The Trial of Reason

Political theology as the investigation of judgement

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Declaration

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Preface and specified in the text.

It is not substantially the same as any that I have submitted, or, is being concurrently submitted for a degree or diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text. I further state that no substantial part of my dissertation has already been submitted, or, is being concurrently submitted for any such degree, diploma or other qualification at the University of Cambridge or any other University or similar institution except as declared in the Preface and specified in the text.

It does not exceed the prescribed word limit for the relevant Degree Committee.
Summary

Title: *The Trial of Reason: Political theology as the investigation of judgement*

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Abstract: This dissertation is an inquiry into the relationship between political theology and the philosophical effort to establish a secular and autonomous order in which individuals govern themselves through universal laws. I argue that this project fails and explore how political theologies arise in its wake. In chapter 1, I argue that Kant’s philosophy stages a ‘trial of reason’ to establish the authority and autonomy of reason. To succeed, Kant must give an account of judgement as the reconciliation the universal and the individual. However, the trial of reason suffers two fates: Either legal procedure is flouted the new order is established through a violent act, or the verdict is deferred, and reason’s laws are legitimised by referring to an ideal of autonomy that never arises. In both cases, something is sacrificed to support rational order. In chapter 2, I show how F.W.J. Schelling responds to an autonomous and secular order by developing a political theology in which only the Church holds the key to a non-violent judgement. I then argue, in chapter 3, that Carl Schmitt develops his political theology in response to a liberal formalism which hides the sacrifices that sustain political and rational order. Here political theology springs out of the realisation that political and rational judgements always demand a sacrifice. In chapter 4, I discuss the work of Giorgio Agamben, who seeks to suspend political and rational judgement altogether. Both the political and the religious is characterised by the same ‘sacred’ logic which sustains an omnipotent, but unaccountable power of judgement. Finally, in chapter 5, I discuss the work of G.W.F. Hegel to show how the trial of reason depends on two conflicting accounts of secularisation. I end with raising some critical questions about the trial, and the political theologies that arise in its wake.
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Abbreviations

WORKS OF IMMANUEL KANT

All of the citations from the works of Kant refer to his gesammelte Schriften. Deutsche Akademie der Wissenschaften, Berlin, Walter de Gruyter, 1900–1942. Citations are given in the following form: [Volume]:[Page number] / [Translation page number]. The only exception is the reference to the Kritik der reinen Vernunft, where I refer to the pages of the “A” and “B” editions.


RGV  

Streit  

Was heißt  

WORKS OF F.W.J. SCHELLING

All of the citations from the works of Schelling refer to the volume and page number of the original Sämtliche Werke, ed. Karl Friedrich Anton Schelling. Stuttgart: Cotta, 1856. Citations are given in the following form: [Volume]: [Page number] / [Translation page number]. All citations are from the first part (Abtheilung) of the collected works (volume 1-10).

WA  

Bruno  
"Bruno oder über das göttliche und natürliche Prinzip der Dinge."


WORKS OF CARL SCHMITT


**LL**  

**LST**  

**PR**  

**PT**  

**PTII**  

**RC**  

**WS**  

**WORKS OF GIORGIO AGAMBEN**

**B**  
**CC**  

**CK**  

**HS**  

**HP**  

**KG**  

**OD**  

**OP**  

**SE**  

**TTR**  


WORKS OF G.W.F. HEGEL
The following abbreviations refer to Gesammelte Werke: Herausgegeben im Auftrag der Deutschen Forschungsgemeinschaft. Hamburg: F. Meiner, 1968. Citations are given in the following form: [Volume]:[Page number] / [Translation page number].


The following abbreviations refer to *Werke in zwanzig Bänden*, ed. Karl Markus Michel and Eva Moldenhauer. Frankfurt am Main: Suhrkamp, 1970-1990. Citations are given in the following form: [Volume]:[Page number] / [Translation page number].

