FROM FOUNDATION TO DISSOLUTION:
RETHINKING THE SOCIAL CONTRACT TRADITION

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Abstract

The early modern intellectual tradition of the social contract introduces a problematic of the will to the socio-political realm. With power's institutionalization no longer shrouded by an earlier religious imaginary, the social contract thinkers attempt to explain how civil society and the state legitimately and originally come into being. However, in doing so they produce a series of excesses. This work traces those excesses from the modern natural law lineage of Hobbes and Locke through the Enlightenment with Rousseau and Kant. It is in the crisis of society confronting the mystery of its self-institution that the excesses of the social and the political come into view. Rather than society being rendered present through the mediations of a divine will, the social contract stages society's foundation as an act of collective human will. Society is 'discovered' in this intellectual tradition as self-instituting, but its discovery is only partial. In submitting the social and the political to a kind of deliberate construction, the social contract in Hobbes, Locke, and Rousseau operates through an 'artificialist imaginary'. As well, being part of the staging of society's self-institution, the social contract contributes to the disarticulation of the social from the political. The social begins to come into view as a realm of intelligibility unto itself, historically, at this point. Yet its intelligibility remains subsumed by the ostensible transparency of the will, or in Kant, as an ultimate impasse to pure practical reason. The social must be found by reading between-the-lines of the works of these thinkers. This is because the social stands as an excess that the logic of the social contract cannot contain. There are multiple figures of the social that begin to reveal themselves here: the social as obligation, as sociability, and even as an uncontrollable 'monstrosity'. Rather than a ballast for the political, the social primarily resists, residually or intractably, the immediate expressions of the political will. These excesses come most fully into view when the contract confronts its dissolution – an act that, by dint of its 'foundability', the contract must legitimate at a certain limit point.

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Abbreviations for Works Cited Frequently

C	J. Bodin, *Six Books of the Commonwealth*
DJB	H. Grotius, *De jure belli*
L	T. Hobbes, *Leviathan*
MM	I. Kant, *The Metaphysics of Morals*
RR	I. Kant, *Religion within the Bounds of Bare Reason*
SC	J.-J. Rousseau, *The Social Contract*
SD	J.-J. Rousseau, *Discourse on the Origin of Inequality* (*Second Discourse*)
SL	C.-L. de Montesquieu, *The Spirit of the Laws*
TPP	I. Kant, *Toward Perpetual Peace*
TT, II	J. Locke, *Two Treatises of Government, Second Treatise*

Introduction

Playing cards have been a feature of everyday social life in Europe extending back to the fourteenth century. The images most commonly found on face cards today originated in Rouen in 1567. Although they fell out of favour in France in the late eighteenth century, they became the English standard around the same time. In the Rouennais pattern, the King of Hearts, originally associated with Charlemagne, the first king of France, brandishes an axe from behind his head. The design first appeared in England on the cover of a political tract called *The Bloody Game at Cards* (1642) at the outset of the Civil Wars. It offered a Royalist portrait of Charles I's plight using the figures and symbols of the card deck allegorically: "The bloody game at cards, as it was played betwixt the King of Hearts. And the rest of his suite, against the residue of the packe of cards. Wherein is discovered where faire play; was plaid and where was fowle." Charlemagne transmutes into Charles I here as the axe-wielding King of Hearts. In time, by 'gradual degrees' (Benham 1931:31) the axe the king brandishes from behind his head would become a sword. In its present-day form, this sword extends just behind the king's head…or perhaps directly into it, for the two-dimensionality leaves something to the player's imagination. But there is sufficient ambiguity in the image that the King of Hearts would by the twentieth century come to be referred to idiomatically as the Suicide King.[1] I offer, however, that there is something potent suggested by this image, even at its first appearance. The king represented here is the king of absolutism, who has assumed a political will unto himself – a will that was becoming increasingly disconnected from the divine, other-worldly realm. That the very weapon dangling behind Charles I's head would in 1649 be his undoing cannot but help strike one with a degree of foreshadowing. His beheading, in retrospect, was no simple 'suicide' as such, but in

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[1] I trace the earliest usage of this term in a publication back to a 1951 issue of Collier's Magazine.

Figure 1: Cover image to *The Bloody Game at Cards* (1642)

convening what would come to be known as the Long Parliament in 1640 he perilously exposed

his neck.[2] The invisible tether between the king's two bodies was becoming increasingly

apparent and exposed.

The suicidal king is an unusual image, and an almost unthinkable one, but we do find one

other prominent early modern cultural representation of the king's suicide (albeit merely

symbolic) in Shakespeare's *Richard II*, written a half-century before the execution of Charles I.

In the penultimate act, Shakespeare's eponymous king is detained by Bolingbroke and forced to

cede the crown by presiding over his own decoration ceremony. In a sublime gesture, and

under the poetic license of his dramatist, Richard II orates the transfer of his majesty over to his

rival:

Now mark me, how I will undo myself;
I give this heavy weight from off my head
And this unwieldy sceptre from my hand,
The pride of kingly sway from out my heart;
With mine own tears I wash away my balm,
With mine own hands I give away my crown,
With mine own tongue deny my sacred state,
With mine own breath release all duty's rites… (Act IV, Scene I)

In this scene, Richard II's power is dramatically juxtaposed to his impotence. He is at once

sovereign and subject. He might just as readily have cried here, 'the king is dead, long live the

King'! Ernst Kantorowicz, in his seminal work, *The King's Two Bodies* (1957), uses this very

moment to illustrate the mystery of the medieval political community's corporealization. The

myth held that the king inhabited two bodies independent of one another, yet closely interlinked.

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[2] Loughlin (1997) notes the critical nature of this moment for the assumption of popular sovereignty and Parliament's self-creation: "Thus, a parliament that had come into existence as an act of the royal will, and whose representatives—being elected on a limited franchise determined by the king and being summoned to advise the king and consent to the actions of the king's government—was now assuming all powers of government, including those of altering the basic framework of government. Having been created by the crown, parliament—by invoking the principle of popular sovereignty—was able to assume a power of self-creation" (p. 35).

One was a mortal and fleshly body. The other was a sublime and transcendental body that existed in excess of its mortal inhabitations. The ritual of transmutation that this sublime second body underwent upon the death of a singular king ensured not only that the King never died but that, as the embodiment of the realm, the body politic would exist in perpetuity.[3]

In the medieval period, divine will, law, power and knowledge converged in the body of the king, granting the human world its orderliness. There was a religious imaginary that situated the earthly order in reference to an invisible and perpetual other-worldly realm. The earthly realm was still one of imperfection, subject to the weight of time. However, the monarch could stave off the corruption and decrepitude of time, given that he was closer to the eternal. The fact that tyrants might occasionally rule, or societies collapse, could still be integrated into this worldview. Tyranny could be reconciled to a divine order as a reflection of the imperfect character of the mortal and temporal plane, or even as God's punishment. The failure of otherwise long-standing regimes could be conceived as part of the natural or cosmic cycle, rather than as a problem of the *political will*, which appears in the early modern period against and in tension with society's imagined corporealization.

What is perhaps most interesting about Shakespeare's depiction, above, is that at the dawn of the modern era, we witness the transmigration of kingship outside of the mediation of the divine. Richard II enunciates the rite himself, marveling at the chasm between his two bodies. Viewed from the historical vantage point of the disentangling of the double body of the king, Richard II has sovereign-like assumed authorship of his own institutional displacement.[4] We find,

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[3] Even while ushering in a modern notion of sovereignty, Jean Bodin (1577) asserted the latter's absolute and perpetual character with the legal maxim: "le Roy ne meurt jamais" (p. 153).

[4] Shakespeare, we should note, is recalling events from two centuries earlier to his time, well before the modern concept of sovereignty has emerged.

then, in Shakespeare's ceremonial embellishment the tragic king's self-deauthorization, the beginnings of a modern political imaginary. For this act of decoronation exposes us to power's non-self-identical character. Power as generated and power as generating, in a sense, separate apart. It means that we have entered a symbolic universe where the public execution of Charles I, and later Louis XVI, could mean more than the murder of a king, but the transmutation of the institution of kingship as such. Regicide, in other words, stages for modern democratic society the mystery of its self-institution.

If everyday social life in the medieval period can be said to have registered its coherence through the public rites and dramaturgy of kingship, the emergence of the people as a sovereign entity in the early modern period requires society to find new sources of cohesion and integrity, and indeed a new way of instituting its orderliness. It requires new elements, in a manner of speaking, to *people* its imaginary. One of its primary elements is the social contract.

Looking Back from the Failed State

The themes of societal collapse and the return to the state of nature are prominent tropes of the now-late modern political imaginary. They reflect a socio-political realm disincarnated and dislodged from its symbolically firm premodern moorings. Of course, the collapse of polities is by no means a novelty of the present day. One may go as far back as the Athenian Stranger in Plato's *Laws*, who surmised that even by his own time thousands upon thousands of cities had already come and gone (Book III). The currency of these themes, however, has reached a new prominence. For these failures represent a 'crisis' in a way they did not to the premoderns, nor for those ancients looking in retrospect. The present world is not without its share of legitimacy crises – those challenges to our sense of a government's moral right to rule (Schaar 1981). Under a legitimacy crisis, the idea that the institutions of the state are capable of fulfilling their

mandates of representing and governing the people becomes suspended.[5] Sovereignty itself has become an increasingly contested terrain: domestic policy wrestles with international laws and conventions; as the influence of capital overtakes the primacy of the *salus populi*, non-state coalitions and corporations grow larger and more powerful than nation-states; and Indigenous peoples continue to seek redress for centuries of violent colonization and treaty-breaches. Further, the function of sovereign power outside normal constitutional provisions – to suspend the law and declare a state of emergency – appears to increasingly become the new *status quo* in the Western world, rather than being 'exceptional' (Agamben 2005).

Reflecting this state of affairs, a new discourse of failing or roguish states entered the discourse of international relations in the 1990s (Derrida 2005; Chomsky 2006; Acemoglu & Robinson 2012; Ferguson 2013). It is a discourse permeated with states both failing and failed—albeit 'failure' often as a byproduct of prolonged internal strife, corruption, and neglect resulting from colonial mismanagement, external domination, or embargo. A generation since a global truce was proffered by the Cold War threat of mutually assured destruction, we face new collective threats of dissolution by proxy: a faltering world economy, looming environmental crises, and unsustainable demands on energy production. The problem of 'failed' or 'rogue' states seems to be of unique importance in such an interconnected, globalized world, where a single destabilized regime can disrupt the global economy, hobble neighbouring countries (e.g., with a flood of refuge-seekers), or inspire the collapse of nearby regimes already on the brink (e.g., in North Africa during the Arab Spring). Some pundits have even cynically proclaimed the newly formed South Sudan as the world's first 'pre-failed' state. Other foreign policy analysts

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[5] A recent Gallup poll (Mendes & Wilke: 2013) found that among sixteen institutions in American society, Congress ranked lowest on measures of confidence (only 10% asserted 'a great deal' or 'quite a lot' of confidence), and a record low at that. The presidency and the Supreme Court were marked by low levels of confidence as well – 36% and 34% respectively, and declining.

have called the Democratic Republic of the Congo (Herbst & Mills 2013) and Libya – post-dictatorship, where tribal leaders jockey for power – not failed states but essentially *non-states*. Real as this climate may be, this discourse also tells us something about the coordinates of our modern Western political imaginaries.

Inextricably linked to this question of failure is a question of 'the will' – whether collective, individual, institutional, or sovereign – and its adequacy to the tasks of governing and representing. The 'failed' state may connote a failure by inaction or neglect; a failure of the will to survive; a failure to take necessary precautions; a failure to account for the immediate consequences (as well as the secondary consequences) of a state's actions. It is part of the discourse of international affairs today that states 'on the brink' like Haiti and Somalia fail to "get their act together". The connotation is one of a perverse or nihilistic will that wills its own atrophy. Jared Diamond's 2005 intervention into public debates around state-dissolution, *Collapse: How Societies <u>Choose</u> to Fail or Succeed* (emphasis mine), is framed tellingly by its decisionism. Failure here is a *choice*, and not simply placed in the realm of the political (the state), but amidst *society* itself. A more recent article from *Foreign Policy*, "Decline is a Choice" by Hubert Védrine (2012), speaks of the need for Western developed nations to deal with the reality of a newly emerging political-economic world order. Diamond's and Védrine's words are telling of the significance attributed to collective actors as, quite deliberately, choosing their futures. For both, it boils down to a matter of the will: the *choice* to survive or the *choice* to perish. Even as this may seem reductive to a sociological imagination, this decisionism frames the way in which politics is perceived in the late modern political imaginary. Yet it is also not far off from those early moderns who, on the cusp of the first state-formations, framed political

legitimacy in terms of the people's willful consent to be ruled and to enter into the social contract.

In her reading of Kantian political theory, Diane Morgan (2000) raises the provocative question: "can the state die or commit suicide?" (p. 85).[6] This question is interesting when situated through the social contract – both when confronting the Kantian universe, and when it is framed by the more artificialist dimensions of the civil state in Hobbes, Locke, and Rousseau. The contract, as a relation wrought by a deliberate and willful act – whether literal, imaginary, or hypothetical – raises the spectre of the possibility of its deliberate undoing or dissolution. To ask how the state and civil society come into being out of the state of nature (as if *ex nihilo*), even as the theoretical *a priori* condition for legitimate authority, presumes a reciprocal question about how the state can terminate itself and the political community dissolve back into a state of nature. The social contract after all presumes civil society can in some sense be created out of nothing, and even be born of itself. It is equally confounding, then, to think the will's self-dissolution—that the sovereign in its full potency may inhere with the capacity to negate the very terms of its existence. This non-self-identical character of sovereignty (its non-coincidence with itself), I argue, cannot be fully reconciled within the social contract tradition. It is this point – the return to the state of nature that is deemed possible and sometimes even desirable under the social contract – that remains largely 'unthought-of' or '*impensé*' and thereby spurs us to think

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[6] To use of the term 'suicide' here has rhetorical significance that needs to be emphasized. For while the self-inflicted death of the state or the individual can conceivably come about by many different means, our concern here is primarily with the deliberate, intentional act of self-destruction. This should be distinguished from those self-inflicted wounds and deaths that come from hapless, unintended acts or accidents. Rome's decline, for example, can be said to have resulted from a kind of internal decay that thus exposed it to external threats. It remains outside the threshold of a deliberate act (unless we rethink this declension as somehow 'deliberate'). Durkheim's (1897) classic definition is instructive: "suicide is applied to all cases of death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce this result" (p. xlii). As the act defined here is the 'result of the victim himself' and is known to produce his death, we must take it to be *intentional* and a matter of the will.

further about these texts, and to think our own times anew.

Framing the Problem

Christopher Morris (2002) reflects on the fate of the modern state as its fracturing becomes increasingly apparent to us:

> Hobbes wrote brilliantly about the state at an early stage of its development, and Hegel took himself to be writing about the state at a time when its essential form was in place, but there is another tradition in political philosophy, which is to write about particular forms of political organization as they are dying. The *Republic* is the classic (unintentional) example of this genre for the *polis*. It is possible that the attention being given today to the state portends that its dusk is not far ahead. (p. 55)

Even as Hegel (1820) was writing with the "essential form [of the state] in place", he also recognized upon the declension of the Enlightenment that "the owl of Minerva begins its flight only with the onset of dusk" (p. 23). Leo Strauss (1953) remarked similarly of the Stoics, that their 'natural law teaching' "was likely to appear as a mere reflex of a particular temporal state of a particular local society – of the dissolution of the Greek city" (p. 15). Our very language of the now *late* modernity, as with *late* capitalism, intimates the twilight of an era. In some sense, it is in light of the state's ensuing legitimacy crises that the features of our political imaginary come into view again. They come into view as they once were to the early moderns, but now at the other end of their history. The works of the early modern social contract tradition reflect a great upheaval. In the seventeenth and eighteenth centuries a sizable portion of the West underwent widespread civilizational change. At a time when regimes teetered on the brink of dissolution through revolution or civil war, there emerged the question of how the state might be

legitimately formed or, indeed, dissolved.[7] Revolution and civil war forced contemporary

thinkers to confront grand questions concerning order, legitimacy, justice, sovereignty, and in a

more diffuse sense, 'the social', as something both new and beyond the logic of those terms.

But even while many currents of this early modern political imaginary are revived by a

legitimacy crisis in recent decades, there are other currents that the social contract thinkers

addressed when faced with the problem of finding new kinds of legitimate foundation that

remain largely occluded today. For example, while the concepts of 'constituent power' and

'constituted power' were formative of the British Constitution in the seventeenth century, at the

height of popular sovereignty discourse, and while the Americans would also draw upon these in

the century that followed, those dichotomous terms have since largely evaporated from public

discourse of Western nations (Loughlin 2007:48). This dichotomy raises the question for us of

how society now understands its own self-institution. The fact that the inner workings of

society's self-staging are not immediately apparent today may be because "society has long been

discovered" (Singer 1986:11). Any urgency around these questions, only now coming into view

again, may indeed be the sign of a crisis.

Thinking the State

Social contract theory, we have noted, finds its origins around the time of the formation

of the modern state.[8] The concept of 'statehood' only enters our vocabulary in the sixteenth

century (Skinner 1978). Indeed, as Bendix (1978) notes, "centralized rule became an

accomplished fact only under the Tudor monarchy" (pp. 247-8). One problem with talking about

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[7] The 150 year period extending from the execution of Charles I in the English Civil War to the end of the French Revolution (1649 to 1799) constitutes the general focus in this work.

[8] This qualifier, 'modern', may be considered somewhat pleonastic here (Morris 2002:18), but is used for the sake of abundant clarity. Occasionally, 'the state' is referred to in this work in the more generic sense to convey any civil condition.

states before the modern era is the lack of a truly centralized authority with the capacity to govern a society. Under feudalism, power remained fractured by aristocratic privileges and church authority. It only began to consolidate with the rise of absolutism in the late sixteenth and early seventeenth centuries. It is at this time that we can meaningfully begin to talk about the state or sovereignty as such, and indeed posit questions around contract-formation.

It is something of a truism in sociology's more structuralist iterations that societies as collective entities are oriented toward internal stability and continuity across time. States, as the political and institutional organization of societies, reflect this very impetus. Survival is in some sense their very *telos*. In the Hobbesian account, life outside the civil state in the state of nature is unyieldingly precarious. The state is formed by the individual's flight from her most feared enemy: death itself. For Hobbes, the notion that the state might live on in perpetuity flows ultimately from this very exigency. The alternative – life in a state of nature – risks being "solitary, poor, nasty, brutish and short" (*L*, I, XIII).

For the social contract tradition the civil state is essentially created out of a voluntarist act, and therefore subject to voluntary dissolution. However, the very institutionality of the state makes it something more than a set of merely fleeting relations that are renewed moment to moment. Hence, while the social contract thinkers present us with a fundamentally consensual and voluntarist basis of social organization and political obligation, for these same thinkers the organizational structures of the state cannot or should not generally be so quickly sloughed off. Even Rousseau, despite his pessimism over the course of Western civilization, considered in *The Social Contract* (1762) the possibility of a "well-constituted State" where the laws "continually gain new strength" as they become more venerable with the passing of time (III, XI).

This institutionality and venerability is perhaps partly why the Soviet Union, under a

regime "concentrat[ing] all power within itself", survived so long even while "the thesis of the withering away of the state continued to be declared as imperatively as ever" through the Stalinist era (Lefort 1986:63). The state is a political form unique in the continuity of its variegated roles and offices, even as their inhabitants change. Indeed, the institutional structures of the state may very well survive the radical shift from one regime to another. We might think of this as one of the features of 'bureaucracy', a concept closely aligned with the modern state. It remains one basis of the state's durability across time. Anthropologists note the distinctness of this form of social organization, historically: "States[9] are the only kind of human society that do not ordinarily undergo short-term cycles of formation and dissolution" (Tainter 2004:27). Cohen, in *Origins of the State* (1978) explains the process of formation and dissolution experienced by other group-formations as 'fissioning':

> All political systems except true states break up into similar units as part of their normal process of political activity. Hunting bands, locally autonomous food producers, and chieftaincies each build up the polity to some critical point and then send off subordinate segments to found new units or split because of conflict over succession, land shortage, failure by one segment to support another in intergroup competition or hostilities, or for some other reason. These new units grow in their turn, then split again. *The state is a system specifically designed to restrain such tendencies*. And this capacity creates an entirely new society: one that can expand without splitting, incorporate other polities and ethnic groups, and become more populous, more heterogeneous, and more powerful, with no known upper limit on its size or strength…. (p. 4)

Lévi-Strauss's work on the Nambikuara band, like Evans-Pritchard's on the Nuer people, indicates along these lines the relative ease with which members of tribal societies may leave them and settle in a new tribe or band – the bands themselves organizing and disorganizing across time and along shifts in social equilibrium (Hirschman 1978:93-4). Cohen, above, hints at a second tendency characterizing the state: In addition to its orientation to permanence, it

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[9] We could add city-states and empires here.

expands. This is distinct from 'primitive' societies which may persist in a condition of ongoing mutual antagonism, yet do not as a rule seek to absorb each other (Gauchet 1985:41).

Clastres (2010) argued that it was this very antagonism – and we might extend this to the process of fissioning – that *prevented* the state from coming into being as a separate entity and therefore as an oppressive one to the social sphere. Indeed we need not think of tribal group formations as being 'ahistorical' or *ante*social as Hobbes would have them. The "savage people" of America, he had remarked, remained in this state of war, without common authority (*L*, I, XIII). However, 'primitive society' *qua* the 'multiplicity of undivided communities' is also engaged in processes of self-institution, as any society might be. It survives, Samuel Moyn (2013) notes, through a "struggle to remain the same" (p. 56), by not letting any singular individual hold power. By contrast, then, the state represents simply a 'modern' way of approaching the problematic of the institution of the political.[10]

These exigencies of the State (e.g., continuity, expansion, absorption), in their primary and secondary consequences, I suggest, exist in tension with each other. Institutions may persist, becoming rigid in their form to the point of stagnation, or they may grow untenable in size, beyond the state's britches. Rousseau (*SC*), for example, imagined the decline of even the well-ordered state to be inevitable over time. But its decline could also be hastened by certain structural characteristics of its constitution: the state with so many orders of administration that its normal functions (or, worse, an emergency situation) might exhaust its resources to the point of dissolution; or the state constituted in such a manner that it must constantly engage in

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[10] In terms of modern examples, we may consider the Maroon communities (former slaves), like the Ndyuka of Surinam, which, upon its members fleeing Dutch plantations in the eighteenth century, were reconstructed absent a monopoly over the legitimate use of violence (Thoden van Velzen 1982).

conquest and expand to meet its resource demands, assuring its eventual fall. [11] The English contemporary to Rousseau, Edward Gibbon (1776), alludes to these points in remarking on the Roman Empire's great expansionist ambitions: "The decline of Rome was the natural and inevitable effect of immoderate greatness. Prosperity repined the principle of decay; the causes of destruction multiplied with the extent of conquest; and as soon as time or accident had removed the artificial supports, the stupendous fabric yielded to the pressure of its own weight" (V. 6, Ch. XXXVIII). Hence, as Cohen notes above, we may not know the "upper limit on" the state's "size or strength", but Rome may provide something of a threshold, even if from a time well before the modern state.[12] In some sense, however, we may read these as the unintended consequences of the state's very orientation to survival – something perhaps counterpurposive at its core; or, in its hubristic orientations, a disjuncture between some larger societal *telos* and the state's basic material demands of self-reproduction.

The medieval body politic indeed boasts some of these features of statehood, in its orientation to expansion or continuity. However, the modern state is conceived, at least through the social contract, as being willfully dissoluble. Through this lens, it is situated within an imaginary of 'the artificial'. There is a tension that appears here: the contract is both artificial, and in some sense, oriented to continuity. It is the field of the social, I will suggest, that brings these two exigencies together.

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[11] Then there's Sparta, "whose reputed purpose is itself war" (Oakeshott 1975:274).

[12] Although there are other polities which boast institutionalized forms of power beyond hunting bands and the like, the modern Western state is unique, borne out of political and economic developments tied to the rise of the bourgeoisie, secularization, and civil society. Further, for the purposes of this discussion, the geographic emphasis here, based in the predominant writings of the period, is France, England, and to a lesser extent the fledgling colonies. I take heed of Morris' (2002) argument here, that "[t]he modern state is a European creation, almost French and British, and much of the world today is a variation on a theme" (p. viii).

Thinking the Social

The concept of 'the social' is a fraught one. It has proliferated in a number of different ways across sociological, historiographic, and political thought. One version of the social we might call in the broadest terms a purely descriptive or analytical category; a way of conceptualizing human relations in all of their modalities and forms (e.g., social interaction, social structure, socialization). We could call this view 'trans-historical' in the sense that these concepts can be used to talk about forms of interpersonal relations or societal forms whether premodern or modern, and existing across cultures. Another version would be the social as a distinctly modern phenomenon, corresponding to the rise of civil society and the breakdown of rigid status hierarchies and their associated role expectations. Here, the social *qua* 'sociability' represents a realm of free interaction between private individuals, insofar as individuals find new modes of coexistence, often as strangers, without necessarily enduring, pre-given bonds of community. This social here represents a newly horizontal plane of relations corresponding to notions of individual rights and metaphysical equality, even if they are not borne out empirically. In this sense, the emergence of 'society' is also the emergence of 'the individual' as a discrete figure. Daniel Gordon (1994) remarks upon the rise of this realm of sociability during the period of absolutism in France. Individuals at this time could interact 'freely' in the *grand monde* without regard for corporate standing, socializing "within the gaps and interstices of a hierarchical regime" (p. 7) in a way not previously possible. We should therefore distinguish this from an earlier notion of 'society' that intimated a realm of intercourse among elites, as in 'high society'. The latter was not so much a realm of 'free' interaction, but a sphere of manners introduced, according to Elias (2000), as a way to reinforce social hierarchies in the premodern period. The nobility could be tamed by the deferential codes of behaviour (a 'spirit of

precedence') of courtly life, extending upward toward the king, all the while distinguishing themselves from the population at large.

An additional usage of the social stems from the rise of the individual as the object of management by the nation-state (e.g., 'social welfare') during the late eighteenth and nineteenth centuries. Less a realm of free interaction, the social appears here through the problem of indigence opened up by post-feudal market relations, the basis upon which, for Polanyi (1944), society is first discovered as a distinct realm. For Arendt (1998), by way of this realm of necessity, the social intrudes upon the political realm by making politics about population management and the economic, or managing 'mere life,' rather than being a realm of free human action. The social here also corresponds closely to the Foucauldian biopolitical production of citizen-subjects through apparatuses of health, education, and criminal justice, and what could newly be called the 'social problems' of disease, poverty, and crime (Vernon 2007:13). This usage, however, only occasionally comes into view with the period and intellectual tradition I am tracing.

In this work I approach the social by juxtaposing its thin and thick iterations. I suggest that the social as a sphere of free and willful interaction must be understood against the social as sedimentation; as a thickness always in excess of an immediate will or purposiveness. Both of these fields of the social come into view with the early modern social contract thinkers, I argue. Yet they are primarily subordinated to a political moment, or even negated by the latter, belying the very idea of a 'social' contract. For to speak of contracts in the manner of a *social* contract is somewhat counterintuitive for sociology. The presumption of finding definitive origins to civil society, or the body politic more broadly, suggests a kind of voluntarism or negative individualism more reflective of economics or political science proper. The deep historical

interest in this question of origins speaks more to the insistence of 'legitimacy' as a factor in how we orient to our political institutions and how society obtains its self-understanding. Indeed, our representations of the past, such as in tropes like 'the contract' and the 'state of nature', tell us more about the nature of social and political thought than what perhaps actually took place.

The language of the 'contract' *qua* social contract is nonetheless compelling, since most contracts, in the conventional sense of the word, are of a provisional nature. They can be completed or satisfied. However, to speak of a fundamental compact, like the social contract, is to speak of a relationship or commitment that is character-changing - one that influences all subsequent relations and subordinate contracts. We can trace the proliferation of contract discourse back to the 1640s, when Charles I's purported breach of an ancient contract led to his eventual execution. Contract theory stems from two major strands of thought – the religious theory of covenant based in individual conscience, and the secular form of contract based in individual self-interest and natural right. Even as the notion of political consent precedes this period, 'contract' presumed a new set of relations (Kahn 2004). What, then, may we say of this particular contract's 'social' character?

Hayek (1979) famously referred to 'the social' as a "weasel-word par excellence. Nobody knows what it actually means" (p. 16). While we may seek to preserve for it a degree of ambiguity throughout this work, this does not mean the social fails to refer to a substantial reality – a reality which is at least minimally intelligible. We might refer to the social in its thick form, provisionally, as a kind of 'density' or substratum that eludes representation, law, and even complete knowledge (Singer 2006). The social's independence from a previous divinely ordained constellation – its seemingly indeterminate *telos* – has garnered it in the twentieth century a range of monstrous characterizations: for example, as an insatiable "blob" (Pitkin

2000), a "curiously independent Moloch" (Barnouw 1990), and as "insane, uncontrollable, a monstrous protuberance" (Baudrillard 1983). Indeed, the attempts to articulate the meaning of this category are extensive in late modernity.

Claude Lefort (1986) presents us with the distinction between the 'institution of the social' and the 'discourse of the social'. While the former set of relations can be said to exist in all societies in some manner, the discourse of the social, or the *representation* of the social as a realm unto itself, separate from the natural or divine orders, is a uniquely modern phenomenon. The social is discovered in modernity, and the social contract tradition is among the first to articulate a notion of it. Yet it is a peculiar discovery in that the 'social' of the social contract seems primarily framed in terms of a political act. The initial, 'social' moment in contract-formation, as Rousseau puts it, is the act of association. Hobbes and Locke share similar notions of a moment whereby the people somehow become a people (if only briefly for Hobbes) before subjecting themselves to a governing authority. This moment – real or hypothetical - is significant for these thinkers, as it signals a basis of political legitimacy that is uniquely modern: authority must be grounded ultimately in the voluntary consent of 'the people' constituted as such. The people are not simply a dispersed multitude. There is an initial collective moment of assent, but even this assent itself seems on the surface more a feature of the political than the social as a distinct field.[13]

I argue here that the social contract tradition *does* in fact make a discovery of the social, but not in the manner it intimates. The voluntarism of consent theory presumes, after all, an act of the will; an act that is un-coerced, and unconstrained, by even those typically 'social' things

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[13] I would offer that this is also different from the vernacular usage of the term, 'social contract', today to describe the norms and obligations that are not legally-binding but have a civil character – for example, the obligation to tip for service at a restaurant.

like enduring statuses, norms, role expectations, or attachments. The social in my reading is rather an excess that social contract theory raises but cannot contain (e.g., mores, non-voluntary obligations, or debts that go beyond that which can be willfully assented to). Hence, in the spirit of works of political theory like C.B. Macpherson's (1962) account of the ideology of possessive individualism in seventeenth century market society, or Carole Pateman's (1988) elucidation of the sexual contract undergirding the relations of the social contract, this work points to the gaps and fissures in social contract thought with the hope of bringing its auspices to light in a new way.

Chapters Outline

Although I attempt to treat these four major thinkers of the early modern social contract tradition as interlocutors through each of my chapters, there is a historic progression for which thinkers are given privileged attention. This lines up with the numerical progression of the chapters: chapter two, Hobbes; chapter three, Locke; chapter four, Rousseau; and chapter five, Kant. I begin my discussion, in chapter one, by considering the socio-historical conditions out of which social contract theory emerges. More than a straight-forward intellectual history, however, I aim to set up the conceptual terms under which the social contract becomes a mode through which society becomes capable of instituting itself and coming into self-consciousness. I draw upon Lefort's conception of the symbolic order in order to show how these novel intellectual currents are constituted within a much larger backdrop or constellation of relations. The intellectual currents of the social contract, however, are not merely a by-product: they also, in practical terms, become formative of the mode of institution of early modern society. The social contract, I suggest here, becomes part of modern society's *mise en scène* and *mise en sens*. It, in a sense, discovers society while also constituting it in a particular manner.

In chapters two and three I consider the theme of artificialism in social contract thought. Alongside the unspoken workings of the symbolic order as its backdrop, the social contract in its modern character holds that legitimate forms of political association must be voluntary in character, based in the capacity of individuals to freely give consent. Additionally, civil society is viewed here as emerging by spontaneous willful assembly. We might call this an artificialist (literally, 'made by art') understanding of political formations, and it is one that is central to the formation of the modern liberal subject. I speak of an 'artificialist imaginary' – drawing on the conceptualization of the imaginary in the first chapter – in the sense that it constitutes a field of representation, with its own conceptual devices (e.g., the state of nature, the contract or compact, the act of association) that give society a kind of meaning and coherence. One condition of consent-giving is the possibility of the withdrawal of that consent and consequent dissolution of civil society. Yet this issue of willful dissolution raises important questions about the durability of civil society and state institutions so constituted, i.e., regarding the range of non-voluntary obligations to the body politic that persist in situations both normal and emergency, to its past and its future. How is 'the social' in this early modern period imagined? I argue the social is not in fact located in the place it is articulated – in the (social) contract as such – but is rather a remainder that shows itself primarily when confronted with the willful act of dissolution, or with individuals leaving a civil state. I consider here the social as indissoluble or as an excess, as it appears within the work of Locke and Rousseau, and to a lesser extent with Hobbes for whom it exists as somewhat epiphenomenal or submerged. The social then, while negated by the voluntarist precepts of civil society and the state, is also the excess produced by the latter. This is most evidenced in those moments when one is required to consent to give up consent at a later time (e.g., in wartimes).

For chapter four I take this point of excess further by considering two inversions of the democratic regime: despotism and totalitarianism. Despotism represents, in its arbitrary deployment of power, a political formation the social contract emerges in some sense to challenge. However, against its best intentions, or because of them, the social contract risks succumbing to and perishing under an absolute concentration of power. Despotism does not strictly belong to the modern period, nor is it democracy's inversion alone. Totalitarianism, however, is both anti-democratic and, historically, post-democratic. The totalitarian ought not to be thought of as a foreign or anomalous formation of the twentieth century but rather as one of the possibilities opened up by modernity and the very premises of liberal democratic or social contract thought: the emergence of 'the people' as a substantial political entity and the inability of institutions to master the excesses of popular sovereignty. The heights of totalitarianism may be found centuries beyond the emergence of social contract thought, but the former are surely anticipated in the more violent moments of the Revolutionary Terror as part of modern democracy's eighteenth century birth. Further, totalitarianism's precursors are found both explicitly in and 'between the lines' of the social contract writings on mob rule and popular sovereignty, most strongly in Rousseau. Totalitarianism stands as a rejection of the artificialist imaginary so tied to political modernity – the body politic seeking to re-corporealize after its early modern de-corporealization. I attempt here, then, to address how totalitarianism, with its own unique symbolic coordinates and *mise en forme*, is anticipated and perhaps even fomented in social contract thought.

In chapter five I consider the many near-suicides of the state in the writings of Kant. The victims of the great early modern regicides – Charles I's and Louis XVI's – provide my point of departure. Kant stands out among the social contract tradition as more legal-formalist than

voluntarist in his ontology. We may see his work as the twilight of the early modern social contract tradition, having dispensed with its artificialist character and having subsumed the political to the moral exigencies of pure practical reason. For Kant, the dissolution of the state remains something quite exceptional, but not impossible, nor even impossible as a legal act, so long as a return to the state of nature – the worst fate of all – is eluded. For there is little so deplorable as human life outside of its existence under law in Kant. It also becomes possible for the first time in the modern period, through Kant, to speak of the state of exception, relative to the law and the sovereign – and, indeed, this gap between the exception and the categorical imperative becomes most evident when viewed through the problematic of collapse. We also seek to uncover a figure of the social *qua* sociability in Kant, which bears a propitious antagonism. Unsocial sociability becomes a motor of civilizational progress and a buffer in the realm of international affairs (that lingering, inextinguishable sphere of the state of nature), quite unlike Rousseau's *amour propre* which portends only collapse by way of an insidious despotism. The social for Kant, I suggest, remains a key dimension in the ever-ascending progress of humanity, even as it must always exist as a failure to achieve pure ethical action.

In positing this problematic of dissolution and the social contract, I aim to redeem the sociological project of thinking the social, in its manifold configurations, against and through the political. Hence, I conclude by considering some twentieth century figures of dissolution and the legacy of social contract thought in late modernity. In broader terms, I consider the strands of social contract thought that re-emerge in the twentieth century after its restaging under Kant. Kant's framework subordinates the empirical contract to transcendental law, splitting the social contract off from its artificialist origins: on the one side is Rawlsian justice, on the other is neoliberalism. I consider here amidst the renewed interest in theories of the state whether we

might posit a new imaginary that views the fraying of the social and the political through the lens of the post-apocalyptic.

Chapter 1: The Social Contract and Its Symbolic Order

"...how could we imagine that a state could be immortal, given that Sparta and Rome had perished?" (Colas 1997:413)

The social contract tradition emerges out of a shift in the symbolic coordinates of modern Western society. The very possibility of reimagining the genesis of political society, as the social contract tradition did by tracing it back to a figurative state of nature, required a shift in the broader co-ordinates of collective life. It is in the early modern period (the seventeenth and eighteenth centuries especially) when it first becomes possible to talk about 'the people' as sovereign entity, outside of the rights conceived in the old estate system, and emancipated from an entrenched hierarchical social order.

By extension, in the move from Hobbes to the Enlightenment thinkers that follow him, like Locke and Rousseau, it becomes possible to talk about a discovery or 'invention' of society. As Baker (1994) notes, "[t]he Enlightenment invented society as the symbolic representation of collective human existence and instituted it as the essential domain of human practice" (p. 96). Society, its inner workings exposed by the light of reason, became a field with its own intelligibility outside of the determinations of divine provenance. It is not merely society's discovery that is novel here, but the mystery of society's self-institution in the social contract and popular sovereignty. As Leo Strauss (1953) remarked on this shift: "[m]an can be sovereign only because there is no cosmic support for his humanity. He can be sovereign only because he is absolutely a stranger in the universe" (p. 175).

I begin this chapter by laying out a conceptual framework for the rest of the dissertation. This involves uncovering the symbolic coordinates of early modern French and English society,

and considering what it means to begin to speak about society's self-institution. I follow with a somewhat circumscribed history of these political societies to help us understand their shifting social currents. I end the chapter with a discussion of the Enlightenment as both an efflorescence of this shift toward society's self-conscious institution, yet also as a move bearing its own excesses and shadows.

The Symbolic Order

We might think of the symbolic order as a kind of backdrop structuring social life, making intelligible ostensibly singular and discrete events. The symbolic is a constellation of terms that grants society its coherence and integrity. It is, in a sense, what makes social existence possible. For "people do not live in society in a purely spontaneous manner" (Singer 1986:5). They need to be able to point to common rules and goals, and identify or even disidentify with them. In limiting spontaneity, the symbolic resists its own spontaneous transformation. It is not something "to be appropriated and manipulated freely at the whim of political actors" (Bignotto 2013:42). Lefort's usage is somewhat freer than that of one of its progenitors, Jacques Lacan. Lacan's symbolic is concretely tied to the structural characteristics of language and the Law, bearing the metaphysical features incumbent to all systems of meaning. In suggesting that "the unconscious is structured like a language", as he did in his early work, Lacan makes the coherence of the psychic life of individuals contingent upon the symbolic order. Singular words, for example, would be nonsensical phonemes without being embedded in a structured concatenation of other words. That is to say, words must fit within a coherent structure with relational meaning, hierarchies of value, and attendant rules of usage, i.e., grammar and syntax. In Lefort's usage, it is *social* life that requires this backdrop in order to obtain coherence. In his formulation, modes of social conduct, interactions and the like, "would be simply physical

motions" (Flynn 2006:115) if they lacked the general context provided by a given symbolic order.
Social practices, relations, institutions, hierarchies and social divisions obtain their sense of
meaningfulness and legitimacy only with reference to some kind of larger backdrop:

> …une vie individuelle est hautement symbolique à l'égard du devenir culturel, en
> ceci qu'elle montre quelles sortes de possibilités sont données à l'homme, quelles
> relations le lient au groupe et à quoi tendent ces relations, quelle perception du passé
> et de l'avenir lui façonnent les institutions. (Lefort 1952:97)

Our very sense of reality is therefore contingent upon the symbolic order. In other words, the
symbolic order *orders* "the apprehension of that which presents itself as real" (Flynn 2006:118).

A society's mode of institution gives social life its intelligibility and makes possible a
certain sense of belonging within a given social order. It is "a particular way in which [a] society
is articulated", under a "certain configuration of power and a certain conception of its symbolic
character" (Lefort 1986:20). The mode of institution involves an on-going, practical putting-into-
form of society. We might think of it as the practical translation of the symbolic. It is a practice
that is in place even before society can be said to be 'discovered', though after its discovery these
practices can themselves appear less opaque.

Lefort (2006) uses three interrelated terms to talk about the process by which society
institutes itself. At the most general level is the *mise en forme*. We may think of this as society's
translation into a *political* formation or regime type, whether democratic, monarchic, or
bureaucratic,[14] to give the most common Western examples. It is essentially the way in which
society constitutes for itself the place of power. With this putting-into-form come two associated
processes: society's *mise en sens* or 'putting into meaning' and its *mise en scène* or 'staging' (p.

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[14] Lefort prefers to talk of totalitarian *society* and the bureaucratic *regime* as its form of power.

154). The symbolic coordinates of society need to be dramatized, experienced, and made meaningful for it to obtain its coherence.

Let us consider these terms through the modern democratic form of society, by way of example. There exist for democratic society generative principles like equality, human rights, and the general will that find institutional expression in law. These principles afford society a manner of self-understanding. For example, as Lefort (1986) notes, the 'struggle for human rights' is a key "'generative principle' of democratic society" (p. 22). It animates institutions and engenders laws, which in turn reproduces this very principle. *Mise en sens* brings the symbolic coordinates of society into a realm of intelligibility by translating them into the terms of the imaginary.