**FVC**  

**PeR**  

**GCS**  

The following abbreviations refer directly from the collections and translations in the respective volumes.

**VGP**  

**VPG1**  

**VPG2**  
**VPR**  

**OTHER WORKS**

**BM**  

**Grundlage**  

**HCS**  

**MBL**  
Thus the world is like an oilpress: under pressure.
If you are the dregs of the oil you are carried away through the sewer;
if you are genuine oil you will remain in the vessel.
But to be under pressure is inevitable.

St. Augustine
INTRODUCTION

This dissertation is an inquiry into the relationship between political theology and the philosophical justifications of secular order. It seeks to trace a distinctive effort in modern philosophy to break with religious and heteronomous authorities of the past and legitimise a new order based on autonomy and the universal laws of reason. This development was motivated by the conviction that only a secular reason can legitimise a political order without recourse to religious authorities. Consequently, the philosophical effort has significant political implications. If this project fails, the legitimacy of secular political order can be called into question. For, as I will explain shortly, the institution of a secular order depends on a rational account of judgement.

By attending to various thinkers connected to the Kantian tradition of philosophy, I argue that the problem of political theology appears at the point at which the effort to establish a secular order fails. Although I deal with a broad range of thinkers and issues in this dissertation, I treat the philosophical justification of secular order and the political theologies that arise in its wake in a restricted manner. I do not offer a complete or normative description of political theology, nor do I argue that the construction of secular order I describe in this dissertation is the only way of understanding or justifying secularity. Furthermore, I am not aiming to write a history, nor to defend a positive vision. The goal is rather to assess different versions of a problematic which arises in the works of several thinkers, and to show how, at each turn, their failed institution of secular order makes room for an exploration of the relationship between reason, politics, and theology. Put succinctly, I show how political theologies appear in response to reason’s inability to account for its self-grounded power and authority to judge. In this manner, I hope to elucidate some of the philosophical, theological, and political relations that are at stake even in contemporary discussions about the meaning and relevance of political theology. The result is, I venture to say, elucidation and criticism, not a distinct positive vision.
To understand the scope of this project, we must briefly consider two central aspects of the philosophical construction of secular order to which I refer. On the one hand, the endeavour is to be understood as a task of ‘judgement’, and is situated in a metaphorical space of a courtroom and that of building a city. On the other hand, this endeavour is contextualised by a narrative of the origin and condition of modernity. Having explained these two aspects, I will clarify the meaning and function of political theology in this inquiry.

**THE TRIAL OF REASON**

In chapter 1 of this dissertation, I describe the construction of a secular order as a ‘trial of reason’ by attending to Immanuel Kant’s reaction to the trial of Louis XVI during the French Revolution. The metaphorical and conceptual apparatus that I develop in that chapter is carried on in the rest of the dissertation, and ought, therefore, to be unpacked here. I do not claim that these metaphorical descriptions are explicit in the other thinkers I discuss. However, by using these metaphors in the other chapters, I am able to draw attention to a problematic that appears in all of them.

In 1792-3, Louis XVI, the absolutist sovereign of the French nation, was charged with treason and executed by the revolutionaries, who intended to finally end the heteronomy of the *Ancien Régime* and to found a new republic based on the ideal of autonomy. Kant was fascinated and disturbed by the trial of the king because it exhibited all the promises and difficulties of his own philosophy on the plane of historical appearance. The many political, social, and religious difficulties of the trial exposed the problems with a philosophical justification of the authority of secular reason. Even a superficial consideration raises questions about the rationale behind charging a sovereign with treason: How can the sovereign be judged according to his own law? During the *Ancien Régime*, the king was the impersonation of all legality; he *was* the law. Furthermore, the political circumstances were such that the main task of the trial of the sovereign Louis XVI was to end the *Ancien Régime*. One of the intentions of the trial was thus to break with the old and make way for a new order, but it is not clear whether the legal drama represents a transition based on rational legal procedure or whether it merely is a cover for a murder (regicide) and a radical revolutionary act. These difficulties are not quibbles about what happened at a certain point in time, but go to the heart of this new secular city itself. They may inspire very pointed questions about the possibility and legitimacy of a secular order as such. In short, can secular reason ‘deduce’ its new authority by rational and procedural means, or is it built on violence and sacrifice?
The complex combinations of juridical and political operations in the trial of Louis XVI puts on display all the paradoxes and tensions of Kant’s own critical philosophy (krisis = judgement). His critical project repeats the two-fold act of the historical event: his philosophy stages a trial and tries to build a new ‘rational city’ based on the ideal of autonomy. As a city-builder, reason legislates universal laws which will curb the anarchy of religious enthusiasts or political anarchists. As a jurist, reason puts itself on trial and plays all the roles in the courtroom, so as to prove by rational and procedural means that it has the highest authority to legislate and judge. These interconnected metaphorical spaces contextualise the effort to show how reason can rightfully institute and preserve a secular order. Throughout this dissertation I consider these issues of the trial of reason as the problem of judgement.

Judgements order the world by subjecting it to laws. In their simplest sense, judgements apply a universal term to a concrete reality. Philosophically speaking, a judgement is a specific configuration of three terms: the universal, the particular, and the individual. It creates order by subsuming an individual (Socrates, for example) under a universal (citizenship), to make it a particular (a citizen). The judgement is, therefore, the basic configuration of any order, whether this order is political, natural, or metaphysical. To institute a new order, reason must demonstrate its ability to legislate universal laws and its capacity to judge and thus order the world according to these laws.

In the trial of reason, however, judgement is given a further task. The authority of reason depends on it being able to institute an autonomous order. This means that the laws in question cannot be coercive subjections of alienated individuals, since that would be a regression to the heteronomy one seeks to avoid. Thus, the inhabitants of the new secular city must be able to think of its laws as the product of their own self-legalisation. As we will see throughout this inquiry, this is where the trial of reason tends to fail. When reason puts itself on trial to show that its judgements can create and uphold an autonomous order, it faces difficulties it cannot overcome without transgressing its own laws. This difficult relationship between reason’s universal laws and the goal of autonomy might be better understood with reference to a narrative I will explain in the following section.

**Narratives of Modernity**

As a philosophical justification of secular order, the trial of reason is rarely expressed in the abstract, but tends to be situated within a narrative of the political experience of modernity. No single defining narrative is intended here, but the thinkers discussed in this dissertation resemble each other in many ways. The time of this trial is at the break with a religious or feudal
past, the place is a battlefield of forces and actors, and the goal of the legal act is to found *ex nihilo* a city of striving, yet harmonious and self-satisfied citizens.¹ This complex situation implies that the ‘shapes’ of judgement that I am tracing in this dissertation never stand on their own, but rather that their configurations and movements intertwine with narratives of the modern condition. The main points of resemblance between these narratives can be summarised in four interdependent moments:

1. The experience of the individual as alienated from the universal and particular configurations of the State, told historically as the progression from a feudal, medieval, and religious past to the absolutist systems of sovereignty.

2. A characterisation of absolutist political power as despotic coercion, i.e., as the domination of universal laws or formal categories over naked individuals. From the perspective of law, human beings are only seen as political subjects, not as unique individuals. Yet somehow they always exceed their political definition, which is experienced as a form of alienation.

3. The alienation of individuals under the absolutist regime represents the historical origin of ‘society’, bourgeois and civil. These individuals envisioned an ethical community regulated by the goal of autonomy or self-legislation, in contrast to the coercive laws of the State.

4. The institution of a new city where ethical community and political rule coincide and thus where coercion is replaced by freedom. The critical task, that is, the task of judgement, is precisely that of enacting this reconciliation by means of reason’s own powers.