The *mise en sens* also participates in the *mise en scène* insofar as the two are not entirely separable. As the democratic regime is constituted around an empty centre, we can understand society's self-staging through its periodic reproduction of a void or its constitutive conflict: the election. The election of political representatives, beyond merely fulfilling the technical proceduralism of deciding on a government, stages or vivifies the principle of popular consent recalling the putative origins of democratic society.[15] It does so through the active participation of the people, who experience it as the reproduction of society's political form.[16] The election we

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[15] On some level, the fact of low voter turnout does not diminish the *mise en scène* of the election, for even failing to vote gets reabsorbed and interpreted as a *choice*, or a kind of tacit consent to be governed by the winning party.

[16] Edmund Morgan (1988) describes the election's more raucous form in post-revolutionary America, where it displayed the excesses of a sporting event. One historian in 1791 remarked that he "could think of no more disgraceful transaction to compare them with than an election. 'I have seen,' he said, 'this coarse sport [football] carried to the barbarous height of an election contest'" (p. 202). Early modern elections were often experienced in the manner of the carnivalesque. In the moment of society determining the political institution of society, its normal order was temporarily overturned, as if having momentarily lost its coordinates. Morgan's observation on this is keen, for Protestant countries, which tended to develop along the republican line, did not otherwise institute a rite of carnivalesque, while Catholic countries, embracing the latter festivities, tended not to have elections (p. 206)

might even say is the re-staging of *the social contract* itself as one of democratic society's formative motifs.

These *mises* constitute the practical making of society. For our purposes the imaginary is a key term for understanding the outcome of these *mises*, as society's translation of its symbolic coordinates. Where the symbolic is a substratum of relations that resist change, the imaginary constitutes a set of representations of society. The word, 'imaginary,' is not used to emphasize the fictitious nature of these representations (though they are surely not 'real'), but the fact that it grants society consciousness of itself.[17] Moyn (2013) gives this process a Lacanian resonance by referencing the mirror stage, whereby, writ large, society only finds incorporation by situating itself into a fictional, hypostatized representation of itself. Alienation from its fractured raw materials in a representation of coherence is the price of social existence, just as a kind of alienation is the price of subjectivity according to psychoanalysis.

The imaginary should not be understood as inflexible. Indeed, in its modern form, we find the imaginary realm increasingly 'disentangled' or freed from the symbolic. In this sense, it becomes necessary, I claim, to speak of multiple imaginaries, which remain at some level still imbricated with the symbolic. It may consist in a range of representational motifs around which the law and political institutions are constructed. It also, in a more salient way than the symbolic, gives contours to collective life – the collectivity's situatedness in time and space. As Lefort (1988) remarks on society's representational schemes: "Human beings populate the invisible

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[17] All the same, that the 'imaginary' and 'reality' might also be at odds with one another is an important aspect of Lefort's conceptual topology. The *fiction* of popular sovereignty, after all, as Edmund Morgan shows (1988) historically, was more important for producing a 'modern' social existence than the *actual* existence of inviolate processes for its implementation. This reading suggests, as with Lefort's, that society can attain different degrees of proximity between the imaginary and reality (even if we cannot have perfect knowledge of that reality). In some instances, too, close a proximity may be devastating, as Diane Morgan (2000) notes on the matter of national identity: a "fictionalised account of the founding of a nation is necessary to establish historical 'continuity' and also to preserve the myth of national uniqueness …. If the truths were and could be rigorously told, there would be no ground for claiming national exclusivity" (p. 70).

with the things they see, naively invent a time that exists before time, organize a space that exists behind their space; they base the plot on the most general conditions of their lives" (p. 223). It is in the imaginary that the visible and the invisible intertwine, where temporal and spatial planes are mapped out, where we construct a "relation to the dead and to the future" (Flynn 2006:113).

The arbiters of the revolution imaginary in France, for example, filled it out by appealing to the past. The Phrygian cap recalled the liberation of slaves in Rome, while other Roman symbols took the place of Christian ones subject to ritualized deconsecration (Ozouf 1991). On the temporal plane, we may recall the revolutionary period in France wherein time, in the form of the passing of days, would be mapped out anew with the republican calendar. Old historic facts or events would get re-inscribed into the symbolic universe of the day: The republican calendar came into effect in the autumn of 1793, already a year into the life of the life of the republic. Hence, "Year I was never actually lived as such" (Huet 2012:110), but created and given meaning retroactively as if it *had* been experienced as such. By way of another example of this retroactive process, Kantorowicz (1957) cites the work of the early medieval cleric, the Norman Anonymous, for whom the Israeli kings of the Old Testament are read, retroactively, as participating in the double body of Christ, but in the *anticipation* of His coming: "a *twin person*, one descending from nature, the other from grace" (p. 46). This precept would have been nonsensical at the time of the writing of the Hebrew Bible, but perfectly consistent with the medieval political theology of the twelfth century (Flynn 2006:108), and in a temporal frame where events do not unfold horizontally across time, but vertically as if part of an omni-temporal[18] divine frame.

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[18] This usage comes from Auerbach (1957) and is developed further, below, in my discussion of 'The Modern Symbolic Order'.

It is not simply that historical events are reimagined and given new significance, but that the very concept of temporality has shifted here. The Western, premodern religious imaginary itself instituted a temporality radically different to its pagan predecessor. The foundation of the community in the former, for example, is relived in the Christian ritual of the Eucharist, as a moment in history, rather than pagan ritual which relived its origins ritually as a 'timeless beginning' (Gauchet 1985:136). Of course, all constructions of history are made meaningful only through representational systems. These examples rather go further in showing how a shift in the way in which time and events are imagined can give radically new significance to actual history, absent as they are of that significance at the moment of their occurrence.

To say that the imaginary has become disentangled from the symbolic is not to suggest that the imaginary has become arbitrary. Indeed we can think of periods where, given the tectonic shifts in the symbolic order,[19] society's imaginary configurations, its erstwhile *mise en sens* and *mise en scène*, no longer have traction and begin to collapse. Indeed, as suggested in the introduction, a society's 'form' may come into view best at the point of its institutional failure: when a particular regime loses its sense of legitimacy. The fall of the *ancien régime*, for example, cannot simply be explained by rampant poverty or failures of political accountability. It is better explained by the failure of power to continue to enshroud its brutality in a cloak of legitimacy. Suffering and wanton excess could, after all, have their 'legitimate' place within a stable regime, within a coherent mode of institution under the auspices of the *ancien régime*. However, as Flynn (2006) puts it, at the outset of the French Revolution, "the symbolic efficacity of the system of representation, within which this experience of misery could have been encoded and

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[19] The shift in the symbolic does not come spontaneously, or in a random manner. It exists in a dynamic relationship with the material conditions of society. The significance of "state fiscal distress", "elite mobility and competition", and "heightened mass mobilization potential" (Goldstone 1991:278) to the revolutionary changes experienced in England in the 1640s and France in the 1790s should not be disregarded. These function in tandem with generative principles of regimes, which are not themselves reducible to mere material conditions.

endured, ha[d] collapsed" (p. 133). Leading up to the French Revolution, we see the rise a new system of values and a new sense of what constitutes legitimate authority (e.g., the rational-legal; the universal; the meritocratic; the third estate). If the official discourse or the imaginary of the *ancien régime* still persisted institutionally, it was in tension with these emergent principles and representations—a disentangling that, we have noted, is decidedly modern. With the shifting symbolic coordinates of society, and new means for representing them, the representational schemes of the nobility, and its patrimonial privileges, no longer appeared legitimate. Similarly, and as a kind of inversion a half-century later, the allegiance of the scattered peasantry to Louis-Napoléon Bonaparte, in Marx's discussion of *The Eighteenth Brumaire* (1852), can be understood as a failure of the *proletariat* to provide a unifying basis for the peasant class. Napoleon III, on the other hand, offered a kind of symbolic efficacity by channeling the 'phantoms' of the First Empire (Lefort 1986:14).

By way of another, more recent example of failure, under the Stalinist-bureaucratic regime there existed the notion of a "socialist paradise, in which the harshest contrasts in reality [were] transformed into harmonious and complementary parts" (Lefort 1986:53). Capitalism, on the other hand, could be represented under these auspices as chaotic and inhumane. "Disquiet, disarray, individual criticisms were always absorbed in the ultimate vision of the Stalinist universe, a universe governed by a necessity in which every action was mechanically linked to every other" (*ibid*.). Under other circumstances, where this overriding logic did not prevail, dissatisfaction might lead to a challenge to the regime's legitimacy. This is indeed what would eventually happen, as the bureaucracy "had become increasingly rigid and distant from the masses" in its struggle against capitalism (p. 58). It started losing cohesion, and with that decline, "the bureaucracy [began] to lose the fantastic dimensions that it had acquired" (*ibid*.). It was

exposed as "conflict-ridden, prone to error, [and] vulnerable". The final nail in the coffin of the Stalinist-bureaucratic regime came from Khrushchev's excoriation of Stalin at the Twentieth Congress, essentially shaking "the foundations of modern totalitarianism". Žižek (Žižek & Gunjević 2012) recalls for us the suicides committed amongst the former Stalinist cadres following Khrushchev's speech. The facts that were unveiled were not new; the cadres simply had lost the symbolic support that had once justified their actions in the name of historical progress. To now accept Stalin as a monster was unbearable to those apparatchiks of the regime. In contrast, the "hysterical scenes of suicide and madness" (p. 118) claimed by Camus (2012) to have followed the execution of Louis XVI reflect the extent to which the symbolic order of the moribund *ancien régime* held firm for a large portion of society, despite this grand symbolic feat of regicide and the ritualized reinscriptions of society during the Revolution. For many royalists, the acts of public regicide violated the terms of their symbolic inscription in society in the most unbearably traumatic way.

The very fact that the conceptual apparatus of the social contract antedates the French Revolution by up to a century-and-a-half suggests the coordinates of the symbolic order were already shifting for a period. Locke, Hobbes, Rousseau and Kant are all, in some sense, confronting the emergence of a new symbolic order with a new imaginary scheme at the level of intellectual culture – the very possibility of change in the modern period means we witness a disentangling of the two. For as much as this tradition involves a degree of philosophical abstraction, the mix of speculative history and philosophical anthropology we see in social contract thought demonstrates an attempt to enshroud an emergent or newly idealized political order in a cloak of legitimacy. Indeed, the dramatization of the foundation of society and the

state in the social contract tradition, we may argue, comes to play an important role more broadly in the mode of institution of modern Western society.

There is an epistemological tension that necessarily comes with our rendering of the symbolic here. As the system which coordinates the relationship between power, law, and (importantly here) *knowledge*, the symbolic cannot become an object of knowledge to itself. There is no point from which one can stand within it wherein its truth can be apprehended, nor is it possible to stand outside of it from a neutral place (as subjectivity is always already situated *somewhere*). As with the Lacanian symbolic order, we may say Lefort's is constitutively incomplete: there is no other of the Other. This is in part why society as a rule for Lefort fails to completely coincide with itself. Lefort's (1988) classic dictum points to the problem: "human society can only open onto itself by being held in an opening it did not create" (p. 157). There is always a point of excess or a 'fringe of indetermination' (Bignotto 2013:35) that a conceptual framework points to but cannot fully grasp. This lacuna brings us to the relationship between the symbolic and the real.

In the Lacanian universe, 'the real' refers to that which exceeds representation. It is a residual factor that suggests a fundamental failure in any attempt at symbolization. Further, it marks a logical limit point in every system of meaning, even as the latter strives for self-assumed coherence or completeness. The real is not to be confused with 'reality' as such; the latter merely obtains a conceit of 'realness'. For reality, as it is apprehended, is always contingent upon representations (the imaginary). Lefort's usage of the real, however, is not metaphysical as such. As Breckman (2012) claims, "Lefort's notion of the real is actually closer to the Lacanian definition of a symbolically instituted 'reality' than to the Lacanian 'real'" (p. 32). The imaginary for Lefort remains connected to some dimly perceivable substantiality (a 'referent') –

a relationship that Lacan's system precludes. This referent for Lefort is itself in a sense inaccessible, but its very positing marks an epistemological contrast with Lacan. Lefort's usage does not tend to capture the disruptive or traumatic character of the real (the fact of this 'failure' to *make present*), as it is addressed in the social theory of Žižek, for example. While I do not raise the Lacanian real in this work, it is suggested at times in speaking about excess, which I take as a recurring theme.

The social contract, we may say, describes a set of ideals that indeed may not have reflected actually existing relations. They may even in a limited sense be 'utopian'. For example, 'the state of nature', as it is imagined, is one of those 'non-places'—or equally a uchronia or 'non-time'—as the horizon upon which the contract is conceived. But social contract theory reflects a nascent set of relations it views and posits as coming into being. It therefore both constitutes an ideal and a reality, in some sense blurring the lines between the two (Singer 1986:97-102).

Having set up some key terms, we now turn to consider more fully the historical conditions that made the emergence of the imaginary of the social contract possible.

A New Constellation: The Collapse of the Medieval Symbolic Order

The social contract tradition first emerges alongside the development of modern natural law theory. Friedrich Otto von Gierke (1950) notes that these natural law "theories of the nature of the State […] if opposed to one another, have one thing in common – they all depart from the medieval theocratic conception of the State" (p. 4). This shift marks the move away from the predominance of the premodern religious imaginary. The State was, henceforth:

> ... no longer derived from the divinely ordained harmony of the universal whole; it
> was no longer explained as a partial whole which was derived from, and preserved
> by, the existence of the greater: it was simply explained by itself. The starting-point
> of speculation ceased to be general humanity: it became the individual and self-
> sufficing sovereign State; and this individual State was regarded as based on a union
> of individuals, in obedience to the dictates of Natural Law, to form a society armed
> with supreme power. (*ibid*.:40)

Medieval political theology had placed the perpetuity of the state in the institution of kingship which, with its second, transcendental body incorporated into itself the realm, the political community, as well as an element of the divine. Even as Cromwell himself appealed to a kind of divine providence in the overthrowing of the British monarchy, the execution of Charles I in 1649 brought traumatically into public view the sovereign's mortal character. The king could be killed; he was no longer a fixture in an interminable line with its ancient provenance, and nor could another institution (a Lord Protector, for example) replace him in quite the same manner.

John Donne, a generation before the Civil Wars, expounded upon a world undergoing a radical transformation:

> And freely men confesse that this world's spent,
> When in the Planets, and the Firmament
> They seeke so many new; then see that this
> Is crumbled out againe to his Atomies.
> 'Tis all in pieces, all cohaerence gone;
> All just supply, and all Relation:
> Prince, Subject, Father, Sonne, are things forgot…. (Donne 1994:177)

The collapse of the medieval cosmos brought with it upheaval in the social order. The final line in Donne here captures the faltering of old kinship structures and political hierarchies amidst the unprecedented mobility of capital, bodies, and ideas. Carole Pateman (1979) remarks similarly on the rigidity of premodern forms of social organization: "Before about the seventeenth century, humans had been seen as part of a cosmic, divinely-ordered and 'natural' hierarchy of inequality and subordination. Within this context there was scant room for general questions to be posed

about political authority and political obligation" (p. 12). This uniformity, expressed conceptually and visibly in the body of the king, reflected a particular configuration of the symbolic order that made certain kinds of questions *unimaginable*. Pateman qualifies this point further: "The scope of a given ruler's right of command might be challenged but, in general, rulers were seen as part of God's way with the world" (p. 13). Of course, the medieval system should not be confused with a perfectly ordered one 'in reality'. Power rarely consolidated fully around the king in practice, shared as it was by church and nobility with their respective and antagonistic interests under feudalism. But as noted earlier, the imaginary dimensions of medieval political theology, as rooted in or discordant from 'reality' as they may be, provide the basis for individuals' orientation to the world around them.[20] The religious imaginary afforded society the possibility of its stable institution – of *not* imagining other possible configurations of society, which could be destabilizing. It essentially "render[ed] power" relatively "non-problematic" by placing it securely in the transcendent realm (Singer 1986:17).

The breakdown of this old worldview raised new and fundamental questions about political obligations and political authority. We may take a cue from Foucault's *The Order of Things* (2002) here: the modern ushers in a new way of thinking about the world – a new *episteme*. Where once lay "correspondence and identity" grew "discrepancy and difference" (Blakemore 1998:155). It is out of this fragmentation, of social things laid bare, that society could be re-imagined as a human construction. It is only here that we can truly begin to talk about the state, and the source of its authority in the figure of the sovereign.

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[20] We may note that the course of centralization of power through the medieval period occurred differently between England and France. With the former, we may trace 'royal supremacy' back to the Norman conquests, while with the latter, the enlargement of royal authority was more gradual (Bendix 1978:323).

The Modern State and the Emergence of the Sovereign

The early medieval period saw kingship reined in by divine law or classical natural law. There was little sense of our modern notion of sovereignty, or for that matter positive law, whether as an expression of the will of an absolutist monarch or the popular will of its republican descendants (Gough 1978:25). Law in the medieval period bore little distinction from custom (p. 26) and remained decentred, rivaled by the authority of the church. Sovereignty as a concept is perhaps best thought of as a development of the sixteenth century in response to the anarchic features of the medieval estate system and the ensuing religious wars. During this period, even as a system of honour situated nobles in a hierarchy of relations in a normative or ideal sense, this did not prevent them in practice from jockeying with kings for authority and allegiance:

> A dissident and ungovernable nobility might be expelled from an Italian city or a powerful military order might be suppressed in Spain; but the great lords of France, the sons of those who had humiliated Louis XI, could not be so easily disposed of, and there were those even in the reign of Louis XIII [1610-43] who reckoned themselves the equals of the king and who regarded their allegiance as a matter of condescension. (Oakeshott 1975:227-8)

France's monarchy, by this analysis at least, remained relatively weak before Louis XIV. We may also see the emergence of this notion of sovereignty around the early modern state's impetus to "exclude and consolidate" as threats were posed both internally and externally – hence the need to ward off a potentially superior papal or imperial authority and to "extinguish competitors" at home (Oakeshott 1975:225).

The figure of the sovereign is introduced with the re-emergence of the idea of a process through which law could be created and transformed: the Roman *lex*. "'In lex [the Romans] discovered a means of modifying, and even abolishing, ancient custom' which came to be thought of 'as itself lex and therefore capable of being *emended* in a law-making process'"

(emphasis mine) (O'Sullivan 2000:138-9). This was an elemental moment in the formation of sovereignty—the emancipation from a purely customary past. In this sense, but for its manifestations in Roman civilization, sovereignty has a uniquely modern character to it: "modern states differed both in enjoying sovereign authority [the monopoly over legitimate violence] and in the degree of power at their disposal" (p. 140). Jean Bodin's work heralds the conceptual shift from medieval kingship to modern sovereignty as "that absolute and perpetual power vested in a commonwealth which in Latin is termed *majestas*" (*ibid.*). With Bodin, power becomes secular and sovereignty becomes the primary feature of the philosophical theory of the state (Gierke 1950:40). This capacity to break with the past would become the basis upon which absolutism could take hold in the seventeenth century. "Statutory law and the definition of law as the command of the sovereign", Hulliung (1976) notes, "were the means by which Hobbes and Bodin overcame the customary law that had protected property rights but had also obstructed the freedom of the king to act as he pleased" (p. 96). Hence, the power of the post-medieval king was enhanced under absolutism as he drifted away from customary and divine law.

The idea of sovereign power ushers into the body politic a newly 'indeterminate' character. For example, democratic or republican forms of sovereignty - in their modern iterations - are defined by a kind of excess at their core, one that comes with the distinct ability for self-transformation. Regimes that were based in divine law faced constraints accorded to their transcendental referent; some externality that was unchanging. What is unique to this emergent form of sovereignty as opposed to earlier modes of rule is its putatively self-transformative character: "a state was a 'free' or 'sovereign' association in respect of three characteristics. It was 'free' because its government was not subject to any superior external authority," "in virtue of being an association in terms of law," and "because, having in its government the authority

and the procedures to emancipate itself continuously from its legal past, it was proof against

prescription; there was no law so ancient or so entrenched that it could not be amended or

repealed" (Oakeshott 1975:229). Oakeshott speaks more generally of a shift from nomocratic

regimes to teleocratic ones. While the nomocratic is oriented toward its self-reproduction, the

teleocratic is oriented toward the realization of an ideal. The latter suggests a regime open to

transformation, as if no longer externally determined. Michael Naas (2008) provides a helpful

comparison:

> While a monarchic, aristocratic, or plutocratic regime *may* change over time, may
> improve or may be destroyed – the monarch may be overthrown or may die, the
> aristocracy may become corrupted and lead to a plutocracy, the members of the
> wealthy class may shift – such changes are *not* intrinsic possibilities of these
> regimes. (p. 136)[21]

Put otherwise, these older regimes do not inhere with an immanent capacity to radically alter

themselves. Such alterations could only come about by an external force, or a kind of atrophy or

corruption of its animating spirit. There is, however, an intrinsic possibility for self-

transformation in the modern republic, and this is essential to the social contract's imaginary

around the dissolution of the state. To better appreciate this distinction between these premodern

and modern modes of institution, we should consider more deeply the nomocratic coordinates of

medieval political theology and its early modern transition toward absolutism.

The King's Two Bodies

The early modern period saw a decline in the theologico-political myth of the king's two

bodies, as addressed in Kantorowicz's seminal work on the subject. According to the myth, there

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[21] Krause (2003) notes that for Montesquieu, each regime is susceptible to decline where the animating spirit is
corrupted and the institutions weakened or made vulnerable. In despotism, since it is an order without law, defined
by a spirit of fear and lawlessness, it declines *in accordance with* its animating spirit. Yet in either case, dissolution
by corruption must be distinguished from the deliberate, willful act of dissolution by the sovereign.

was something divine and interminable in the institution of kingship. The king – or sometimes, queen – was placed in the horizon of the Body of Christ and ruled accordingly by divine right. Through this figuration, the king could both rule and incorporate the realm, as both its head and its body. The perpetuity of the body politic could be imagined through the permanence of the institution of kingship. Kingship thereby provided a space within which collective life attained a certain coherence and longevity, even upon the death of a singular king (as the interregnal proclamation assured, "The king is dead; long live the King!"). The king and the court surrounding him granted the body politic a visible, even spectacular presence. Indeed, the divine, other-worldly – and therefore invisible – origins of monarchic power meant that it needed to be made visible somehow (Singer 1986:56). We may say that the representational aspects of the institution of kingship provided premodern French and English society with a kind of consciousness of itself. This configuration of kingship was, as such, a central motif of the medieval political imaginary.

The doctrine of divine right reached its peak alongside seventeenth century absolutism in England and France (Fox 1960:134). Divine right did not presume a God-sanctioned autocracy, but that the king ruled in a manner consistent with "God's order" or unity (Gough 1978:51). The medieval period gave way to a more centralized power under absolutism. In France, even as there existed intermediary bodies (e.g., the *parlements*) between the absolutist king and the estates, all were required to approach the king as the "seat and source of all power" for their entreaties. Under the emergent principle of *raison d'État,* Louis XIV and XV could each view his will as "identical to that of the state, the nation, the rational, and the public" (Hulliung 1976:19). With the seventeenth and eighteenth century absolutisms of James I, Frederick the Great, and Louis XIV, "the king embodied the whole of authority; the law was often coterminous

with his will" (*ibid*.). This sentiment is captured best in Louis XIV's infamous remark, "*l'État, c'est moi*".[22] Bossuet, in the 1670s, further proclaimed to the Sun King: "*tout l'État est en lui: la volonté de tout le peuple est renfermée dans la sienne*". The identification of the monarch with the state for a period fused divine right and absolutism (Fox 1960:135). As with the Roman emperors, the absolutist king refused to share the design of positive law with "the *parlements* or the estates" (*ibid*.:137) in disregard to claims of customary law. But absolutism involved also the secularization of power – its figuration in the will of the king rather than in the horizon of divine law.[23] We see this in absolutism's own *mise en sens* and *mise en scène*. To take an example from Daniel Gordon (1994) on absolutism, a "non-Christian (i.e., pagan) imagery was evoked in courtly theater and art in order to ratify this divination of the human—to create a new symbolic milieu in which courtiers could worship the king's will" (p. 120). This would have been sacrilegious in a premodern and strictly 'Christian framework' (p. 120).

Louis XIV's brand of sovereignty, in its full assumption of power, bordered on despotic or 'seigneurial' will (as opposed to 'royal' or 'tyrannical' rule) in the Bodinian taxonomy. This seigneurial approach extends as late as Louis XV's declaration in 1766, "it is in my person alone that sovereign power resides ... it is from me alone that my courts hold their existence and their authority" (Prokhovnik 2008:93). Signaling further the capriciousness of Louis XV is the (likely

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[22] Rowen (1961) argues this statement may be somewhat apocryphal. It is more likely Louis IV had spoken in possessive, rather than identificatory, terms: "*l'État, c'est à moi*".

[23] Oakeshott (1975) frames this in part as a historical transition of authority from Church to State: "When civil courts had taken over what had belonged to the jurisdiction of ecclesiastical courts, when wills and treaties had ceased to be semi-ecclesiastical documents, when the Pope's authority as an arbitrator between the rulers of realms had lapsed, when papal taxation had been proscribed by civil rulers, when ecclesiastical offices had become royal appointments invaded by laymen, when the franchises enjoyed by the Church had been withdrawn and ecclesiastical corporations in large numbers dissolved, when excommunication had no terror and interdict no peril, the judicial *majestas* of the Papacy had vanished" (p. 225).

somewhat apocryphal) statement: "*après moi, le déluge*" (or, roughly, "once I'm gone, what matter if the state be consumed by flood?").

In practice, however, the absolute monarch could not simply act arbitrarily, but was restrained by custom. As Sewell (2000) notes: "Any wholesale abolition of [aristocratic] privileges by the king would violate his own *raison d'être* and thus jeopardize his 'absolute' power. The corporate ideology of the Absolute Monarchy rendered it absolute only within a system of essentially fixed privileges" (p. 67). This was surely more the case in England, at least after 1688, where Parliament reserved a certain privilege to constrain the royal will, in a manner not matched yet in France. In England, absolutism declined sooner. David Hume (1793b), writing about divine right in his essay "Whether the British Government Inclines more to Absolute Monarchy, or to a Republic," could claim that, by the mid-eighteenth century, "the mere name of king...commands little respect; and the talk of a king as GOD's vicegerent upon earth, or to give him any of those magnificent titles, which formerly dazzled mankind, would but excite laughter in everyone" (p. 35). Monarchy in a sense consolidated its power in the period of absolutism, before collapsing under the momentum toward republicanism. There was an expansion of the monarch's 'real' power under the *ancien régime*, but with this expansion and self-assumption of power, the aura around it (i.e., divine right) in fact receded by the time of Louis XVI (Singer 1986:60).

We may go so far as to see divine right as a kind of 'vanishing mediator' (Jameson 1988) in political authority's prolonged movement towards its self-assumption. Divine right allowed the king – or James I at minimum – to claim a direct line from the State to God, thereby dis-intermediating the Pope (Loughlin 2007:31). Such a move completed the transition of political power from church to state. As an increasingly deist understanding of God appears with the

Enlightenment in the eighteenth century, so appeared the notion of a sovereign whose power transcends the political system rather than existing as one stratum within a divine order. Divine right, in a sense, vanishes in the process.

It was absolutism having attained its full realization, then – the sovereign's assumption of power outside the purview of the divine will – that eventually gives birth to the social contract. Without reference to a transcendental other, older social hierarchies were no longer granted legitimacy as part of an enduring order. Power comes to appear as the product of human will and open to a new schema of authorization. Indeed, Gauchet (1985) finds in this counter-purposive move by the state, toward power's self-assumption, an 'almost suicidal' gesture (p. 58)—a gesture we will return to again.

Disaggregation and the Birth of the People

It took a shift in the symbolic order in the early modern period for the people to be conceived as a legitimate source of sovereignty. The core ideals of popular sovereignty, like equality of rights and rule by consent, only began to truly materialize around the English Civil Wars. Anticipating this shift, Fortescue in the fifteenth century and Machiavelli in the sixteenth both praised the English tradition protecting private property, which allowed for the security of the yeomen and the landed gentry, and ensured a degree of protection against tyranny (Morgan 1988:154). The statutes in place under Henry VII allowed for land holdings among freemen that could not be found across the channel. There is also an economic case to be made about the influence of an emergent bourgeoisie. The expanding class of propertied yeomen and gentry meant that king and nobility were increasingly dependent upon the former for taxation. In contrast to France, the right to levy taxes came under the exclusive purview of Parliament in England.

For our purposes, the yeoman's significance is in how he was situated within the political imaginary of the day; how his image could be wielded to achieve certain political goals. Indeed, he bore a unique status in the social order given he was not bound by a system of feudal obligations, thereby occupying a place outside age-old structures of vassalage. Ideas of popular sovereignty were prevalent in England and America in the seventeenth and eighteenth centuries, but they were "more easily observed in England," Morgan (1988) notes in his compelling historiography. Unlike in England, "the fictions of popular sovereignty remained at a greater distance from fact than in the colonies and accordingly required more explanation, interpretation, and defense" (p. 151).

One element that surely adds to the gap between the emergent people in reality and in the imaginary was their 'invisibility' relative to the spectacular presence of the king. Morgan (1988) argues that the "ability of the people to exercise sovereignty and control their government rested on the righteousness, independence, and military might of the yeoman farmer, the man who owned his own land, made his living from it, and stood ready to defend it and his country by force of arms" (pp. 153-4). Cromwell girded his authority with "the strength of the people", and Harrington further advanced the notion of the 'invincible yeoman', who could form an army greater than any peasantry around. We need not dwell much on the gap between the imaginary and reality here, but simply note that these representations of the warrior yeoman were largely at odds with the real yeoman who had not seen the battlefield much since the days in which Machiavelli previously sang their praises. By the eighteenth century, battles were fought with professional armies, and even before them, by the poor, without the yeomen.

Just as the House of Commons had elevated the status of the king under the mandates of divine right for its own strategic influence, so the yeoman was exalted for his ultimate control:

> Yeomen did not declare their independence. Their lordly neighbors declared it, in
> an appeal for support against those other few whom they feared and distrusted as
> enemies to liberty and to the security of property - against irresponsible kings,
> against courtiers and bankers, stockjobbers and speculators - and against that
> unsafe portion of the many whom they also feared and distrusted for the same
> reason: paupers and laborers who held no land. (Morgan 1988:169)

The landed aristocracy could hoist the yeoman as a threat against incursions, even as society itself remained rather hierarchical and deferential. Indeed, before the Glorious Revolution in England, yeomen did not tend to elect their own.

Of course, 'the people' here still referred to a narrow set of propertied men. The parallel to the yeoman, existing outside of nobility and vassalage, was the nomadic peasant or vagabond (in France, the *gens sans aveu*). For the people as a whole to come into view as the source of sovereignty, a dramatic shift away from the structural coordinates of feudalism was first required:

> The most obvious effect of the new institutional system was the destruction of the
> traditional character of settled populations and their transmutation into a new type
> of people, migratory, nomadic, lacking in self-respect and discipline—crude,
> callous beings of whom both labour and capitalist were an example. (Polanyi
> 1944:128)

What remained after this uprooting were 'fragmented elements': "the atoms of society, the multitude of individuals, each with his egoistic desires but also his legitimate claim of freedom" (Verweyen 1996:199-200). It is this fledgling liberal subject, and the rights conferred upon him, that we turn to next in charting this shift.

The Rights of the People

It was through absolutism that the medieval estate system could develop into the modern state, with its more centralized power and bureaucracy. Where power had previously been divided up variously between the different estates, the seventeenth century saw its consolidation

around the monarch: "Most of these monarchs [ruling these emergent states] extinguished those persons who could claim to be their partners in the exercise of authority or nobilities who by *jus feudorum* claimed to participate" (Oakeshott 1975:189-90). The modern state saw ancient law and custom replaced by legislative supremacy, as well as the absorption of independent jurisdictions (p. 228). Bendix (1978) notes how in the feudal order, 'personal' relations as a site of distinction were held as superior to the 'impersonal', which was "regarded as plebeian and specifically devoid of dignity" (p. 230). Hence we can point to a symbolic shift that found the abstract relations between ruler and subject, and between subjects themselves, gain legitimacy over 'feudal and personal relations' (Oakeshott 1975:228). This incorporation of all into the modern state alternately had the effect, in Gierke's (1950) account, of eliminating the separate personality of the people, who bore customary rights as a distinct entity within the system of estates. Indeed, the modern state appears, in principle, to incorporate all segments of society in a uniform manner. In England, this 'rights-bearing' character of the people magnified under the emergent ethos of popular sovereignty in the 1640s. Under the premise of parliamentary supremacy, the people were vaunted as the source of the authority espoused by their representatives.[24] Yet in the process, the actual people appear to fade into the backdrop, subsumed under the figurative 'people' being represented. As Edmund Morgan (1988) notes, "[w]ith the fictional people suddenly supreme, actual people, as embodied in local communities, found their traditional rights and liberties in jeopardy from a representative body that recognized only a fictional superior" (p. 53). The old estate system that preserved certain rights, protections, and a balance of power was, perhaps ironically, *lost* under the unifying tendency of the modern

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[24] This is notwithstanding the problems of treating 'the people' in such undifferentiated terms (Pateman 1988; Mills 1997; Pateman & Mills 2007). That is to say that in addition to the excesses that go 'unspoken' in social contract thought, there are also unspoken kinds of domination (e.g., gender, racial, colonial) that these early modern thinkers take for granted and fail to recognize as *socially* constituted in themselves.

state. It was, after all, soon following upon the devastation of the Civil Wars that Hobbes would

proclaim the people's abdication of their rights to self-government as their one and only

'sovereign' act. However, Parliament's newfound power meant it, along with the ministers of the

Crown, could rein in the king's power in assuming the ability to determine his judgment. 'A

Declaration of the Lords and Commons' was issued to this effect in 1642:

> It is acknowledged that the King is the Fountain of Justice and Protection, but the
> Acts of Justice and Protection are not exercised in his own Person, nor depend
> upon his pleasure, but by his Courts and his Ministers who must do their duty
> therein, *though the King in his own Person should forbid them*: and therefore if
> Judgment should be given by them against the King's Will and Personal
> command, yet are they the King's Judgments. The High Court of Parliament is not
> only a Court of Judicature . . . but it is likewise a Council . . . to preserve the public
> Peace and Safety of the Kingdom, and to declare the King's pleasure in those
> things that are requisite thereunto, and what they do herein hath the stamp of Royal
> Authority, although His Majesty . . . do in his own Person oppose or interrupt the
> same. (Flynn 2006:109) (emphasis mine)

This right of Parliament to 'declare the king's pleasure' would be echoed some years later by

Isaac Penington Jr., who placed Parliamentary power above the executive in order to "curb the

extravagancy of Power" (Morgan 1988:84-5). There was still divine right, and indeed the king

still embodied both the state and its power, but Parliament put itself in the position of

ascertaining the king's pleasure. As Koselleck (1988) remarks on the emergent idea of *raison

d'état*: "the English Parliament in 1640, when it wished to strip Charles I of his prerogatives,

hastily embraced the argument that every conscience, even the King's, must bow to the interest

of the State. Parliament claimed total sovereignty ... [forcing the] King to act against his good

conscience" (p. 21). In the early seventeenth century, the Commons was increasingly in a

position to determine the king's will, especially in remonstrances toward his advisors who were

by no means infallible. The logic proceeded as follows: "The king is wise and good. Therefore

he must want what we want" (Morgan 1988:30). The Commons presumed to know what the king

wanted better than he did, himself.

In France, the people came to find greater identification with the sovereign monarch of the *ancien régime* once they were liberated from their vassalage in the eighteenth century. The king was mobilized as a site of identification, allowing for the people's coherence as a nation: "the collectivity had to become subjects of the king, before it could become a collective subject opposed to the king" (Singer 1986:73). But the king would ultimately be displaced from this point of identification in the period leading up to the Revolutionary Terror. Absolutism, in concentrating power, became increasingly precarious. By the incorporation into the king of his own divine supplement, as simultaneous legislator and guarantor of legitimacy, absolutism collapsed under "the enormity of his representation" (p. 76).

Hence, the emergence of a new mode of representation, the leveling of distinctions, the re-assembling of peoples, and the break with something that was once timeless and divinely ordered are fundamental features of the emergence of the modern state. They are, in kind, fundamental to the emergence of civil society, idealized as a formation wrought from equal and consenting parties. To further consider the traumatic kernel of this transition, we turn briefly to the symbolic problem of the king's second body.

Excursus: Regicide

Foucault and the historians of the present have argued that power, especially in the modern context, is best understood not through its consolidation and centralization in the state (e.g., the power to create and enforce law) but through the diffuse techniques and apparatuses of disciplinary regimes and knowledge production. The traditional conception of political power saw the latter as residing in – and as made theatrically visible through – the sovereign; as the governance over a geographic realm and the maintenance of order therein. The modern nation

state, ushered in dramatically, we may say, by the decapitation of Louis XVI, can no longer be thought of as embodying power or making it so spectacular, according to the Foucauldians who insist we cut off the head of the sovereign in our theory of the political (Foucault 1979:88-9). At best, sovereignty becomes a secondary category here with little significance in the permutations of power and subject-formations. Yet, as Singer and Weir (2006) note, to conflate 'the political' with technologies of power, or treat sovereignty as a merely residual category, results in a failure to recognize its symbolic dimensions. In the most extreme case, this means failing to recognize the traumatic possibilities that persist or open up further under new constellations of the political, as I address in Chapter 4 in the discussion of totalitarianism. We must consider that what the above-mentioned beheading "fails to realize...is the possibility that the sovereign body remains alive and kicking" (Neocleous 2003:18) after its decapitation. It remains, haunting, like some headless ghost, or as the dead primal father in Freud's *Totem and Taboo* (1913). Is this not the French problem with Louis XVI, rearing his severed head again in the (albeit increasingly desacralized) form of emperor or king in the century to follow?[25] The elimination of the king does not eliminate the place of the Other and the symbolic dimension of power. In his reconsideration of the king's two bodies, Eric Santner (2011) identifies the transfer of sovereign power from the French king's sublime body to the people, not a desublimated mass but as a sublime *second* body of the people. The displacement of the king's majesty following the French Revolution, Santner claims, "introduced into 'the people' a spectral yet visceral surplus immanence: the flesh that attaches to this new subject-bearer of sovereignty as an always ambivalent and uncanny 'distinction,' an element that would appear both to bind and threaten

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[25] Recall that Lenin's body is still sublime (preserved for public viewing), perhaps because the Tsar was not formally executed nor was there a post-facto ceremony to that effect – his second body transferred to Lenin; Tsarist absolutism survives! The embalming of Lenin and Dimitrov was an attempt at creating indistinction between two bodies – the mortal and the mystical – such that they persist even after their deaths (Morgan 2000).

with dissolution the body politic of modern nation-states" (p. 103). Sovereignty is not so much excarnated (de-corporealized) here as *transmutated*. We find this in England in some respect as well, though a century-and-a-half earlier: "The people to whom [Parliament] attributed supreme power were themselves fictional and could most usefully remain so, a mystical body, existing as a people only in the actions of the Parliament that claimed to act for them" (Morgan 1988:49). While Kant (2006c), in a manner consistent with the early modern royalists, observed that "it would be nonsensical to speak of the majesty of the people" (p. 78), we may still speak of this second, latent, mystical body of the people, that, in the sense of the sublime, resists direct representation.

The Modern Symbolic Order

In premodern society, just as these three terms – power, law, and knowledge – mapped on to one another, so did the symbolic, imaginary and the real (Flynn 2006:125). The latter were, from the perspective of the collectivity (that is, from the perspective of the imaginary itself), indistinguishable. Until the gap opens up between knowledge and the other terms, it "does not make sense" to question the distinction between them. It is this shift that makes 'the social' as a distinct realm intelligible. In the longer run of modernity, as noted earlier, political power separates "from society as a whole and from the spheres of economic activity, law, knowledge and so on" (Lefort 1986:21). Truth-claims become immediately suspect, scientific truths are contingent upon continual verification and falsifiability, and public discourse becomes a field of perpetual debate. In this regard, the social contract thought of the early modern period represents a transitional point. For even as it introduces the principle of autonomy over heteronomy, the dimensions of power, law, and knowledge are not yet clearly separate, at least before Kant.

This shift in the symbolic brings about a new mode by which society institutes itself – a new set of representational tools and coordinates. As Lefort (2006) puts it: "when society can no longer be represented as a body and is no longer embodied in the figure of the prince, it is time that people, state, and nation acquire a new force and become the major poles by which social identity and social communality can be signified" (p. 166). This symbolic shift is the basis of the modern political imaginary.

Even as the state may consolidate power under the republic to a greater extent than the *ancien régime* did (Tocqueville 1856), in modern democratic regimes, according to Lefort, the place of power becomes an ontologically *empty* one. In the medieval political imaginary, the king could incarnate all: the people, the estates, the realm, and the divine. He constituted the site at which power, law and knowledge converged; the space within which it is possible to distinguish between legitimate and illegitimate uses of power, or between truth and falsity. Democratic regimes, as a truly modern innovation in political representation, are premised on an irresolvable tension: the inability of anyone to stand in for the entire political community. "Representative government is", Manin (1997) notes, "a system in which the representatives can never say with complete confidence and certainty 'We the people'" (p. 74). 'Truth' and 'power' no longer coincide after the collapse of age-old 'markers of certitude'. These two terms are now subject to an ongoing debate. This is why, we may say, political parties are key institutions to democratic regimes: they sustain the idea of an empty centre with, at most, tentative claims to occupy it by one party or another. The loss of this continual tension or debate would mean the collapse of the democratic regime.[26]

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[26] "[T]he image of popular sovereignty...is linked to the image of an empty place (*lieu vide*), impossible to occupy, such that those who exercise public authority can never claim to appropriate it" (Lefort 1986:279).

Breckman (2012) shows Lefort's innovation here in understanding the symbolic dimensions of how the democratic regimes are instituted. The emptiness at the core of the democratic regime is not simply about a structural lack, in the metaphysical sense that Lacan used it to describe the symbolic. It is rather that "modern democracy institutes the symbolic dimension of power as empty" (p. 34) as part of its *mise en forme*. The act of constructing this space as empty is key, for it cannot be simplified to a mere confrontation with lack.[27] As Žižek (2002) notes, democracy "reinterprets the 'empirical' fact of interregnum [the period between two reigning figures] into a 'transcendental' condition of the legitimate exercise of Power" (p. 276). This does not negate the fact that lack, or excess, is a dimension that democracy has to confront. The importance here is the construction of this empty centre through the imaginary. In positing the 'rite' of the election as its primary instituting ritual (one in which periodically the governing body dissolves and is reconstituted), the democratic regime reminds us that the centre is fundamentally empty.

In Carl Schmitt's reading (1985), the emergence of the modern sovereign merely transmits the transcendental referent to the secular realm: "[t]o the conception of God in the seventeenth and eighteenth centuries belongs the idea of his transcendence vis-à-vis the world, just as to that period's philosophy of state belongs the notion of the transcendence of the sovereign vis-à-vis the state" (p. 49). The sovereign here represents an immanent transcendence to the body politic.[28] However, this movement does not involve terms as equivalent as Schmitt makes them out to be. The modern sovereign is immanent to the world in a way that God was not. For the former can no longer situate power unproblematically amidst the invisible and eternal

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[27] The *ancien régime* had to confront this lack as well, in a sense, but was able to more resolutely place it in a transcendental space with relative security. The interregnum rite of medieval political theology enunciated the death of the king near-simultaneously as it bade his longevity. The second, divine body of the king, after all, never died.

[28] As Gauchet (1985) notes: "Reducing otherness does not mean eliminating the dimension of the other in the name of pure presence but transferring the other into immanence" (p. 166).

locus of the other-worldly. According to Lefort, the theological may survive in modernity, and indeed it may experience a resurgence during moments of crisis, but it is not a normal figure of the political. Democracy does not rely on it as a substratum even as it still posits a kind of exteriority – its self-transcendence. That outside space remains, but it does so as radically indeterminate. Indeed, 'the people' come to assume the place of power where once sat the king, but the former remains an indeterminate entity. Carlo I. Accetti (2010) compares the *Vox Dei* of the *ancien régime* with the *Vox populi* of modern mass democracy: just as divine will eludes concrete expression, to be deciphered by earthly representatives, so too the people's will remains an ineffable object to be deciphered by elected representatives (p. 264)—except that the inscrutability of the latter constitutes its core conflict.

What also enables the regime shift in modernity is a change in the temporal and spatial coordinates of collective life. As Lefort (1988) tells us, "the advent of a new idea of time, of the division between past and present, true and false, visible and invisible, real and imaginary, just and unjust, between that which conforms to nature and that which goes against nature, between possible and impossible" (p. 93). In the premodern period, as Singer (1986) notes, "time is generally seen as the corruption of a pure state graced by the presence of God" (p. 14). The permanence of the divine presence in the world provided orderliness amidst impermanence.[29] Such temporal 'simultaneity' makes no real sense within the chronological temporality of the

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[29] Auerbach's (1957) discussion of the near-sacrifice of Isaac in the Old Testament is instructive on this point: "[I]f an occurrence like the sacrifice of Isaac is interpreted as prefiguring the sacrifice of Christ, so that in the former the latter is as it were announced and promised and the latter 'fulfills'... the former, then a connection is established between two events which are linked neither temporally nor causally-a connection which it is impossible to establish by reason in the horizontal dimension ... It can be established only if both occurrences are vertically linked to Divine Providence, which alone is able to devise such a plan of history and supply the key to its understanding ... the here and now is no longer a mere link in an earthly chain of events, it is simultaneously something which has always been, and will be fulfilled in the future; and strictly, in the eyes of God, it is something eternal, something omnitemporal, something already consummated in the realm of fragmentary earthly event" (p. 73, cited in Anderson 1983:24).

modern symbolic order. The future is now placed within the horizon of the progress of history, rather than the eschatology of endings or an eternal present (Koselleck 1988:10).

In the religious imaginary, the other-worldly obtains a coherence and its earthly inscriptions a kind of legitimacy not as visibly salient under the modern democratic regime. By contrast, Flynn (2006) notes that the way in which premodern societies "relate to themselves and the world is dramatized in terms of determinate figures existing in the visible world" (p. 125). The intertwining of the invisible (the king's second body) with the perceptual field of the visible (the living king) is only possible before modernity – before the imaginary begins to disentangle from the symbolic. Society before democracy posits an external Other (e.g., God) that guarantees both knowledge and law (in social relations, etc.). In the modern symbolic order, the figure of the Other is effaced (Flynn 2006:125), but, *the place* of the Other cannot be eliminated if social life is to be made meaningful. *The people* as Other is an indefinite, unincorporated entity, open to wildly shifting re-inscriptions. We get a sense here of a (paradoxical) immanent transcendence rather than mere pure presence. The "organizing principle turns out to be the other in ourselves," Gauchet (1985) notes, a "modern reabsorption of religious otherness" (p. 166). The 'discovery' of this autonomous society, however, we find, is one fraught with occlusion; the very shadows cast initially by Enlightenment in its own practice of 'uncovering'.

The Enlightenment and the Discovery of Society

To understand the development of the social contract tradition, we need to consider the intellectual currents of the Enlightenment. The Enlightenment may be characterized by a range of cultural, intellectual, and epistemological shifts taking place in the West from the late seventeenth century and through the eighteenth century. Among these is the triumph of reason over myth and superstition; of science over religious explanation. Metaphorically, it is the

shining of a light on society and exposing it to its own inner-workings erstwhile left in darkness.

Foucault (1980) describes the 'Rousseauist dream' that would inspire the later revolutionaries:

> It was the dream of a transparent society, visible and legible in each of its parts, the dream of there no longer existing any zones of darkness, zones established by the privileges of royal power or the prerogatives of some corporation, zones of disorder. It was the dream that each individual, whatever position he occupied, might be able to see the whole of society, that men's hearts should communicate, their vision be unobstructed by obstacles, and that opinion of all reign over each. (p. 152)

In becoming visible, society comes to appear as a realm with its own distinct orderliness.

We may think, then, of the voluntarist formation of society out of the state of nature as a kind of 'founding fiction' at the centre of the artificialist imaginary of the social contract, and central therefore for society's imaginary constitution. The 'discovery of society' in the seventeenth and eighteenth centuries also marks a shift in prevailing schemes of representation, away from the religious imaginary. The earliest usage of this terminology of society's 'discovery' comes from Karl Polanyi's *The Great Transformation* (1944). His 'discovery' is placed at the turn of the nineteenth century and owed to the joint trajectory of pauperism and 'political economy' in England. It was with the emergence of ostensibly self-regulating market forces and their dramatic intrusion into everyday life that society 'appeared'. Polanyi points to social reformer Robert Owen as having first made this observation, that not simply the market but 'society itself', as an 'emergent reality' beyond the market and beyond the earlier set of feudal organizational arrangements, could influence 'human possibilities' (p. 85).

With the intellectual history later offered by Louis Dumont (1965), this discovery is placed at an earlier point, in the imaginary of the Enlightenment. In the religious imaginary of premodernity, the social world, or its orderliness, was viewed as a reflection of the other-worldly

or divine.[30] The social world was ordained with meaning and purpose, made immediately present by God and His lineage along a concatenation of social hierarchies. As Singer (1986) notes, it is only with the breakdown of the religious imaginary that society is made 'discoverable' – that is, treated as an object that is not immediately given or made present by some other realm. Because society was only a representation of another realm under the religious imaginary, it did not "solicit any attempts at understanding or interpretation," as a distinct entity (Singer 1986:16). Indeed, the 'religious imaginary' suppresses the discovery of society. Within it, "society is without a sphere of immanence from which it can appear as given of itself. It appears instead as given from without by a divine Other, as subjected to a sphere of transcendence that alone provides it with its form, finality and meaning" (*ibid*.:13). The very idea, then, that society may have distinct inner workings that could be studied or made an object of theory was unintelligible. Further, as noted earlier, the inscrutability of the divine will did not pose an epistemological problem as such. However, with the rise of secularization and individualization, under the Enlightenment, society increasingly appears to display a substantiality all its own. Society can be said to be 'discoverable' only once it appears to have a substantiality independent of some other-worldly realm; once it is viewed as the construction of humanity.[31] Indeed, for the social contract tradition, it is because of its very 'constructedness' and artificiality that, we may say, society is discoverable.

It is with Hobbes that we get the first 'scientific' approach to understanding the social world, even if 'society' itself remains an obscured concept for him. Later Enlightenment thinkers

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[30] This did not mean the world fully embodied the perfection of divinity. Its imperfections, rather, could be understood as its "shortcomings in its relation with the divinity" (Singer 1986:45).

[31] Singer (1986) notes that "if society, its order and finality, its consistency and integrity, appear as given from without, by an extra-social origin, then society will necessarily escape discovery… [I]n order to be discovered society must appear as immanent to itself, the origin of its own institution" (p. 11).

could obtain this knowledge because the social world comes to be seen as a world of our own construction. But even this assessment bears its own conceit, for the social contract *constitutes* the coordinates of the social and the political in order to guarantee "society's identity, unity, and integrity" (Singer 1986:102). It discovers society as its own constituting force, but this 'discovery' is as much a constituting as it is a discovering. Hence this discovery should itself be framed as part of the imaginary, for society can never see itself completely,[32] in spite of the conceits of the Enlightenment. To do so it would have to somehow stand outside itself. Society's presumption of self-immanence is always illusory. This is also why, Lefort tells us, the symbolic "is not itself a social fact" (Labelle 2006:72).

This very move, rather than simply uncovering and denuding, relies upon its own symbolic backdrop that cannot in the same gesture be forsaken. While the Enlightenment represents a stage in the broader process of secularization, marking the shift from the premodern to the modern, it does not readily forego certitude but enshrouds it anew in the light of reason. This is why abstract ideas like Humanity, Progress, and Science, "written in capital letters" (Lefort 1986:17), get taken for granted in this period. Enlightenment knowledge does not bear, as Singer (1986) notes, the 'hesitancy', 'partiality', or 'uncertainty' that we associate with modern, secular knowledge (p. 20). It further relies upon residual ties to the religious imaginary in the form of deism. In general, the Enlightenment eschewed atheism as a kind of "interrogation disconnected from any principle," one that pursued "all the monstrosities of the human mind" (p. 40). Although no longer an object of theological speculation, the god of deism offers a kind of metaphysical prop in this transitional period of modernization.

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[32] Hence we may, alternately, speak of the 'invention' of society as Baker (1994) does.

Religion—even a merely civil religion, as with Rousseau—persists as an important moralizing force in Enlightenment thought, even while cutting off the vestiges of traditional religion, like original sin (Cassirer 1951:141). However, rather than the social emanating from the religious and serving the *telos* of the latter, civil religion comes to serve society. Those two spheres, at the same time, are importantly discrete: for example, sin and crime come to occupy their distinct jurisdictions (Baker 1994:107). Even as traditional religion fades into the backdrop, the Enlightenment sees the proliferation of secret societies – the masonic lodges – with their own peculiar occult dimensions and arcanum (Koselleck 1988:71-2). These figures would be formative of the new society of the eighteenth century. For society itself, under the Enlightenment, became "the system of being within which everything else, even the sense of the sacred, took on value" (Gordon 1994:77).

The Enlightenment bears with it a peculiar move, epistemologically speaking. It issues forth from a kind of disenchantment of the world; the world laid bare before the light of reason. Under the religious imaginary, the world is taken for granted as a reality made present according to divine law and in relation to an other-worldly realm. Once unveiled, however, the social world obtains a substantiality all its own, characterized by its own discernible rules. We can frame this shift as one from mere presentation (the world made present) to a scheme of *representation*, whereby reality can only be understood through a kind of distancing. In *The Order of Things*, Foucault remarks on the shift in priority toward representations, and away from the objects that are *themselves* represented. The legacy of this in late modernity is a kind of epistemological position of doubt around truth-claims. This gap between the world and the representations of it, however, is more a facet of the *post*-Enlightenment. The Enlightenment itself – and surely this was part of Adorno and Horkheimer's (1997) fascination with it – both constructs a reality as

not-immediately-given, and then avows access to it through its own conceptual tools. It both

establishes a gap between the world and its representations while simultaneously claiming access

to that world as if to negate that very gap again (Singer 1986:22). While Enlightenment "seeks to

claim complete social visibility"…"at the very moment that society's presence is receding

behind its appearance" (p. 35), even the Enlightenment cannot situate itself in a position from

which it is capable of seeing its underlying symbolic order. Its proscription of an epistemology of

doubt is its conceit: the disavowal of its blind spot. Indeed, this is one conceit that wends its way

into our consideration of social contract thought.

Summary

  The displacement of the divine Other does not lead to a disorderly set of relations in the

early modern period. The symbolic order is still structured in the Enlightenment around a

certainty in the world's orderliness and knowability. The social contract tradition also, while

finding power split between the people and its representation, introduces for us the substantial

character of the people as Other. The people is not simply a rights-bearing entity but bears a kind

of sovereignty that finds initial expression in the principle of consent – at the very foundation of

society itself – and a reserve of power in its capacity to withdraw consent to be ruled under

exceptional circumstances. As we find in the following two chapters, this conceptual shift

provides a new foundation upon which the state can be built as a modern, and indeed artificial,

entity. It is from this point that we can begin to understand the artificialist imaginary of the social

contract tradition and its legacy in the modern political landscape.

  As I demonstrate in the following chapters, the social contract is a key motif by which

society comes to represent itself as self-instituting, and sometimes self-deinstituting. It no longer

relies upon religion or an otherworldly reference for its mode of institution. It presumes, among

other things, a separation of society from the state, and indeed an inversion of the 'flow of power' from top-down to bottom-up, as a human construction. It is here, then, that we turn to how this practical putting-into-form of society relies upon a set of representational motifs that I describe as the artificialist imaginary.

Chapter 2: The Artificialist Imaginary

The artificialist imaginary is something of an ironic concept. The designation 'imaginary' as part of a social topology suggests there is something in the conceptions of these artificial human constructions that is quite opposite to artifice. That is, the imaginary assumes a set of symbolic coordinates that are necessarily somewhat obscured and therefore not subject to the rational, conscious and deliberate instituting connoted by artifice. It is rather these symbolic coordinates that make the *impression* of this artifice possible. For an imaginary presumes a set of structuring relations only understood with reference to a symbolic order. Further, the imaginary always presumes some degree of obscuring even as it seeks to reveal something about its object. The ultimate conceit of artificialism, I contend, is the implicit assumption of society's self-authorization without a prior, irreducible moment of symbolic institution.

The social contract can be understood as situated within an artificialist imaginary that constitutes, broadly speaking, one way of making sense of the symbolic order of democratic societies. It is not *the* definitive way in which modern democratic society is understood, as if to speak of the Imaginary in singular, hypostatized terms. Since the imaginary realm should be understood as increasingly disentangled from the symbolic in the modern period, we can speak of a proliferation of fields of the imaginary, rather than the more totalizing religious imaginary of the premodern period. The artificialist imaginary should be understood, then, in terms consistent with, for example, Castoriadis'[33] discussion of the 'capitalist imaginary' (1997), or Singer's 'revolutionary imaginary' (1986), which constitute particularistic understandings of society that

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[33] While I use 'imaginary' in somewhat loose terms in this work to convey a kind of framing, it approximates the conceptual coordinates of Lefort more than the social imaginary of Castoriadis. The latter conveys more of a boundless capacity for self-creation. I have found Lefort's emphasis on the distorting character of the imaginary (Thompson 1982: 674) to be more apposite here.

attain currency in modern socio-historical moments. Hence, despite their differences, these imaginaries share common temporal and spatial understandings of the social world, and even a common societal *mise en forme* in democracy.

I seek in this chapter to point to the contours of the artificialist imaginary, which are perhaps best illustrated by the paradox of the social contract's imagined self-destructibility. For within the artificiality of the social contract, there remains an ineluctable tension: even as the social contract may be founded, remade, or even dissolved, 'the social,' and indeed 'the state,' resists destruction. The body politic, once it is born, comes to obtain a *telos* all its own. Any spontaneous or immediate gesture of collective will must confront the problem of institutionality—the group's endurance across time—and especially so in the modern era when it is no longer secured in reference to an unchanging, other-worldly realm.

Social contract theory is premised on the idea that authority is only legitimate when initially founded by popular consent. Although the idea of rule authorized by consent is not a novelty of the period, rule by the consent of the people[34] in general is. This moment of consent may be brief, tacit, or even hypothetical, but at the core of the tradition is the notion that it is a precondition for the legitimacy of political society. Yet this initial expression of the will, or purposiveness, that may be the basis of consent is not the same as the will's many other transmutations. The popular will is by nature inchoate and exists in tension with its sedimentations in institutional forms and mechanisms (e.g., Parliamentary procedure, elections, the bureaucracy of government). The latter obtain 'lives' of their own, resistant to immediate or spontaneous transformation. There is a tendency for institutions to survive, grow, or even expand in an autonomous manner, in excess of the will in its greatest immediacy. Indeed, when we read

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[34] Again, a highly circumscribed category despite its pretense toward universality.

the literature of the social contract closely or between the lines, we find this very tension –

between the will and its institutional expression – to be an undercurrent within social contract

thought.

Despite the decidedly voluntarist understanding of civil society present in social contract

theory, there is always something more at stake in the act of foundation. There is an excess that

gets effaced in such a voluntarist understanding, one that belies the very linguistic turn of a

'social' contract. For there is something in 'the social' that cannot simply be deemed voluntarist.

There is a kind of heterogeneity at stake that we may only dimly be able to articulate or point to,

based on our position within the symbolic order, but it is there nonetheless. Thinking 'the social'

requires sustaining its ambiguity to a degree. Keeping with the epistemological considerations of

the first chapter, there is a sense in which the social is not fully visible or articulable. It

demarcates a point of excess, a point that is not articulable within the coordinates of the political.

It is that which resists finality, intentionality, and rationality; a kind of durability that while not

fully representable, persists in the face of an intentionality to the contrary. Most importantly for

this section, it represents that which cannot be contained by the artificialist imaginary.

The social perhaps shows itself most evidently in its durability when confronted with

dissolution, abandonment, or even the refusal of the Law – in the moments where the prospects

of a return to the state of nature arise. Chapter three will explore these scenarios more fully. This

chapter lays out the artificialist imaginary of the social contract tradition while demonstrating its

constitutive tensions.

Corporeal and Artificial States in Hobbes and Rousseau

In consideration of the various metaphoric permutations of the body politic found within

early modern political thought, Gierke (1950) notes that "there was hardly a single system of

political theory which entirely escaped this 'organic' tendency" (pp. 51-2)—that is, where the state could be seen as figuratively embodying society, as something 'more' than a mere aggregate of discrete acts and individuals. However, while the social contract tradition of this period trafficked broadly in metaphors both corporeal and machinic, we see a shift from the former (e.g., 'the body politic') to a more mechanical one, or the idea of a mechanism imitating organisms. The human body in Hobbes is imitative of his 'automata' by way of many springs and wheels. The 'body politick' appears as for Locke as a mere synonym for the state, which he frames in more corporatist terms as a sort of "business contract" (Hess 199:88).[35] And Rousseau's body politic is no more than the aggregate formation of many individual parts.[36] Indeed, by the twilight of the early modern period, the body politic is decapitated and the individual is disincorporated. There is no longer a coherent identity to society as a social body (Lefort 1986:25).

The rise of this machinic metaphor coincides with the development of the modern natural law tradition. Modern theories of the state (at least the non-Hegelian or non-naturalist ones) are typically characterized by an element of artificiality – that is, the state as an instrumental construction (Morris 2002:5-6). Leo Strauss (1953), also speaking of the early modern period, notes that the state "presented itself as an artificial body which comes into being through convention and which remedies the deficiencies of the state of nature" (p. 254). Strauss' language here notably recombines artificiality and corporeality as an 'artificial body', pointing to this persistent tension between organicism and mechanization.

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[35] Macpherson (1954) expands on this reading of Locke's state as a "joint-stock company of [property] owners whose majority decision binds not only themselves but also their employees" (p. 19).

[36] "But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance." (*SC*, Book I, Ch. 6)

The 'body' as metaphor for the state inheres with an assumption of its eventual decline, as with the life-cycle of any organism. It is a declension posited here as immanent to the state itself rather than simply based in external factors. In this way, the modern state lacks the immanent sense of perpetuity secured by the divine principle of medieval political theology. Hobbes and Rousseau, for example, speak of states, in an organicist turn of phrase, as inherently 'mortal'. They inhere with the kernel of their own eventual dissolution, either fracturing by civil unrest, collapsing under their own administrative weight, or succumbing to complacency and corruption under the loss of their animating spirit.

Even as he was explicitly against the use of metaphor ("and senselesse and ambiguous words") as a rhetorical device (*L*, I, V), Hobbes' organicist language around disorder and decay within the state is manifold:

> And though Soveraignty, in the intention of them that make it, be immortall; yet is
> it in its own nature, not only subject to violent death, by forreign war; but also
> through the ignorance and passions of men, it hath in it, from the very institution,
> many seeds of a naturall mortality, by Intestine Discord. (*L*, II, XXI)

The Leviathan is, after all, but a '*mortall* god'. Just as Hobbes finds, at the level of individual action, that the fear of death assumes the place that 'the good' once held under classical natural right (Strauss 1953:181), so is the state limited primarily by the coordinates of mortality (e.g., illness, decay and death). Disorders that weaken the state in Hobbes include:

> 'Pleurisie' (where money accumulates in too few hands, just as blood may 'get
> into the membrane of the breast), 'Ague' (the difficulty of raising money),
> 'Hydrophobia' (a bizarre term referring to seditious literature), and the existence
> of too many corporations ('wormes in the entrayles of a naturall man'). (Runciman
> 1997:23-24)

Runciman (1997) notes that Hobbes, in this last case, "was thinking of the great city corporations, such as the Corporation of the City of London, which supported parliament against the king

during the civil war" (p. 25). Even more defective, however, was the 'abomination' of 'mixt Monarchy'. Hobbes compares this to a man he once saw who "had another growing out of his side, with a head, armes, breast and stomach, of his own…" (p. 24). This admixture of two competing wills in the same 'body' represented a violation of the principle of sovereignty for Hobbes. For a defective constitution ('a defectuous procreation') would tend toward dissolution. Of course, Hobbes writes at a time when England was plagued by civil war ('intestine disorder'). Civil war, as a concerted challenge to the sovereign, was essentially "the death of the Leviathan, the death of the state" (Derrida 2009:28-9). It is perhaps then a point of irony that Hobbes should resort to a word so laden with a monstrous character by Biblical inheritance – the *Leviathan*, this great sea creature – to describe, amongst his phantasmagoria, a sure and steadfast Commonwealth.[37]

In contradistinction to his corporeal metaphors is the distinctly artificial character of the state, for Hobbes, as the product of human will. Indeed, the state is potentially vulnerable by virtue of its very artifice, but a rightly-ordered state may be *nearly* immortal, he says. Although Hobbes argues that "nothing can be immortal, which mortals make," he allows that "if men had the use of reason they pretend to, their Commonwealths might be secured, at least, from perishing by internall diseases. For by the nature of their Institution, they are designed to live, as long as Man-kind, or as the Lawes of Nature, or as Justice it selfe, which gives them life" (*L*, II, XXIX). The contingency lies in the fact that there is no guarantee individuals *will* use reason.

Hobbes' 'great man' adorning the frontispiece of *Leviathan* is progressively throughout the book described as a 'great machine'. The move away from the sixteenth-century body

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[37] Schmitt (2008), however, assures us that "notwithstanding fanatical Bible-quoting writers, English literature was governed at the time of Hobbes' *Leviathan* (around 1650) by a completely nonmythical and nondemonic conception of the leviathan" (p. 25).

metaphor involves positing a state that could, as if by design, defy the coordinates of natural mortality. Wolin (1990) puts this shift in even stronger terms: "There could be no sharper contrast than that between the sixteenth-century image of the commonwealth as an organic, natural body and Hobbes's profoundly constructivist conception of 'the Pacts and Covenants by which the parts of this Body Politique were at first made, set together, and united'" (p. 23). This claim is perhaps counter-intuitive because our most immediate representation of the Leviathan is that magisterial body that adorns Hobbes' frontispiece. As Gierke (1950) notes, Hobbes introduces the Leviathan as a great giant's body, but ends "by transforming his supposed organism into a mechanism, moved by a number of wheels and springs, and his man-*devouring* monster turned into an artfully devised and cunningly constructed automaton" (p. 52) (emphasis, mine). Hence, for Hobbes, institutions and social relations in the state are 'artificial' or the product of artifice, construction, instrumentality, and are 'non-natural' in the sense that they may take any form that humans give them (though they are best when they reflect the principles of natural right). From the vantage point of the twentieth century, what we are left with by this artifice are atomized individuals issuing forth "machines in perpetual motion" (Pateman 1979:38).

In Rousseau, the sovereign or general will constitutes the 'life principle' of the body politic:

> The legislative power is the heart of the State; the executive power is its brain, which causes the movement of all the parts. The brain may become paralysed and the individual still live. A man may remain an imbecile and live; but as soon as the heart ceases to perform its functions, the animal is dead. (*SC*, III, XI)

The will, as legislative power, is associated here with the life force, "as if the majority of the cells in our body (rather than those in our brain) decided which impulses to communicate to the

nerves" (Esposito 2008:18). This is, of course, the inversion of Hobbes, whose sovereign is associated with the head. It is by dint of this executive authority that the state survives, in Hobbes, while in Rousseau the life of the state is owed to the heart or the general will.

Rousseau draws parallels between the artificial state and the human body in *The Social Contract*, in a manner not dissimilar to Hobbes. The bodily metaphor appears again in considering the inevitable failure of even a 'rationally' ordered society:

> The body politic, as well as the human body, begins to die as soon as it is born, and carries in itself the causes of its destruction.…but it is for [the people] to prolong as much as possible the life of the State, by giving it the best possible constitution. The best constituted State will have an end; but it will end later than any other, unless some unforeseen accident brings about its untimely destruction.
> (III, XI)

The notion of the body politic carrying "in itself the causes of its destruction" suggests something of a self-destructive character to all states. Despite the people's best intentions, states yield their own downfall. Even 'the accidental' character of its demise seems somehow a property of its instrumental construction (of "giving it the best possible constitution"); a vulnerability it constitutionally produces within itself. Virilio's (2007) claim about technological production, that "[t]o invent the sailing ship or steamer is to invent the shipwreck" (p. 10), seems apposite here too. To invent the state is to invent its demise. Indeed, the 'accidental' demise mirrors its accidental formation in Rousseau. As Hacker (1961) notes, "Rousseau has society develop from the state of nature by what might be called an inevitable accident, and the state will later come into existence as the result of a specific contract" (p. 300). In this notion of accidental origins we see the artificial as well, for, as Durkheim (1965) observed, "though not necessarily contrary to nature, society does not arise from it naturally" (p. 121).

Perhaps most interesting in Rousseau's account contra Hobbes is the plausibility of a state constructed under knowingly unsustainable or self-destructive lines. We get a sense that it may be with even a glimmer of awareness that a state should be designed with ends that are contrary to its ultimate survival, by the requirement of constant expansion or conquest to survive, as indeed Rousseau notes of exceptional cases where ceaseless expansion entered their constitutions: "It may be that they congratulated themselves greatly on this fortunate necessity, which *none the less indicated to them*, along with the limits of their greatness, the inevitable moment of their fall" (emphasis, mine) (*SC*, II, IX). This would appear wholly irrational to Hobbes, for such a precarious construction contradicts the very *telos* of the state – survival. For Rousseau, the state is not reducible to this *telos*, as its purpose cannot simply be traced back to the problem of the 'fear of death'. This distinction will become clearer as we trace Hobbes' and Rousseau's intellectual lineages back to modern natural law in the following section, wherein we view the origins of civil society, constructed from the ground up, from the state of nature. For the moment, we turn to the intellectual origins of this artificialism.

The Methodological Individualism of Natural Law & Natural Right[38]

"Heaven and earth shall pass away, but one jot or tittle of the law shall not pass till all things be fulfilled" (Matthew 5:18, in *De Corporo Politico*)

Law, generally speaking, has a moral quality to it, but only positive law is properly regulative. Natural law[39] is of course not "a body of actual law, which can be enforced in actual courts," though it may in fact influence positive law (Gierke 1950: xxxvii). Among classical

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[38] I attribute this framing of natural law as a kind of methodological individualism to Daniel Gordon (1994) (p. 70).

[39] I use natural law and natural right somewhat interchangeably here, given the extent to which they tend to be referenced in tandem, and as the one is in some sense the mere reciprocal form of the other.

liberals like Locke, positive law was an "attempt by mortals to reproduce the universalism of divine natural law" (Scheuerman 1996:302). Further, when arguments were made historically to challenge or vanquish an unjust ruler (e.g., tyrannicide), in the absence of normal legal channels, an argument would often be made through an appeal to natural right or natural justice as a last resort. However, there is no guarantee that positive law will reflect natural law, or that consensus around natural law will be readily achieved.

Modern natural law theory tended to presume the individual inhered with certain rights born of the original state of nature—a point real or imagined when the existence of collective life was negligible (Gierke 1950:96). The individual, in leaving the state of nature and entering a civil state, surrendered only those original rights required by the state (p. 113). There remains, then, in the natural right tradition, even under Hobbesian absolutism, an irreducible element of individual right that is impervious to the encroachments of the sovereign will.

The natural right tradition lays the foundation for social contract theory in positing a basis upon which political institutions can legitimately be formed. From this point of departure, the Leviathan can be built from the ground up and find justification. But natural right becomes both a basis of constructing the Leviathan and the very possibility of resistance against it. Hobbes for example would give primacy to our 'natural *right*' to escape death, or to "do whatever we think conducive to our survival" (Morris 1999:x), even in some cases against the sovereign. Locke would extend this right to self-preservation to the right to protect of one's own property as a necessary element to the former. In Rousseau, the 'natural right' to self-preservation based in *amour de soi* seems somewhat attenuated by an obligation to others (based in natural compassion), and as such he is generally situated on the fringe of this intellectual tradition.

The very existence of natural right assured that the artificial character of civil society and the state was not at the same time *arbitrary*, but grounded in principles. To understand how a modern notion of natural right developed, we need to return to its classical origins briefly. I take a cue here from Leo Strauss (1953) in distinguishing the classical natural right tradition from the tradition of 'conventionalism'. The former extends back to the philosophy of Socrates, Plato, Aristotle, Cicero and Thomas Aquinas; the latter, to the Epicureans and the Sophists. The classical natural right tradition was animated by a notion of a fundamental good as a moral basis for collective life; but it is not by nature 'conservative'. Indeed, it was capable of presenting a potentially radical challenge to the "ancestral or divine code" for the Greeks (p. 85). Conventionalism, on the other hand, assumes at its root the arbitrary and artificial character of the law, disavowing its basis in transcendental principles, and unconcerned with the 'right' ordering of society. While the social contract tradition can be seen as drawing on both traditions, it is not easily reducible to either.[40] Modern natural right gives primacy to the individual, rooted in his or her self-preservation, rather than in the fundamental duty toward 'the good' or the *summum bonum* of the classical tradition. Strauss makes the case that the natural law tradition of the seventeenth and eighteenth centuries can be understood through a shift from the classical emphasis on natural duty to the modern emphasis on natural right, and further as a reaction to the "absorption of natural law by theology" in its Thomist form (p. 164). The connection to the beginnings of the Enlightenment is significant here, as it was a period that "witnessed the emergence of modern natural science, of nonteleological natural science, and therewith the destruction of a basis of traditional natural right" (p. 166). Further, for Hobbes, the primacy of

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[40] See Hampton (1988) on Hobbes' slippage between conventionalism and non-conventionalism (p. 48). According to Strauss (1953), conventionalism privileges the state of nature as a natural condition superior to civil society. For Hobbes, civil society is superior (p. 184).

fear of death as an irreducible basis of human will becomes possible only once other 'illusory' fears, like the dread of hellfire (worse than death itself), could be quelled by the light of reason. Modern natural right, in a sense, requires the disenchantment of the world even as it animates the individual as a rights-bearing figure.

Where philosophy in the classical tradition of natural right, Strauss (1953) claims, "had been the humanizing quest for the eternal order, and hence it had been a pure source of humane inspiration and aspiration", "[s]ince the seventeenth century, philosophy has become a weapon, and hence an instrument" (p. 34). The instrumentalization of philosophy constituted for Strauss a crisis point in modern political philosophy. For our purposes this notion of instrumentality is instructive. For there is no 'eternal order' under the artificialist imaginary in which the social realm can be situated. It must find its moorings on a this-worldly plane.

The social contract thought of Hobbes and Locke grants legitimacy to regimes that respect the fundamentals of self-preservation—e.g., the freely-given consent to be ruled. But given its rootedness in natural right principles, the contract cannot be aligned with the arbitrariness of conventionalism, nor the notion of the arbitrariness of the will. Hence in my usage of 'artificialism' or the 'artificialist imaginary', I distinguish it from the *arbitrary* character of conventionalism. Indeed, under conventionalism, right or justice could not be qualified as 'natural' (Strauss 1953:11).

It was only when nature or the divine was displaced as the source of legitimacy for civil society or political institutions that either could be legitimately situated as the byproduct of human action. Indeed, as Althusser (1972) remarks, "[t]o say that the society of men emerges from a contract is indeed to declare truly *human and artificial* the origins of all human institutions" (p. 26). Strauss (1953) sees this as key to the emergence and significance of

contractualist thought in the seventeenth and eighteenth centuries: "For in the modern era the notion that nature is the standard was abandoned, and therewith the stigma on whatever is conventional or contractual was taken away" (p. 119). To say nature as a standard was abandoned, however, is not to dispel *natural* right. For as Runciman (1997) puts it, natural law theory posits political structures as "built out of nature rather than by nature" (p. 39). It is because the state of nature is so antithetical to the civil state that we can say there is nothing 'natural' about the latter; the natural condition (or state of nature) is a 'defective' one.

Classical natural law on the other hand was situated in relation to a transcendent notion of the good. In Aristotle, the polity is "a superior ethical reality of natural origin" – a realization of humanity's essential character (Colas 1997:50). We find this transcendental or other-worldly orientation also in the divine law of the medieval period. However, modern natural law appeals to a quality of humanity removed from this other-worldly realm. We see also, in comparing the ancient with the modern, the shift from hierarchical thinking to an increasingly leveled social plane. Manin (1997) notes the key distinction in relation to the selection of political leaders:

> For Aristotle, certain characteristics give by themselves or by nature to those who possess them a title to govern and to impose their will on others, even if in a city it is neither prudent nor entirely justified to reserve positions of power exclusively to those in possession of such characteristics. Certain people have a particular title to govern others, says Aristotle, because they realize or come closer than others to the excellence and flourishing of human nature. The fundamental divergence separating Aristotle from Grotius, Hobbes, Pufendorf, or Locke concerns the question of what it is that confers such a title to govern and impose one's will on others. Modern natural right theorists maintain that no particular quality gives a person the right to govern others. That right must of necessity be conferred externally, through the consent of those others. (p. 157)

Authority's basis in consent is given primacy in the social contract tradition because of the fundamental privileging of the right to self-preservation over inherent qualities predisposing

certain individuals toward leadership. The fitness of a given regime to that end must be determined by individuals, consensually.

There was also nothing inconsistent between classical natural right and natural inequality in the ancient world. Strauss (1953) notes that "the best regime," in the classical tradition, was "that in which the best men habitually rule" (p. 140). Where 'wisdom', and the hierarchies it assumed, would naturally take primacy over rule by consent in the classical tradition, modern natural right was, when distilled down to its founding principle, egalitarian.

Hence, modern natural law made an important contribution to the emergence of theories of the social contract and the revolutionary sensibilities of the seventeenth and eighteenth centuries. "[T]hose ideas", Ernest Barker notes, "were to prove a dynamite which helped to explode the connection between Great Britain and her American colonies, and to shatter the ancient monarchy of France" (Gierke 1950:xv). Strauss (1953) remarked in similar terms that modern natural right was a "dynamite for civil society" (p. 153), dislodging it from its premodern moorings, and with more revolutionary implications than its classical philosophical forebears. The American Revolutionaries, for example, could appeal to the natural law espoused in the British juridical tradition by one judge in 1614, that no act of Parliament can supersede natural law (Gierke 1950:xlvi).

Where the medieval Church previously governed the content of natural law, this would become the purview of the sovereign in the early modern period. Hobbes broke with "the medieval Christian position according to which the Church, rather than the State, has the right to determine the content of divine law" (Medina 1990:25). While Hobbes retained residual ties to a religious view of the world, as far as statecraft was concerned one needed to understand how actors constructed their world regardless of their religious adherence:

> Like Grotius, Hobbes labours under a prima facie ambiguity. On the one hand,
> they both write from a theistic standpoint according to which life and morals are
> part of the divine dispensation. On the other hand, they intend to account for the
> moral aspect of this dispensation in such a way that it explains how people without
> theistic beliefs can have a moral life. (Haakonssen 1996:31)

Further, Locke also retained an 'appeal to heaven' as the last resort of the people against positive law, but this was still dependent upon the people 'judg[ing] the cause of sufficient moment' (*TT*, *II*, § 168), reflecting a more modern political theology.

Gordon (1994) observes that the natural law tradition did not really take hold in the French Enlightenment. Rousseau therefore obtains an equivocal relationship to modern natural law. Contrary to the idea that there are moral dictates of natural law that could be discovered 'by reason', Rousseau challenges the naturalist conceit of reason, imputed by the likes of Hobbes and Locke. For observing these principles requires a degree of reason not conceivable in the state of nature (Scott 1992). When reason is heralded in Rousseau, it is more aligned with recovering natural sentiment or intuition. In *Emile* (1979), for example, he writes:

> But the eternal laws of nature and of order exist. For the wise man, they take the
> place of positive law. They are written in the depth of his heart by conscience and
> reason. It is to these that he ought to enslave himself in order to be free. The only
> slave is the man who does evil, for he always does it in spite of himself. Freedom
> is found in no form of government; it is in the heart of the free man. He takes it
> with him everywhere. (p. 473)

Natural law, such as it is in Rousseau, is not divined by reason exclusively but found in the heart. Mores were "not engraved on marble or bronze [i.e., not constructed by man or handed down by God], but in the hearts of the citizens" (*SC*, II, XII). Edelstein (2009) notes that 'nature' proves to be a rather self-contradictory concept in Rousseau: "the *Social Contract* may have rejected the authority of natural right ('this [social] right does not come from nature,' 1.1), only to reinscribe it at the very heart of its legal doctrine with the *volonté générale*, which relies on and is structurally identical to the natural 'principles' of self-love and compassion" (p. 156). At

minimum we may say the fundamental principles for Rousseau are different from Hobbes and Locke,[41] given the place of a fundamental 'compassion' in his view of natural man – a discussion we will return to later. But it is sufficient to say for the time being that the social order itself is by no means 'natural' for Rousseau, just as it is not for Hobbes and Locke.

The Nature of Contracts

Victoria Ann Kahn (2004) identifies the importance of the creative, aesthetic subject underlying the proliferation of contract discourse in England of the 1640s. The very artifice of the latter presumed the capacity of speech to bring forth a set of relations, and a new speech-bearing subject who lay behind it (p. 1). Kahn argues that many English men and women at this time "came to think of politics as a realm of poetics, even fabrication" (p. 16). A formerly divine creative force was now situated in the human subject, capable of not simply creating an agreement but freely giving consent to be ruled, and obligating himself of his own free will. That is, he "could bind himself," Kahn notes, "but only because he was first bound by the social and linguistic agreement that promises must be kept" (p. 6).

The history of contractarianism takes us back to the struggle of religious minorities in the sixteenth century, before the influence of a broader liberal ideology (Gough 1978:49). Freedom from religious persecution required the mounting of a defense against the encroachments of absolutism. Within a certain early modern imaginary, however, it makes sense to talk about the legitimacy of political formations through the concept of contract and with new implications.

The contract is not simply a positive gesture affirming a certain type of government. It also demarcates the point at which that government can be called illegitimate, and the possibility

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[41] "[T]he social order is a sacred right which is the basis of all other rights. Nevertheless, this right does not come from nature, and must therefore be founded on conventions." (*SC*, I, i.)

of its dissolution as a result. Indeed, it marks the very fact that this possibility exists. The early modern social contract is typically conceived as proceeding in a two-stage process: (i) the act of union or association, and (ii) the act of subjection to a sovereign and/or government. This process is sometimes read as a movement from a 'social' moment to a 'political' one. Dumont (1992) notes along these lines, "[a]fter 1600, at least two contracts had to be entered into in succession in order to account for the transition [from individual in the state of nature to civil society]. The first, or 'social' contract, introduced the relationship characterized by equality or 'fellowship'...; the second, or political contract, introduced subjection to a Ruler or a ruling agency" (p. 75). In a sense, the contractualists foreground both civil society and the state as conceptually distinct, privileging one term over the other. But the privileging of terms varies. In Rousseau, it is civil society or the people—aligned with the general will—that is ultimately sovereign. It is similarly so with Locke where the people as such retain sufficient authority to dissolve the contract. In Hobbes, it is rather the particular will of the sovereign ruler that is privileged.

We may also note the marked ambiguity attributed to the "social" over the political in Dumont, placed as it is in quotation marks. The social remains an indefinite term. Dumont goes further to show in his own argumentation that despite this double movement, the social contact thinkers appear, by sleight of hand, to collapse the two terms into one by making one epiphenomenal to the other: They "reduced this multiplicity of contracts to one: Hobbes by making the contract of subjection the point of departure of social life in general, Locke by replacing the second contract by a Trust, Rousseau by suppressing the Ruler altogether" (*ibid*.). The distinction between the social and the political is introduced by the social contract, but then obfuscated. The ambiguity between these terms is one we will return to. For the moment, though,

we will consider the problem of power's institutionalization as it fractures along contractualist lines.