This narrative was already present in the works of philosophers such as Georg Wilhelm Friedrich Hegel and Karl Marx. In his *On the Jewish Question*, Marx notes how the transition from feudalism to the absolutist system of government involved the alienation of the individual from the State and the diremption of civil and political life.² In Marx’s story, the identity of the feudal man was constituted by his place in a hierarchy of complex social and political relations.

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Then, with the advent of the modern world this hierarchy is levelled and man’s political relationship is simplified as he is subjected to the sovereign State.

This story is expanded on by Reinhart Koselleck in his book *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society*, in which he argues that the origin of the absolutist State produced a split identity between the subject’s universal and public relation to the State and its inner, private individuality. The creation of a private, non-political individual gave rise to a notion of an ethical community, consisting of individuals bound by the moral law, self-critical, autonomous, and opposed to the coercion of the State. This process aligned with the ascendancy of the bourgeoisie and the self-construction of a non-political, private, and social sphere. In the social sphere, autonomy was possible, because man found his home in a community of equals.

The bourgeois effectively created a whole new ethical rationality of autonomy which broke with natural law and religious justification. The social was never not political, and the history of political theory shows how the ethical became the criterion of the legitimacy of law. For the bourgeoisie, the old authority of divine right had to be substituted by a demonstration of how the law was the expression of an autonomous community. Therefore, the law could not merely be a just and formal distribution of citizens and their property, which would be coercion, but had to be related to a conception of the good, now defined as autonomy, or the coincidence of the community and the individual.

Accordingly, the trial of reason is situated within a distinct narrative of the political, religious, and rational conditions of modernity, namely that of a rising bourgeoisie trying to create an ethical, autonomous community which unites public law and private will. The difficulty with the trial of reason is, therefore, that of repeating in philosophical terms the increasing tendency of bourgeois society to subject the laws of the State to its own ideal of non-coercive autonomy. The secular city is realised not only when universal and formal laws are in place, but when these are demonstrably the expression of and in harmony with its citizens.

**Political Theology**

As we saw above, the experience of alienation under the absolutist systems gave rise to a new vision of an ethical and autonomous community. But what happens if the peaceful transition from absolutism to autonomy fails? Indeed, can the trial of reason reach a just verdict? In this

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inquiry, I argue that the trial of reason does fail and that some form of political theology tends to arise as an investigation of this failure. The ethical State is supposed to be the realisation of autonomy, but continues to demand that its inhabitants sacrifice their identities and wills so as to conform with its laws because the public law and the private will never coincide perfectly. Thus, the failure of the trial of reason leads to the recognition of the sacrificial dimension of political order. The sacrifice demanded by political order, even today, demonstrates that one has not yet overcome the problem of judgement: there is always a gap between universal laws or formal definitions, and the concrete reality to which they refer. This chasm precludes the realisation of the ideal of autonomy and creates a split between the coercive relations of actual laws and the ethical ideal by which they are legitimised.

Throughout this dissertation, I show how various political theologies arise at precisely the point when secular order fails to realise its ethical ideal without coercion. The theological may reappear, for example, as a representation of the peaceful community which secular reason can never realise, or, indeed, as a representation and legitimation of the sacrificial act necessary to realise an autonomous community. In each case, however, it is the problem of judgement and the failure of reason which motivates renewed reflections on the relationship between rational or political order and the theological. My aim is to elucidate these issues and thus to clarify the relationship between philosophical legitimation of secular modernity and political theology. Towards the end of the dissertation, I will point to some of the inherent limitations of those political theologies which take the failure of the trial of reason as its point of departure.

**Outline of the argument**

I begin the first chapter of this dissertation with the trial of Louis XVI and Kant’s response to it, as mentioned above. I argue that Kant’s philosophy repeats in philosophical terms the dramatic trial which sought to enact the transition from the rule characterised by the coercion of the king to the ethical community of the republic. Kant wanted to establish a rational order based on autonomy, and thereby to escape the despotism and anarchy of previous times. In the *Critique of Pure Reason*, Kant institutes a trial which is meant to uncover the universal laws to which reason is subjected and to show how these laws are actually the expression of and realisation of reason’s essence. In this way, reason is both subject and sovereign in a lawful and autonomous order. Nevertheless, I argue, Kant is unable to show how the laws to which reason is subject, are actually expressions of and legislated by reason itself. Thus, the trial of reason
fails, which is evidenced by two tendencies in Kant’s own philosophy, corresponding, one might suggest, to the guillotine and the courtroom: either the trial is completed by deviating from rational procedure in order to demonstrate that reason is autonomous, or the verdict of the trial is deferred and autonomy turns into a regulative ideal which is never realised. In both cases, however, something seems to be sacrificed in order to uphold the new rational order. In the first case, one must commit a violent or irrational act in order to make it look like reason is autonomous. In the second, one must subject oneself to formal and heteronomous laws, grounded in an unsubstantiated promise that this will one day make one autonomous. This double fate of Kant’s philosophy is explored in the following chapters.

In chapter 2, I show how F.W.J. Schelling’s political theology is a response to the first fate of Kant’s trial, namely the coercive institution of autonomy. Schelling began his career as a supporter of the French Revolution and a believer in self-legislation. Gradually, however, he came to see the limits of the conception of freedom as self-legislation (autonomy). It seemed to Schelling that secular order can only establish autonomy by forcing people to be free. Law, in short, will always be a coercive imposition on individuals. Secular order, therefore, demands a sacrifice, in the sense that people must sacrifice their identities or lives for the law. In response, Schelling developed a political theology which described the Church as a bearer of the hope of a free, non-coercive community of spirits. We see here the rudiments of a theory that posits the inevitable failure of rational judgement and that attempts to overcome the problem with reference to a religious community beyond law. However, in Schelling’s political theology, we are left with an unmediated relationship between coercive law and an impotent ethical-religious ideal, and no answer to how the religious community may come to transform political coercion into freedom.

Chapter 3 deals with the other, formalist, fate of Kant’s philosophy and its rejection in the political theology of Carl Schmitt. First, I summarise and expand the implied narratives in Kant and Schelling by briefly looking at Reinhart Koselleck’s reading of the origins of the bourgeois ideal of autonomy. In the rest of the chapter, I relate this narrative to how Carl Schmitt’s political theology responds to the deferred verdict in the trial of reason, especially as it appears in the neo-Kantianism of Hans Kelsen. Kelsen’s work represents a liberal formalism which seeks to avoid asking questions about the origin and application of law—that is, the problem of judgement. Liberal formalism is a desirable option for those who insist upon order, but who are unwilling to interrogate its anarchic beginnings. Kelsen’s work is explicitly contradicted by Schmitt’s political theology. Schmitt argues that liberal formalism, conceptualised in the neo-
Kantian tradition and enacted in the never-ending discussions of the bourgeoisie, tries to suppress the incomprehensible gap between formal laws and concrete reality. The application of formal law to reality cannot itself be guided by a formal rule, which means that someone must decide. Since a decision always excludes something, a unified and autonomous order can only be founded on a decision that excludes something or someone. For Schmitt, this means that real political order is grounded in sacrifice. This sacrificial element of political order grounds a political theology as a theory of the analogous ways in which theological and political systems are based on a sacrificial logic, and a transcendent decision which sustains the unity of metaphysical or political order. Finally, I argue that Schmitt’s political theology has merely suppressed the problem of judgement by characterising it as an ineffable sovereign decision which closes the gap between the universal and the individual.