Sovereign Authority

By many accounts of Hobbesian thought, the dualism mentioned above is first raised, and then essentially undone. "He substituted for the two original contracts", Gierke (1950) tells us:

> …a single contract by which each pledges himself to each to submit to a common Ruler, who, on his side, takes no part in the making of the contract. This assumption destroyed, in the very germ, any personality of the People. According to Hobbes, there has never existed, at any time, a *societas civilis* based simply upon itself. The personality of the People died at its birth. (p. 60)

Although Hobbes tells us "the right of all sovereigns is derived from the consent of every one of those who are to be governed" (*L*, III, XLII), the "people as constituent power", Forsyth (1994) remarks, "are but a fleeting moment in the all-important process of establishing government" (p. 41). Pateman (1979) describes this singular act of alienation similarly: "individuals take their first, and last, political action" in forming the covenant (p. 55). The people can only become a collective actor or moral person through the sovereign. They cannot have independent rights (p. 141). There is in Hobbes no original right of the people (but for the natural right to self-preservation that individuals themselves cannot cede), nor is there one created in a contract, for the people cannot 'contract' with the ruler. Rather, powers are conferred upon the Sovereign by the "contract of all with all" (Gough 1978:108). This is why the Sovereign is not, himself, subject to the contract nor any binding limitations therewith.

Gierke (1950) uses the term "irresponsible", or without responsibility, to describe the Hobbesian sovereign's relationship to his subjects. The sovereign is an "engulfing reservoir of all rights both of individual subjects and of the aggregate body they form" (p. 60). For the sovereign

still exists, legally speaking, in a state of nature relative to his subjects; he retains the right to everything. Indeed it was this very status of the sovereign being *hors-la-loi* that the Montagnards could use to justify their regicidal fervour during the French Revolution—the king was not justiciable and therefore could be killed outright.

Hobbes' *Leviathan* is a response to the crisis of legitimacy issuing from the political and economic calamity of the English Civil Wars and the execution of Charles I in 1649. *Leviathan* best reflects Hobbes' mature thinking on sovereignty, as a revision to his previous writings from before the regicide—*De Cive* and *De Corpore Politico* (Schochet 1990:56). Charles I was executed by the Parliamentary assembly, in part, out of religious antipathy. As Hobbes saw it, England needed to usher in a truly modern form of rule with a legitimacy immanent to itself. The civil wars required the institution of a singular, unimpeachable, and indivisible authority for Hobbes. Hence, his sovereign had the monopoly on "the right to enact, enforce, and interpret the law for [his] subjects" (Medina 1990: 24). By this, Medina notes, "Hobbes reduces laws to commands of the sovereign" (*ibid*.). There are no formal checks on the sovereign's authority. As such, the sovereign could not act illegitimately toward his citizens nor do them injury. Only "by iniquity" could he "be injurious to God" (*L*, II, XVIII). Christian natural law could counsel, but ultimately it was, for Hobbes, the sovereign's authority to decide, even in matters of good and evil.

The foregrounding of consent in Hobbes, as with social contract thinkers in general, gives the impression that subjects are the author of their own rule. This consent means that they, in a sense, "obey themselves when they are commanded by their sovereign", once they transfer their rights over to him. Schochet (1990) calls this almost Rousseauian in its popular sentiment— though the people in Hobbes hardly 'remain as free as before' they entered into the contract (*SC*,

I, VI), to recall Rousseau's turn of phrase. This raises the question of how genuine this point on

'the consent of all' is. For Hobbes there is, again, "no obligation on any man, which ariseth not

from some act of his own" (*L*, II, XXI). In the 'Review and Conclusion' to *Leviathan*, on the

question of the historical reality of actual contracts, he remarks: "The beginnings of

commonwealths can never be morally justified….there is scarce a commonwealth in the world,

whose beginnings can in conscience be justified." Yet authority acquired under the threat of

death, under a 'your consent or your life' gambit, by Hobbes' estimation, is still consensual,

should one choose allegiance over death. The accusation of despotism or tyranny here is not a

meaningful claim that can be made of the Hobbesian sovereign. If government is effective, it is

legitimate (Strauss 1996:88). But consent, we may say, remains at least minimally important for

Hobbes, even as the consent wrought by forced hand strains credibility.

The mystery in Hobbes' formulation is not so much that the sovereign is created as if out

of nothing; indeed, this remains something of a mystery for Locke and Rousseau as well. What is

curious is that the multitude should become a people at all; that they should become a substantial

entity only to immediately give up any substantiality independent of the sovereign. Against the

conventional reading, I would suggest that the people do not 'die' at their birth, but remain,

underpinning or 'haunting' the body politic, even subversively, in Hobbes. Dyzenhaus (2007)

suggests, indeed, that Hobbes' consent-based account of the state requires the people to exist as

constituent power; as something in excess of a mere multitude. In his section on The Generation

of the Commonwealth (*L*, II, XVII):

> … Hobbes says that a multitude in the state of nature can exit that state by agreeing to authorize one person to represent them. In authorizing this person—the sovereign—the multitude acknowledges all his acts as their own and submits their judgment to his. The passage seems therefore to refer to the question of constituent power. It is about how the multitude's consensus creates something qualitatively different from the sum of its parts—the real unity of them all, represented in the person of the sovereign. However, even if we take Hobbes to be talking about the phenomenon of constituent power, he is not bothered by the question of constituent power. The bearer of constituent power, the multitude, not only vanishes with the creation of the sovereign but is reconstituted as individual subjects, each with an absolute obligation of obedience to the sovereign.
> (Dyzenhaus 2007:137)

The people emerge only to vanish again, perhaps persisting only as a memory or as a spectral presence – the sublime second body we considered in chapter one (Santner 2011). In Locke and Rousseau, however, the people remain a 'real' sovereign force even after personal sovereignty is created. Locke takes a rather strong stance against the absolutism of the singular ruler, privileging the rule by many over the rule by one. The individual, he notes, is "in a much worse condition, who is exposed to the arbitrary power of one man, who has the command of 100,000, than he that is exposed to the arbitrary power of 100,000 single men" (*TT*, *II*, § 137). Locke uses the term 'prerogative' when referring to executive office – a kind of discretionary power "without the prescription of the law, and sometimes even against it" deployed for the public good – e.g., where the formal application of the law may be harmful, or where circumstances emerge for which the legislature has not yet created law (§ 160). Prerogative also governs the assembling and dissolving of the legislature. However, 'supreme power' is still ultimately aligned with the people, who may in the final instance decide to make an 'appeal to heaven' to determine whether the prince's use of prerogative has violated the trust and the public good (§ 168). This 'deinstitutionalized' form of power affords the people final judgment on the legitimacy of the governing body. Feldman (2008) frames this decision as the people's judgment at the threshold of the constitution (as to whether an abuse of prerogative has taken place). Sovereignty,

however, is not a term Locke uses in describing 'well-framed governments', tinged as it was with absolutism and paternalism in his mind. Taking this line even further, John Simmons' work (1993), *On the Edge of Anarchy*, grants by its title a provocative conception of the provisional nature of institutionalized power for Locke. Simmons calls Locke's voluntarist political philosophy "philosophical anarchism" at one point – though this is not so as to suggest that people, for Locke, have complete moral license. We are still bound by moral laws. As such, the people for Locke occupy a status similar to the Hobbesian sovereign, who is not bound by the constitution but exists in a liminal space between the civil state and the state of nature (p. 8). The people retain a reserve of sovereignty: the ability to judge if the other contractor (the executive, in this case) has lived up to the agreement (Gierke 1950:149).

Rousseau similarly places the final reserve of legitimate power in the people. For Rousseau, sovereignty is expressed in terms of the general will of the people rather than the particular will of a governing body, whether the latter should be democratic, aristocratic or monarchic. Indeed, the general will is predicated on the exclusion of all partial wills, thereby finding its most striking contrast with the Hobbesian notion of sovereignty. Yet, the formal character of Rousseau's sovereign bears important parallels to Hobbes': the sovereign (the general will), by definition, cannot be unjust. "The sovereign merely by virtue of what it is, is always what it should be," Rousseau claims (*SC*, I, VII). Pateman (1979) claims Rousseau's sovereign will displays a certain 'arbitrariness': "If the legislative will, or the judgement of citizens themselves, is supreme in political life, then, it will be argued, there is nothing to prevent citizens acting in a completely arbitrary manner. Individual whim and caprice are, as Hegel claimed, enthroned at the heart of Rousseau's theory" (p. 153). But we must caution that for Rousseau, as for his contractualist forebears, the sovereign is not conceived as 'arbitrary.' Since

the general will can 'do no wrong' (though it can be misapprehended), it is by definition rooted in a notion of something inviolable. The general will as Rousseau conceives it, after all, represents the *absence* of the whim or caprice of private interest.

For Rousseau (1762), the institution of government is not the basis of the social contract—or rather, it is not the foundational moment. Were it so, it would be "plain too that the contracting parties in relation to each other [in the state of nature] would be under the law of nature alone and wholly without guarantees of their mutual undertakings, a position wholly at variance with the civil state" (*SL*, III, XVI). This is another point on which Rousseau deviates from the Hobbesian convention. The bond of association is primary *and* superior to the institution of government: "There is only one contract in the State, and that is the act of association, which in itself excludes the existence of a second. It is impossible to conceive of any public contract that would not be a violation of the first" (*ibid*.). The individuals here alienate their freedom and hand it over to the community in general, rather than to the ruler as such.

Of course, when the people become both government and subject, they encounter an unprecedented problem. No longer can the people be said to retain rights unto themselves outside of the constitution. The tyranny of the people against itself was highly implausible for Rousseau. This is why the federalists argued similarly in the early days of American constitution-building that a bill of rights was an absurd concept in a republic. A monarch might be forced to make certain concessions to the other estates, as was seen in England with the Magna Carta, the Petition of Right, and their Bill of Rights. But the people conceded both nothing and everything to the community when they self-govern, the logic went (Morgan 1988:282-3). Unlike with Hobbes, when the people alienate their freedom by giving it over to the community in general, for Rousseau, they receive it all back in a new form.

Here, then, we find the institutions of the political sphere are a secondary effect of this singular act of association. Neither party in the contract has an 'existence' before it, which is to say that the people not only contracts with itself, but it creates itself out of nothing. Or, rather, as Althusser (1972) puts it, "the Social Contract is not a contract but an act of constitution of the Second recipient party [the community] for a possible contract, which is thus no longer the primordial contract" (p. 131). This we may consider as one of the excesses of the political that also appears in Hobbes as the repressed, uninstitutionalizable constituent power of the people, or the people who in Locke or Rousseau decide on the fate of the government at the fringes of the constitution. There is always a remainder that cannot be incorporated into the process of power's institutionalization.

Orderliness Beyond the Law

In her essay, "What is Authority?" (1961), Arendt describes the instability attending the Roman 'trinity'. If one facet of it – either religion, authority, or tradition – "was doubted or eliminated, the remaining two were no longer secure" (p. 128). The error of Hobbes and his ilk, Arendt claims, was to think that "authority and religion could be saved without tradition". The social here, as tradition, is not merely a residual category but a lynchpin, exclusive neither to present-day society, nor the Romans. Rousseau in Book IV of *The Social Contract* made a similar observation of the Roman Republic. Tribes at this time underwent a kind of fissioning: "the censors, after having long arrogated to themselves the right to transfer citizens arbitrarily from one tribe to another, allowed most of them to be inscribed in whichever one they pleased ... so that the idea of the word *tribe* ... became almost a chimera" (Huet 2012:80). Huet calls this the "initial weakness of the Roman system and the ultimate source of its downfall" (*ibid.*). This, in Rousseau's estimation, was the downfall of the classical republican system, suggestive of the

existence of something substantial in the community beyond the political that could be disrupted by the arbitrary reconfiguration of communal bonds. Chapman (1956) regards it, however, as an impasse in Rousseau that the stability of the political system "requires more intense social sentiment than [it] naturally and spontaneously generates in men" (p. 54). Rousseau introduces the figures of the demiurgic Legislator, the censor, civic education, and civil religion to guide moral character, but at the expense of the moral autonomy necessary to discern the general will. This is a recurring tension in Rousseau, and one that we will return to.

In Locke (2002), moral norms appear as a source of order distinct from civil law and divine law, generated by bourgeois civil society. 'Private censure' emerges as a realm distinct from the law of God and the law of political societies, yet providing its own kind of orderliness. Unlike with Hobbes, for whom subjects do not participate in a public sphere as such (Habermas 1991: 90), Locke saw vice and virtue as defined independently by private citizens coming together and constituting public opinion. At the level of civil society, "personal opinions prove to have the force of law" (Koselleck 1988:56). The emergent clubs, literary societies, coffee-houses and salons provided the space for the development of this social milieu. Previously, moral opprobrium circulated in the customary life of courtly and corporate society, in a manner reproducing symbolic hierarchies. It lacked this characteristic of society as a realm of free exchange unhindered by status allocations.

For Locke, the social, we may add, has a primordial character to it. It exists even in the state of nature – an idea rather unique to him as part of this intellectual tradition. On the other hand, the social for Hobbes appears epiphenomenal and thereby artificial. In Hobbes' time, we might claim that 'the social' as a modern formation had not yet truly come into being. As a term, it only started becoming popular around Rousseau's time (Neocleous 2003:25). Indeed it is

difficult to imagine in Hobbes the social as a field wholly independent of the political. He often conflates 'society' and 'state' (Morris 2002:24), placing both within a totalized plane—though, granting that even in "the eighteenth century the term state [in France at least], when used politically, was understood to be inclusive of, and even synonymous with, 'society'" (Singer 2013:160). In Hobbes, what holds the group together is the covenant, a political arrangement for which the sovereign is the lynchpin. The people exchange a natural individualism (atomism) for an artificial individualization – one guaranteed by the sovereign. The sovereign is, to put it otherwise, "the political form of their *desocialization*" (emphasis, mine) (Esposito 2008:61). It could be argued that this is because while Hobbes writes during the collapse of the medieval worldview, he also exists before 'the rise of the social'. This is before a time in England when civil society opened up to incorporate all people; before a time when modes of interaction might no longer be filtered through entrenched status allocations; and before modern social bonds like trust, 'generalized reciprocity', and even nationalism could organize society. The majority of the members of the body politic were 'ordinary subjects', "poore, obscure, and simple men, comprehended under the name of the Vulgar" (Baumgold 1990:78). At a time when 'society' referred to the courtly realm of nobility, it is understandable that Hobbes would not elevate the masses to the status of a *civil* society. Differences between estates, and varied rights and obligations, meant there was little of the uniformity or free intercourse that would characterize civil society in eighteenth-century Britain.

In the late medieval period, the people, or the 'social totality' could be presented only through the double body of the king. Society could not exist as a separate, let alone oppositional, force (Singer 1986:55). Hobbes himself predates the discovery of society, properly understood. Or rather, he is a transitional figure in its discovery. For while he displaces the religious

imaginary, he retains a mortal God (the absolute, the Leviathan) of which the social realm remains derivative. Indeed, we may align Hobbes more with the discovery of power, if we think of the political as "society's active control over itself through a separated power" (Gauchet 1985:13). This would constitute the discovery of the political as a realm of the sovereign's self-assumed authority, rather than as mediating or implementing the divine will.

It is perhaps more fitting to say that 'the social' does not exist as an autonomous sphere in Hobbes' philosophical anthropology, existing only in the more categorically 'sociological' sense of human relations that are not immediately political. All aspects of society, but for the inner consciences of individuals, for Hobbes are saturated by sovereign power. We might add that for Hobbes, "public opinion doesn't exist as an independent entity – it is supplanted by the sovereign, who is the people's only legitimate voice" (Manin 1997:174). Civil and moral norms, as examples of the social, emanate from the sovereign in a trickle-down manner in the Hobbesian universe: Universities, under the auspices of the Leviathan, are "the Foundations of Civill, and Morall Doctrine, from whence the Preachers, and the Gentry, drawing such water as they find, use to sprinkle the same…upon the People" ('A Review and Conclusion'). Social relations are in a sense epiphenomenal to the political order. Goldsmith (1999) compares this Hobbesian configuration of the social with that of an earlier arbiter of absolute sovereignty, Jean Bodin, who:

> …contemplates the correct ordering of citizens…but not as Hobbes does in *Leviathan*, making the sovereign the sole fountain of honour. Thus where Hobbes differs from Bodin, the effect of those differences is to emphasize or increase the powers of sovereignty over all aspects of society: property, opinion and honour were all placed within the explicit sphere of sovereignty. (p. 27)

So while Hobbes does talk about 'manners' and codes of honour, these seem to be of only secondary importance to the covenant.

As Lefort (2006) tells us, the symbolic dimension goes largely unnoticed in modern democracy "because [the symbolic] is no longer masked beneath a representation of the difference between the visible world and the invisible world" (p. 162). This seems to be largely the case of Locke, Rousseau, and Kant who do not situate power through the ornate spectacle of the *ancien régime*. The symbolic, however, is visibly translated into the imaginary in Hobbes (even as he is not democratic in any strong sense). The absolute sovereign is able to inspire 'awe' as a 'mortall god', absorbing its former supplement and sustaining it through spectacle.

What is the nature of this 'awe' that Hobbes points to? Though it is unclear on the surface how it differs from 'terror', Burke's (1999) conception of the sublime attempts to distinguish 'awe' from the grotesque energies of terror, which are incapable of elevating the spirit to the point of 'delight'. The sublime is only associated with 'settled and recognized authority' (Burke 2009:166). Foucault remarks on the two functions of power: power as binding (law) and power as dazzling (magic) (Balke 2005:83). These are akin to the two modes of power that Benveniste (1973) situates within Indo-European royalty. The latter magico-religious term, however, is lost[42] in modernity, even if it lingers residually—as with Louis XVI under the Thaumaturgical principle—up to the end of the eighteenth century. But Hobbes' world is still animated by the spirit of honour, as the upholding of and adherence to transcendent principles (Riley 1973b). 'Awe', in its auspiciousness, in fact seems suggestive of both honour and fear. It is the latter animating spirit (fear) with its instrumental character that appears to take over in later readings of *Leviathan*.

In Hobbes, the people have, in a sense, substituted their generalized fear of each other in the state of nature for the fear of the sovereign (Santner 2011:17). Hence, it is not civil society or

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[42] But the split remains between the magico-religious and properly political functions; a split akin to the "modern sovereign who 'reigns but does not govern'" (Agamben 2011:69).

some social substance here that reins in egoistic self-interest. It is a sense of awe in the face of sovereign power that directs the people's "actions to common benefit". By awe, the sovereign "is inabled to conforme the wills of them all" (*L*, II, XVII). The sovereign in Hobbes retains as "part of power's symbolic repertoire" (Singer 1986: 86) a magisterial quality in measures of both grace and violence.

Indeed, in Derrida's (2009) reading of the Leviathan, "the only thing motivating obedience to the law" is terror (p. 40). Dietz (1990) attempts to make the case that Hobbes can be counted among the theorists of civic virtue; that moral character is actually a matter of concern for him. There are "dispositions necessary to citizenship…. [F]ear and force alone" are not sustainable (p. 92). Beyond the utilitarianism and authoritarianism typically associated with the Leviathan lies the question of legitimacy. In his later work, *Behemoth,* Hobbes (1681) argues "[t]he power of the mighty hath no foundation, but in the opinion and belief of the people" (p. 16). Yet there is little sense here of public opinion that is shaped freely in the sense we get from Locke or Kant. For the terrorized could not engage in moral contemplation, under the fear of the Hobbesian monarch. Without this realm of moral contemplation, civil society becomes impossible. It is only once this mask of power disappears and is no longer identified with the monarch (couched in his magisterial character), that morality can become public in a way associated with sociability (Singer 1986:77). Hence, the secondary status of the social in Hobbes suggests a weak and potentially unstable social order, despite the security Hobbes strives for in his appeal to natural right.

Summary

Lefort (2006) reminds us that, for modern democratic regimes, "power no longer makes any gesture toward an outside" (p. 161), and this may be said to be true even of Hobbes who is

not democratic, at least in the liberal sense. If there is an outside, it is the state of nature.

However, the state of nature is not outside as if on another plane. It is situated within a

chronology of passing time that can be mapped out in a quasi-historical manner. There is nothing

but atomized individuals there, and unlike the touted religious origins of medieval political

theology, it is not an outside that grants coherence to law or knowledge. Natural law is a

reference point, especially with Hobbes and Locke in the seventeenth century, but 'nature' does

not give form or content to the societal sphere. Rather, natural law, which is not 'of nature' but a

departure from it, may lionize a regime as legitimate or not. It assumes no specific or necessary

positive outcomes. This is why there remains in the social contract tradition something artificial

at the core of civil society and the state. Further, failure or dissolution is no longer conceived as a

fall from grace, the impoverishment of the earthly realm or divine punishment, but rather

generally as a by-product or limit point of will or reason. Modern natural law does not provide

any positive content to law or an answer to the moral question "what is the good?" Even in the

final instance – the Lockean appeal to heaven, which may be necessary in the decision to depose

a leader or to dissolve the contract – there is no pre-given or certain grounds upon which this can

be used, for it resides in the people itself. Locke (1824) rejects the earlier view that the

conscience is equivalent to the 'judgment of God'. Rather, it is "nothing else but our own

opinion or judgment of the moral rectitude or pravity of our own actions" (p. 31).

There is an important shift here from Hobbes to Locke. Society becomes a coherent

entity unto itself, and one that does not necessarily degenerate upon the collapse of political

authority. As Baker (1994) remarks on Locke and the other Enlightenment thinkers' escape from

the Hobbesian choice between 'anarchy' and supposedly 'arbitrary power':

> the Enlightenment evaded that choice…[a]nd it did so by recourse to a notion of society as an autonomous ground of human existence, a domain whose stability did not require the imposition of order from above, and whose free action did not necessarily degenerate into anarchy and disorder below. In England, this self-regulating human domain of order and stability was called up most famously by Locke. (p. 119)

For Hobbes, we have suggested, merely *anticipates* the discovery of society. What he offers is at most only a partial discovery. The social for him still emanates from the political will, as it did under the religious imaginary predominant in the premodern period. The shift we see in him is that the people are afforded an initial substantiality in order to confer authority to the sovereign, if only in a fleeting moment of association. However, it is only with Locke (or later, Rousseau) that the bond of association persists in an active way such that we can say society or civil society has an independent substance just as the people do. Hence, it is only with the Enlightenment, post-Hobbes, that society is truly 'discoverable'. But because of their respective artificialisms, we arrive at only a rather 'thin' notion of the social (as a set of contracts or agreements that are salient), in both Hobbes and Locke. There is a 'thicker' version of the social – "the obscure, unintended effects of the interplay of…wills" (Baker 1994:113) – that is only dimly anticipated. But the discovery of this thicker form of the social "as an objective domain beyond the will of individuals" (p. 112) that is the domain of sociology proper is only *possible* once the individual has emerged as the active force behind society's construction, a move initiated by these early contract thinkers. Indeed, we may say that, just as the religious imaginary is constituted upon excluding certain conceptual possibilities, the artificialist imaginary excludes the thickness of the social as it is a term that cannot be integrated into its logic, even as it is destined to resurface. Where it appears explicitly as a realm unto itself, society remains framed explicitly in primarily voluntarist terms or derivative of the political.

To restate our main point: in the social contract tradition, the state is an artificial construction, but one that takes on a *telos* in excess of that artifice. It lives and dies in many ways as an organism, despite its sometimes machinic character. Herein lies the tension, and it is a tension we shall explore further in the following chapter, looking at the conditions under which states might willfully dissolve themselves. For where the social contract may be dissolved, 'the social', we find, often persists in ways antithetical to the fundamentally voluntarist ethos of the contract itself.

Chapter 3: Dissolving the Contract

On 11 December, 1688, James II fled England amidst an ongoing struggle with Parliament that would climax with the Glorious Revolution. With this departure James canceled writs for new Parliamentary elections, canceled the nomination of sheriffs (needed to run elections), and dropped the Great Seal in the Thames.[43] Pocock (1988) suggests James II's father, Charles I, who had made an unsuccessful attempt to flee to France, would have at least kept the Seal with him (p. 160). The radical Whig line considered James II's actions as effectively dissolving the government and returning the people to the state of nature. This principle was expressed most notably in Locke's *Two Treatises*' section on the Dissolution of Government, which anticipated the ensuing Revolution. Locke's was in many ways a revolutionary work, tantamount to declaring a right to revolution in the face of unjust authority. Abdication or forfeiture of the throne returned power to the people, who were then free to form a new government. The second of the *Two Treatises* laid out the principles upon which it could be said "James II's activities had 'dissolved' the government," and that having been returned to the state of nature, "the people had a right to take up arms and then reconstitute the government anew in whichever form they pleased" (Thompson 1994:89).

The problem of oppressive power takes on a new significance after the waning of the religious imaginary. The king could no longer rely on the institutional security fostered by the myth of his second, mystical body. Indeed, we witnessed this already with Charles I. No longer could the singular king's transgressions be bracketed from the inviolability of his other body. By James II's time, 'the people' had come to assume a substantiality all its own, as an excess to any

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[43] It is worth highlighting the symbolic significance of the imprimatur of the state personality in the form of its signature – the Great Seal, in this instance (Derrida 1986).

form of institutional power. Indeed, as a substantial entity, the people, for Locke, could persist

sociably, even in a state of nature. As we began establishing in the foregoing chapters, the state is

constructed with a *telos* of continuity by virtue of its very institutionality. The implications of

this *telos* must be considered in relation to the discourse of popular sovereignty. For, the modern

state (and social contract theory) owes much to the latter. If the state is an artificial construction,

then it must raise the possibility of its very *de*construction – and indeed, it must raise this in its

very moment of foundation. This is the tension I undertake to explore in this chapter.

The Social Contract as Binding

The social contract must be considered distinct from normal, everyday contracts. With

the everyday, instrumental contract, such as an exchange of money for the provision of services

or goods, the character of the contractors, for all intents and purposes, goes essentially

unchanged. This agreement does however presume a prior relation – a character-changing

contract that submits all to some legitimate authority, guaranteeing those discrete exchanges.

This prior contract we might think of as a pre-condition, or a meta-contract for which there is no

pre-condition. Whereas discrete contracts leave the personalities of contractors generally

unaltered, the social contract, Forsyth (1994) suggests, "aims always at creating a permanent

union between the contractors themselves, and a union that will continue to bind the successors

of the original contractors, with or without their express adhesion" (p. 39). The operative term in

Forsyth's reading is 'aims', for the social contract's objectives and outcomes are neither singular

nor resolute. Edmund Burke, though by no means a representative of the tradition, offers in his

Reflections on the Revolution in France some insight into this distinction: "the State ought not to

be considered nothing better than a partnership agreement, in a trade of pepper and calico, coffee

or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to

be dissolved by the fancy of the parties" (2009:261). Indeed, one might argue the state is oriented toward continuity such that it may guarantee the stability and completion of these provisional contracts indefinitely. State-capitalist fiscal policy today, for example, seems to demand an always deferred, future debt-repayment. David Graeber, in his work *Debt: The First 5000 Years* (2011), makes the case that monetary systems are fundamentally premised on debt, where money rather than constituting some positive value is like a transferable IOU, always a stand-in for or stimulation of something owed. The Bank of England, for example, finds its origins in a £1,200,000 loan to the king by a consortium of bankers in 1694. It is a loan, Graeber remarks, that by necessity remains outstanding: "To this day, this loan has never been paid back. It cannot be. If it ever were, the entire monetary system of Great Britain would cease to exist" (p. 49). Of course, debts do not simply implicate the present world. Indeed, the mortgaging of the wealth of future generations appears to have become a modern economic commonplace. We may recall as far back as the dwindling days of the *ancien régime* the wartime extravagance of the French monarch that might be sloughed off with a simple "*après nous, le déluge*".[44] Koselleck (1988) describes this latter edict as a moral breaking point marking the twilight of the *ancien régime*—that the French State assumed for itself the right to "conceal or strike out its debts" to its financiers (p. 64). These excesses raise a larger questions around the obligations to future generations only beginning to be perceived in the early modern period. But despite the frequent late modern 'abdications' of responsibility to the future, the modern in general with its shifting spatial and temporal coordinates is also ushered in with a purposeful orientation to the future. As Gauchet (1985) puts it, "a society no longer externally determined is a society which must

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[44] This casting of debt into the future is raised most strikingly today for the low-lying and coastal regions of the world confronted with their own gradual 'deluge' from the slow-melting polar ice caps.

necessarily turn completely toward the future" (p. 176). If society is to self-institute and survive in perpetuity, the past must lose its hold.[45]

William Atwood, a contemporary of Locke, spoke to the perpetual nature of society's obligation to fundamental laws. While laws and even some fundamental laws could be altered, he noted, "[t]hey that lay the first foundation of a Commonwealth, have Authority to make Laws that cannot be altered by Posterity... For Foundations cannot be removed without the Ruin and Subversion of the whole Building" (Thompson 1994:79). Legislative change, Atwood put it, needed to pass through the Fundamental Law of *salus populii* or the "chief constitutional law". Arendt (1963) makes the similar case that even amongst the framers of the American Constitution, a century later, "it was felt that, once the decision was taken, it remained binding for the body politic to which it gave birth", and that those who argued for the absolute alterability of the Constitution, or the possibility of its annihilation, were in fact "lonely figures in the Assembly" (p. 156). In Grotius on the other hand, who was something of a proto-contract thinker, we witness "the idea of a permanently binding historical contract" (Simmons 1993:153). Just as an individual or a people could find themselves enslaved as an outcome of war, Grotius conceived it to be possible that a people could legitimately sell itself into slavery, if, for example, its survival depended upon it:

> It is lawful for any Man to engage himself as a Slave to whom he pleases... Why should it not therefore be as lawful for a People that are at their own Disposal to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without reserving any Share of that Right to themselves? (*DJB*, I, iii, VIII, 1)

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[45] On this point, Kant (1963) remarks alternately on the risk of mortgaging of the *present* too much, for the sake of the future (e.g., for future wars): "Although, for instance, our world rulers at present have no money left over for public education and for anything that concerns what is best in the world, since all they have is already committed to future wars, they will still find it to their own interest at least not to hinder the weak and slow, independent efforts of their peoples in this work" (8th Thesis).

Resting on a position contrary to the modern social contract tradition to begin with (i.e., on the legitimacy of slavery), implicit in this claim is the binding of the will of future generations. The offspring of slaves, or indeed those children sold into slavery for their necessary survival, would be likewise bound.[46] Grotius both signals here the autonomy of the will of the people as well as its self-negation. He thereby distinguishes himself from the social contract tradition that succeeds him for which, in principle, the people must be capable of both giving and revoking their consent. This goes to the core of the premise of the artificialist imaginary already discussed: the mutability of foundations.

If the covenant or social contract is considered voluntary, consensual, and un-coerced in its ideal form, then a generation cannot be said to be formally bound by the decisions of its predecessors. On this question of binding future generations, Thomas Jefferson had offered three postulates: (i) the dead have no rights; (ii) a majority can bind itself, but once a new majority of citizens emerges, so re-emerges its power to reconstitute itself; and (iii) a future generation cannot be bound, just as one sovereign group cannot bind another from the outside (Gosseries 2008). That the body politic should exist in a particular configuration for twenty years at a time, as Jefferson had it (Honig 1991), or any duration for that matter, suggests something quite modern. For it couches sovereignty in the people by its 'generation' rather than in dynasties. Elsewhere, Honig notes, Jefferson urged that a generation should not pass without a rebellion, in order to remind the people of their role in conferring power to government. Sieyès around the same time recommended the convocation of assemblies every thirty years in order to revise the Constitution (Jaume 2007:70). Hence, those revolutions that inherited the social contract

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[46] Grotius notes on the binding nature of such enslavement, "it will not be permissible for those who are born under such an obligation to flee from slavery unless they return adequate compensation for their support" (*DJB*, 2, 5, 29).

tradition brought about constitutional thought that tied the duration of a particular constitutional formation to the passing of each iteration of the people. Popular sovereignty, through a kind of revolutionary lens, demanded in some sense power to devolve back onto its constituent bearers from time to time.

Kant also argues around this time that the will of future generations could not be bound by their predecessors, at least in a manner that would restrict their ability to self-transform. He suggests that "an age cannot bind itself and the succeeding one in a manner that would prevent progress" (Axinn 1971:428). Law and the constitution must similarly be open to change, as Kant argues here against the mandating of adherence to specific religious principles:

> we must ask...whether a people is authorised to make a law for itself whereby
> certain accepted doctrines and outward forms of religion are declared permanent,
> and whether the people may thus prevent its own descendants from making further
> progress in religious understanding or from correcting any past mistakes. It is clear
> that any original contract of the people which established such a law would be null
> and void, for it would conflict with the appointed aim and purpose of mankind.
> Thus a law of this kind cannot be regarded as the actual will of the monarch, to
> whom counter-representations may accordingly be made. (Kant 1991:85)

For Kant, the *telos* of humanity prevents any contract from binding future generations to indisputable terms, at least on matters of conscience. Neither the people, nor its monarch, can make a law oriented to such ends. The principles of justice or right on the other hand are binding in a more fundamental way for Kant. We might even say the obligations to humanity in general to develop its moral character, under natural law, are stronger than any obligations a singular state might create. Yet if all laws can be altered, then we are confronted with the question of what in this intellectual tradition cements the body politic together. Is there some unalterable, irreducible moment of foundation? The capacity for lawfulness after all requires some preliminary foundation or a political act that gives the group some kind of coherent juridico-

political existence. Kant's contemporary, Edmund Burke, saw in the French Revolution (and whatever rebellion he feared it might inspire across the Channel) a violation of this very principle of foundation. The Glorious Revolution a century earlier seemed something quite different for him. For even as it achieved for Parliament a greater share of authority within the Constitution, it did so by preserving the liberties embedded in an *ancient* constitution.[47] Not only did it revert back to older traditions, but in ensuring the passage of the crown to William and Mary, Parliament sought to bind their 'posterities' to the end of time with the proclamation:

> 'The lords spiritual and temporal, and commons, do, in the name of all the people aforesaid, most humbly and faithfully submit *themselves, their heirs and posterities for ever*; and do faithfully promise that they will stand to maintain, and defend their said Majesties, and also the limitation of the crown, herein specified and contained, to the utmost of their powers,' &c. &c. (Burke 2009:20)

This act of binding was anticipated by an even earlier one under Elizabeth I, and would be undoubtedly altered again some decades after Burke, in the Reform Act of 1832. Indeed, Burke's once-compatriot Thomas Paine (1791) would find these ideas of binding posterity and unalterable foundation all quite preposterous. Yet, writing against the contract tradition, Burke does attempt to grapple with the insistence of the past on the living, as well as the burden upon the living toward future generations. He offers that "if society is a contract then it is a contract between the living, those yet to be born and the dead" (Neocleous 2005:2).[48] This usage of

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[47] For Locke, by contrast, the Glorious Revolution would grant consent its proper foundational role, the law springing "from the natural rights of every individual and from his will, as a rational and sociable being, to set up machinery to secure them" (Pocock 1967:263).

[48] In the opera, *Nixon in China* (1987), Mao Zedong remarks to Nixon and Kissinger upon the "great silent majority", to which the premier Zhou Enlai clarifies "the Chairman means, 'the dead'". Along similar lines, science fiction writer Arthur C. Clarke observed in his *2001: A Space Odyssey* (1968) that "[b]ehind every man now alive stand thirty ghosts, for that is the ratio by which the dead outnumber the living" (p. 7). The actual number today, according to the Population Reference Bureau (2011), is perhaps closer to fifteen for every living human , but this being the case, the putative obligations to past generations are still surely onerous and inestimable, if they can be said to exist at all.

'contract' seems inimical to the voluntarist notions espoused by the likes of Locke and Rousseau. Burke eschews the idea of legitimate authority arising from popular will or consent, but retains a sense of a metaphoric, primeval contract: "Each contract of each particular state is but a clause in the great primeval contract of *eternal society*, linking the lower with the higher natures, connecting the visible and invisible world" (emphasis, mine) (2009:54). There is an echo here of the proto-contractarian tradition in Grotius as well, writing in 1610:

> …we owe much to our ancestors, who have accepted a form of government which was excellent in itself, and ideal for our character and ambitions, from the original founders… It is now our duty…firmly to defend this form of government, which is urged by reason, approved by experience, and recommended by antiquity. (*De Anquitate*, p. 115)

Grotius here presages Burke, who looked back to the spatial and temporal coordinates that were more securely rooted in the premodern period, granting social life a kind of coherence he witnessed dissolving under France's revolutionary fervour.

As noted in the previous chapters, the very possibility of withdrawing consent and returning to the state of nature was a facet of the evolving political imaginary of the early modern period, even as it was countered by the rival conceptions mentioned above. With this position, emerges the possibility of the death of the body politic by new means: that is, by willed self-dissolution or suicide. Before exploring this idea further, first we must revisit the conditions under which the initial departure from the state of nature was imagined in this period.

Leaving the State of Nature

In the Preface to his *De Cive*, Hobbes undertakes an intellectual exercise, stripping subjects of their responsibilities and dissolving all relations in order to arrive at a point of origins:

> …to make a more curious search into the rights of states, and duties of subjects, it is necessary, (I say not to take them in sunder, but yet that) they be so considered, as if they were dissolved, that is, that we rightly understand what the quality of human nature is, in what matters it is, in what not, fit to make up a civil government, and how men must be agreed amongst themselves, that intend to grow up into a well-grounded State. (p. 11)

The state of nature is an important conceptual trope for the artificialist imaginary. In order to unpack how it functions within the intellectual tradition of the social contract, we should first explore the ways in which the state of nature has been construed by its main arbiters.

The state of nature as it is typically conceived of in political theory is not a 'pre-social' state *per se*, as if connoting the absence of kinship relations, norms, conventions, roles, status, and language altogether. It does not necessarily presume some hypothetical protoplastic state of human existence, even as some social bonds may be difficult to sustain before the emergence of 'society' as such. Rather it tends to refer to a period prior to entry into some kind of formal association or contract, or the condition ensuing from the collapse of the same. Dumont (1992) emphasizes that the 'social' in social contract theory pertains to 'civil society', rather than the social as generative of personhood, in the manner that sociologists typically think of, for example, 'socialization'.

The state of nature was an intellectual development primarily of the seventeenth century and one that shares its origins with the invention of the people. Edmund Morgan (1988) remarks that "[t]he idea that anarchy and the absence of any social structure preceded the formation of government in the 'state of nature' was part of the fiction of popular sovereignty" (p. 119). Accordingly, 'equality' came to occupy an important place in political discourse with the advent of popular sovereignty (p. 288). The state of nature in the political imaginary was after all a primeval plane of *equality*. There may have been natural variation in physical and mental aptitudes among humans, but each individual remained more or less equally vulnerable to the

predation of others under such a condition.

This intellectual legacy we have described thus far allows us to claim that at a certain point in the early modern period, it becomes possible to posit a figurative space and time prior to organized society or the body politic, such as the state of nature. The charting of a time and place 'before' organized society is not a novelty to the modern period as such, but this state of nature dislodged from a divine *telos* is. The Golden Age was, after all, a fixture of the religious imaginary and, by extension, of political theology through the medieval period. Indeed, Locke himself begins his *Two Treatises of Civil Government* with the Garden of Eden and the Fall of Man. He addresses Filmer's upholding of the paternalist-monarchic inheritance of authority linked back to Adam, but Locke overturns this line of thinking ultimately in the *Two Treatises*. Locke's work marks an important shift in conceptualizing the state of nature. Ronald Meek (1976) credits Locke in his reading of the Bible "with breaking from a then-prevailing interpretation of Genesis that found hunting, pasturage, and agriculture existing simultaneously from humankind's beginnings" (Vogt 2008:123). Locke introduces the state of nature as an element foreign to the Biblical narrative. The move from the state of innocence to the condition after the Fall is quite different from the move from the state of nature to the civil state (Strauss 1953:215). Neither the punishment for the Fall, nor Eve's 'transgression', factor into his political doctrine (p. 216). It may still constitute a past 'before time', but Locke's reading shifts it to a this-worldly plane, and outside the orbit of the religious imaginary. For it is only at a time when royal authority can no longer fully incorporate the realm – when civil society comes to appear as an autonomous entity – that the concept of the state of nature can be sensibly posited in lieu of its prelapsarian alternative. It requires, as noted in the first chapter, a shift in the symbolic order.

The state of nature is not simply placed in the transhistorical past, but remains a condition that organized society is capable of returning to periodically. This is especially so for Locke, for whom social life in the state of nature assumed a minimum degree of coherence. Locke would come to define the state of nature as "[m]en living together according to reason, without a common Superior on Earth, with Authority to judge between them" (*TT*, *II*, § 19). His state of nature is notably a less belligerent setting than Hobbes'. Locke differs from Hobbes, as Ashcraft (1968) notes, with the "theological conviction that God cannot have issued rules for men to obey and then have created beings who, in their most natural state, are necessarily unable to follow those rules" (pp. 902-3). Natural law established "the basic rules of mutual aid and forbearance that are fundamental to social life" (*ibid.*), such as the obligation to self-preservation, and the obligation to preserve others. However, even these laws must be divined rationally; they are not imprinted upon us. While this state of nature condition may constitute a social existence in a way contrary to Hobbes' natural state, it is surely *un*political in the sense of power going unrepresented (Goldwin 1976:126). For this second obligation – the obligation to preserve others – can only be reliably enforced or influenced within political society (*ibid.*:130). Hence, we might call the state of nature a social form – but not a political form – of existence uniquely for Locke. Politically, the state of nature is a state of "perpetual rebellion" as it has foregone both the civil state and the perfect obedience of the Garden of Eden (Vogt 2008:120).

As discussed in the previous chapter, modern natural right lays the foundation for Hobbesian thought. Hobbes' civil state is premised on the notion of a rational subject. The subject who rationally understands her interests would, by his account, willingly cede her natural freedom to a sovereign authority – even in its absolutist form – rather than endure the precarious state of nature. The state of nature is akin to a state of war of all against all. Agreements,

promises, and contracts have no security, for breaking an agreement in that state might better satisfy the driving force of self-preservation than would abiding by that agreement.[49]

We find in Hobbes something of an emergent bourgeois or gentry worldview. There is surely some foundational thinking around *homo oeconomicus* at work here in Hobbes' turn to instrumental and calculative rationality. The 'natural man' Hobbes constructs is steeped in the emergent economic norms of competition of the seventeenth century. As Montesquieu observed of this ahistoricism: "…one feels that what can happen to men only after the establishment of societies, which induced them to find motives for attacking others and for defending themselves, is attributed to them before that establishment" (*SL*, Part 1, Ch. 2). Despite the supposed generalizability of this feature of human anti-sociality (i.e., competition), Hobbes was especially concerned with the ambitions of the political elite of his time. He was concerned with those "children of pride" who "have most leisure to be idle", unlike the poor who were excluded from "this contention for honour" and from public life such as it was at the time (Baumgold 1990:75-6). Neal Wood further speaks to this aristocratic culture at the time, "the fiercely competitive and combative English landed gentlemen in their frenetic pursuit of honours, offices and riches" (p. 76). It was the elites specifically who had wrestled for sovereign power and instituted the Long Parliament, Hobbes' Behemoth (p. 77).