In chapter 4, I engage with the political theology of Giorgio Agamben. In contrast to Schmitt and Schelling, Agamben gives up on judgement altogether. In political terms, Agamben’s argues that the economic ‘paradigm’ has made political negotiations of universal and particular identities impossible. Thus, in his critique of judgement, he tries to show how human life is enslaved to a law that demands nothing in particular. The judgement subjects life to the demand or force of an empty law, which, precisely because it is empty of concrete prescription, cannot be fulfilled. Whereas Schmitt and Schelling develop political theologies in response to the sacrificial character of judgement, Agamben proposes a political theology which seeks to show precisely how sacrifice has become impossible. If judgement were sacrificial, he implies, one could still seek to find a better relationship between the universal and the individual, between the law and the subject. However, for Agamben, the theological and political constructions of order in the West have so emptied the law of content that no sacrifice is possible, which means that there is no hope of a better judgement. His response, is to ‘deactivate’ this theo-political ‘machine’, which subjects life to the force of an empty law. Philosophically speaking, Agamben wants to show that we can suspend judgement, refuse to institute new relations between the universal and the individual. However, as I argue in the final part of the chapter, his alternative vision is either incommunicable or indistinguishable from the condition which he denounces. As a result of this most extreme rejection of judgement, I argue, the problem of judgement returns with full force.

In the final chapter of the dissertation, I turn to Hegel. His philosophy, I argue, presents a clear picture of what has been at stake in the dissertation as a whole. In the first part of the chapter, I show how Hegel’s own attempt to complete the trial of reason was a response to the theo-
political problems of modernity. By attending to Hegel’s explicit acknowledgement that he failed in completing the trial of reason, we will see not only why he failed, but also shed light on the trial of reason as a whole. The trial of reason, Hegel shows us, can only succeed by performing two operations at once: a rational and legal procedure in the courtroom and a revolutionary and violent break with the past. We will see how these logics correspond to two different processes of secularisation, namely that of the Reformation as a rational consummation of Christianity and Revolution as break with and rejection of the same. In this way, Hegel’s philosophy brings us back to the two symbols with which we began: the courtroom and the guillotine. In the final part of the chapter, I attend to Gillian Rose’s recuperation of Hegel, and suggest that her philosophy represents a limit point for political theologies that develop in response to the failed trial of reason. Such political theologies are fated to perpetually explore and respond to the presence of sacrifice in contemporary institutions. Finally, I argue, in critical dialogue with Rose, that we ought to challenge a key assumption of the trial as a whole, namely that the experience of alienation in historical modernity reveals the brokenness of judgement and the complete diremption of the universal and individual.

Context in Contemporary Discussions

The scope of this dissertation means that it is difficult to present anything resembling a comprehensive account of the relevant scholarship. However, I think that it can be best situated by considering how it fits (I) within Hegelian analyses of modernity; (II) within debates about the meaning and relevance of political theology; and (III) in light of the literature on each of the figures discussed in the individual chapters.

I. HEGELIAN ACCOUNTS OF MODERNITY

The work of Gillian Rose is one of the main inspirations for this dissertation. Her work presents an analysis of modernity inspired by the Hegelian tradition. At least three major themes in this

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dissertation can be traced partially back to her work: the gap between the universal and the individual; the aporia of Kantian philosophy; the diremption of law and ethics. These are central aspects of many Hegelian analyses of modernity, which we will refer to from the perspective of her works.

First, her book *Hegel Contra Sociology* re-established the relevance of the Hegelian legacy in opposition to the sociological traditions from Max Weber and Émile Durkheim. Her argument is that the sociological tradition in the wake of Weber and Durkheim failed to give an account of social reality because they had inherited structural aporias from the neo-Kantian tradition, aporias that Hegel had already analysed, namely those arising from the gap between the universal and individual, or concept and intuition. Her book presented a more ‘open’ reading of Hegel which ultimately rejects his speculative synthesis, but nonetheless insists that the ‘absolute’ can be thought. In so doing she followed a tradition of Critical Theory, especially through the Frankfurt School in harnessing Hegel’s philosophy for a critical social theory.

Second, chapter 1 of this dissertation is somewhat inspired by Rose’s ‘jurisprudential’ ideology critique of the Kantian heritage through the lens of Hegel’s philosophy in *Dialectic of Nihilism: Post-Structuralism and Law*. This was a Hegelian reading of the post-structuralist tradition from Friederich Nietzsche through Michel Foucault. Beginning with Kant’s courtroom, in which reason has to play all the roles and, therefore, veil its equivocations, she sought to show how the post-structuralist tradition continued to repeat the ‘antinomy of law’ that it sought to escape. In another major work, *The Broken Middle*, Rose emphasised the diremption of ethics and law, as well as State and civil society, and read a series of thinkers through the lens of this diremption. In short, she presents a ‘phenomenology’ of modern and postmodern theorists, which seeks to show how they consistently try to ‘mend’ the brokenness of contemporary society by theoretical means, and thereby refusing to understand it. This book and its emphasis on Søren Kierkegaard also signalled a shift towards a greater interest in the Christian tradition, and raised the question of faith.

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5 *HCS.*  
7 Her doctoral thesis and her first book was on Theodor Adorno: For Rose, the axis from Kant through Hegel and Critical Theory is the main point of orientation for her discussion of continental philosophy. Peter Osborne, ‘Hegelian Phenomenology and the Critique of Reason and Society’, *Radical Philosophy* 32 (1982): 8.  
9 *BM.*
As mentioned above, Rose’s work is one important influence on this dissertation. Accordingly, it is possible to situate the dissertation in light of the issues raised in Gillian Rose’s work: the Hegelian criticism of Kant’s failure of judgement, the diremption of law and ethics, and the question of the theological are three focal points in this dissertation.

Gillian Rose is not alone in reading Hegel and his criticism of Kant as way of understanding the predicament of modern society. Robert Pippin, another major interpreter of Hegel, similarly reads the problem of modernity and modernism in light of the Hegelian dialectic. What these Hegelian interpretations of modernity have in common is their focus on the failure of mediation: the Hegelian critique of modernity begins from the sense that there was something partial or incomplete about the transition to modernity, and that this is experienced as alienation. Alienation springs out a failure of mediation between communities, institutions, laws and individuals. This was naturally recognised by others before Hegel, including Rousseau and Kant, but Hegel has a unique place in that he was the first one to realise that the only way of overcoming the problem of alienation was not to rush back to unity, but to attend to the failures of mediation between communities and individuals. For Hegel, this project demanded a new concept of reason, since the instrumental and dichotomous rationality of the Enlightenment was unable to comprehend its own problems. Of course, the most prominent example of a Hegelian interpretation of modernity is that of the tradition of Karl Marx. Yet, as Rose herself argues in *Hegel Contra Sociology*, the turn from Marx and back to Hegel as a resource of critique is motivated by Marx’s flattening out of the aporetic character of Hegel’s account of reason.

As mentioned in the introduction, the Hegelian analysis of modernity is often undergirded by a narrative of the transition from medieval or feudal society, via the absolutist system and to the