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[49] Yet even for Hobbes, rationality is surely not the exclusive human motivator – there are passions. And there are the failures of rationality, or having insufficient rationality. Unlike the hypothetical perfect rationalist, individuals are not immune to thoughtless action or failing to recognize the secondary consequences of their actions or inactions. While we are often reminded by Hobbes that anarchy would be a reality worse than tyranny, he recognizes that people will still unthinkingly choose the former; or, rather, that "[r]ebels will overthrow an unsatisfactory regime only because they give no thought to the tyranny or anarchy that is bound to follow" (Hobbes 1889: xvii). This is the myopia that comes from only thinking about the present, but also the product of being motivated by "passions, interests, and norms" (xviii). Pascal, a contemporary of Hobbes, offered a similar observation: the "love of life seems strong, but in fact, people are willing to die for almost any belief, however illogical" (*ibid*.). Stephen Holmes (1990) notes, "[t]his was Hobbes' dismayed conclusion as well" (p. 132). By Holmes' reading, death is not always necessarily the greatest fear, even in Hobbes, for individuals hold transcendent values whose violation may be worse than death itself. It is only after the most thorough 'disenchantment of the world' that the fear of the precarious state of nature can be assured its proper place as the primary motivator of human action.

From this putatively natural self-interest comes the fundamental impulse to avoid death, or indirectly, to covet that which may secure life: the "generall inclination of all mankind, a perpetuall and restless desire of Power after power, that ceaseth onely in Death" (*L*, I, XI). As Hobbes would have it, man is not "naturally gregarious, like bees or ants" (Gough 1978:107). Rationality naturally orients one to see others as a threat. It is unclear how the basic building-blocks of social relations manifest themselves in this setting, whether it be the fundamental bonds of kinship or even the basic linguistic consensus required for attributing words to things.[50] It is fitting that Hobbes should stand out as the sole thinker of the classical social contract tradition to frame the relationship between men and women in the state of nature in non-hierarchical terms. As Pateman (1988) notes, for Hobbes "there is no natural mastery in the state of nature, not even of men over women" (p. 44). Outside the contract, everyone is a potential threat to everyone else, but whatever means of conniving, and there is clearly no common world upon which gender norms could be secured, let alone that litany of features of civilizational advancement Hobbes lists: "no place for Industry; ... no Culture of the Earth; ... no Navigation; ... no commodious Building; ... no account of Time; no Arts; no Letters; no Society" (*L*, I, XIII). This anti-social portrait of humanity is so cynical that, as Gough (1978) notes, it would seem that "men…could never unite to form a society" (p. 60).

The threat posed by others in the state of nature for Locke, is somewhat less pronounced. There is a tension in Locke's writing between humans' natural sociability and their 'desire for personal happiness'. So while he speaks of the state of nature in terms more idyllic than Hobbes,

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[50] Octavia Butler's 'Speech Sounds' (1983) is a short, compelling science fiction depiction of the dissolution of civil society upon the loss of the capacity to communicate through verbal signification. In the dystopian setting, an affliction that impairs almost all humans' ability to speak or recognize words leads to an apparent collapse of civilization, as if the loss of this primary basis of social cohesion – language – should bring about` a regression back to the state of nature. In this case, the dissolution of the social, in a sense, *effects* the dissolution of the political.

these should not be considered definitive for Locke, since there are different shapes the state of nature may take on. Locke's state of nature is, as Simmons (1993) puts it:

> a state of limited safety and considerable uncertainty, a state of significant but not desperate "inconveniences," a state to which only certain limited forms of political society will be preferable. The state of nature is one of "uncertain peace," in which people are able to follow the law of nature but do not always do so, a condition created by the "tension between man's natural sociableness and his equally natural desire for personal happiness". (p. 26)

A kind of society can still exist in the state of nature, as Locke posits it. Promises and compacts can be made here since "truth and keeping of faith" are qualities of humanity even outside the state. As noted above, for Locke, the state of nature is not simply a condition without government, but one without a *legitimate* common authority. Locke's state of nature is therefore presented as preferable to some political formations, while for Hobbes the state of nature is never preferable.

Locke's descriptions of possible states of nature range from "a state of peace, goodwill, mutual assistance, and preservation" to ones of "enmity, malice, violence, and mutual destruction" (*TT*, *II*, § 19). This is not an inconsistency in Locke's work, Simmons notes, but the recognition that the state of nature yields uncertain outcomes. As Ashcraft (2013) claims of Locke's philosophical anthropology, humans "are fallible rather than wicked" (p. 236). It is for this reason, as noted in the previous chapter, that Locke appears to legitimate the return to the figurative state of nature more than his intellectual alters.

It remains unclear in Rousseau's work as to whether the state of nature is purely ideational or an empirical historical reality. In his *Discourse on Inequality*, according to Cassirer (1961), Rousseau "declares that he is starting from a state of human affairs that no longer exists, that perhaps never existed and will probably never exist, but which we must nevertheless posit in

order to judge rightly our present state" (p. 24). This ambiguity reflects Rousseau's alternation

between the intellectual roles of philosopher, critic, educator, and historian. To the extent that the

state of nature partakes in the artificialist imaginary, James Miller (1984) points to a tension in

Rousseau's depiction of the departure from the state of nature: "for what, in the Alpine republic

of Rousseau's dreams, appeared as an organic heritage, handed down from time immemorial –

namely, the salutary mores and manners that comprised the 'common self' of his rustic citizens –

now appears, equally miraculously, as the instantaneous result of a discreet 'act'" (p. 62). With

the shift from the *Discourse on Inequality* to *The Social Contract*, we thereby witness the

emergence of something of a 'rational fiction'. Ernest Barker (1947) also finds this artificialism

in Rousseau confounding:

> He would have escaped from a mist of confusion, and avoided the inexplicable
> miracle of a sudden contractual emergence from a primitive and stupid condition
> into a civilized blaze of enlightenment, if he had stopped to draw a distinction
> between society and the State. The society of the nation is a given fact of historical
> evolution, not created by any contract of society, but simply there. The State based
> on that society may be, or may become at a given moment of time (as France
> sought to do in 1789), the result of a creative act performed by the members of the
> society. (pp. xliii-iv)

We should qualify Barker's remarks, however, noting that the distinction between civil society

and the state did not really make sense in the language of the *ancien régime* (Singer 1986:57;

Baker 1994:101; Gordon 1994:239). The king still stood in for both terms, and *l'État* did not

convey its current, modern meanings. We might also qualify the above point on society being

'simply there'. For even if it is not reducible to an artificial and deliberate 'act', we must still

consider society's coherence as a practical accomplishment of a *mise en scène* and a *mise en sens*.

Staging this move from the state of nature, this self-creation, is the very *mise en sens* that

enabled what Barker calls in the above quote, "a creative act performed by the members of the society."

Turning to his philosophical anthropology, for Rousseau there is a moment prior to the avarice, greed, and desire for accumulation that so characterizes present human civilization (Scott 1992:698). The 'pure state of nature' is prior to any social or moral relations in Rousseau. It is not that natural man leads a solitary existence—after all, procreation necessitates some degree of interaction. The point is rather that those interactions do not lead to moral and psychological development: "passions tend to bring people back together again, but the necessity of seeking a livelihood forces them apart" (Rousseau 1996:12). However, as soon as one recognized the utility of others, of having the provisions for two rather than one, private property, and the labour necessary for its procurement, developed. For "awards awaited those who could produce most and best" (Durkheim 1965:79). There was no going back to this primordial state of nature for Rousseau. This is the 'inevitable accident' of human civilizational development.

The state of nature out of which humanity emerges is peaceable insofar as it is essentially pre-social, and characterized by self-sufficiency, for Rousseau. The moment at which humans leave the state of nature in Rousseau's estimation is essentially one of excess. It is the moment of acquiring more than one needs for mere subsistence, and indeed upon realizing the utility of others for the accumulation of this surplus, that humans first enter into social relations. We may take this further in our thinking of excess and the social. For in Georges Bataille's formulation, organisms produce not for mere maintenance but also for growth. Yet there remains an excess that cannot be profitably turned into more growth – an excess of energy or perishable goods that might otherwise go to waste (Miczo 2002). This excess provides for fundamental social relations like gift-giving, or sacrifice. The 'accursed share' – this 'something more' than what we need or

can handle – is, here, one generative form of the social, and one with pathological implications for Rousseau. For in Rousseau, as Durkheim (1965) notes, "superfluity awakens cupidity" (p. 81).

The social, then, emerges in a sense *ex nihilo* in Rousseau. There is no naturally occurring 'social' instinct. Cassirer (1961) suggests that self-preservation (*amour de soi*) is the only natural instinct in Rousseau, and indeed it is something that must be partially renounced by entering society. He even goes so far as to argue the early Rousseau saw in Hobbes the keenest political realist, in contrast to those who would paint society's foundations in terms of a kind of natural sympathy (p. 28). But there remains a notion of innate compassion borne out of Rousseau's writings (2007), which we find in his examples of "savage man's" instinctual repugnance at witnessing the suffering of another (p. 14). This capacity for pity exists in tandem with, and indeed 'moderates', the instinct for self-preservation in the state of nature. We might call this capacity proto-social, or a potentiality on which moral virtues may be established under the social contract. For, as Durkheim (1965) notes with reference to Rousseau, "[a]t that stage of his development, [man] was not unsocial, but asocial" (p. 74), existing without speech or rules (*SD*:54) that might join one to another. The antagonism characterizing 'social man' or *amour propre* in Rousseau is absent at this stage**.**

Contrary to a common assumption, Rousseau did not advocate the return to the state of nature. Voltaire's prejudiced reading, conveyed in a letter to Rousseau from 1755, is perhaps the most infamous: "No one has ever employed so much cleverness in attempting to convert us into beasts; one is actually tempted to go on all fours when he reads your book" (Voltaire 1905:149). Rousseau, however, assures us that such a return is impossible. Once humanity has entered civil society it is forever changed: "Human nature does not go back" (Cassirer 1961:26). Even where

government is corrupted by the Prince having "a particular will more active than the will of the sovereign" (*SC*, III, I), and a particular incarnation of the state is dissolved, Cassirer notes, for Rousseau "[t]he wounds the existing structure of society has inflicted on mankind cannot be healed by destroying the instrument that caused them" (*ibid*.). The civil state is more clearly found to be salvageable in Rousseau's later work. Reading the *Discourse on Inequality* in tandem with *The Social Contract* and *Emile* proves the possible rectitude of a rightly ordered society:

> In his first writings [Rousseau] sees no escape except a complete reversal and return; he demands that the '*homme des hommes*' transform himself once more into the '*homme de la nature*'. But to this pure negation there succeeds the new positive construction he aims to complete in his political theory and his theory of education. (Cassirer 1961:57)

Indeed, the civil state could not be wholly inadequate if 'man' could give up his natural freedom for civic freedom and "remain as free as before" (*SC*, I, VI). Hence, by asking in the *Second Discourse*, rhetorically, "[m]ust Societies be destroyed, thine and mine annihilated, and men return to live in forests with the Bears?", Rousseau implicitly posits this very notion as preposterous. Similarly, he remarks in *Emile* (1979):

> But consider, in the first place, that although I want to form the man of nature, the object is not, for all that, to make him a savage and to relegate him to the depths of the woods. It suffices that, enclosed in a social whirlpool, he not let himself get carried away by either the passions or the opinions of men…. (p. 255).

In spite of the perversions of civilization, it would be even more monstrous to allow the child to grow up in a civil condition but without any civilizational influences. For despite the fact that civilization corrupts, there remains in it the tools of its own transcendence, or *le remède dans le mal* (Starobinski 1989). This remedy is akin to an evil that also yields benefit. This is a recurring theme in Rousseau, found especially in *The Social Contract* and *Emile*. Once humanity has

passed the Rubicon of its civilizing process, there is no return. However, the ill effects of the latter might be attenuated by the very tools civilization has introduced. Nature, then, must not so much be banished as transmuted: "One must use a great deal of art to prevent social man from being totally artificial" (Rousseau 1979:317).

In charting out these various departures from the state of nature we arrive at three distinct conceptions of humanity's originary orientation to the social: humans are naturally sociable for Locke, unsocial for Hobbes, and asocial for Rousseau. These conceptions inform the following discussions of the prospects for a return back to the state of nature. However, they do so necessarily juxtaposed to the thickness of the social that amasses in collective life, ineluctably.

Returning to the State of Nature: Disbanding, Rebelling, and Resisting

The scenario of groups or collective bodies willfully disassembling and returning to a state of nature appears periodically in early modern texts. These examples usually hearken back to the classical or early medieval period, before the discovery of society as such. Montesquieu (1748), for example, observed how the German tribes[51] who conquered Rome displayed a kind of primitive democracy that allowed them to retreat back into the woods during disputes over authority. The Tatars of the Eurasian Steppe might also assemble from time to time in order to undertake conquests, Montesquieu observed, then disassemble into smaller clans afterward (*SL*, XVIII, § 11).

As Foucault (2003) notes, the barbarian emerges in eighteenth century political discourse as the destroyer of civilizations (p. 195). It marks a pointed contrast to the eighteenth century discourse of civility, and indeed the moderating effects of civilization that Elias famously

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[51] It was in the spirit of anarchic origins that Sieyès (2014) asks rhetorically, "Why should [the Third Estate] not repatriate to the Franconian forests all the families who wildly claim to descend from the race of the conquerors and to inherit their rights of conquest?" (p. 48).

accounts for. The destroyers of societies and states, however, were not just the 'barbarians'. More important to the contract tradition was the internal figure of the 'rebel' or the 'revolutionary' who is imagined as a remedy to arbitrary power.

In England, historians trace ideas of 'legitimate' resistance against tyrants back to the late sixteenth century. Baumgold (1990) notes that "Orthodox Protestant and monarchomach ('king-killer') resistance theory narrowly legitimized rebellion led by 'inferior magistrates', viz., religious authorities and parliaments" (p. 79). Before popular sovereignty can be said to have emerged as such, resistance to institutional power could still be justified on the grounds of Protestant or Catholic orthodoxy. Religious communities saw themselves as the final arbiters of God's will against those rulers who claimed to bear their own authoritative will (Morgan 1988:56). We can extend this principle back to the Huguenot tract, *Vindiciae Contra Tyrannos* (1579), around the time of the Saint Bartholomew's Day massacre in France, which justified rebellion against (but not judgment of) tyrants. Bodin even allowed the right to resist the usurper tyrant, or in some instances, to kill him – though he forbade the killing of a rightful monarch, even one who committed misdeeds (*C*, II, 5). Similar justifications for resistance against tyranny, and even secession, can be found in the federative writings from Protestant territories like Holland, Germany and Switzerland. In Althusius, for example, groups retain a degree of autonomy against the ruler who would do them harm: "They can themselves resist tyrannical attacks upon those rights by force of arms, even though this may involve a conflict with the authority of the State" (Gierke 1950:72). Althusius is among the clearest anticipators of the social contract tradition, although writing in the vein of constitutional theory and in the less centralized federal republics of the Netherlands and Germany. The corporate and customary rights his theory enshrined, and even his early take on popular sovereignty, however, did not bear

the same lineage of the social contract, wherein natural right guided the emergence of individuals out of the state of nature.

The sixteenth and early seventeenth century natural law theory, the federative writings, and the radical Huguenot thought anticipate this rise of popular sovereignty. These included early notions of a contract, and indeed a limit-point on power's legitimacy that allowed for resistance or rebellion in limited circumstances. The social contract thought that followed perhaps made the strongest case for the voluntary, and therefore dissoluble, character of the civil state. However, we find points of tension here. The contract resists dissolution in some instances, refusing the right to disband or return to the state of nature. It is at this point that we may turn to exploring this internal tension of the artificialist imaginary through the motifs of disbanding, rebellion, and resistance.

On Disbanding

Social contract theory generally finds the dissolution of civil society or the state and the return to the state of nature as at least theoretical possibilities. This is on the grounds that there are circumstances under which the consent that girds the contract can be withdrawn, or whereby the contract is deemed violated, and the people is no longer bound. In Rousseau, no singular act, not even the social contract itself, is fully binding on the people, who are always sovereign in the final instance. In his reading, the sovereign cannot alienate itself, divide, or submit to another sovereign. However, it must legitimately be able to dissolve the contract, for the general will is always sovereign. The people are the sovereign moral person, delegating decisions to a second moral person, the government or ruler. The government's actions remain subject to the approval of the sovereign. Rousseau makes perhaps the strongest cases for sovereignty as a decidedly *popular* formation. No matter what form a government may take – democratic, aristocratic, or

monarchic – sovereignty for him lies with the people and the former remains subject to their revocation. Governing bodies are merely commissioned to their duties by a trust, a deputation that can always be withdrawn. The people, then, must be capable of dissolving their pact of association, and thereby the body politic itself. They "can limit, modify or recover at pleasure" the power of government, "for the alienation of such a right is incompatible with the nature of the social body, and contrary to the end of association" (*SC*, III, I). Rousseau, hence, eschews the idea that the general will could be constrained. Further to this, he allows the resumption of natural liberty by a willful assembly of citizens to overturn the social contract:

> I am here assuming what I think I have shown; that there is in the State no fundamental law that cannot be revoked, *not excluding the social compact itself;* for if all the citizens assembled of one accord to break the compact, it is impossible to doubt that it would be very legitimately broken. … *It would be indeed absurd if all the citizens in assembly could not do what each can do by himself*. (my emphases) (*SC*, III, XVIII)

The pact of association is not binding, in the final instance, for each individual might just as soon withdraw from this pact as the citizens together might hold a general assembly to dissolve itself. We get a sense, then, of a pact that is decidedly provisional, rooted in natural liberty – something which could theoretically be reassumed at any time. In this regard, the pact of association appears as nothing more than the sum of its parts – the thickness of the social entirely eclipsed.

According to Gierke (1950), taking this point to its logical conclusion, Rousseauian popular sovereignty amounts to "the declaration of a permanent right of revolution, and a complete annihilation of the idea of the constitutional State" (p. 150). Indeed, there is something of a Rousseauian legacy in France in the century following him. The French Constitution in its many iterations during the long nineteenth century survived an average of "less than ten years" (Dicey 1889:120), dissolving numerous times rather than opting for more modest revisions. We

may see this legacy as borne out of the Rousseauian currents of the French Revolution that, in a sense, "created a society [that] is still looking for its government", remarked Anatole Prévost-Paradol in the 1860s (Jaume 2007:78).

Just as Lefort speaks of the ritualized character of elections, which exposes the modern democratic state periodically to its absent centre as part of its *mise en scène*, with the Rousseauian ideal, the "people as constituent power continue to meet at regular intervals, bringing the government to heel each time they do" (Forsyth 1994:42). It is a condition of "continual dissolution and recreation" (Hacker 1961:301), of a people bound, in a sense, by no future or no past. Colletti (1974), in a turn of phrase most often associated with Friedrich Engels, sees this, put into practice, as "the abolition or withering away of the State" (p. 184). No state could be certain to stand or be instituted beyond a single iteration of the people under these terms. Each new assembly of the whole "cancels...the previous political and legal situation" (Gierke 1950:130). Engels' own imagined withering away of the state is posited as the product of society finally becoming self-identical, un-split by the elimination of class structures. Rousseau's 'withering away' unfolds as the impossibility of the representation of the general will. The state is always already confronting the possibility of its self-dissolution. This situation constitutes, for Medina (1997), a potential legal anarchism. Since the people would hold the right to establish or reject laws at will, they could end up doing so in such a haphazard manner that a feeling of insecurity takes over (p. 282). Taking this argument to its logical end, the ideal state for Rousseau can never fully or 'legitimately' come into existence:

> At first, thinkers had been content with the idea that later generations were bound by the contracts of their predecessors; but the fiction of fresh contracts (renewing the original contract in each generation) soon came to be regarded as necessary in order to explain the social obligation of each new age. At last a point was reached when the individual was not only assured freedom of entry into the State (by being made a party to a fresh contract when he reached maturity), but also freedom of exit; and each group of individuals was thus given the right of creating a separate autonomous society. Here the theory of contract had touched an extreme where, by denying to the will of yesterday any authority over the will of to-day, it condemned itself to suicide. (Gierke 1950:110)

Gierke makes the case that the logical end of popular sovereignty, as developed among the likes of Locke and Rousseau, sees the popular will overtake every one of its institutional sedimentations so as to find authenticity only in its immediate expression. Indeed, this is key to why political institutions may be called 'artificial' in the imaginary of the social contract.

Dissolution is not simply a challenge to the state in Rousseau, but also for civil society. In at least one instance, the social bond appears to dissolve as readily as the political. For example, the social body for Rousseau dissolves upon the splitting of the sovereign:

> If finally the prince should come to have a particular will more active than the will of the Sovereign [the people], and should employ the public force in his hands in obedience to this particular will, there would be, so to speak, two Sovereigns, one rightful and the other actual, the social union would evaporate instantly, and the body politic would be dissolved. (*SC*, III, I)

This sudden dissolution of the *social* union seems rather extreme on the surface, but Dominique Colas (1997) offers one explanation for this outcome, consistent with what we have laid out thus far: "The possibility of civil society's disintegrating due to the corruptibility of government follows from Rousseau's strict artificialism: because as he saw it civil society had no roots in nature, it is more vulnerable in his theory than in those that posit a natural origin for civil society" (p. 413). The social *qua* 'bond of association' cannot survive here because it is *not*

substantively different from the political in Rousseau's articulation. It ostensibly does not produce something greater than the sum of its parts.

Leaving Rousseau aside for the moment, we may turn to Locke who also privileges the individual over the binding character of the contract. In a passage from his *Two Treatises*, Locke tells us "there are no examples so frequent in history, both sacred and profane, as those of men withdrawing themselves, and their obedience, from the jurisdiction they were born under, and the family or community they were bred up in, and setting up new governments in other places" (II, § 115). Locke references this motor of civilizational expansion – emigration – to challenge the exhortations of his interlocutor, Robert Filmer, with his ideas of a providential and paternalist sovereignty at the core of Western civilization. This supposedly common tradition of leaving one's jurisdiction and temporarily returning to the state of nature to form the civil state anew is one basis upon which we can witness the 'true' origins of sovereignty: through popular acts of assent.

In the modern world, with no habitable territory left unclaimed, the return to the state of nature with such ends in mind is surely a near-impossible feat. Even by his time, a century after Locke, Rousseau (1979) remarked on the implausibility of finding an unclaimed natural state to return to: "It would even be impossible for [man] to subsist. For, finding the whole earth covered with thine and mine and having nothing belonging to him except his body, where would he get his necessities?" (p. 193). As Klausen (2007) notes, Locke's consideration of this pivotal point of the state of nature relies upon a world wherein there remains still-uncharted territories; some form of *terra nullius*. This is indeed at the core of Locke's consideration of *explicit* consent, as the only fully binding form of consent. The 'tacit consenter' or 'non-consenter' could, Locke would have it, simply 'leave'. Because all consent is initially tacit (imputed merely by one's

birth into a political community), true legitimacy demands the possibility of the individual expressing consent deliberately, without duress and at the age of majority. Consent requires the possibility of leaving and going somewhere else. There must be "room enough" elsewhere for civil society to be re-established should the existing conditions be considered too oppressive for consent to be truly free.[52]

Locke's time was one in which moveable wealth was a novel development. The emergent European state system, with its attendant openings in commerce and trade, and the discovery of the 'New World' provided for a kind of mobility previously unknown. Bills of exchange made international cash flows more feasible, and made binding obligations and local connections arguably more mutable (Hirschman 1978:96). Indeed, this postulate of *terra nullius* made a certain kind of political legitimacy imaginable at the time that is not entirely so today. The present-day libertarian fantasy of 'leaving' and starting a society anew 'off the grid' in a world already so thoroughly saturated by bodies politic makes the Lockean postulate sound at least plausible by comparison.

This question of the binding nature of the social contract takes on new significance when we are confronted with the prospect of leaving civil society *after* having explicitly consented to its terms. Locke addresses this in the second of his *Two Treatises*:

> …he, that has once, by actual agreement, and any express declaration [as opposed to tacit obligation assumed by birth], given his consent to be of any common-wealth, is perpetually and indispensably obliged to be, and remain unalterably a subject to it, and can never be again in the liberty of the state of nature; unless, by any calamity, the government he was under comes to be dissolved; or else by some public act cuts him off from being any longer a member of it. (§ 121)

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[52] America was this realm of possibility in Locke's view.

There are a number of circumstances in Locke under which obligations to the state or civil society can be revoked, but under normal circumstances, there is no basis for such a voluntary renunciation once explicit consent has been given.[53]

Simmons (1999), remarking on the 'sociable' character of the state of nature for Locke, notes he was "careful to distinguish between dissolution of government and dissolution of society" (p. 117), suggesting that not all forms of bonds can be considered dissolved by the dissolution of a contract: "In the latter case men are returned to the state of nature, while in the former it appears that the society regains those rights it entrusted to government, but no *individual* citizen returns to the state of nature" (*ibid*.).[54] The social, in this sense, remains an indestructible part of the people in Locke, even once the political agreement is dissolved.

The possibility of disbanding is a formal necessity in Rousseauian thought. It is also necessary, in a sense for Locke, but here it is more tied to ensure consent can be freely rendered. Once rendered it is not normally recoverable in Locke, we will find, unless the contract is broken by the governing authority. In either case thus far, however, the social appears to be a residual category, either eminently dissoluble, as in Rousseau, or always already there, as in Locke.

On Rebellion

If society's foundation is imagined under the social contract through a discrete act in the transhistorical past, that act is relived perhaps most dramatically in the moment of popular rebellion or revolution. Indeed, revolution, in some of the social contract's iterations, is "represented as a (re)enactment of the contract, and thus as an explicit return to these principles"

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[53] Those who have only tacitly consented, however, maintain their freedom to establish society anew, or join another, elsewhere.

[54] Meanwhile Hobbes, Pateman (1979) claims, could not distinguish "between the overthrow of a government and the destruction of social life itself" (pp. 61-2). This, again, reflects the derivative or epiphenomenal character of society in Hobbes.

(Singer 1986:96). In radical dissolution lies a reference back to the *mise en scène* of foundation. This appears differently from mere disbanding, or collapse, for under rebellion and revolution a society and its state may survive a momentary reintroduction of a state of nature relation between the people and its government – or it may thereby assume a new form. What is perhaps clearer in rebellion than in our previous case of disbanding is that the latter disrupts the existing order so as to re-establish it under new terms.

Of the cases from the early modern period, the French and American revolutions are exemplary of the problem of rebellion under the auspices of popular sovereignty. If the Glorious Revolution had to address the problem of a ruler *in absentia* and thus dethroned, the French Revolutionaries had the messier problem: what to do with the dethroned king still in their midst. The decision to put Louis Capet on trial was opposed by, among others, the Jacobins who preferred an execution outright (Hunt 1992:55). Robespierre made the case against the trial, in favour of revolutionary justice:

> When a nation has been forced to resort to the right of insurrection, it returns to the state of nature insofar as the tyrant is concerned…. How could the tyrant invoke the social contract? he abolished it… What laws replace [the constitution]? those of nature, which is the basis of society itself. The salvation of the people, the right to punish the tyrant, and the right to depose him are all the same thing... The trial of a tyrant is *the insurrection*; his sentence is the end of his power; his punishment, whatever the liberty of the people demands. (Walzer 1992:132-3) (emphasis mine)

Robespierre starts from the position that the ruler who asserts the arbitrary power of a tyrant has violated the social contract. Ultimately, only the people can decide on this breach. But once the contract is deemed violated (as assumed in Louis' deposition), the laws may no longer speak for the one who violated them—inviolable though he was deemed by the 1791 constitution. For Saint-Just, inviolability also meant irresponsibility, and therefore the king must be unbounded by or outside of the social contract (Fehér 1987:108). All that remains, then, is the state of nature

between the people and the tyrant. Rousseau made the same point about insurrection in the

Second Discourse – that as a pure expression of popular will, it is itself in essence 'a trial':

> The insurrection, which ends in the death or deposition of a sultan, is as juridical
> an act as any by which the day before he disposed of the lives and fortunes of his
> subjects. Force alone upheld him, force alone overturns him. Thus all things take
> place and succeed in their natural order; and whatever may be the upshot of these
> hasty and frequent revolutions, no one man has reason to complain of another's
> injustice, but only of his own indiscretion or bad fortune. (pp. 94-5)

The Jacobins during the French Revolution would come to power claiming this 'untrammeled'

right of the people to insurrection (Jaume 2007:74). One finds a similar sentiment in the drafter

of the Declaration of Independence, Thomas Jefferson, when he stated in reference to Shays'

Rebellion of 1786-7: "God forbid we should ever be twenty years without such a rebellion"

(Honig 1991:109).[55] The statement goes, further:

> …what country can preserve [its] liberties if [its] rulers are not warned from time to
> time their people preserve the spirit of resistance? Let them take arms. The remedy is
> to set them right as to the facts, pardon & pacify them. What signify a few lives lost
> in a century or two? The tree of liberty must be refreshed from time to time with the
> blood of patriots & tyrants. It is [its] natural manure. (Jefferson 1999:110)

Indeed, we may read a decade earlier in the language of the Declaration of Independence the

obligation or duty to disobey: "it is their right, it is their duty, to throw off [despotism]" (Walzer

1970:3).

Constitutions – like the Constitution of the United States, for example – may on the other

hand provide the terms under which they can be formally altered, or indeed, indicate the point at

which they have been violated by those holding office. They cannot, however rightly authorize

rebellion against their own formal edicts. Jefferson's own position moderated during the drafting

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[55] It is worth noting, though, that this particular rebellion Jefferson saw as 'founded in ignorance', and therefore not
justifiable.

of the Constitution. However, there remain strong currents in the social contract tradition that legitimate the possibility of rebellion against the state, if only under certain extreme circumstances and against the language of constitutions.

The act of regicide or tyrannicide was usually reserved for the most extreme form of tyranny; a ruler "who openly professes a desire literally to destroy his subjects altogether" (Franklin 1981:132). Recalling the Glorious Revolution again, James II hardly aspired to such destructive ends, but he did in the estimation of Parliament seek to subvert the constitution when he left the throne vacant by fleeing to France in 1688. But this flight was precipitated by essentially rebellious activities, including the invitation of the Prince of Orange and a small army to England. Again, for Locke, the people retained for themselves a supreme power: "to remove or alter the legislative, when they find the legislative act contrary to the trust reposed in them" (II, § 149).

Under the English tradition of mixed monarchy, the coronation oath obliged the king to respect the constitutional limits to his power. "Some vague sort of popular consent or choice in the distant past, renewed from time to time in the coronation ceremony," Morgan (1988) claims, "was at least implied" (p. 57). This obligation would be further entrenched under the Bill of Rights (1689), which appeared as a kind of contract between Parliament and the Crown. The Whigs, however, believed that declaring James II's actions an 'abdication' and replacing him were covered by an *age*-old compact: the ancient constitution that submitted the king's authority to checks. Indeed, this ancient constitution, seen through seventeenth century eyes, inhered with a notion of a contract. Under its precepts, "[t]he origin of English government could thus be placed in the actions of Englishmen themselves in a comfortably distant and nebulous past" (*ibid.*). The coronation oath of the king, to 'respect the constitutional rights of his subjects'

submitted his rule to a compact, the Whigs argued. The Tories countered the language of 'original contract' with an historical account that saw the king as "the mainspring of the government, and that from him every organ in the realm drew its motive power" (p. 133). However, the Whiggish turn-of-phrase carried the day in the House of Lords, if only by a small majority.[56]

There are essentially two different scenarios where the right to resistance is justified in Locke:

(I) A state of war between the people and the government: This occurs usually when the executive acts tyrannically, ushering in a war that violates the law of nature and constitutes a forfeiture by the government of all rights. Locke found that isolated acts of tyranny may be tolerated by the public, but not when "confronted with a calculated design to subvert its constitution and reduce it to a state of servitude" (Franklin 1981:97). Under James II, the indictment here is toward his attempt to subvert the function of the legislature "in part by suppression and in part by usurpation of its powers" (*ibid*.).

(II) A breach of trust. This may follow from:

> …the executive substituting his arbitrary will for the laws (II, § 214), by the executive hindering the legislative from assembling or acting freely (§ 215), by the executive changing 'the electors or ways of election' contrary to the people's interest (§ 216), or by the people being delivered 'into the subjection of a foreign power' (§ 217). (Simmons 1993:162)

When government officials act contrary to the trust placed in them, they forfeit their authority. This merely reduces rulers to the status of ordinary persons and does not entail the full forfeiture of rights as in the case of tyranny. Indeed, unlike Kant or Hobbes, for Locke, the king who has

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[56] Even the Whigs, however, generally disagreed with Locke's more radical view of the dissolution of government and return to the state of nature.

become despotic is not protected from constitutional inviolability. He may be punished: "When a King has Dethron'd himself, and put himself in a state of War with his People, what shall hinder them from prosecuting him who is no King, as they would any other Man, who has put himself into a state of War with them" (§ 239). Hence for Locke, as with Rousseau, justice is in the last resort at the people's determination.

While one can read into Locke's *Two Treatises* an argument that individuals give up all of their natural rights to the legislator, Simmons (1993) argues to the contrary, that individuals for Locke always retain a portion of these rights. Locke's views, Simmons notes, changed from the earlier *Two Tracts on Government* (1660-2) to the later *Treatises* (1680-90) and *A Letter Concerning Toleration* (1689). The shift is rather remarkable, from the *Two Tracts* first advocating 'passive obedience' in the face of *all* decrees, be they just or unjust, to the 1667 *Essay on Toleration* allowing "passive disobedience in matters of conscience" (Simmons 1993:150), to finally the later documents allowing rebellion against a broader range of breaches, as Locke's mature thinking on rights required. Locke's initial reticence to allow for rebellion too freely reflects the early post-civil war period and the potentially anarchic consequences of tolerating a 'disobedient rabble' (*ibid.*). To the critique that Locke encourages anarchy and rebellion, he would counter that the people are generally slow or averse to change (at least in peace times), and only undertakes such change upon the gravest injustice or abuse.

There is a shift also in Locke's work as to "what rights *must* be transferred to government" and "what rights *can* be transferred" (*ibid.*:66). For example, by the time of the *Two Treatises*, Locke allows that natural rights to some land, property and other sundry 'innocent delights' be retained. Only the minimum number of rights – those necessary to preserve the community and the individual – are forfeited. We may also view this as conceding

the "privilege of acting first" to the community, such that an unwillingness or inability by the government to act causes that right to revert back to the individual, "even to the point of actively resisting a government that fails to observe natural law" (p. 68). As Locke states in the *Two Treatises*:

> The Legislative being only a fiduciary power to act for certain ends, there remains
> still in the People a *supreme power* to remove or alter the Legislative, when they find
> the Legislative act contrary to the trust reposed in them. For all power given with
> trust for the attaining an end, being limited by that end, whenever that end is
> manifestly neglected or opposed, the trust must necessarily be forfeited and the
> power devolve into the hands of those who gave it. (II, § 149) (emphasis, mine)

So, as in Rousseau, the people here are ultimately sovereign in a manner that escapes representational form. Even as Locke avoids the term 'sovereign', we see it here in their capacity to grant or withdraw the trust that makes legislative power possible at the threshold of its failure.

On Resistance

Unlike rebellion, which seeks to overturn power's institution, resistance may be taken as a separate case of refusal without legitimate claim to assume the sovereign function. We may take as a present-day example the case of passive disobedience. Indeed, the full return to a state of nature in Hobbes would be an extreme situation contingent upon the absence of "effective government," or a "government able to provide its citizens with adequate security against domestic and foreign assaults on their persons or property" (Simmons 1999:98). For the sovereign as the personality of the state denies the multitude a unity of its own outside of, or against, the state. The multitude only becomes a political entity after handing power over to the sovereign. But, in a rather exceptional situation, individuals retain their natural right "to survival against a sovereign who endangers them" (Hoffman 1998:45). The sovereign who threatens the life of a subject, for whatever purpose, enters into a "state of nature relationship" with her, as the

fundamental basis of the covenant – self-preservation – has become void (Schochet 1990:62). Or, it is better to say the individual is no longer bound by the obligations of the covenant, for the sovereign is always in the state of nature relative to his subjects. As he retains the 'right' to everything, "there can happen no breach of covenant on the part of the sovereign" (*L*, II, XVIII).

The early Hobbes of *The Elements of Law* Sreedhar (2008) finds "implies that subjects both can and must give up *all* their natural rights, including the right of self-defense, when they enter the commonwealth" (p. 785). However, Sreedhar notes that the later Hobbes found it "impossible to give up one's right of self-defense" (p. 786). This is complicated by a later instance – the only one, perhaps – in which Hobbes acknowledges one *can* cede the right to self-defense: where war requires one put oneself at risk of death, one is *not* permitted to retreat or disobey if one has willfully conscripted oneself, voluntarily or mercinarily.[57] This obligation is irrevocable. Walzer (1970) notes that this residual obligation to honour contracts even where one's life is at risk is irreconcilable to Hobbes' general theory. The people may be "obligated to defend their society as long as they are able", in order to, in a manner of speaking, "protect their protection", but imminent death in battle is surely a worse fate than the mere precariousness of returning to the state of nature (p. 82). Strauss (1953) re-iterates the Hobbesian understanding for us: "There are…no absolute or unconditional duties; duties are binding only to the extent to which their performance does not endanger our self-preservation" (p. 181).

Hobbes claims further in the *Leviathan* section, 'Of the Liberty of Subjects': "when the defence of the Commonwealth requireth at once the help of all that are able to bear arms, every one is obliged; because otherwise the institution of the Commonwealth, which they have not the purpose or courage to preserve, was in vain" (*L*, I, XXI). This, Walzer (1970) argues, is even

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[57] This obligation does not apply to the forcibly conscripted.

more thoroughly at odds with Hobbes' general theory. Walzer finds that this remains an irreconcilable conundrum in Hobbes' work: "The very existence of the state seems to require some limit upon the right of self-preservation [e.g., necessary war], and yet the state is nothing more than an instrument designed to fulfill that right" (p. 87). Society then is at an impasse, or merely relies on the conceit that its members will defend it to the death. For them to actually do so would violate the law of nature (p. 88). Hence, it cannot be the law of the state that is violated by desertion or abandonment: "When armies fight, there is on one side, or both, a running away: yet when they do it not out of treachery, but fear, they are not esteemed to do it unjustly, but dishonourably" (*L*, I, XXI). Hobbes proudly remarked, Strauss (1953) recalls, that with the impending civil wars in England, he was "the first of all that fled" (p. 197). Those who would stay and fight honourably appealed to a premodern ethos—a form of the social that must lose its hold.

The Hobbesian subject has the right to defend himself against the sovereign who might attempt to kill him, for this fundamental right to survive is inalienable. But the sovereign also has an inalienable right to kill, since he has a right to everything. For example, Sreedhar (2008) notes, "on Hobbes's account, the Athenian state had a right to order Socrates to drink the hemlock even though Socrates had a right to disobey" (p. 785). Indeed, any prisoner under sentence of death has the right to try and escape, as noted in the section, "Of the First and Second Natural Laws and of Contracts". Here, the prison guard and the prisoner are returned to a state of nature, and therefore by this logic, Socrates could be called *mad* for not having the hemlock forcibly administered, rather than taking it voluntarily (Walzer 1970:81). Sreedhar (2008) observes that "[w]hile Hobbes argued for the necessity of an 'absolute' sovereign, he did not require 'absolute' obedience to that sovereign" (p. 798). This qualification, however, further calls into question the

notion that the sovereign is inviolable: "by giving the subject a theoretical or moral claim against the sovereign [to accuse him of failing to protect their lives] it calls into question Hobbes's insistence that the sovereign was answerable to no one on earth" (Schochet 1990:64). It points, in part, to the secular turn, as the king's rule was no longer divinely ordained. The principle of natural right, in the extreme case, could make the return to the state of nature more favourable than life in a civil condition where death may be imminent.

Reconsidering the Contract as Binding

I have thus far shown some of the terms under which the contract may be declared violated and the people, or singular individuals, wrested from a civil state back to the state of nature. In these instances, however, there remains tensions – the possibility that there may also be circumstances where the right to withdraw from the contract is refused. There are circumstances wherein one must essentially, in the initial (if hypostasized) moment of consent, *refuse* the right to withdraw consent at a future point. For there are elements of collective life that are binding in a manner that defy the terms of willful consent. I explore two such cases below.

(i) On War

Despite the artificialist conceit attributed to the thinkers discussed so far, it is not always possible to dissociate from civil society or the state. Indeed these limits are indicated at points by the very same thinkers. Further to Hobbes' apparent equivocations around war conscription in the above section, Rousseau notes that there are extenuating obligations and debts that one cannot simply relinquish at will – e.g., those forbidding desertion in the battlefield or escape from formal punishment. The individual can disband from the civil state, but only so long as it is not in order to "escape his obligations and avoid having to serve his country in the hour of need. Flight in such a case would be criminal and punishable, and would be, not withdrawal, but

desertion" (*SC*, III, XVIII).[58] In the state of emergency or *casus necessitatis*, no one has the absolute freedom to leave. The emergency suspends this right, suggesting there is something in the sovereignty of the People over its members, or, again, something in the body politic itself— its sinews and tissues—that by necessity exceeds its otherwise voluntary or artificial bonds.

Locke, not unlike Rousseau, appears to provide for obligations among individuals to enter into battle even at the risk of death. Walzer (1970) claims that "because of the peculiarly collectivist formulation he gives to the fundamental law of nature," Locke "is able to reassert an obligation to die", but this seems "inconsistent with the general pattern of his political thought" (pp. 88-89). On the question of martial discipline, or the emergency scenario, Locke finds:

> …the preservation of the army, and in it of the whole common-wealth, requires an absolute obedience to the command of every superior officer, and it is justly death to disobey or dispute the most dangerous or unreasonable of them; but yet we see, that neither the serjeant, that could command a soldier to march up to the mouth of a cannon, or stand in a breach, where he is almost sure to perish, can command that soldier to give him one penny of his money; nor the general, that can condemn him to death for deserting his post, or for not obeying the most desperate orders, can yet, with all his absolute power of life and death, dispose of one farthing of that soldier's estate, or seize one jot of his goods; whom yet he can command any thing, and hang for the least disobedience; because such a blind obedience is necessary to that end, for which the commander has his power, viz. the preservation of the rest; but the disposing of his goods has nothing to do with it. (*TT*, *II*, § 139)

It strikes one as counterintuitive that the state's seizing of assets could be a greater transgression of natural right or a greater imposition than the forced recruitment. For this forced recruitment entails the possible demand of self-sacrifice by an 'unreasonable' superior officer who must nonetheless be obeyed. This may simply be a contrast between an arbitrary or capricious demand (for property) and the demand made of necessity (for self-sacrifice). But we must recall that at

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[58] David Graeber (2011) remarks on a general obligation, in more recent times, within the USSR that forbade citizens from emigrating. The fact that the individual furnished with life and education and the support of the state could not freely rescind his or her obligations to it is not exclusive to socialist regimes. He notes: "Nationalists appeal to exactly the same kind of arguments – especially in times of war" (p. 71)—though for our purposes, socialism and nationalism are both essentially post-Rousseauian developments.

the very root of the natural right to self-preservation, for Locke, is the right to property, which is an extension of and necessary feature of that right to survival. In a kind of counterpurposive turn, the right to protection of property appears to take greater primacy in the above quote to the very thing it is meant to serve: life itself. Indeed, Strauss's (1953) negative definition of freedom in Locke suggests an individual endlessly enduring work, pursuing enjoyment, or the absence of pain, to a point of pure instrumentality. Life in the civil state becomes, counterpurposively, "the joyless quest of joy" (p. 251). More significant, though, is that for Locke and Rousseau (and in Hobbes, though as a tension that seems the most striking, and which at least presumes willful conscription) there appears to be obligations made voluntarily that in some circumstances lose their voluntary character or become irrevocable. That one must consent to give up the right to withdraw consent at certain points suggests there is an excess present in the contract that its logic cannot fully contain.

(ii) **On Gratitude and the Gift Relation**

One prototypical form of binding that appears when we read between the lines of the social contract tradition is the gift relation. The gift is a social relation that goes beyond mere instrumental exchange. It bears the conceit of disinterest, yet cannot fail to oblige its recipient to return it in kind, or in excess. Mauss' canonical treatment of the gift (1954), combing the anthropological literature of the day, represents the gift relation[59] as a fundamental and universal form of exchange, and indeed as a primordial form of the social. It involves a form of obligation that challenges most strongly the premises of the artificialist imaginary.

We may recall for Hobbes that the *free* assent to be governed is of fundamental

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[59] The gift appears in our discussion here as 'necessary gratitude', or the obligation to reciprocate, rather than in its ritualized form. In this sense, I speak here more of equivalent returns on the gift, rather than returning more than is given, as the Maussian convention goes.

importance, even if this involves a momentary gesture. That this consent may be yielded under duress is irrelevant to Hobbes, even though it is a matter that will give pause to the liberal contract tradition. He extends this circumscribed consent to the parent-child relation. In lieu of the 'Domination Paternall' of the state of nature there exists a temporally-suspended consent in the civil state. That is, since the child does not have the faculties to rationally consent (as with the 'mad' or the 'imbecile'), "the actual consent of the child had to be projected into the future" (Schochet 1990:64). Consent as an *a priori* requirement becomes *a posteriori*. There is here a temporal transfer of obligation. In Hobbes, authority in this relation comes from "the Childs Consent, either expresse, or by other sufficient arguments declared" (*ibid*.). Hobbes, therefore, considers this logic of the parent-child relationship in a manner approaching sovereignty by conquest. Schochet calls it a 'relation of gratitude': "Preservation of life being the end for which one man becomes subject to another, every man is *supposed* to promise obedience, to him, in whose power it is to save, or destroy him" (p. 64). The child is always already rendered obligated by virtue of being brought into existence and minded. We might view this obligation as one version of the social in its thick form that counterintuitively works its way into Hobbes, since it defies the normal, voluntarist terms of consent. As found in the section 'Of the Other Laws of Nature', Hobbes "had at hand a means of salvaging the most substantial of his claims – his fourth law of nature, the law of gratitude – but he chose to derive even that dictate from consent" (Schochet:1990:69). In Hobbes' framing of this fourth law of nature, gratitude and reciprocity appear as eminently rational. A failure to abide by it – to refuse the gift relation – would violate the first law of nature, to seek peace (*L*, I, XV). Hence, Hobbes offers a rationalization for what is essentially a social relation that defies the normal coordinates of consent. Yet it is still sufficient to bind offspring through their assumed gratitude *qua* consent *a posteriori*.

Locke appears more conditional in his assessment when it comes to the obligations owed by children: "Children are as free to obligate themselves politically to any existing or new polity as they would 'if they were born in the Woods, amongst the unconfined Inhabitants loose in them' (II, § 116)" (Klausen 207:760). As Klausen puts it, "the child is as yet politically homeless, i.e., stateless, before the age of majority" (p. 762). Their mere tacit consent is not equated to explicit consent. However, the distinction between these terms is troubled by the gift relation. Indeed, as Simmons (1993) notes, it may be sufficient for Locke that an individual is the willing recipient "of benefits provided by the government" or the enjoyer of its 'dominions' (p. 202) to determine consent has been 'declared'. Simmons refers to this as a source of obligation through benefaction, and considers it thoroughly at odds with Locke's more robust voluntarist notion of consent. One finds similarity here within the reciprocation theory of John Rawls (2009)—the most significant late modern representative of the social contract tradition. Under the principle of fairness, "when a number of persons engage in a mutually advantageous cooperative venture according to rules, and thus restrict their liberty in ways necessary to yield advantages for all," Rawls claims, "those who have submitted to these restrictions have right to similar acquiescence on the part of those who have benefited from their submission" (p. 96). Here we find again an example of the binding nature of benefaction. Even if the gift as such is bereft of its ritual character, the social law of reciprocation holds.

Locke also addresses the matter of gratitude toward parents, as Hobbes does. We may consider 'kinship' to be a primordially social relationship, and this becomes all the more evident in Locke. While at one point he suggests there is a kind of natural duty to respect and honour one's parents – a duty that 'nothing can cancel', based merely on the act of begetting – he later qualifies this to obligate only children of those parents who have properly executed their duties.

Locke notes in the Second Treatise that the honour obligated is not reducible to a natural debt of begetting, but reciprocal and equal to the parents' satisfaction of their roles and duties: "the honour due from a child places in the parents a perpetual right to respect, reverence, support, and compliance, too, more or less, as the father's care, cost, and kindness in his education have been more or less" (§ 67).

We can read this relationship of gratitude through the model of a gift relation that, once engaged, obliges the recipient whether or not they willfully acceded to its terms of reciprocity. Locke offers a picture of a relationship that is not merely 'natural', and while it is ostensibly voluntary to some degree (the degree to which care is bestowed on the child), it cannot be voluntarily rejected without violating a kind of natural or moral law. The natural basis of kinship ties is refuted in order to introduce reciprocity as a 'social' relation: the child upon age of majority owes 'more or less' in kind what the father has bestowed in care. It is not an obligation that can be canceled out,[60] but "holds in all parts and conditions in a man's life" (§ 67). It appears to bear equivalence – or near-equivalence – in the balance of 'mores' and 'lesses', but is also decidedly imprecise, as if a full equivalence could never be entirely achieved or quantified.

The problem of gratitude appears in Rousseau as well, though less so in relation to the family.[61] Insofar as humans owe something to society – some key element of their moral existence – a sacrifice in the form of war conscription, or even in non-emergency situations, may be legitimately demanded of them. In a section of *The Social Contract* concerning The Right to

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[60] A passage from Margaret Atwood's *Payback: Debt and the Shadow Side of Wealth* (2008) seems apposite here: "Canadian Nature Writer Ernest Thompson Seton had an odd bill presented to him on his twenty-first birthday. It was a record kept by his father of all the expenses connected with young Ernest's childhood and youth, including the fee charged by the doctor for delivering him. Even more oddly, Ernest is said to have paid it" (p. 1).

[61] The family is described early in *The Social Contract* as the 'first society', in rather voluntarist terms. Once the natural dependency of the child upon the parent for her preservation has ceased, "if they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention" (I, II).

Life and Death (II, V), Rousseau remarks, "when the prince says to [the individual]: 'It is expedient for the State that you should die,' he ought to die, because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature, but a gift made conditionally by the state". Unlike Hobbes, for whom such sacrifice would seem to contradict the very basis upon which the state is built (i.e., self-preservation), Rousseau's position is moderated by the primacy he gives to the general will. It is through the general will that individuals enter a moral existence and are constitutionally transformed. As Walzer (1970) notes: "From the state, that is, from the shared experiences and general will of the political community, [man] receives a second life, a moral life, which is not his sole possession, but whose reality depends upon the continued existence of his fellow-citizens and of their association" (p. 91). It is ironic, then, that the individual should find the highest point of moral reflection and self-transcendence by removing herself from society, or existing on its fringes, so as to allow solitary reflection as we sometimes find in Rousseau (Strauss 1953:292). But even *this* position can only be occupied because society has granted the individual this moral existence, allowing a kind of reflection one could not achieve alone as a 'stupid animal'.

Walzer (1970) argues that, for Rousseau, the community is protected, and owed protection, on account that it grants the individual a 'common life', rather than simply offering protection of his merely natural existence: "So long as the state survives, something of the citizen lives on, even after the natural man is dead" (p. 92). The social in this sense institutes a relation of gratitude under which we are constitutionally always already indebted. Just as the general will is something more than just an aggregate of private wills, the citizen is constitutionally something more than her mere humanity. The republican soul, as Hegel later noted, found

immortality in the republic that 'survived him', while a society of egoists (e.g., Hobbes' example) met death with terror (*ibid*.). Here we get a sense of how, although an artificial construction for Rousseau, the social contract produces something 'more' than a mere aggregate formation that could be readily undone, despite his avowals at times to the contrary.

Summary

The rebellious subject is a key feature of the artificialist imaginary. For rebellion, resistance, and revolution – or at least the discourse surrounding these acts – are part of society's *mise en scène*. The staging of these acts, or their potentiality, reminds society under the social contract of its founding premises, ritually reproducing them in even stronger terms than the periodic political rite of election. Yet these figures of dissolution fail to fully overcome the excesses of social obligation in the writings of the social contract tradition.

Talcott Parsons, writing in the middle of the twentieth century, challenged the notion that 'the social', or a social system, could ever fully collapse (I quote him here at length):

> [T]here is never likely to be a completely disintegrated society. The mere fact that the human beings who live in a social system are socialized to some extent gives them many need-dispositions which can be gratified only by conformity with the expectations of others and which make them responsible to the expectations of others. Even societies ridden with anomie (for example, extreme class conflict to the point of civil war) still possess within themselves considerable zones of solidarity. No society ever "disintegrates completely"; the 'state of nature' depicted by Hobbes is never reached by any real society. Complete disintegration is a limiting case toward which social systems might sometimes move, especially in certain sectors of the structure, but they never arrive there. A particular social system might, of course, lose its identity, or it might be transformed into one which is drastically different and can become absorbed into another social system. It might split into several social systems where the main cleavages follow territorial lines. But dissolution into the "state of nature" is impossible. (Parsons & Shils 1962:204)

A disintegrated society, we can imagine, would be akin to a society where relations are somehow fully defined by the warlike state of nature. Parsons' remarks here are interesting, as they posit

from the position of structuralist sociology thought a durability to the social that was not really imaginable to Hobbes. The social in this sociological imagination is not simply something that can be constructed and later renounced. For the subjects constituted through 'socialization,' as it were, carry with themselves the excess of that constitution: e.g., needs-dispositions such as recognition, care-giving, and a coordinated division of labour, which require agreeable others in order to be achieved. That initial constitution may still be an artifice of the social system by this understanding, but it produces something *more* that is not always as readily dissoluble. This tension, as we have noted, appears unresolved in Hobbes, Locke and Rousseau.

I have attempted to establish in the foregoing two chapters the emergence of an imaginary around state-formation and state-dissolution that is fraught with tensions. The artificialism of collective life under the social contract appears to struggle against its own sedimentations in both institutional and practical forms, as well as against the state or society's basic positive orientation to its own continuity. We have noted here circumstances in particular around war or kinship relations, where obligations assume an essentially non-voluntary character. In these cases, the contract is shown to produce a series of excesses that its artificialist logic cannot contain.

While the contract may be necessarily revocable for Locke and Rousseau (and indeed, even with Hobbes, there are circumstances where the sovereign may be resisted), there remain extenuating circumstances that point to a kind of obligation that is ostensibly not revocable. That is, we consent to give away our freedom—our ability to withdraw consent, in certain situations. Where consent is the foundation of legitimate civil relations, we *additionally* must consent to be imposed upon in a manner that is irresistible.

It is here that we turn to the latent aspects of the social, or of this non-institutionalizable form the people assumes, with regard to the coordinates of democratic society – those latent qualities that risk overwhelming the body politic entirely in ways thinkers like Rousseau anticipated if only dimly in the eighteenth century.

Chapter 4: The Social Contract and Its Inversions

As noted in the earlier chapters, the artificialist imaginary presents us with the premise of the voluntary, deliberate and legitimate dissolution of civil society and the state. This chapter considers the possibility of dissolution as, rather, an unintended consequence of society's mode of institution under the social contract. In the social contract tradition, society's discovery, we have noted, is only partial. It appears to a limited degree as a realm independent from the political, but one of largely voluntary-purposive relations. The implications of these dynamics that are introduced in the early modern period are, I argue, only dimly anticipated by the social contract thinkers. This chapter explores how society's mode of institution under the social contract, against its salutary intentions, opens up a kind of volatility that puts the coordinates of the liberal democratic state at risk: on the one end, in despotism, and at the other, in totalitarianism.

The Problem of Popular Sovereignty

"The people are the heroes now, Behemoth pulls the peasants' plow" – *Nixon in China* (1987)

The social contract participates in the emergence of a modern form of the political representation. When the people appear as the bearers of sovereignty, and their consent as the government's fundamental source of legitimacy, representation becomes fraught with new complexities. The people cannot be said to govern or legislate directly under the social contract, even though they may 'make decisions' in the most exceptional of circumstances (i.e., the state's foundation or dissolution). Even with Rousseau, for whom sovereignty is at its source necessarily 'popular', government is always premised on a delegation of power and therefore a

split between itself and the people on whose behalf it governs. In modern democracies, the people's direct or 'unmediated' inputs are most typically restricted to mechanisms like voting, and to a lesser extent, where they exist, referenda, recalls, imperative mandates, and legally binding pledges. While Rousseau notes often in *The Social Contract*, "in the exercise of the legislative power, the people cannot be represented", he would moderate this position in his *Lettres écrites de la montagne*, favourably comparing the representative British Parliamentary system with the Genevan popular assembly, and even expressing misgivings about the "unruly passions of ordinary citizens" (Fralin 1978:533). Practically speaking, in large states, the general will must find its expression through representative legislative forms. Where democratic representation occurs, it involves the institution of a minimum of distance between legislators and the citizens they stand in for. However, in attempting to faithfully represent the will of the people, there is the persistent risk of failure, for this divination of the will is in no way direct or perfect. To 're-present', or present again, presumes an iteration of the will that is never the same as its original.[62] The 'people' are neither a coherent nor a stable entity, or rather we may say there is some surplus in the people that remains constitutively immeasurable. This is the sublime second body we pointed to earlier (Santner 2011), assumed by the sovereign people upon the death of the King.

The inchoate character of the people was a source of consternation among seventeenth century conservative thinkers like Robert Filmer (1588-1653), who were confronting the prospects of popular sovereignty for the first time:

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[62] As Singer and Weir (2006) observe on the unstable character of the people, even as they "are the ultimate power, it is never certain [to their representatives] what they want, or even who they are, because their desires and, potentially, their sense of their identity can change" (p. 455).

> For the people, to speak truly and properly, is a thing or body in continual
> alteration and change. It never continues one minute the same, being composed of
> a multitude of parts, whereof divers continually decay and perish, and others
> renew and succeed in their places. They which are the people this minute, are not
> the people the next minute. (Filmer 1991:277).

Inston (2010) remarks on this inchoate dimension as constituting a latent anarchism of the people: "The people never provide the state with completely stable grounds being 'still and also always a multitude' which is prone to 'anarchic waywardness'" (p. 157). This is not to say that the institutional expression of the people is disconnected from their popular will in such a way as to be arbitrary *per se*, so long as the regime's mode of institution persists. But it does presume a necessary gap between the will and its institutional form or expression. The modern constitutional tradition, for example, bears within itself this notion of a split or tension, sometimes thought of as the distinction between constitutive and constituted power: "governmental power ultimately is generated from the 'consent of the people' and that, to be sustained and effective, such power must be divided, constrained, and exercised through distinctive institutional forms" (Loughlin 2007:1). Hence, there remains in democracy always a tension between "constituent power and constitutional form, politics, and law" (*ibid.*). George Lawson (1598-1678), a contemporary of Hobbes, distinguished on the other hand between 'real sovereignty' ("the power to constitute, abolish, alter, reform forms of government") residing with the people, and 'personal sovereignty' (the power constituted in government). We may recall that Locke specified only a portion of authority – the amount necessary to maintain order – is given over to government. The competency to change that government must remain with the constituent power of the people. This notion of constituent power first emerges in modern European discourse out of the English civil wars as a challenge to absolutism. If rulers governed by a trust, the people could also remove or alter that government upon breach of that trust. The

advancement of the modern parliamentary system, however, has seen the difference between constituent power and constituted power gradually dissolve into the commons as the *vox populi* (Loughlin 2007), as if the former has receded into the backdrop, as could be argued in Britain today.

This *split* between real sovereignty and personal sovereignty, once established, runs two risks. It may either become too vast, completely alienating the people from its institutional expression to the point of the arbitrariness of despotism, or conversely, disappear altogether, giving no space for power to be represented outside the immediacy of society, as with totalitarianism. Before considering these pathological shifts in society's *mise en forme*, we should revisit the social contract's democratic form first in greater depth.

Rousseauian Democracy

Rousseau, by some accounts (Hacker 1961, Pateman 1970, Marini 1967), is the theorist *par excellence* of modern democracy. Democracy constitutes one of three political regimes in Rousseau's typology. This includes: (i) the polity wherein there are more magistrates than "mere citizens" – democracy; (ii) the polity wherein there are more mere citizens than magistrates – aristocracy; and, (iii) the polity most common in his time, where one individual governs all – monarchy (Marini 1967:463). Each of these regime types is susceptible to degeneration into its own kind of anarchy in the modern period. Rousseau identifies each regime type alongside its inverted form: "When the State is dissolved, the abuse of government, whatever it is, bears the common name of anarchy. To distinguish, democracy degenerates into ochlocracy, and aristocracy into oligarchy; and I would add that royalty degenerates into tyranny" (*SC*, III, X). Laying aside for the moment the distinction between despotism and tyranny, 'oligarchy' and 'tyranny' arguably bear the formal properties of the regime they replace, although bereft of their

animating spirits. They are characterized by corruption and a violation of the rule of law.

Ochlocracy, on the other hand, appears differently. Rather than a decline in the democratic

regime's animating spirit, ochlocracy represents an overwhelming of the political structures by

an excess of popular fervour; a kind of mob rule that cannot abide institutional processes or

delegated bodies. Interestingly, this is not a term that gets any real attention in Rousseau's

writings – he is more concerned with corruption by the overcoming of the general will by the

particular, rather than the particular will by the general. But for our purposes, this phenomenon

of ochlocracy is worth revisiting as it bears similar features of what would come to be known in

the twentieth century as totalitarianism.

Democracy, as Rousseau defines it, seems uniquely vulnerable to descent into its

pathological form. In the two other regime types—aristocracy and monarchy—the sovereign (the

people, or the general will) is separate from the ruling body or government (a small group of

magistrates, or a monarch, respectively). In democracy the people are both sovereign *and* the

government, but constitutively distinct as two separate entities. While the sovereign as law-

maker is concerned with general matters – as per the general will – the government decides upon

particular cases, issuing decrees. In a curious move, the people here come to preside over matters

both general and particular.[63] Indeed, a pure democracy would see these two bodies overlap in a

manner that would make the separation of law and decree nearly impossible. When the general

and the particular comingle or become indistinguishable, pure democracy risks succumbing to

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[63] Rousseau speaks of the 'difficulty' understanding how "the people…under certain circumstances, become a prince or magistrate. It is at this point that there is revealed one of the astonishing properties of the body politic, by means of which it reconciles apparently contradictory operations; for this is accomplished by a sudden conversion of Sovereignty into democracy, so that, without sensible change, and merely by virtue of a new relation of all to all, the citizens become magistrates and pass from general to particular acts, from legislation to the execution of the law." (*SC*, Book III, Ch. XVII)

ochlocracy or mob rule. This pure democracy, needless to say, is a rather infeasible arrangement in most states. Rousseau notes, in *The Social Contract*:

> There never has been a real democracy, and there never will be. It is against the natural order for the many to govern and the few to be governed. It is unimaginable that the people should remain continually assembled to devote their time to public affairs, and it is clear that they cannot set up commissions for that purpose without the form of administration being changed... [W]ere there a people of gods, their government would be democratic. So perfect a government is not for men. (III, IV)

'Elective aristocracy' is the closest to what we presently understand as representative democracy, which Rousseau considered for all intents and purposes the best, for we should recall "[it] was the representation of Sovereignty that Rousseau opposed, not government by an elected minority" (Marini 1967:465). The general will, as the sovereign, can never truly be represented. The sovereign is to government, for Rousseau, as will is to action. They are constitutively distinct orders. Indeed, this would form the basis of DeSèze's defense of Louis XVI during the French Revolution, when the latter was tried by the National Assembly: that "the general will could not pronounce upon a specific person" (Christenson 1999:241).[64]

In despotism, the king usurps the place of the sovereign as law-maker, as if to absorb the general into the particular. In totalitarianism, the particular is overwhelmed by the general, such that they reach a point of indistinction. Where the former appears explicitly based in the corruptibility of civilized man in the *Discours*, the latter must be teased out of the general will and its permutations in *The Social Contract*. It is at this point that we can turn our gaze to these two mutations of the democratic regime more fully.

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[64] The revolutionary situation, however, constitutes that emergency state wherein the emergent sovereign appears to temporarily dawn the robes of law, justice and power, indistinctly, as if laying the law down anew in the process – a point we will return to in the next chapter.

Despotism

In his work, *Society against the State* (1977), Pierre Clastres makes the case that "primitive societies", in maintaining a kind of primordial equality, refused power to be placed in the hands of an organ that could at any point detach from society and "thereby [become] an independent entity outside it" (Flynn 2006:95). Power and conflict flowed here instead under different modalities—under a symbolic order that did not allow an external 'founding principle' or authority (Gauchet 1985:26). Clastres is concerned with the fundamental problem of power's institutionalization. In its extreme form, the state risks becoming despotic—that is, absorbing the law under the aegis of power. This, for Clastres, is the tragedy of the state – that it always in its institutionality ultimately subordinates society to power (Flynn 2006:96). 'Primitive' society, on the other hand, could neutralize the threat of violence of political authority through its own particular ritualized mode of institution (p. 97).

This detachment of the state from society is a problem distinct to the modern symbolic order insofar as the state is a modern formation. The artificialist imaginary assumes the possibility of this separation as a legitimate part of society's *mise en forme*. Indeed, once society, like the state, is construed as an artificial construction, it appears, for some social contract thinkers at least, to bear the ability of "detaching itself from its political representation and overturning the state" as with the revolutionary scenario (Singer 1986:89). Just as society appears as a realm autonomous to the political sphere under the artificialist imaginary, power also appears as a separate field with its own distinct orderliness and purpose (*ibid*.:82), even as the two remain normally linked. Despotism, however, appears as a disruption of these coordinates—the state 'detaching' and dominating society.

The despot saturates society with his will and subsumes the law to his whim. Durkheim

(1965) captures this figure through the metaphor of a monster with only its head remaining alive, "having absorbed all the energies of the organism" (p. 31), he notes in discussing Montesquieu's account of despotism. Montesquieu would attribute to despotism its own character as a regime, but one quite different to its alters – democracy and monarchy – and thereby offering a typology somewhat different from Rousseau's. While tyranny, by contrast, "represented the corruption of a type of regime" (Singer 1986:82), despotism constituted a regime-type all its own, if even as a kind of 'anti-type', to consider Singer's (2013) usage: "tyranny refers to breaking existing laws and creating disorder, while despotism implies an order without law" (p. 44). Rousseau marks this distinction similarly in *The Social Contract*:

> In order that I may give different things different names, I call him who usurps the royal authority a tyrant, and him who usurps the sovereign power a despot. The tyrant is he who thrusts himself in contrary to the laws to govern in accordance with the laws; the despot is he who sets himself above the laws themselves. Thus the tyrant cannot be a despot, but the despot is always a tyrant. (Book III, Ch. X)

By setting himself above the laws, the despot can be said to absorb the law, or submit it to his own arbitrary will. The tyrant is merely wrongfully occupying his office, though not in a manner that constitutes or presumes his total dominion over the law as if determining it arbitrarily.

While monarchy and democracy for Montesquieu congeal as regimes through the 'spirits' of honour and virtue, respectively, despotism is defined by a disorderly spirit: that of fear (Singer 1986:83). Despotism's logic and 'ontology of power' involves a 'maximum concentration' of power, unbridled by other powers. It observes a *telos* of self-expansion, but usually at the expense of society. It is also generally 'indifferent to all guiding ideals' (p. 82). As such, despotism also tends toward its own self-destruction.

If we think in terms of our earlier discussion of the symbolic order, we might say that the symbolic order of despotism, in its overwhelming of civil society and alienating the popular will

from the political sphere, is a *thin* one. The Hobbesian sovereign of absolutism on the other hand

remains situated in a thick symbolic order, his legitimacy enshrouded in the 'awe' he is able to

generate by his visible presence, we may recall. Society may still be able to represent itself

through him. But this is not so with the despot, who instills fear alone. The coordinates of

representation, such as those which exist under a republic, or even under absolutism, are

displaced. Power under despotism fails to constitute any real kind of orderliness or coherence in

society. By contrast, the strength of a society's 'fabric' within the republic is demonstrated in the

degree to which it does not need to be rigorously policed; the degree to which it is capable of

maintaining its own orderliness independent of state oversight. Despotism becomes anemic

because it substitutes mere violence for representation and loses the orderliness previously

provided by the social realm. In fact it may be in the very dissolution of the social bond,

Rousseau notes, that despotism flourishes:

> Finally, when the State, on the eve of ruin, maintains only a vain, illusory and formal
> existence, when in every heart the social bond is broken, and the meanest interest
> brazenly lays hold of the sacred name of 'public good', the general will becomes
> mute: all men, guided by secret motives, no more give their views as citizens than if
> the State had never been; and iniquitous decrees directed solely to private interest get
> passed under the name of laws. (*SC*, IV, I)

Rousseau's pessimism around a creeping despotism comes through more fully, however, in his

Second Discourse where he charts the long, slow and inevitable decline of civilizations toward

despotism:

'Tis from the bosom of this [social disharmony] and these revolutions, that despotism gradually rearing up her hideous crest, and devouring in every part of the state all that still remained sound and untainted, would at last issue to trample upon the laws and the people, and establish herself upon the ruins of the republic. The times immediately preceding this last alteration would be times of calamity and trouble: but at last everything would be swallowed up by the monster; and the people would no longer have chiefs or laws, but only tyrants. At this fatal period all regard to virtue and manners would likewise disappear; for despotism, *cui ex honesto nulla est spes,* tolerates no other master, wherever it reigns; the moment it speaks, probity and duty lose all their influence, and the blindest obedience is the only virtue the miserable slaves have left them to practise. This is the last term of inequality, the extreme point which closes the circle and meets that from which we set out. (II, § 55)

Rousseau presents despotism as something monstrous; a monstrosity arising inevitably from within the body politic once it's set on the course of its corruption. It is the outcome of the general corruptibility of 'social man', the general will displaced by the private wills of individuals, and ultimately the ascendency of the private will of the despot. We may read this as a failure of 'the social' in another sense – as a realm of manners and morals, or in civil religion – to maintain its hold. The features of civic virtue, "manners", "probity and duty", dissolve under the demands of "blind obedience"; a kind of dyscivilization or 'breakdown of civilization' in Elias' (2005) terms. Here, "a systematic undoing of social restraint" (Huet 2012; 153) and fomenting of discord leads to this monstrous form of the political. For when the people as sovereign fails to hold its government to account, "cities fall and perish before their time" (*SC*, III, XIV). When "citizens are greedy, cowardly, and pusillanimous, and love ease more than liberty," Rousseau avers, "they do not long hold out against the redoubled efforts of the government; and thus, as the resisting force incessantly grows, the sovereign authority ends by disappearing" (*ibid*.).

In Rousseau, 'the social' appears in one of its major forms as concern with the opinion of others, in *amour proper*. This is the fate most societies succumb to in time. The general will, on the other hand, offers a basis for living together that is not social in any immediate sense, given

that it demands individuals arrive at it solely by their own inward moral reflection. Such

circumstances may thrive in small republics—those that are socially equitable and based in

common experience (Green 1996:167). In the small republic, however, there is still the necessity

of tradition, civil religion, and moral education. Hence, against *amour propre*, there is another,

necessary and propitious figure of 'the social'. But these features are corroded by the growth of

society over time, according to the body politic's own expansionist impulses. Was this not, after

all, the fate of a republic as great as Rome?[65]

To understand the seed of this development we should trace the problem of *amour propre*

in Rousseau further. An initial antagonism is introduced in the state of nature that precipitates the

move to collective life. It is in the dialectic of recognition of social man that human relations

become antagonistic. Rousseau notes in his *Discourse on Inequality*, "the savage lives within

himself, while social man lives constantly outside himself, and only knows how to live in the

opinion of others, so that he seems to receive the consciousness of his own existence merely

from the judgment of others concerning him" (§ 9). Social man is in a constant state of

dissimulation, thriving on flattery and competing for esteem. Living on the opinion of others, he

lives outside himself. *Amour propre* is as artificial and alien to man's true nature as the rivalry it

is built upon is artificial. Hence, this 'fault line' upon which society is constructed may indeed be

called 'inhuman' insofar as it involves a perversion of humanity's character in the state of nature.

We can further understand the negative and artificial character of *amour propre* for

Rousseau by looking to the social milieu of the day. The terms of human sociability were

shifting in France even before Rousseau's time. The coffee shop, the salon, and the *sociétés de*

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[65] Montesquieu framed this inevitability in a similar manner: "as adaptation necessarily undermines the original constitution, the democratic republic seems fated to end in despotism, either by way of internal decomposition, as with extreme equality, or by way of external expansion, as with the ancient Roman republic" (Singer 2013:106).

pensées were replacing the court as sites of sociability or being-in-public. Here, in the *grand monde*, outside the strictures of courtly life, individuals could interact free of hierarchical privilege and strict codes of intercourse. Sociability came to appear as an egalitarian sphere, and even ushered forth its own informal norms that maintained this egalitarian character (e.g., reciprocity, modesty rather than one-up-man-ship, pleasing courtesies over haughty ones, and openness to new ideas) (Gordon 1994). Despite this egalitarian push, or perhaps because of the generalized nature of this sphere, Rousseau (2012) perceives in this new climate the inevitability of pride rearing its ugly head: "Once we have started to measure ourselves this way, we never stop, and from then on the heart occupies itself only with placing everyone else beneath us" (p. 113). *Amour propre* at once raises the problem at the individual level of men living inauthentically, and at the general level of men guided by 'secret motives' and 'private interest' (*SC*, IV, I) against the public good.

We may turn back here to Hobbes and Locke on the problem of despotism. We find this possibility of political institutions eventually taking on a life of their own perhaps best in Hobbes, out of a strict necessity for the survival of the body politic. The absolutist character of his Leviathan is justified out of fear of the unfavourable alternative: chaos and war. As Franz L. Neumann observes in the epigraph to his analysis of national socialism in Germany, *Behemoth* (1944):

> [Hobbes'] Leviathan is the analysis of a state, that is, a political system of coercion
> in which vestiges of the rule of law and of individual rights are still preserved. His
> Behemoth, or the Long Parliament, however, discussing the English civil
> war…depicts a non-state, a chaos, a situation of lawlessness, disorder, and anarchy.
> (p. xii)

One may find it strange that Hobbes should draw on monstrous Old Testament metaphors[66] to describe *both* the chaos of the Long Parliament and his secure and steadfast Commonwealth: the Behemoth and the Leviathan, respectively. The chiliastic association with these terms would not have been lost on Hobbes' contemporaries (Springboard 1995:354). For the Leviathan cannot help but also convey something of a devouring monster in its symbolism.

There are points in both Locke and Rousseau where the animal kingdom is used metaphorically to describe human relationships. Absolutism appears, in examples given by both of them, as an arrangement that allows predatory animals free rein over defenseless prey. Rousseau's reading of Hobbes is that he portrays the human race as "divided into so many herds of cattle, each with its ruler, who keeps guard over them for the purpose of devouring them" (*SC*, I, II). We get a similar metaphorical account of Hobbesian absolutism from Locke, conveying the idea that the sovereign retains the license of the state of nature: "This [the giving of consent to an absolute monarch] is to think that men are so foolish that they take care to avoid what mischief may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions" (*TT*, *II*, § 93). Derrida (2009), on the question of sovereignty and its Hobbesian form, asks provocatively: "might its force, its power, its greatest force, its absolute potency be, in essence and always in the last instance, a power of devourment...?" (p. 23). Here, the counterpurposive kernel of sovereign authority becomes its starkest. For there are instances where the exigencies of its own survival entail devouring the people it exists explicitly to protect!

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[66] The Leviathan is imbued variously with the qualities of an artificial man, a Gallic Hercules, a Protestant prince, and an absolutist state (Springboard 1995) – surely an overdetermined metaphor if there ever was one. Schmitt (2008) notes this convergence in similar terms, as a "unity of god, man, animal and machine" (p. 82).

Hobbes emphasizes in his earlier works like *The Elements of Law* that the intent of the preservation of life in the Commonwealth is not for 'bare preservation' but also for 'benefit and good'. But as the *conservatio vitae* is always a prior moment, there is the inevitable risk that 'benefit and good' is foregone indefinitely and seemingly arbitrarily. Even as, under Hobbesian absolutism, there is a sense of lawfulness and a concordance with natural right, the resemblance to despotism's concentration of power cannot be overlooked. Hobbesian absolutism and despotism find close proximity, for example, in their paranoid style. The sovereign's knowledge is never complete, and if he is to be completely judicious in preserving his authority and the security of the state, every measure by this logic must be taken to extirpate threats. The sovereign is here like the Hobbesian individual in the state of nature who must remain alert to the threats posed at every turn. To situate this discussion more historically, in seventeenth century Protestant England, paranoia was rampant concerning the promotion of sedition by priests. Indeed, there has long-been something of an "anarchic strain" to Christianity, since well before the Reformation. In a letter to Emperor Theodosius, Ambrose of Milan famously attested: "I prefer God to my sovereign" (Hobbes 1889:xxxvi). Too much religious toleration was dangerous, for despite incurring the ire of the sovereign, the seditious were "assured of their salvation by the testimony of their own private spirit, meaning the Holy Ghost dwelling within them" (*ibid.*:25). In his own time, Hobbes "interpreted the execution of Charles I as a Protestant adaptation and implementation of the Jesuit doctrine of regicide" (p. xxxvi). Having witnessed the chaos of civil war, Hobbes encouraged Charles II "to 'fall upon' and 'destroy'…religious subversives, to cut them off as did Hercules the heads of Hydra" (p. xl). Holmes, in his introduction to *Behemoth* (Hobbes 1889), claims that for Hobbes, "[a] prince worth imitating is Ergamenes: the Ethiopian king educated in philosophy, who daringly murdered all the priests in

his land…". He writes, further, "it would have been best for the English monarchs to have killed the one thousand or so Presbyterian ministers 'before they had preached'" (p. xl).

Locke, in *A Letter Concerning Toleration* (1689), also argued papists could not be tolerated in England, for their allegiance could never be certain: "they owe a blind obedience to an infallible pope". Of course, this should also be taken in the context of the pervasive fear of Popery in Stuart England. Hobbes similarly had advocated for the banishment of atheists as they were a danger to the public. They could not be trusted to keep oaths; but, they ought not to be punished outright, he claimed (Tuck 1990:161). This is despite the fact that Hobbes and Locke would both become more tolerant toward religious freedom in their mature works (pp. 161, 167). Both were concerned with the 1666 Parliamentary Bill 'against Atheism and Profanity'. They were often incidental allies in the pursuit of toleration (p. 170). In general, Locke became a fiercer advocate of religious freedom than Hobbes, for unlike in the *Leviathan*, Locke's "sovereign could be forced by his subjects to introduce toleration" (p. 168).

Despite these qualifications, the Hobbesian sovereign might find reasonable justification to excavate the body politic so as to root out religious subversives. Of course, beyond this self-eviscerating death by a thousand cuts, excessive violence and the repression of civil society could be the sovereign's own undoing. Charles I, for example, burned bridges with the public and with Parliament through his absolutist rule. When the Scots invaded, the nation went on a tax strike and Charles was left standing alone. Hobbes even "admired the Romans for their capacity to win power through strategic concessions," noting that too much power could be "self-defeating" in "alienating potential cooperators" (Holmes 1990:140).

Ultimately, however, we must distinguish Hobbesian absolutism from Rousseau's category of despotism, for even as the absolute monarch is capable of committing violence

against the body politic, he does so 'lawfully' and is guaranteed under the symbolic order of absolutism. Even as it may appear despotic on the surface and in hindsight, and may generate logics of power similar to despotism (e.g., paranoia), it does not reflect the arbitrariness of the despot. Part of this distinction involves the position of both regime types in relation to the social. Where despotism witnesses and reflects the dissolution or corruption of the social, society is still in the process of 'forming' under the absolutist imaginary and not yet a significant realm of orderliness independent of power, at least in Hobbes' reading.

I've suggested here that despotism represents one form of democracy's corruption for Rousseau, though indeed it may constitute the corruption of any regime type for him. The other form, ochlocracy (or, filtered through late modern modes of technical rationality and bureaucracy, what we may later call 'totalitarianism') must be understood through a reconsideration of the emergence of 'the people' as the fount of sovereignty.

The Emergence of Popular Sovereignty

"Il n'y a rien dans le monde de si insolent que les républicains…." Montesquieu, *Voyages* (1943:112)

Whether we speak of the invention, the emergence, or the discovery of the people – that is, of the people as an autonomous, self-authorizing, and sovereign entity – it is important not to conflate that process with the 'discovery of society' we spoke of earlier. To do so would be to mix a social moment with a political one, and while they bear similar historical markers, they are situated differently in relation to the social contract. For the social contract's discovery of society, as we've discussed, is at best only partial. This is not to say the social is not present here, but that it has not yet been apprehended in such terms.

In Edmund Morgan's (1988) reading, the earliest forms of political representation appear in England well before any notion of popular sovereignty surfaces. As far back as the thirteenth century, the king would summon delegates who were endowed with a kind of power of attorney over their boroughs and counties (p. 39). Representatives had the authority to bind their region to taxes and laws. From as late as the sixteenth century, representatives assembled at the behest of the king or queen by "an obligation imposed from above" (p. 42). The expansion of the House of Commons through this period did not come from the people broadly speaking, but under the influence and interests of the nobility ("powerfully connected country gentlemen") (*ibid.*).

We can trace the discourse of popular sovereignty back to the 1640s with the Levellers during the English civil wars. Where kings previously 'represented' the realm in the sense of personifying (Gueniffey 1993) or standing for (Pitkin 1967) it, the requirement of the willed consent by the people to be ruled (e.g., by the election of representatives) assumed a different notion of representation altogether. The traditional monarchic form cannot be understood as representation in our modern sense of the term. The king did not represent the will of the people – his subjects – but 'rendered present' the divine will, be it as law, justice, or grace within the realm (Singer 2013:183). It was through this 'making present' that the king conferred upon the social world a degree of orderliness and coherence. We may recall that the king represented coherence and continuity across time, having inherited his place through a dynastic line, rather than by a process of popular selection and hence a different symbolic order altogether.

The power of the English crown magnified through the premodern period, up to its crisis in the seventeenth century when these two versions of representation clashed:

> The claim of Parliament to represent all the people had long been used as a
> weapon to challenge the king; in the Civil War it becomes a justification for
> overthrowing him. Conversely, the king sought to keep the members of Parliament
> in their place by arguing that each spoke only for his own separate community;
> they did not collectively 'represent' the realm. (Pitkin 1967:252)

Pitkin's observation points to something of a crux between two contrary symbolic orders – one emergent and the other waning. Of course, Parliament was still not representative in our modern sense of the term, based in 'universal' suffrage. 'The people' were largely deployed as something of a rhetorical device through which the nobility could assume greater authority. As Morgan (1988) argues, the representatives in Parliament in the seventeenth century "invented the sovereignty of the people in order to claim it for themselves" (p. 50). "In the name of the people", he writes, the parliamentarians "became all-powerful in government, shedding as much as possible the local, subject character that made them representatives of a particular set of people" (*ibid.*). This allowed those in Parliament to distance themselves from the local terms of their representation (of representing a subset of the people) and instead claim to 'represent' the people in a way the king never could. The people—or those with suffrage—could in theory hold their representatives to account. However, in this transitional period, the people are 'invented' and then quickly submerged by the new coordinates of representation. For during the civil wars, the New Model Army did not claim to represent the people from a distance, but to *embody* the popular will. To be consubstantially 'the people' was something closer to the older, monarchical model (Morgan 1988:118). It could be uttered at the time by the army chaplain William Sedgwick (1648), the New Model Army "are truly the people of England, and have the nature and power of the whole in them" (p. 75). They were, in a sense more the people than the *actual* people. He argued further, the army was:

> …truly *the people*, not in a *grosse heape*, or in a *heavy, dull body*, but in a *selected choice way*: They are the people in *virtue, spirit and power*, gathered up into *heart* and *union*, and so most able and fit for the worke they have in hand: The people, in grosse, being a monster, an unwieldy, rude bulke of no use. (Morgan 1988:75-6)

At a time when the people were still – to take Morgan's title – being 'invented', they could in one move be viewed as the font of popular sovereignty, and in the next as an unwieldy, voracious horde. Other accounts described the people as a "giddy multitude", and as "'beasts in men's shapes,' who would destroy themselves if given a chance" (*ibid*.:76). The people, left to their own devices, without finding their representational equivalent, would essentially self-destruct.[67]

The incoherence of the people upon their discovery is mirrored in their indigence during the French Revolution and following the universalizing impetus of the Enlightenment. It was at this point, Agamben (1998) remarks, with the Declaration of the Rights of Man and Citizen, that the people came to assume their political status as 'rights-bearing' through their mere humanity; their 'bare natural life' (p. 127). In assuming this position, however, those people who constituted *les gens sans aveu* would also "become an embarrassing presence, and poverty and exclusion appear for the first time as an intolerable scandal in every sense" (Agamben 2000:32). We find this similarly in Arendt's (1963) account of the Revolution – the scandal of a politics compelled by poverty or necessity rather than free action. But this privation, importantly, is only scandalous after the aforementioned symbolic shift, whereby its juxtaposition against the people's nascent sovereignty becomes unbearable. It was under these terms that, not unlike with the New Model Army, the Terror of the French Revolution saw the people become

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[67] This was a recurring tension in British parliamentary history: for example, Loughlin (2007) recalls the late eighteenth century sensibility in England that their 'matchless' constitution had to be defended *from* the people (p. 45).

consubstantial with the state (Jaume 2007:75). The Jacobins, as the revolutionary vanguard, could at a point by the same logic as the New Model Army be deemed the people itself. Singer (1986) describes this sleight of hand as the 'hidden premise of the Jacobin regime', noting "the semivoluntary dissolution of many of the popular societies under Jacobin pressure, and the renunciation of all autonomous activities by the rest. It was as though the people had finally been persuaded that the government was the people itself" (p. 189).

Both of these eruptions of popular sovereignty were, however, temporary, and gave way to more moderate democratic trajectories, despite (or because of) their prior excesses. In order to assume political authority on behalf of the people, it can be argued that the vanguard had to occupy the space of the king's power. It needed to be able to incorporate the people as if to embody their 'true essence', just as the king had incorporated the realm and everything within it. This is quite different from what we understand in modern democratic regimes as the requirement of a minimum degree of distance between the represented and the representative. This transitional moment of consubstantiation, it may be argued, was required as a kind of 'vanishing mediator' in Jameson's (1988) terms, to allow a new symbolic order to emerge without a total collapse of orderliness in general. The coordinates of the symbolic order of the *ancien régime*, we may say, needed to first be peopled with new actors before the new regime could emerge. The king is switched out for the corporate identity of the New Model Army, or in France one hundred and fifty years later, the Terror, so as to substitute for the king's second body the sublime second body of the people. Billaud-Varenne's speech (20 April 1794) at the Convention conveys the auspicious nature of this pursuit:

> The French people have set you a task which is as vast as it is difficult to carry out. The establishment of a democracy in a nation that has languished in chains for so long might be compared to the effort made by nature during the astonishing transition from nothingness to existence, and those efforts were no doubt greater than those involved in the transition from life to annihilation. We must, so to speak, recreate the people we wish to restore to freedom. (Žižek 2002:261-2)

The Terror, in a sense, could wrest the French people out of political nothingness, *ex nihilo*, to give them a substantial body before they receded once again behind democratic institutions. By contrast, in the English case the Rump Parliament ruled by the divine right it inherited from Charles I. The apologists argued at the time it was God's will that the strongest should rule: "It was the solemn duty of all men to obey whoever had the force" (Morgan 1988:78). In this sense, in England divine right transmigrated to the New Model Army, consecrating its position before it dissipated under the secular norms of popular sovereignty. This transitional period is all the more remarkable in that under the Restoration a decade later, the king needed no longer appeal to divine right as before: "Although many of the Royalists who welcomed the return of the king were ready to reaffirm his divine right, others perceived that divine right was no longer necessary to monarchy" (p. 81). Further, "[t]he sovereignty of the people offered no obstacle to the restoration of the king" (pp. 81-2). Perhaps the greatest achievement of the civil wars and the Protectorate then was the establishment of sovereignty under both popular and secular auspices.

Importantly, as Žižek (2011) notes, it is at this transitional point of 'perfect embodiment' where representation in fact disappears. What is lost in the Terror or the New Model Army, and in totalitarianism for that matter, is the (imagined) minimum of alienation between representatives and the represented. The leader of the totalitarian regime, to move ahead historically, seeks to directly present "the will of the people", but in presuming to do so, he alienates the people radically from themselves (p. 118). The political here is no longer a provisional delegation that can be held to account, for there is no longer a position outside of it.

As it was under the Terror, the distinction between the state and civil society under totalitarianism appears to evaporate: "The state has become, or seeks to become, consubstantial with society and to diffuse its presence throughout the social sphere" (Lefort 1986:6). Stalin, for example, could argue under such a form of society that "every social group should give absolute obedience to the leadership of the party" (*ibid*.:62). If the people *are* the state, then the notion of their subordination, *en masse* or in group formations (e.g., trade unions) becomes, on the surface, absurd. Once representation is imagined as a perfect embodiment of the proletarian will - when representative and represented are consubstantial - who can grieve, or claim wrongdoing? Under Stalinism, Lefort notes, "society has undergone an unanticipated metamorphosis: it has produced a monster at which it gazes without recognizing its own image, a dictatorship" (p. 75). It gazes without recognition because it lacks the interval of self-distance necessary to assume such a perspective. There is something akin to psychosis in the experience of direct identification with one's representation – of losing the minimum of distance assumed by, in Lacanian terms, a *symbolic* identification. We see this especially in the paranoid psychosis that manifests constant threats to the integrity of the body politic under totalitarianism. Before exploring this theme further, though, we should return briefly to the grounds established for the social contract by Rousseau and its anticipation of the totalitarian.

Rousseau's Undifferentiated Community

It is useful to reconsider Rousseau's formulation of the general will here in relation to this question of the people as sovereign. The general will is, of course, not simply an aggregate of private wills, but what the people ascertain, by each individual looking internally, what is the common good. As the basis of sovereignty for Rousseau, the general will defies division or partiality. However, the majority may also fail to properly ascertain the general will, for the

people can err. That is to say that the general will is not immediately apparent, and the claims made about it may vary widely amongst the people.[68]

Rousseau was generally dismayed by factions or 'partial societies' that might absorb the individual and divert his interest from a general consideration of the State. For it was important "that each citizen should think only his own thoughts" (*SC*, II, III) in ascertaining the general will.[69] This concern appears also in Rousseau's *A Discourse on Political Economy* (1755) on the question of private associations:

> The influence of all these tacit or formal associations causes, by the influence of
> their will, as many different modifications of the public will. The will of these
> particular societies has always two relations; for the members of the association, it
> is a general will; for the great society, it is a particular will; and it is often right
> with regard to the first object, and wrong as to the second. (p. 59)

Nisbet (1943) suggests this spurning of particular societies reflects "Rousseau's absorption of all forms of society into the unitary mould of the state" (p. 94). Rousseau's misgivings here reflect a period in which secret societies, like masonic lodges, proliferated outside the purview of the state (Koselleck 1988:70). Against the differentiation of wills, Rousseau tells us in *The Social Contract*, "[a]s long as several men together consider themselves to be a single body, they have only a single will" (IV, I). This is the general will in its ideal form, and when the common will is approached with the same purpose, it is "clear and luminous" and evades "contradictory interests". This is why Rousseau was not an advocate of ongoing, open-ended debate: "long

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[68] The general will should not be mistaken for mere public opinion. As Gordon (1994) notes: "public opinion arose in the private sphere and was *about* the policies of the sovereign state, whereas the general will arose from within the legislature, had immediate legal authority, and so *constituted* sovereignty". Also, public opinion, unlike the general will, did not include the uncultivated or illiterate (p. 205).

[69] "If the general will is to be able to express itself, that there should be no partial society (i.e. groupings of men with common, but narrow, interests) within the State, and that each citizen should think only his own thoughts... But if there are partial societies, it is best to have as many as possible and to prevent them from being unequal... These precautions are the only ones that can guarantee that the general will shall be always enlightened, and that the people shall in no way deceive itself." (*SC*, II, III)

debates, dissensions and tumult proclaim the ascendancy of particular interests and the decline of

the State" (IV, II). As Sandel (1996) puts it, Rousseau's political community is one that is

"unable to abide disharmony" (p. 320). As such we get little sense of a public sphere in

Rousseau. Habermas' (1991) account of Rousseau points to a notion of public opinion[70]

subsumed to the activities of the people as sovereign assembly. The ascertaining of the general

will did not brook well the "rational-critical debate in the public sphere" (p. 97), for the general

will "was more a consensus of hearts than of arguments" (p. 98). The people in Rousseau do not

constitute a public sphere, Habermas notes, distinct from its existence as sovereign assembly

always in session—"a plebiscite in permanence" (p. 99).

Inston (2010) argues that rather than signaling a uniform totality, there is an ontological

incompleteness or indeterminacy in Rousseau's formulation: "The undecidability at the heart of

the Social Contract undermines the view that Rousseau's political theory pursues the totalitarian

aim of fully determining the social" (p. 406). He counters here Talmon's *The Origins of*

Totalitarian Democracy (1952) and Berlin's essay, 'Two Concepts of Liberty' (1958), both

written in the shadow of twentieth century totalitarianism. Inston holds that democracy for

Rousseau is indeterminate, and each iteration of the regime is provisional – a safeguard against

totalitarianism. This is in line with Lefort's major insight, that modern democracy is constituted

upon an empty centre, in which no one can fully or continuously inhabit the position of power.

Although I argue that the terms knowledge, power, and law do *not* disentangle under Rousseau's

general will, as with the modern democratic regimes to come, we do get a sense that every

iteration of the republic is a provisional one and always subject to revision or even dissolution.

Yet in some sense, it is this very indeterminacy that opens democracy up to its inverse form

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[70] Where public opinion existed outside the political sphere proper, it was still subject to the guidance of the censor, just as legislation was to the enlightened figure of the Lawgiver.

(even if it is not its 'pursued' form), and perhaps so in ways over the centuries to follow that

Rousseau could not fully anticipate.

Carl Schmitt was a notable critic of the 'openness' of democratic (or, constitutionally

liberal) regimes. At the core of these regimes, he argued, is an empty signifier that could,

nihilistically, be manipulated for ends contrary to its very openness. Scheuerman (1996) presents

the Schmittian reading of liberal democracy:

> Because legal positivism can provide no moral justification for liberal democracy,
> it unwittingly equips illiberal political forces with a real opportunity for destroying
> the final remnants of liberal normativism: as soon as illiberal political groupings
> garner, for example, two-thirds of legislative votes, positivists are powerless in the
> face of a likely decision to dissolve parliament itself. (p. 304)

Liberalism as a value, by this reading, inheres with a kind of relativism that opens up the

perverse possibility of people becoming open to valuing its antithesis. As such, it is not a

sustainable common good for which individuals would willingly sacrifice their lives in those

truly political moments for Schmitt (1985): in the war or conflict between enemies (in the

context of his fundamental friend-enemy distinction). Even as Schmitt is sometimes called a

twentieth century Hobbesian, he saw in Hobbes' individualism and rationalism the lack of a truly

homogenizing political mythos. In Hobbes lay the original basis of the 'substance-less' legalism

that would culminate in the legal positivism of Hans Kelsen and his ilk (Dyzenhaus 2007:139).

Modern democracy in a sense yields an excess it cannot contain. In what Derrida would

describe as a kind of 'auto-immune' self-destruction, democracy, in its openness—indeed in its

attempt to *immunize* itself against its opposite form—threatens to bring about the very thing it

eschews: a suspension of that democracy by popular decision and the reversion to its inverse

form. This indeed is the scandal of the rise of totalitarianism in Germany: that, even though

amidst social and economic crisis, totalitarianism could be brought about by "formally normal and formally democratic electoral processes" (Derrida 2005:33).[71]

In Scheuerman's reading, above, the problem goes back to particular 'political groupings' garnering a majority in the legislature. Rousseau is understandably cautious about allowing partial societies to flourish for this very reason. However, the policing against factionalism risks treating differentiation as merely a problem to be regulated, and in regulating it, the regime fails to 'immunitize' itself from the excesses of the political. Rousseau unsurprisingly advocated for a high degree of regulation in everyday life to maintain social virtues.[72] This may include, according to Walzer (1970), an "authoritarian family, a rigid sexual code, censorship of the arts, sumptuary laws, mutual surveillance, [and] the systematic indoctrination of children" (p. 233). Carole Pateman (1988) adroitly points to the failure of most of the classical social contract tradition to see the norms of gender subordination (the 'sexual contract') as the repressed underside of the social contract. It is in this very manufacturing of a social fabric or sentiment that Chapman (1956) sees the kernel of a totalitarian impulse in Rousseau. For the tools Rousseau deploys to bolster a social sentiment, like civil religion, violate the very principle of moral autonomy so central to his political society (p. 86).

One problem with Rousseau's condemnation of factionalism is that it also condemns political parties, which seem so essential at least to modern notions of pluralistic democracy. It is the failure to provide space for this antagonism that frays the institutional coordinates of Rousseauian democracy. Moreover, the refusal of partial societies opens up the risk of the state,

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[71] The inverse of this, as Derrida (2005) alludes to, is the suspension of the second round of elections in Algeria in 1992 under a state of emergency scenario in order to stave off the worrying possibility of a new majority bent on dismantling the democratic system entirely. Here the state of exception shows democracy's autoimmune, suicidal nature: democracy destroys its essence, its empty centre, by suspending its fundamental election process, in order to save itself.

[72] Indeed, a tyrant, by comparison to the republican state, might even *enjoin* license!

on the one side, exercising unfettered control of the people in general, and on the other, absorbing individuals and abolishing their distinctions. This is especially problematic if we assume alongside Lefort a fundamental division of the social. Durkheim observes in *Professional Ethics and Civic Morals* (1957), secondary groups (e.g., professional organizations, religious organizations, civil organizations, and unions) develop as part of the growth and diversification of societies—their increasingly complex division of labour. And while there is the risk of these groups "swallow[ing] up [their] members" (p. 62), without them in place as a buffer, the state would proceed to "make those individuals fall under its domination" (*ibid*.). This observation is occluded, however, before the social has fully become an object of analysis as such.

Here is a dream of overcoming society's alienation from itself – its self-*non*-identical character - in the realization of the general will (Ingram 2006:36), but this is also the totalitarian dream. It is this possibility, of the loss of a minimum interval of distance between the people and the state – the threat of ochlocracy that Rousseau signals but does not discuss – that we now turn to in greater depth.

Totalitarianism

Arendt (1977) notably found the origins of modern totalitarianism in Hobbesian absolutism. However, I argue, based on the premises set out so far, that there is a disconnect between these two formations. Society did not emerge as a substantial entity in Hobbes' time. Totalitarianism, like liberal democracy, has a distinctly modern character. It is not conceivable in the premodern period or under the religious imaginary. It constitutes a modern form of society's self-institution. In addition to the people imagined as identical with its representation, totalitarianism seeks society's full equivalence with the state. Totalitarianism involves the representation of "society as a body without supplying it with an external guarantor of its

organization and limits, and abolishing social division" (Lefort 2006:168). This remains a doomed pursuit, however—this frenzied quest for self-coincidence. For as Lefort (1988) reminds us, "no human society, whatever it may be, can be organized in terms of pure self-immanence". No society fully coincides with itself: "human society can only open on to itself by being held in an opening it did not create" (p. 222). There remains always in 'the flesh' a doubling over that defies self-immanence. Lefort deploys the term 'the flesh of the social' to suggest some animate thing in social life not reducible to the material or the spiritual. This notion of 'flesh' is introduced first in Merleau-Ponty, but in Lefort it takes on new dimensions. The flesh for Merleau-Ponty represented a phenomenological experience of inhabiting simultaneously the positions of subject and object of the world, as part of the enigma of embodiment. Lefort, in thinking the flesh of the social, translates this dual experience in the chiasmus of society-as-instituted with society-as-self-instituting. It is here that the ambivalence between the corporeal and the machinic metaphors of the state, discussed earlier, find their peculiar convergence.

We may recall that in the premodern period, the king was the corporeal inhabitant of the divine through which collective life derived its coherence and orderliness. This 'carnal union', conjoining the people with the king, found its *mise en scène* and *mise en sens* through the king's public existence; through "the image of the natural body, the image of a God made flesh, the image of his marriage, his paternity, his liaisons, his festivals, his amusements, and his feasts, but also the image of his weaknesses or even his cruelties, in short, all the images of his humanity" (Lefort 2006:178). However, in modernity this carnal union undergoes a kind of transubstantiation – an *immanentizzazione*, to use Esposito's term. It no longer has a transcendental, other-worldly referent to be hinged upon, nor a visible corporeal site in which it can be clearly embodied. Santner (2011) raises the important question of what happens to the

king's second, sublime body after the regicide. Under democracy, the people do not bear an other-worldly, transcendent supplement. To recall Lefort's insight, the place of the Other becomes an empty place. Yet there remains something 'in the people more than itself'—what Santner calls the 'royal remains'; an excess that, while signaled by the people, is qualitatively different from the actual people. As Gauchet (1985) observes on the place of the Other after the religious imaginary: "The locus of power is humanly unoccupiable only because it is transcendentally occupied, not by gods, but by invisible terrestrial beings arising from the social body" (p. 186). There is some invisible, sublime aspect of the people that emerges here.

We may wish to think of this remainder in the concept of 'the nation' that flourished in the nineteenth century. The nation conveys a kind of substantiality and coherence greater than society, or the people, even as it connotes something of both of those terms—of both a diffuse bond and a sovereign substance. Like the obsessive interest in the king's corporeal delectations under the *ancien régime*, we find in the late modern period the obsessive governmental (or, biopolitical) interest in the reproduction, the health, and the sexuality, *pace* Foucault, of the nation. We may say these enumerative processes of measuring and assessing the nation constitute part of society's *mise en sens*, or how society is understood and made meaningful to itself. But it is also society materializing its tenuous carnal union with itself.

As we noted earlier, under the democratic regime, no one can be the once-and-for-all voice of the people. Each inhabitation is provisional and, arguably, imperfect since knowledge, law and power can no longer guarantee each other's consistency. Indeed, by separating knowledge from these other terms, democracy opens itself to calling authority itself into question. This 'interrogation' we may say is institutionalized (Flynn 2006:150), reflective of a modern symbolic order. Indeed one form of its institutionalization is the role of political parties

that Rousseauian democracy eschews. The disincorporation of these terms (knowledge, law, and power) makes the public use of reason and the self-conscious institution of society possible (p. 151). Flynn notes that for Lefort, "only modern society legitimates social division and breaks with the image of a substantial community" (p. 159), though we might qualify this further as modern *democratic* society. For Rousseau, this point becomes questionable, since division remains a threat to the integrity of the general will. In fact, this uniformity is arguably one of the tipping points into totalitarianism, which feverishly attempts to unify the social body by the continual expunging of threatening outsiders emanating from within. Totalitarian ideology, Lefort (1986) states, "may be understood as an attempt to produce a unified discourse which explicitly asserts the homogeneity of the social domain, in lieu of relying on a multiplicity of disjointed discourses" (p. 18). Here we find that totalitarianism's paranoid character resembles that of despotism, and must be placed in opposition to democracy and its multiplicity of disjointed discourses. For the indeterminacy and uncertainty in democracy is moderated by the inverse of paranoia: trust.

The orderliness conferred upon civil society in democratic regimes is secured by the strength of its generalized trust. However under the representation of the 'People-as-One', trust is displaced by fear of hidden, alien others. Under the 'totalization' of society with the Terror, for example, the figure of 'the hypocrite' loomed large, for one could never know if the citizen avowing a revolutionary spirit secretly harboured contrary views. The decree of Chaumette and the Commune of Paris (10 October, 1793) sought in the extreme to extend the reach of the Suspects Act to "those 'who change their manners and their speech according to events' (article 3)" (Fehér 1987:110). Daniel Gordon (1994) observes as well that "Marat, the Revolution's great theorist of denunciation, repeatedly declared in his journals that it was the duty of every citizen

to publicly denounce the enemies of the revolution" (p. 233). This enabled accusation of the most fantastical sort, for even a false accusation was an almost favourable sign of the accuser's virtue: "[Marat] affirmed that those who denounced others falsely were not guilty of a crime so long as their accusations stemmed from virtuous intentions" (*ibid.*).

This paranoia, at least in the political sphere, was also arguably the Terror's 'democratic' character in the purest sense: forbidding anyone to permanently occupy the place of power. This problem of the impossibility of representation was made starkest in the Terror's suicidal impulse, as Flynn (2006) suggests: "Their fascination with being is at the same time a fascination with the abyss. This is why they all call down death upon their own heads in an attempt to find a sign of their inscription in the people, in nature and in history" (p. 137).[73] Society attempts to become self-identical during the purges of the Terror by eliminating enemies, divisions, and internal conflicts.[74] It seeks its own self-perpetuation, even as this means constant self-mutilation and ultimately its self-beheading. At the level of society's *mise en scène*, the purges present to the people "a reflection within which they could recognize themselves in their unity" (Singer 1986:188). Lefort (1986) frames this in a mix of social and corporeal terms unique to totalitarian society, as a kind of "social prophylaxis" by abjection, "as if the body had to assure itself of its own identity by expelling its waste matter" (p. 298).

We may note as well the insular, paranoid character of the oligarchic politbureau under Lenin's revolutionary leadership. We see this character in the frenzied extermination of

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[73] This suspicion of anyone who might hold the place of power, however, distinguishes the Revolutionary Terror from the Totalitarianism of Stalin, for example. Totalitarian society finds its *mise en forme* after all in the "infallible power incarnated in the person of its leader" (Lefort 2007: 120).

[74] The argument could be made that Rousseau's formulation of the general will lacks one of the key dimensions of totalitarianism: the outsider within, who can be scapegoated, or blamed for all conflict within the body politic. Let us not forget, however, that there is an authoritarian moment here: that those who reject the general will in Rousseau shall be "forced to be free" (*SC*, I, 7).

adversaries: the complete fabrication of criminal offenses (e.g., as with the anarchists), the elimination of opposition parties and factions, and the repression of workers in Kronstadt—once, the revolutionary elite, later, crushed as counter-revolutionary (Lefort 1986:47). Once class struggle was 'eliminated' under the proletarian state, all that was left was the people in its hyper-vigilant unity. As Žižek notes, once the people are unified as the social body, and, we might add, once the state comes to coincide with the people, any enemy of the regime is also an enemy of the people, outside the very classification of the people: "insects, worthless scum to be excluded from humanity itself" (Wahnich 2012:xx).

What remains ambiguous here is what precipitates totalitarianism's coming into being. In historical terms, we find its catalyst at the level of social and economic crisis. But unlike the despotic regime, or the 'failed state' today that may find power diffused among rival tribal leaders in post-/neo-colonial settings, totalitarianism confronts the problem of the complete saturation of the social by the bureaucratic state. It no longer makes sense to speak strictly in terms of society constituting the state, or the state constituting society, for the boundaries "between the political, the economic, the legal, the ideological, etc." (p. 83) collapse. Lefort (1986) speaks of totalitarianism in ostensibly contradictory terms as both the 'monstrous autonomy of the political' ("domination of the governing apparatus over all concrete activities") and as a collapse of all distinctions between all societal spheres ("a form of society in which all activities are interrelated and in which the separation between different domains of social life is claimed to be negated") (p. 6).[75] Of course, power is concentrated, and to a degree we might see

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[75] A recent intervention into social capital research points to the dark underside of civic organizations under totalitarianism - the use of social networks, civil society organizations and social capital to foment social cohesion around a highly racialized politics. Satnayath *et al*.'s "Bowling for Fascism: Social Capital and the Rise of the Nazi Party in Weimar Germany, 1919-33" inverts the classic Putnam narrative, demonstrating the way in which Nazi party membership rose out of the density of social networks in Weimar Germany.

under an arbitrary despot, except that it is highly organized according to a bureaucratic regime's logic, which in another sense is the legacy of the technical rationality of statecraft under the artificialist imaginary. Totalitarianism for Lefort (2006) is "the project of creating a self-organizing society that allows the discourse of technical rationality to be imprinted on the very form of social relations and that, ultimately, reveals 'social raw material' or 'human raw material' to be fully amenable to organization" (p. 168). It is a process that he calls "the culmination of an artificialist project that begins to take shape in the nineteenth century" (*ibid.*). This 'artificialist project' Lefort references is in some sense enabled by the artificialist imaginary of the preceding centuries, although the latter did not assume a kind of separation of the state and society that might afford technical mastery over society in the nineteenth and twentieth centuries. Rather, under totalitarianism we find the organic and the artificial, having separated apart, recombined monstrously – "a metamorphosis of society itself in which the political ceases to exist as a separate sphere" (Lefort 1986:79). For society, when it no longer constitutes a space of independence from the political unto itself, is unable to act as a buffer – to immunitize (Esposito 2008) – against a bureaucratic and biopolitical administrative logic.

Summary

This chapter has focused on the theme of dissolution primarily in Rousseau to consider both the collapse he portends and the one his framework merely anticipates. Both despotism and totalitarianism represent inverse or perverse forms of the democratic regime – the democratic regime absent its normal coordinates of representation. In the former case, power assumes its own logic outside the realm of representation and seeks its own end, independent of, or at the expense of, the people. In the latter case, the direct identification of the people with the state eliminates the internal necessity of representation, and the gaps, introduced by democracy,

appear to close. Civil society as a realm that provides a degree of orderliness to collective life *and* a buffer against dissolution, in both instances, is negated. It fails to continue to constitute itself as a domain in and of itself but rather turns monstrous in its character. It is either dispelled by violence under despotism or saturated by power, becoming determinate and unable to abide differentiation in totalitarianism. The latter, as I've suggested, is a risk introduced by the artificialist imaginary which disavows the social – the social as both a site of division and a site where division is erased – and therefore fails to anticipate its metamorphoses. In our brief interlude through Hobbes' absolutism, as a foil to Rousseau's version of despotism, we have also confronted one logical outcome of power's institutionality: that in some permutations it seeks its own persistence even at the expense of, or through devouring, its originary source: the people.

Even when the concentration of power under despotism and totalitarianism may appear similar, we can distinguish them fundamentally by considering their symbolic orders: In despotism, the symbolic order is thin or fails to manifest in a way that allows society to secure its footing. It resembles something akin to a state of nature ridden by violence. Society becomes thoroughly opaque to itself, even if it may retain residual spheres of collectivization, as we considered at the end of the previous chapter *pace* Parsons. In totalitarianism, society would appear fully determined rather than as a realm of freedom – frantically exterminating internal threats to its sought-after total self-consistency. Its symbolic order eschews all gaps and differentiation. It is an order that Rousseau fails to fully anticipate (despite his brief mention of 'ochlocracy'), and does so to the disservice of his formulation, for the partial societies he spurns are potentially the very inoculators against the erasure of distinction between the social and the political that we see in it.

In Kant, whom we now turn to in the final chapter, we confront Rousseau's general will anew in the principle of the categorical imperative. The demand for pure ethical action in Kantian philosophy is almost 'inhuman' in the sense that all motives but for those oriented to the law itself are rendered inadequate. As we drift away from the artificialist imaginary and into the formal, transcendental character of the law in Kant, we find the social contract as an idea clashes most starkly with the empirical realities of the institution of law, justice and power. It is here at the end of the Enlightenment and the culmination of the French Revolution that the social contract tradition finds both the realization of its inner logic and the irreconcilable reality of the violence inherent in the state's foundation and dissolution. However, we also find in Kant a salutary form of the social that may afford humanity its moral elevation, even beyond its own intention – what Kant calls unsocial sociability.

Chapter 5: Kant and the Return of the State of Nature

Immanuel Kant's work is scattered with somewhat obscure references to the dissolution of the state at the limit point of his legal formalism. These are sometimes so obscure as to be relegated to the footnotes of his text. This is the case with the two great regicides of the early modern period. Kant saw in the formal executions of Charles I (1649) and Louis XVI (1793) the potential collapse of the legal order in England and France, respectively. For not only were these monarchs killed, but their deaths were accomplished through a judicial conceit. The people, in its representational form, donning the cloak of the judiciary in both cases, subjected their king to trial and punishment in breach of his inviolability – a protection that had been preserved for Louis XVI even in the renewed Revolutionary Constitution of 1791. It was, after all, the king as sovereign to whom the people owed their continued existence in law under the *ancien régime*. Of course, the rejection of the regicide as a monstrous act coexists in Kant's work with his general praise of the republican character of the French Revolution (Rogozinski 1992:104). Regicide by trial was infinitely worse than rebellion or even assassination in Kant's mind. Such an act involved no simple transgression but an inversion of the principle of lawfulness itself. Raising the subversion of law to the level of a lawful act was the "pure Idea of extreme perversity" (Kant 1999b:127). Regicide, here, was an act akin to a *crimen immortale, inexpiable*, a sin theologians claimed could not be forgiven "in this world or the next" (*MM*:97). It was, Kant argued, as if the state, swallowed up into an abyss of the law's negation, had in this instance committed suicide. Any order that persisted thereafter risked dissolution back to a state of nature under the memory of this moment of lawlessness elevated to lawfulness. It would be as if society could no longer, under the sign of this crime, institute a new legal order. But the state survives, all the same. For a return to the state of nature would be a far worse fate for Kant.

Kant has remained a secondary figure to our discussion of the social contract tradition thus far. This is because his philosophical framework represents something of a move away from the artificialist imaginary so central to our earlier contract thinkers. Society for Kant is not so much an artificial construction but an inevitable outcome to man's predisposition to a moral existence, which requires the institution of law and public justice. Kant still figures, however, as the inheritor of the intellectual tradition of the social contract. In thinking through the problems of foundation and dissolution here, we are again confronted with the excesses of the social contract, yet under different terms. We find in Kant's legal formalism the problem of excess all the more striking, where the state of nature appears not as a point to which society legitimately refers periodically to restage its foundation, but as a recurring threat to the juridical condition at the limit-point of the law's institution and execution.

The Problem of the State of Nature

If the state of nature is a normally disagreeable condition for the social contract thinkers we've considered thus far, in Kant it bears perhaps the greatest threat: the failure to live in a condition where justice can be legally or publicly instituted. Kant's aversion to the return to the state of nature appears, for example, when he considers the overturning of the law by foreign invaders. Assuming a new kind of lawfulness can be introduced, Kant (1996) finds the new regime replacing the collapsed one should be treated as if it is legitimate. For this is the surest way to reintroduce the principle of lawfulness. A return to the state of nature would be the worst outcome possible. Indeed, even an autocrat who breaches the social contract may be preferred to the state of nature (Kant 1991:83). For, additionally, if the people attempted to assemble as a new commonwealth in lieu of the old (or newly dissolved) one, they might be "devoured by

ecclesiastics and aristocrats," exploiting their advantages in a power vacuum, [76] "instead of enjoying greater equality in the distribution of political burdens under a single head of state who ruled them all" (*ibid*.). Indeed, foreign intervention may be morally justified if it staves off total collapse and a return to the state of nature. In *Metaphysics of Morals* (1996), Kant remarks that, in the presence of others living in a state of nature, "each may impel the other by force to leave this state and enter a rightful condition" (p. 90). However, there is a tension here, for Kant "held, all the same, that the formal consent of all individuals was the indispensable juristic method by which the foundation of civil society must necessarily be set in motion" (Gierke 1950:109). But there is a greater necessity that knows no law, which we return to frequently in Kant. Kant's loathing of the prospect of a reversion to the state of nature is akin to Hobbes', to the point of accepting tyranny over anarchy (assuming the former allows for a minimum institution of lawfulness). Kant (1999b) claims at one point, "it is the people's duty to endure even the most intolerable abuse of supreme authority" (p. 125) although he tempers this claim in other places. Kant goes even further in saying, "if legal justice perishes, then it is no longer worthwhile for humans to remain alive on this earth" (p. 138). The return to the state of nature is a fate worse than death, for humanity would have lost part of its *telos* – the advancement of the principle of justice. Hence, we find there is no real collapse with the regicide by trial because a new order emerges immediately, and must so, after this attempted suicide. The civil state is an order that must, by necessity for Kant, be maintained. But this allowance for a new, ill-begotten regime to

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[76] David Hume, in his essay *Of the Original Contract* (1793a), made a similar observation on the potential for inequality following collapse: "In reality, there is not a more terrible event, than a total dissolution of government, which gives liberty to the multitude, and makes the determination or choice of a new establishment depend upon a number, which nearly approaches to that of the body of the people: For it never comes entirely to the whole body of them." (p. 449). We can imagine in similar terms how a twenty-first century return to the state of nature would likely reproduce the stratifications of civil society, whereby wealth and class or race-based solidarities would carry over from the civil state.

survive and become legitimate points to a second problem around political foundations: it is not simply that there is no knowable or empirical founding moment, but in practical terms, foundation is achieved by an extra-legal act or crime that must be covered up, or in some sense forgotten.

This does not mean that there is no circumstance where a state or civil society might be rightly dissolved for Kant.[77] Indeed, he provides us with one hypothetical scenario of the group's legitimate self-dissolution. However, even this must meet exacting juridical requirements that in some sense exceed the authoritative will of a rightly sovereign people:

> Even if a civil society were to be dissolved by the consent of all its members (e.g., if a people inhabiting an island decided to separate and disperse throughout the world), the last murderer remaining in prison would first have to be executed, so that each has done to him what his deeds deserve and blood guilt does not cling to the people for not having insisted upon this punishment; for otherwise the people can be regarded as collaborators in this public violation of justice. (Kant 1996:106)

As with our earlier contract thinkers, there remain residual obligations to the polity that must be satisfied before leaving – ones which cannot be as voluntarily dispelled as the obligations in general that were voluntarily assumed in the 'original contract'. Surely, this case would be a rare

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[77] In constitutional theory, the argument can be made that a political institution like a Parliamentary assembly can commit suicide by divesting itself of authority, insofar as the act is viewed as an expression of the people's will. It is a notion that extends at least as far back as the 1640s, when a spokesman for Parliamentary supremacy, Henry Parker, espoused Parliament's capacity for self-creation. The constitutional scholar, James Bryce (1888), argued in the same spirit in the nineteenth century, that dissolution was a capability within the people's institutional form of expression. "Parliament could", he averred, "extinguish itself by formally dissolving itself, leaving no legal means whereby a subsequent Parliament could be summoned" (p. 325). Bryce's contemporary, A. V. Dicey (1889), recalled something similar in Parliament's transfer of power to another body a number of times in the history of Great Britain: In 1539, the "Parliaments both of England and of Scotland" transferred "power to a new sovereign body, namely, the Parliament of Great Britain". In 1653, the Barebones Parliament "resigned its power into the hands of Cromwell" (p. 65). In 1660, the Long Parliament, having been recalled, essentially dissolved itself so that a new Parliament could be formed under the old regime and the monarch put back in place. The French Parliament (or then-National Assembly) did a similar thing in September 1792, declaring its constitution void and establishing a new republic by calling for a new constitutional convention. This is arguably also what occurred even more recently in 1934 when the Parliament of the then self-governing Dominion of Newfoundland, mired in debt, voted to dissolve itself and return its governorship fully to the British Crown. In each of these examples, Parliament as the supreme form of the expression of popular will undertook its formal self-dissolution. Yet something of the state, and indeed the original contract (between the people and itself), remained. For surely each of these 'suicides' sought to bring about a greater concordance between the popular will and its institutionalization, or, alternately, create firmer and renewed grounds for its survival.

one. The more common situation, of individuals emigrating, is acceptable to Kant on account

that the state does not own the individual as property (*MM*:110). However, even here there is a

potential debt to be paid. For the individual may take with him any moveable property, but not

his "fixed belongings, as he would be doing if he were authorized to sell the land he previously

possessed and take with him the money he got for it" (*ibid.*). Hence while the state does not own

the individual, in the final instance it can lay claim to his landed property, regardless of how

much he may have in a Lockean sense mixed his labour with the land.

The general disbanding of the republic remains within the realm of the possible for Kant.

We only need to consider, for example, an island nation like Tuvalu in the South Pacific, which

is apt to find itself uninhabitable within a half-century due to its 'sinking' coast line. Kant does

not speak here to the motivation for this willful dissolution, whether it be by *casus necessitatis* or

not. It may not ultimately matter, so long as those individuals emigrate to other commonwealths.

This is, however, an unusual scenario as Kant does not furnish the people with a reserve of

sovereignty against its instituted form, as Locke does through a 'trust' or Rousseau by treating

government as a provisional commission of the popular will. We must assume that the civil

society in question, were it once under the jurisdiction of a sovereign ruler, must have been

returned their political autonomy by its erstwhile monarch.

In this injunction from our above example to execute all convicted murderers in due

course before disbanding, one gets a sense that for Kant the principle of justice transcends even

the authoritative will of the sovereign people. There is no suggestion of the sovereign's ability to

pardon criminals by a sovereign sentence[78] here under this exceptional circumstance. The body

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[78] The sovereign sentence or *Machtspruch*, as Fenves (2003) describes it, is a form of speech that has the force of law without the generalizability of law. It interrupts or suspends the juridical process in a singular instance, and reflects the singularity of a given sovereign—his or her decision-making capacity (p. 32).

politic, rather, as a juridical entity, inheres with deep-rooted obligations that cannot be so readily sloughed off. Like the insistence of Talion law (*Wiedervergeltungsrecht*), all crimes (or at least the most heinous) must be avenged, as if to fulfill a transcendent juridical zero-sum equation. We are in some sense in the orbit of Rousseau's example of the individual who cannot leave the commonwealth to avoid serving a prison sentence. Yet in Rousseau the obligation appears much more a debt to society, while for Kant the debt that remains is owed to Supreme justice – the very source of the blood guilt that would otherwise follow the former inhabitants dispersing abroad. This case puts Kant in tension with the earlier contract tradition, for it is justice in its universal character, not society as destructible moral entity, to which retribution is owed.

We've addressed two specific cases in Kant where the state confronts its possible self-dissolution: (i) the near-suicide of the state by public trial and execution of a monarch, and (ii) the hypothetical republic that dissolves itself by willful assembly, but not without first executing all convicted murderers. There is a third case in *The Metaphysics of Morals* that is equally fascinating as an inversion of the second one, wherein Talion law needed to be appeased before the civil state could rightly be dissolved. This third case is found in what Fenves (2003) calls the strangest paragraph of all in Kant: Here, under an exceptional condition, a criminal sentence is remitted to *stave off* the state's dissolution. Kant considers here a hypothetical instance in which a large segment of a nation's citizens are accomplices to a capital offence like murder. If they were all submitted to the trial and execution required by a judicious administration of the law for such felonies, not only would the state depopulate itself to the point of collapse, but it might risk deadening the sensibility of the remaining population by subjecting it to the (necessarily) public spectacle of execution. The passage goes as follows:

> If…the number of accomplices (*correi*) to such a deed is so great that the state, in order to have no such criminals in it, could soon find itself without subjects; and if the state still does not want to dissolve, that is, to pass over into the state of nature, which is far worse because there is no external justice at all in it (and if it especially does not want to dull the people's feeling by the spectacle of a slaughter-house), then the sovereign must have it in his power, in this case of necessity (*casus necessitatis*), to assume the role of judge (to represent him) and pronounce a judgment that decrees for the criminals a sentence other than capital punishment, such as deportation, which still preserves the population. (Kant 1996:107)

Greater than the risk of blood guilt – which would have plagued those hypothetical island-dwellers who dissolved and dispersed without summarily executing certain convicts – is the risk of the state's unintended collapse.[79] Kant allows a compromise in this situation, that of dispersing the guilty to the provinces. By his estimation, this solution would stave off dissolution. For the state could still function under some newly imagined division of labour amidst the outlying provinces, we must presume, without having to fully eviscerate itself. This resettlement can only *partly* appease the demands of justice – those complicit in murder will still live. The survival of the state overrides the strict demands of justice in this case, while in our previous case, justice as such is the very impasse to willed dissolution.

There is an important, subtle difference here between 'banishing' and 'exile'. Kant (1996) notes this distinction in the very next section:

> [The lord of the land] has the right to *banish* a subject to a province outside the country, where he will not enjoy any of the rights of a citizen, that is, to *deport* him, if he has committed a crime that makes it harmful to the state for his fellow citizens to associate with him.... He also has the right to *exile* him altogether (*ius exilii*), to send him out in to the wide world, that is, entirely outside his country.... Since the lord of the land then withdraws all protection from him, this amounts to making him an outlaw within his boundaries. (p. 110)

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[79] To draw upon a real historical case, the Stalinist purges risked this very outcome that Kant feared, though less in the interest of jurisprudence than paranoia, brute power, and instrumental rationality: "it may well be said that the purges carried out by Stalinism went so far as to endanger the functioning of the production apparatus. One may doubt the effectiveness of repressions that at one point wiped out half the number of working technicians" (Lefort 1986:68). Totalitarianism here approaches the character of a machine out of control, discussed in the previous chapter.

With banishment, the guilty remain under sovereign power, while with exile, the guilty would be extricated, and also excluded from any of the protections of the state. It is *exile* here (not banishment) that resembles what Agamben (1998) would come to call the *ban*, designating "both exclusion from the community and the command and insignia of the sovereign" (p. 23). The ban constitutes the threshold at which it is "literally not possible to say whether the one who has been banned is outside or inside the juridical order" (*ibid*.). The subject who is exiled by sovereign power is placed outside the law through its own privation (its withdrawal of protection of rights of citizenship). The *exiled* perhaps most closely resembles Agamben's figure of *homo sacer* in that 'all protection' is withdrawn, and therefore so withdrawn are those rights that would ensure protection from all predation. The ban represents for Agamben (1998) the epitome and the nihilistic character of law in modernity: its being *in force without significance* (p. 35) – that is, the moment it is stripped of positive content.[80] Indeed it is Kant's *Critique of Practical Reason*, we may note, that introduces to the modern world this pure form of law, which makes it possible to think the state of exception.

We arrive here in a new terrain with the Kantian form of law and the authoritative will inhering in the sovereign. But while the *ban* is not unthought in Kant, our example above of deportation to the provinces, we should note, does not place us in the realm of *homo sacer*. The biopolitical implications of this form of 'emergency power' are not fully considered in Kant since 'the social' as the site of governance over bare life is only beginning to be revealed in European states. The banished (unlike those under the *ban*) still retain basic protections of the state in order that its population may survive. They are merely no longer citizens. This remains

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[80] Though, we should acknowledge, the act of banishing is not, in itself, modern but a feature of power extending back through premodern civilizations. Indeed, Ancient Rome is the point Agamben returns to in order to develop both the concept of the ban and *homo sacer*.

one of those rare cases where a kind of exception (*casus necessitatis*) intrudes upon Kant's thought. For the judicious capital punishment of all the accomplices to murder risks the destruction of the state *qua* juridical condition. The core principle of Kantian moral philosophy – the categorical imperative – must find itself relaxed here. It would seem that Kant has some difficulty dealing with this realm of 'necessity' that has the power to override juridical exigencies. However, the ability for the state to function is the precondition for the possibility of the juridical and we must therefore tolerate smaller violations for the sake of the continued possibility of justice.

Kant generally rejects 'sovereign sentences' over normal juridical decision-making procedures, as the former are an affront to the principle of justice – that is, the law's procedural implementation. However, in these very exceptional circumstances, like with our banishment case, the sovereign dons the garb of the judiciary and is allowed to intervene. As Fenves (2003) describes it, the sovereign here comes to play all of the parts in the legal drama – absorbing them, as if to momentarily usher in a state of indistinction between the spheres of power, law, justice and the aggrieved party. We may note the sovereign can offer clemency for crimes against the state, but he cannot normally stand in for the affected parties in civil matters, which is what makes this case so unusual. "With respect to a crime of one subject to another", Kant (1999b) notes, the sovereign "absolutely cannot exercise this right, for in such cases exemption from punishment (*impunitas criminis*) constitutes the greatest injustice toward his subjects" (p. 144). However, the *casus necessitatis* means the sovereign as 'outlaw', standing both inside and outside the legal order, does *not* commit injustice against the aggrieved party. There is something about the sovereign (in discerning the state of necessity) that allows him to suspend the normal application of the law, rightfully, without being stained by blood guilt. This is unlike the people

in our other hypothetical example who might fail to meet the demands of retributive justice before dissolving their society, having meted out a mere sentence of jail time in place of death.

We may consider here the legal status of the *casus necessitatis*. It is a term that can be traced back to the Roman maxim '*necessitas legem non habet*' or 'necessity has no law'. It is a kind of exception to the law but should not be confused with the 'state of exception' definitive of a particular modern form of sovereignty, nor should it be aligned with an earlier *raison d'état*.[81] Agamben situates the definition of sovereignty within the capacity to decide on the state of exception; on the moment of the law's legitimate suspension. It is a capacity of the sovereign that cannot be legislated, nor legislated away. It makes sense to speak of this particular relationship between the sovereign and the law only under their modern coordinates, with the introduction of the liberal democratic constitution (Agamben 2005:5). The notion of the sovereign as one who decides—the 'choice' as a creative, deliberative act—should, we may note, be distinguished from the premodern king as *ascertaining* correct action in accordance with the divine law or the will of God. Agamben addresses this modern opening up of the juridical system in the following terms: the "modern state of exception is [...] an attempt to include the exception itself within the juridical order by creating a zone of indistinction in which fact and law coincide" (p. 26). In the medieval case, the law is suspended by appeal to an external fact, like necessity. "The idea that a suspension of law may be necessary for the common good is foreign to the medieval world" (*ibid*.). The state of exception as a modern formation needs not reference this external order. The capacity of suspension is included in its own self-referential logic.

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[81] Kant, we may say, eschewed the principle of *raison d'État* as it contradicted both the principle of seeking perpetual peace in international affairs, and it did not provide a sufficient threshold (compared to the *casus necessitatis*) to warrant a suspension of the application of the law or the categorical imperative (Armitage 2000:634).

I argue that Kant constitutes a transitional figure in the emergence of the state of exception. There appears in the sovereign of Schmitt and Agamben a decisionist or arbitrary quality to the sovereign who may suspend the law merely on the question of the public good rather than emergency *per se*. It is a degree of arbitrariness that the authoritative will – which may still ascertain a case of necessity – is not tolerated by Kant's legalism. But because Kant introduces a modern form of law, we find ourselves at the fringe where an older order of the *casus necessitatis* meets the biopolitical state of exception. The latter is a possibility that Kant's legal formalism opens upon, but cannot fully reconcile itself to. We may further consider this tension between law and its suspension by turning to a problem we considered in previous chapters: the possibility of legitimate rebellion.

Rebellion and the Move to Republicanism

Given that people do not reserve the right to withdraw consent to be ruled in Kant, we are confronted with the problem posed by power that becomes illegitimate in the form of tyranny or despotism. Kant (1999b) thoroughly refuses the legitimacy of tyrannicide – that is, to lay "hands on or take the life of the chief of state" (p. 125).[82] On this point, Kant (2006c) addresses his contemporary, Gottfried Achenwall, who finds justification for resistance to and deposition (though not the killing) of a tyrant. Achenwall states: "If the danger which threatens the commonwealth as a result of continued tolerance of the injustice of the head of state is greater than that which results from taking up arms against him, then the people can resist the head of state and, in pursuing this right, abandon its contract of subjugation and dethrone him as a tyrant" (p. 54). Kant cannot imagine this would ever in practice be advocated by an intellectual of Achenwall's esteem. Kant does acknowledge elsewhere the exceptional and rare circumstances

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[82] Hobbes (1949), in *De Cive*, also rejects the notion "that a tyrant king might lawfully be put to death" (p. 9).

where such an act may be justified, though these remarks seem relegated to the fringes of his intellectual work.

In *The Conflict of the Faculties* (1798), Kant charts out the legitimate course of humanity's civilizational advancement: "What sequence can progress be expected to follow? The answer is: not the usual sequence from the bottom upwards, but from the top downwards" (p. 188). For Kant, the rational end of government in general was that it should gradually and eventually transform itself into a republican form, to be best in consort with the spirit of the 'original' contract. The French Revolution and its republican ethos represented an advancement of "the moral disposition within the human race" (Kant 1991:262). Kant (1798) refers to it as "an occurrence in our own times which proves this moral tendency of the human race" toward improvement (7:84). However, as we have noted, Kant advocated for change by evolution (palingenesis) rather than revolution (metamorphosis). "Since…the contract is only an Idea of reason," he argued, "a people cannot use the notion of 'breach of contract' [as by a tyrannical king] as a pretext for disestablishing the old order and creating the ideal state over night" (Riley 1973a:465). Kant could not endorse a non-procedural or illegal regime change – such as violently rending a republic from an absolutist regime – even if, on occasion, the replacement of a single faltering leader could be justified (p. 467). We may recall, though, that a regicide by assassination, while treasonous, would not be as great an affront to the principle of justice as putting a king on trial.

Kant was against revolution as a matter of justice. However, hidden in his work is a rare case of apology for rebellion. Beck (1971) notes that "in unpublished notes we find Kant writing that resistance to government may be justified provided some constitutional provision is made – as he believed it was made in England [in 1688] – under which there can be a formal legal

finding that the original contract has been broken by the monarch" (p. 412). A "tentative justification of the Glorious Revolution," then, Beck claims, "remained hidden in [Kant's] notes" (p. 413), even as the conceit of a 'voluntary abdication' distorts the very fact of the rebellion that drove James II to France. Rebellion, Beck adds, might even be permitted against the most despotic ruler, guilty of the "enforcement of a religion, compulsion to unnatural sins, assassination, etc." (*ibid*.):

> In his published works, there is only one half-hearted commendation for revolution
> … and one passage (later than the contribution to Biester's journal) which excuses, if
> it does not justify, revolution. It occurs in the *Rechtslehre* where Kant speaks of a
> people's having "at least some excuse for forcibly [dethroning a monarch] by
> appealing to the right of necessity." (*ibid*.)

Here, an illegal action is excusable, by necessity (*casus necessitatis*), even if still morally wrong as a matter of justice. Of course, dethronement is not the same as revolution or a violent, sudden regime change. Other than this case, Beck (1971) notes, "Kant's denial of the right of revolution is as firm and clear as his express sympathy for the French Revolution" (p. 413). Riley (1973a) also concludes that Kant does not always treat revolution with perfect consistency (p. 467), but upon looking at everything he says about it, a consistent view can be posited. Beck attempts to resolve this paradox in Kant around the French Revolution by suggesting that when Louis XVI recalled the *états généraux*,

> …they discharged the duty that legally devolved upon them to "reform" the
> government [at least pre-Thermidor]. This outcome, to be sure, removes the paradox:
> Kant disapproved of revolutions, but what was called the French Revolution was not
> really a revolution or, if it was a revolution, the only revolutionary was Louis XVI!
> (1971:417)

The estates could not be accused of rebellion in deploying the legal apparatuses of the state to reform the constitution. Charles I, it could be said, accomplished the same feat in 1640 as Louis XVI had a century-and-a-half later: he recalled Parliament, opening the door to its full

assumption of power (Loughlin 2007:34). But even before this, the English king had played an important role in the expansion of Parliament in the sixteenth century. Indeed while the gentry who did not have seats in the House of Lords clamoured for seats in the Commons, the king sought their inclusion as well in an expanding royal bureaucracy. This shift, it is worth emphasizing, was not the by-product of a popular uprising.

If we think back to the modern natural law tradition, even Hobbes allowed the individual to resist the sovereign who would put his life at risk. For Kant (2006), "[t]he nonrebellious subject must be able to assume that his ruler does not want to do him harm" (p. 57). As the Hobbesian sovereign has no binding obligation to the people under the covenant, the people at least retain a legitimate fighting chance once their lives become threatened by the sovereign. But for Kant, such a threat could only occur "due to error or ignorance of certain consequences of laws on the part of the highest power" (*ibid*.). For in a rightly ordered state, the contract, as an ideal, constantly "whispers in the ear of the government" as a guard against tyranny (Williams 2007:476). We must, however, believe that in Kant's time it is possible that the ruler can 'err', for he no longer participates in the divine. His knowledge is not perfect, or rather it is not perceived as such in the modern symbolic order. With the sovereign's approval, one can voice an opinion publicly, and the free press fills this role to some extent. For the sovereign to want to deny the people this freedom is to be in contradiction with his very purpose of representing the general will, and hence, a case of error. It is for this reason that the willful dissolution of the state in Kant appears, outside the case of the republic, potentially permanently deferred, for the sovereign need never return to the people the autonomy that would enable it. It is only by civilizational progress that this possibility of autonomous and democratic self-institution and self-dissolution appears. It is this progressive change rooted in a figure of the social that we may

now turn to.

Unsocial Sociability

In his 'Idea for a Universal History from a Cosmopolitan Point of View', Kant points to one motor of societal development that Nature, in its cunning, has fostered in humans: unsocial sociability. Unlike Rousseau's pathological description of social man's compulsion to compare and compete with others for esteem – *amour propre* – Kant's sociable antagonism appears salutary. Indeed, the 'inauthentic' play of appearances contains a partial moral quality for Kant (2006c), if only as a spur to moral development: "Even the illusion of good in others may have worth for us, for out of this play with pretenses, which acquires respect without perhaps earning it, something quite serious can finally develop" (p. 44).

Mixed with the compulsion to live in society – for it gives humans an existence greater than mere natural existence – are the onerous demands on the individual self. One is compelled both to seek the favourable estimation of others, but also to achieve rank above them, as if in a (proto-Hegelian) dialectic of recognition. There is a progressive element at work here, for this compulsion leads to ever-refined aesthetic and moral sensibilities – culture elevated as if by a competitive motor. Without this 'unamiable' characteristic of competition, Kant suggests humans would persist in a rather dumb existence, like animals, though potentially content and affectionate. There is something operative here beyond human will and beyond ratiocination: "Man wishes concord; but Nature knows better what is good for the race; she wills discord" (p. 16). Even as such vanity and jealousy foster moral evils, they are also spur to greater moral ascendancy, and without this unsociability the latter would be impossible. This is also the basis upon which Kant (2006c) remarks that a society of devils could at least obtain an orderly existence in a commonwealth, for their self-interest would find, in the antagonism of wills, a

kind of mutual protection. A well-ordered state would direct "the forces within it against each other in such a way that the one hinders or nullifies the destructive effects of the other" (pp. 90-1).

The compulsion toward freedom from constraint, and the compulsion toward a moral life in Kant, however, do not undergo the sublation that Rousseau would have in man giving up all freedom to have it returned again through the general will, at a higher register, so that he might remain as free as he was before. There is no sublation between the social and natural freedom here. Humanity may progress – indeed, this is the course advanced by the Enlightenment – but only ever asymptotically toward its moral perfection. The categorical imperative as the sole motivator of action remains the ideal, but one inevitably sullied by the sensuous and the social as irreducible human incentives.

It is this very same antagonism that exists internationally between states, Kant tells us – though here unsociability is not situated under a magistracy, but rather in a non-legal 'state of nature'. Again we find a double movement of a coming together and a driving apart. Nature may draw states together in their mutual self-interest, toward a 'spirit of trade', even as it pushes nations apart, across the earth, by differences in language and religion (*TPP*, pp. 91-2). In *Religion within the Bounds of Bare Reason*, Kant (2009) notes further that "[e]very state, so long as it has alongside it another one that it may hope to subdue, strives to increase itself by subjugating it" (p. 38), recalling the expansive orientation of the state we discussed in our introduction. Following wars, with their attendant recriminations and devastations, which nature has ensured by instilling in us this[83] antagonism, Kant portends that the states will eventually find themselves a degree of peace and security in a League of Nations – that is, a cosmopolitan

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[83] "The mechanical course of nature visibly reveals a purposive plan to create harmony through discord among people, even against their own will." (*TPP*:85)

condition. Kant addresses the folly of the state that might seek to absorb all other states, as in a world monarchy – society organized according to the uniformity of the One. But 'this monster,' a 'universal autocracy' like the despotisms we discussed earlier, is destined to dissolve again under internal strife (*RR*). This is because of the fundamental nature of unsocial sociability – or, in Lefort's terms, the fundamental division of the social – that remains inexterminable.

The state of nature existing between states, of course, can never ascend to a properly juridical condition. It does not, however, bear the anarchic qualities Kant associates with a state of nature existing primordially between humans – a condition outside of or prior to the civil state. In the absence of a universal sovereign remains one field of the social, which makes a degree of orderliness between nations possible. States at war with each other, for example, must be able to establish a minimum degree of trust that would assure the agreement to basic rules of war:

> No state shall allow itself such hostilities in wartime as would make mutual trust in a future period of peace impossible. Such acts would include the employment of assassins…, poisoners…, breach of surrender, incitement of treason…within the enemy state, etc…. For there must remain, even in the middle of war, some degree of trust in the enemy's manner of thinking, since otherwise no peace could possibly be reached, and hostilities would degenerate into a war of extermination (*bellum internecinum*). (*TPP*:70)

For peace between states, some degree of sociability is necessary. We might refer to this as 'diplomacy'. It is foregrounded by the fact that the individuals living in their respective civil conditions have adopted a basic level morality, for "the moral principle in the human being is never extinguished" (*TPP*:103). But there is a tension here we find in returning to the problematic of the will. Kant remarks in *The Conflict of the Faculties* (1798): "No one can guarantee that now, this very moment, with regard to the physical disposition of our species, the epoch of its decline would not be liable to occur... For we are dealing with beings that act freely"

(p. 83). Whatever moral obligation may exist in a public, lawful existence, and even given Nature's guiding hand, there is no assurance the people will act in a manner consistent with it. This matter of ontological freedom is important for our purposes since failure and decline throughout this work have been situated primarily as a consequence of deliberate or willfully chosen action.

Further to the problem of the failure to act in accordance to the moral law in Kant is the recurrent problem of radical evil. Radical evil reflects action that fails to take the law itself as its sole motivation – those actions that are somehow egoistic or involves 'sensuous' or 'impure incentives' (*RR*). This evil is deemed 'radical' not because it is extreme, but because it is so rooted in our human nature and corrupts our ability to choose freely. Hence, one may very well follow the moral law and still commit radical evil by maintaining impure incentives. Equally, one is not so much in a state of 'guilt' for transgressing society or the lawgiver as for having adopted a disposition or motive other than the law itself.[84] The promise of Enlightenment and the *telos* of history for Kant, however, is the progress of humanity. As we have noted, it is a progress that is wrought in part through unsocial sociability. The social appears, then, to be both a font of moral development and a mire of radical evil (e.g., when our motives and incentives reflect the moral estimations of others). It is a curious tension in Kant, for the social remains an inextinguishable stain on pure ethical action even as it brings us ever-closer to moral perfection.

We may turn here, finally, to the residual forms of honourability that in Kant's time presented a persistent challenge to the demands of his legal formalism.

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[84] As Kant remarks, the extent of guilt is "not so much because of the *infinity* of the supreme legislator, whose authority has thereby been violated…but as an evil in the *attitude* and the maxims as such" (*RR*:88).

The Persistence of the State of Nature

Outside of its persistence in the space between sovereign nation-states, Kant identifies

two exceptional cases in *The Metaphysics of Morals* where the state of nature re-emerges within

an existing legal order: the birth of a child outside of wedlock, and an accusation that dishonours

a military officer (p. 108). The demands upon the preservation of honour – "incumbent as duty

on each of these two classes of people" (*ibid*.) – appears to necessitate in the former case,

infanticide, and in the latter, a duel whose outcome is liable to be homicide. The risk involved in

the latter may be consented to; however, it is not this willful consent as such that places the

dueling parties in a potential state of nature. It is what Kant would see as the inexorable conflict

in some instances between social mores, or honour, and the rule of law. For Talion law must find

in all cases of homicide the guilty party executed, as Kant would have it. But the conflict, as

Uleman (2000) notes, lies in the failure of law to be a sufficient *motivator* against either instance

of homicide. Worse than the murder or death, from the perspective of either assailant, Kant

acknowledges, would be to suffer the disgrace aligned with giving birth out of wedlock (not to

mention the social stigma assured to be attached to the child herself) or having one's military

honour besmirched.[85] The law here fails in one of its main objectives: to motivate peaceable

relations within the community. For it is incapable of intervening on behalf of the dishonoured

parties. It is incapable of being an arbiter of the social and absolving any such parties of the stain

of dishonour or disgrace. The conflict for Kant, then, is that capital punishment, as the necessary

form that retributive justice must take here, will have the appearance of being *un*just or cruel.

As with the struggle for peaceable relations between nations, the conflict between the

demands of honour and the rule of law can only be alleviated by the moral development of civil

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[85] Obviously these are not the only instances in which one faces dishonour, but they are unique as 'norms' prescribing in each case a kind of 'homicide' as the only sufficient means of redressing or averting dishonour.

society and the civil constitution. However, the 'spirit of the law' may be slow to change. The

durability of old norms, roles, customs – 'the social', broadly speaking – remains an impasse to

'moral progress.' It is worth reconsidering here that for Kant there is no stepping outside of the

law back into the state of nature while under a civil condition. The dueling parties may seek to

disavow the law to settle a score, but the law remains omnipresent. The conflict gives Kant

pause, all the same. He first says the outcome of this duel by consent "cannot strictly be called

murder" (Kant 1999a:477) given the actors' intentions. More perplexing is the child born out of

wedlock who, as 'illegitimate', is born outside the law and thereby outside the law's protection,

Kant suggests in the same paragraph. It has "stolen into the commonwealth" and therefore, he

muses, its annihilation can be ignored. By all appearances, though, Kant is positing a tension that

does not get fully resolved in this section. He tells us "it seems that" ("*so scheint es*") these two

cases exist in a state of nature and can therefore not be punished. The child 'ferreted' into the

commonwealth like contraband is also in a state of a nature, he tells us – but Kant's belief about

this statement is perhaps suspended by the earlier speculative, "*so scheint es…*". After all, he is

unwavering in his application of the categorical imperative at the end of this section: the

infanticidal parent, and the lone surviving dueler, must die.[86]

    The social appears here as an excess or remainder that destabilizes the rule of law in

Kant's legal-formalist schema. It seems, in these examples, the law has failed to elevate the

people to a point where legalism may hold supremacy over mores or norms of honourability. We

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[86] The one scenario of *ius necessitatis* (right of necessity) around a capital offence that Kant cites refers to a lifeboat scenario where the survival of one person requires the murder of another: "There can be no penal law that would assign the death penalty to someone in a shipwreck who, in order to save his own life, shoves another, whose life is equally in danger, off a plank on which he had saved himself. For the punishment threatened by the law could not be greater than the loss of his own" (*MM*:28). The survivor here may not be ruled inculpable, but is unpunishable because the threat of capital punishment could never, Kant would have it, motivate the inaction that would lead to his own death by drowning. Here, however, the stakes for the culpable individual risk his physical life rather than his symbolic life or honourability, and we are once again in the realm of *casus necessitatis*.

may consider, however, that there is something antiquated about the conventions of honour governing these acts. Emerging legal reforms in Germany at the time reflecting a change in attitudes over the harshness of punishment for infanticide meant that unwed mothers were increasingly punished less harshly in the eighteenth century (Uleman 2000:179-180). Dueling, on the other hand, was reserved merely for the aristocracy, a hold-over of an already waning status allocation (p. 184). Kant was notably opposed to the perpetuation of hereditary titles. They contradicted the egalitarian basis of a republican ethos. At best, current title-holders could be duly honoured, but their titles ought to go unfilled upon their lapsing (Kant 1996:103). The rites of dueling therefore were not to be long for this world.

It is worth also considering this putative return of the state of nature here. For the individuals concerned in our examples are by no means returned to a pre-social state. If anything, their actions are premised on the overbearing demands of the social (norms of female propriety and standards of military honour). But the social here constitutes a space the law fails to penetrate. The law fails to do one of the things it is supposed to do: elevate the moral character of humankind. The state of nature persists ostensibly in Kant in two fields: in the relationship between nations, and at the micro-level of certain exceptional human relationships described above (though, again, ultimately these cannot truly escape the rule of law). The former is an inextinguishable condition, which can only be moderated by diplomacy as a form of the social. The latter is introduced through an irreducible conflict between the juridical and the social as honourability, which at best find their convergence across time through civilizational progress, but never completely resolve their tension.

Summary

Kant is the first philosopher for whom pure practical reason can be said to be the basis of civil existence (Kersting 1992:145). The stakes in dissolution are therefore rather different for him than for Hobbes, Locke, and Rousseau. For one, we may recall the axiom: "if legal justice perishes, then it is no longer worthwhile for humans to remain alive on this earth" (Kant 1999b:138). The state of nature is never a more favourable condition to return to.

We may return to the question of the symbolic order here, for as we discussed, the Enlightenment period out of which Kant emerges is made possible by a broader shift at the level of society's intelligibility. The individual can be thought of as an autonomous and potentially ethical being, and society, in its ideal form, as autonomously instituted only once both the individual and society are discovered as such. Society is no longer placed in the orbit of a transcendental or other-worldly Other that might determine it, heteronomously. But the symbolic order itself that enables this autonomy and progress remains an impasse to the Kantian ideal of pure ethical action. The existence of a symbolic order means the intelligibility and legitimacy of our action remains in a site outside of our complete apprehension and therefore our action based in practical reason is never 'pure'.

The social, we have noted, also represents for Kant something of an intrusion upon the principle of justice. Society appears as bearing its own logic and orderliness, as (un)sociability, or in the customary yet outdated mores of honourability. The social makes civilizational progress, and indeed survival, possible by mediating the affairs between states. It is in this progress that humanity ascends in its moral character – its adherence to the categorical imperative – but it is a moral condition that is necessarily in tension with 'social incentives'.

Progress demands, then, the eclipsing of the very thing that spurs it forward and which can therefore never be fully eclipsed.

Dissolution can only be achieved by the people once it has been given constitutional mechanisms, as in a republic, to consent to such an act. It is not a faculty inherent in the people such that they can assume it simply or willfully under any regime. The only example Kant gives us is the hypothetical island republic – and, it is noteworthy, this example is given in the service of reintroducing the inextinguishable character of Supreme justice. This provides a contrast to our earlier contract thinkers, for whom the people are either always sovereign, no matter the regime type, or for whom natural liberty is returned once an individual's life has been threatened (or goes 'unprotected') by the sovereign. There is no empirical people in which sovereignty can be 're-discovered' in Kant. It can only be granted by the sovereign *post facto*. However, we must also assume this possibility to dissolve does not mean license to return to the state of nature, but to potentially disperse and adopt a civil condition elsewhere.

The problem of excess in Kant is that the principle of the universal always exists beyond the particular or the empirical. The existence of law itself requires the occasional suspension of legality as such, as at least one of our Kantian examples suggests, for its conditions of possibility to persist. Yet we should note that this is more an *anticipation* of the 'state of exception' as definitive of Schmitt or Agamben's decisionist form of sovereignty. The figure of the *casus necessitatis* may not constitute the state of exception in its later modern formulations, but it does suggest the recurrent figure of the state of nature that cannot be excised, whether in the figure of the ban or the excusable rebellion. Conversely, the state of nature can never be fully colonized, for it, like necessity, knows no law.

Conclusion: Redeeming the Social

Can the state commit suicide? To posit this question of dissolution is once again to return to its inversion: can society create itself *ex nihilo*? For this is the starting point of the social contract. Indeed, the spectre of self-dissolution raised by the image of self-creation is perhaps more interesting than the philosophical conundrum of the state's suicide, or the will *unwilling* itself.

The question of dissolution is always already presumed by and integrated into our modern imagining of foundations. The possibility of revoking the social contract at certain limit-points, and the requirement of periodically replacing one's government through the practice of elections, are themselves necessary parts of modern democratic society's self-staging and its imagined origins. We may recall the terms *mise en forme, mise en scène,* and *mise en sens*, which always entail the construction of and filling out of society's symbolic and imaginary coordinates as a condition of its very coherence. So, even as we find ourselves outside the orbit of the divine providence of the religious imaginary, and against Edmund Burke's 'eternal society', there remains beyond the voluntarism and artificialism of social contract theory a necessary backdrop – something beyond the explicit principles of natural right or the transparency of Enlightenment thought – that confers upon society its orderliness, durability, and continuity.

Part of talking about 'the social' as constituting a distinct sphere, as we have done throughout, is to suggest a field that is separate from the political or authoritative will. This is where the social appears a fraught concept for the social contract tradition. Social contract thought emerges with a partial understanding of the social, as a realm conceptually distinct from the political. It posits the social explicitly in the thinnest sense, as a voluntary moment, most

importantly signaled by the first act of association. However, we have attempted to demonstrate that the social emerges in its thick form as an excess or residual effect of society's mode of institution, one that the terms of the social contract cannot contain. In charting this course we have developed a number of figures of the social: (i) We see one version of the social in the various sorts of obligations or debts that are produced as by-products of societal life outside what is explicitly consented to in the initial act of association. Even as one cannot, in this intellectual tradition, consent to disavow one's free will (e.g., to willfully enslave oneself), one consents, if only tacitly, to be imposed upon at a later point; to, at moments requiring enduring obligation (e.g., war; a state of emergency; criminal convictions), suspend the voluntarist possibility of disavowing the contract altogether. (ii) We have considered the sphere of sociability as involving a kind of artifice – *amour propre* in Rousseau and unsocial sociability in Kant. Even as sociability may be, respectively, a blight on our moral constitution and a stain upon pure practical reason, it bears with it the possibility of civilizational advancement whether in the form of the *remède dans le mal* in Rousseau or as that spur to morality or peaceable relations in Kant. (iii) We have addressed the figure of tradition in the form of manners, mores, and honourability, as both a hold-over from the *ancien régime*, but also a necessary restraining force upon individual actors, against the otherwise artificial or voluntarist character of society. And (iv) we have unearthed an even more opaque figure of the social in the metaphorically 'monstrous' overwhelming of distinctions – a kind of solidarity that defies differentiation and individuation, appearing through the second body of the people, or the will in its pure deinstitutionalized form where the social and political begin to blur, as with totalitarianism.

The social, in its variegation, resists definition in a singular or totalized form. For, at the most basic level, it can neither be reduced to a *unifying* field, nor a *differentiating* one. Put

otherwise, we may think of each moment of unification in the field of the social as inhering with an accompanying moment of differentiation. Hence the field of the social remains, rather, a multifarious one, which is both pointed to by social contract thought and, to some degree, relegated to its margins.

We have also considered a number of figures of dissolution throughout this work. In the introduction we considered the emergence of a language of the *non-state* or the *pre-failed state* in Western foreign policy discourse. The political field unfolding in the twenty-first century is one in which the sovereign will has become, in a manner of speaking, overdetermined. The nation-state cannot escape the influence of internationalism, whether in the global economy, in climate change, in epidemics that cross national borders, in obligations toward humanitarian aid, and in calls to arms against 'terrorism'. Hence, it is increasingly difficult to speak of an authoritative or sovereign will independent of these outside influences. However we can still point to how societies imagine or represent themselves, as they often do by distinguishing themselves from those 'other' faltering states and non-states.

All regimes – and indeed the theories of regimes – generate excesses, which to some degree they are capable of disavowing, displacing, or securely situating. Even the premodern monarchic regime confronts this problem of excess, projecting it to the other-worldly, invisible realm. We may recall under the religious imaginary, power was situated along a concatenation of hierarchical relations, and ultimate authority in a mortal inhabitation of the divine. The this-worldly Other we confront in the modern democratic regime, however, exists as immanent to the world, and thus remains open to different materializations and dematerializations. Indeed it opens itself up to its own possible negation in the democratic regime altogether: an auto-immune self-destruction (Derrida 2005). Or, in the case of the Terror, we find the attempt to re-

substantialize the immanent Other, giving body to it in the form of the ruler, and risking a kind of

dissolution by implosion. In modernity, this opening onto dissolution, or the possibility of the

state's failure, becomes integrated into the state's very origin and *telos*. We may recall, to take

one extreme example, amid Nazi Germany's *Götterdämmerung*, Hitler's Telegram 71, which

proclaimed: "If the war is lost, let the nation perish." Here, under what Virilio would call 'the

suicidal state', the political will is perversely transmuted into a war-machine, "the institution of a

permanence external to all intention" (p. 31). It is as if the machine here, the purest form of

artifice, begins to run itself. This permutation of the will represents in one sense the pinnacle of

what Clastres imagined as the state against society – technical rationality in its purest form. Yet

in another sense, as we recall from Lefort, it is the very loss of the distinction between society

and state unimaginable before the modern period. This mechanization may be something quite

different from the artifice of Hobbes, which had the distinct sense of an intentional will and

'work of art' that comingled the organic and the mechanical in way quite distinct from the

technical mastery of the social body under totalitarianism. This twentieth century technical

mastery is, rather, based in the legacy of "the sharp differentiation between 'organism' and

'mechanism' [that] finally prevailed at the end of the eighteenth century" with Kant (Schmitt

2008:41).

Today, the conventional coordinates of the social contract find themselves strained in

multiple ways. The core principle – that legitimate authority derives from popular consent – re-

emerges with every referendum on national sovereignty that could lead to a secession, as in the

case of the province of Québec, or more recently with Scotland and the United Kingdom. In

another sense, the social contract as it was conceived in the early modern period has receded into

the mythic past. The original 'people' it spoke of are now reconfigured under the symbolic

coordinates of nineteenth and twentieth century nationalisms. For 'the nation' posits a substantiality and an imaginary field that is filled out in a manner different from 'the people' as an abstraction of political thought. The nation – as contested a term as it may be – confers upon the people a kind of positive content, connecting them to a mythic past and future, and indeed to the land, in a new way. The social contract of the early modern period has in some sense given way to the 'imagined communities' of the last two centuries.

We started out by suggesting that the features of the state and civil society reveal themselves most dramatically both at their historical birth and at their twilight. If we are indeed witnessing a rediscovery of society today, it may be the spirit suggested by Morris (2002) at the outset, the possibility that "the attention being given today to the state portends that its dusk is not far ahead" (p. 55). One of the discoveries of society we pointed to from the early nineteenth century takes place in view of the crisis of the indigence of the people, uprooted by industrialization and the reterritorialization of the state. The civil state here comes to assume dominion over nature in its abundance, yet is confronted all the more publicly with the scandal of precarity. To Malthus, writing amidst this discovery, nature according to its laws and brute force would drive the numbers of humankind back to equilibrium. It is as if the laws of the jungle – or the Hobbesian state of nature – were introduced anew to the civil state in the form of class conflict (Polanyi 1944:131). Hence if there is crisis at the source of society's re-discovery today, it was surely also visible at its discovery.

The social contract was set decidedly against the state of nature – a 'nature' that is later conquered and claimed by the civil state, but which the legitimacy of the latter requires as a space of freedom it must be possible to return to. Indeed, by the eighteenth century there remained in the world no habitable *terra nullius* – a term key to Locke's formulation of explicit

consent. Taking the point of dissolution to a logical extreme, if the state of nature has undergone a 'death' of sorts in its total colonization, then there remains still the possibility of witnessing its 'second death': the loss of nature's capacity to generate and sustain life altogether. A generation or two ago we confronted the ominous spectre of nuclear annihilation. Beyond the mere death of individuals, the atomic bomb posited for Lacan a second death, the possibility that "the foundation, the permanent support of the eternal circuit of generation and corruption, dissolves itself, vanishes" (Žižek 1992:36).

Whether or not the civil state as we know it is truly in its final throes, we may read something into the anxiety that characterizes the early twenty-first century, what I would posit as a post-apocalyptic imaginary. I distinguish the post-apocalyptic imaginary from the recurrent apocalyptic millenarianisms and eschatologies of Western culture. Earlier apocalyptic imaginaries marked an end point by divine reckoning, or even as recently as the Cold War, the prospects of mutually assured destruction that would leave nothing in its wake.[87] The post-apocalyptic imaginary rather posits some kind of life after societal collapse, and does so against the backdrop of 'natural' forces rather than a divine reckoning. In the post-apocalyptic imaginary the population of the world may be scourged by some biological agent, by hunger, by reproductive excess, or alternately barrenness. It is this human life viewed '*après le déluge*' that populates any number of cultural texts today, be they filmic,[88] televisual, or literary. We see it

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[87] For example, in 1946, at the outset of the Cold War, Lewis Mumford imagined a range of psychological and social disruptions a generation might be stricken with in confronting the possibility of total nuclear Armageddon: "escape in fantasy would be one: purposeless sexual promiscuity would be another: narcotic indulgence would be a third; but perhaps the most disturbing result of this cutting off of the personality from the normal sources and outlets of development would be the frequent outbreaks of catatonic trance" (1954:30).

[88] One telling example of this trope is *The Day After Tomorrow* – a Hollywood film from 2004. Its very title opens a vista to a time following environmental catastrophe, which is staged for us in short order by way of a sudden catastrophic temperature drop in the Northern Hemisphere. It is both a morality tale about American hubris and, alternately, the promise of humankind's perseverance. We are left to infuse the title with Nietzschean significance mostly on our own. Though not explicated in the storyline, the title is drawn from the preface of *The Anti-Christ*

further in the largely North American impulse to prepare for collapse, or anticipate it by securing

a life 'off the grid'. It resides in the survivalist, the homesteader, the militia member, living as if

in a state of nature, outside the dominion of state sovereignty – in a state of nature, albeit entirely

different from the original state of nature, *avant la lettre*. This impulse is manifest in that

yearning for the *terra nullius* Locke imagined America to be when he remarked "in the

beginning, all the world was America" (*TT*, *II*, § 49). Nature here remains a site of Edenic

promise (Worster 1993) even as it approaches devolution.

The post-apocalyptic imaginary is also posited in those disaster-resistant seed vaults

strewn about the earth, constructed by states and international bodies – the germs of future

agriculture lying in wait for ecological catastrophe. It is marked by both the decline in

confidence and trust in state institutions, on the one hand, and the demand for diplomatic

cooperation between states and private enterprise to secure a future against a common threat, on

the other. It is as if the fissures in the classical social contract are met with the revived sense of

the ineluctable human contract that obliges one generation to the next, and one country to

another, across time and place.

Turning back to the legacy of the social contract tradition, we discovered in our final

chapter that the artificialist imaginary collapses under Kant, even as he retains the fundamental

precepts of the social contract. Since every moral act for Kant is measured against the

transcendent authority of pure practical reason, no empirical originary contract can live up to

such an ideal, and hence it is useless to undertake to discover the contract's historical origins.

Kant effects a splintering off of the fundamental principle of the social contract from the

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(2013): "First the day after tomorrow must come for me. Some men are born posthumously" (p. 15). Humankind,
hence, is framed as finding its re-birth in its catastrophic undoing – the *remède dans le mal* pushed to its limit point.

artificialist imaginary, I claim, given the tensions inhering in the latter. Hence the social

contract's revival in the twentieth century comes in two disparate forms: one in John Rawls' veil

of ignorance and its attendant late modern principles of social justice, and the other in

neoliberalism. Put in other terms, pure practical reason is separated apart from the 'empirical'

political will. Rawls' famous thought experiment offers, in lieu of a fantastical state of nature, an

abstract scenario whereby we bracket all of our individual characteristics in order to arrive at a

more robust principle of justice and therefore a more highly egalitarian social contract.

Neoliberalism, on the other hand, replaces the social contract with the multitude of tiny contracts

that constitute the economic realm (Singer 2006:92), granting predominance to the latter. Its

discourse is common enough today: individuals are interpellated as 'tax-payers' and willful

economic transactors, rather than citizens or members of society.[89] Here, human relations are

reduced again to their most voluntarist and self-interested terms, while the social appears to bear

no ontological order unto itself. Indeed, we may recall the spurning of 'the social' by

neoliberalism's forefather, Friedrich Hayek, that we addressed earlier. Whatever orderliness

might have once been attributed to the social is now subsumed to the laws of the market, which,

despite operating like a hypostatized, almost transcendental 'invisible hand,'[90] is still ultimately

reducible to instrumental, individual transactors.

    This is not to say artificialism fully constitutes the modern political imaginary, as an

interpretation of the symbolic; nor does it even fully constitute 'conservatism' (or liberalism, for

that matter). Among its alters is a strand of conservatism that rebels against this very notion of

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[89] It is worth noting, though, that where the terminology, 'social contract', is used in common parlance today, it is usually suggestive of the range of social rules that are unspoken or taken for granted, especially those that entail some degree of reciprocity (e.g., paying gratuities 'voluntarily') or trust (e.g., promise-keeping). Indeed, these are the ideas triggered for most non-academics to whom I've mentioned the topic of this dissertation, the social contract.

[90] I am grateful to Brian Singer who pointed this dimension out for me in a personal correspondence.

the artificial. We might see this most clearly, initially, in Burke's response to the social contract tradition. Burke stakes the coherence of social life upon its continuity with the past, and indeed this became a commonplace of conservative politics in the subsequent centuries. But we must not forget that as much as Burke is oriented toward the past, he is also oriented to the future: the binding of future generations, and our obligation to future generations, as members of an 'eternal society'. It is this orientation to the future that structures a kind of still-existing 'classical conservatism' in contrast to the more neoliberal trend that, despite eschewing the past (and to a certain extent the future), often finds convergence with the former in its fiscal policy.

In the premodern world, we may say 'the social' existed, but it was not perceived as such under the religious imaginary, and certainly not in a manner by which we could distinguish a thin version from a thick one. Alternately, in the early modern period, the discovery of the people involved a partial discovery of society, but one limited to artificialist coordinates, as that which can be willfully assembled and disassembled. It is the appearance, or representation, of the autonomous will, however, that gave the social its new currency. The problem of artificialism and the artificialist imaginary is double, for it both *disavows* the social but relies upon the logic of the latter. In the social contract tradition, the social in its thick form is both negated by the political will, yet returns as the latter's limit and condition of possibility. The social contract's attempt to reckon with this tension and with the problem of non-voluntary obligations sets it apart from a later neoliberalism, which refuses the discourse of the social altogether. We may recall here Margaret Thatcher's infamous sentiment: "there is no such thing as society… There are individual men and women and there are families". Here, the neoliberal imaginary refuses the possibility of excess, of civil society, or of anything beyond these basic units of action (though, if anything, the 'family' as an anthropological or kinship structure, is a proto-social relationship). It

is a refusal of anything that is not voluntarist, contractual, rational, and deliberate, at least beyond familial relations. In this occlusion of a thick version of the social, there remains an awareness of mere extremes: absolute atoms (individual men and women), and the absolute density of kinship relations (their families, and sometimes 'the nation' as family writ large). This disavowal is ingrained, such that it constitutes a predominant way of thinking about and being in the world today, e.g., how one may view the homeless, the marginal, the criminal, and so forth. Indeed, is there any stronger neoliberal disavowal of the social in recent years than the Canadian Prime Minister's chastisement of the Liberal Party leader for deigning to 'commit sociology' and speak of 'root causes' in the aftermath of the Boston Marathon bombing? Stronger perhaps was the same Prime Minister's assurance to the public a year later that the disproportionate number of missing and murdered Aboriginal women in Canada did not constitute a 'sociological phenomenon' such that it might require a public inquiry. These statements would seem perplexing to any sociologist, even as they bear a certain intelligibility within a neoliberal imaginary. It is an imaginary in which sociology itself becomes *unintelligible*, since alienation, stratification, and marginalization themselves become no longer meaningful conceptual tools for understanding society. Perhaps it is in this refusal that the social will be redeemed – the rumors of its demise greatly exaggerated. For *neoliberalism* is not unintelligible to sociology. If sociology is to have a life amidst the hegemonies that would refuse its purview on the world, it is perhaps found first and foremost in pointing to the thicknesses that uphold the artificialist conceits like those of neoliberalism, and the denial of which it thrives upon.

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