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modern world. Marx, and later Reinhart Koselleck and Jürgen Habermas, have argued that the growth of the absolutist system and the end of the complex political and social identities of feudal society gave birth to a bourgeois individual who felt alienated and began to oppose himself to the State and its laws.\(^\text{13}\) Gradually the bourgeoisie began to form the notion of autonomy and sought to submit the laws of the State to its ideal. Philosophically speaking, this gave rise to a distinction between laws and ethics, which modern reason was never able to reconcile. The Hegelian analysis of modern reason is that it always splits into two: the universal laws legislated are supposed to be an expression of autonomy, but the arrival of autonomy is always delayed, projected into the future, or violently imposed. In each case, there seems to be an irreconcilable gap between the coercion of rational and political laws, and the ethical ideal of a harmonious and self-legislating community. This philosophical dialectic and its corresponding narrative of modernity sustain a related debate about the autonomy or primacy of the political. Koselleck, following Schmitt, argues that the bourgeois ideal of autonomy inevitably fails, and subverts the legal order it is supposed to sustain. Some form of this argument has been repeated by many political philosophers since the time of Hegel.\(^\text{14}\) A wide range of thinkers are worried that the bourgeois ideal of autonomy seeks to avoid the coercive character of political order and overlooks the difficulty of judgement. This difficulty is often taken to require a political resolution which cannot be grounded in ethics or legitimised with reference to a society, as we will see in the chapter on Schmitt. Finally, the primacy of the political is often defended against the primacy of economy—which is why I deal with Agamben in chapter 4. The greatest challenge to a Hegelian analysis of modernity is that the economisation of society has made political and rational judgement impossible. The Hegelian response—especially in the tradition of Marx—is that economic relations always veil social and political relations and negotiations between communities, identities, and individuals.\(^\text{15}\)

All of these problems raised by a Hegelian analysis of modernity appear in the chapters of my dissertation, but always as connected to the question of political theology. The question of political theology has often been underdeveloped in Hegelian analyses of modernity. Thus,


although I argue against some of the fundamental problems with these analyses and their basic
assumption, the way in which I connect them with the problem of political theology is, I submit,
a contribution to the still ongoing debate about modernity. Furthermore, while I present some
reservations about the Hegelian analysis of modernity and the assumptions of the trial of reason
as a whole, it will be evident that I nonetheless agree that the problem of mediation is one of
helpful the most lenses through which we may interpret modernity.

II. POLITICAL THEOLOGY

There is no unified definition of political theology. Its many uses and redefinitions during the
past century mean that the term might seem like an indicator for a poorly defined problem.\textsuperscript{16} In
recent decades, the term has functioned as an umbrella for debates about religion, secularity
and ‘post-secularity’, Christian theological reflections on politics, various forms of atheistic
Christian universalism, and much more. It is nonetheless helpful to divide contemporary uses
of the term into three very rough categories.\textsuperscript{17}

First, the term may refer to critiques of secularism and discussions about the meaning of the
postsecular. These can be traced back to early criticism of the so-called ‘secularisation thesis’,
which asserted that the political and sociological conditions of modernity had lead to the decline
in religious practice and its presence in the public sphere.\textsuperscript{18} There is a large amount of literature
about the meaning of this failure, variously positing the ‘return’ of religion, or the rediscovery
of a force or reality that was always implicit in modernity.\textsuperscript{19} Others have retold the history of
the construction of religion as a political decision to enable the rejection of non-Western

\textsuperscript{16} In a similar way, the word ‘post-secular,’ has been explained as ‘merely a topical indicator for—
well, a problem’. Hent de Vries and Lawrence Eugene Sullivan, eds., \textit{Political Theologies: Public

\textsuperscript{17} Here I follow Annika Thiem, ‘Schmittian Shadows and Contemporary Theological-Political

\textsuperscript{18} Thomas Luckmann, \textit{The Invisible Religion: The Problem of Religion in Modern Society} (London:
Macmillan, 1967); Peter L. Berger, \textit{The Sacred Canopy: Elements of a Sociological Theory of
Religion} 60, no. 3 (1999): 249–73; Charles Taylor, \textit{A Secular Age} (Cambridge, MA: Belknap Press of
Harvard University Press, 2007). For a good overview of recent literature on the postsecular, see
Imaginary’ (Oxford Brookes University, 2012).

\textsuperscript{19} Jürgen Habermas, \textit{An Awareness of What Is Missing: Faith and Reason in a Post-Secular Age},
trans. Ciaran Cronin (Cambridge: Polity Press, 2010); Richard T. Antoun and Mary Elaine Hegland,
ed., \textit{Religious Resurgence: Contemporary Cases in Islam, Christianity, and Judaism} (Syracuse, NY:
Syracuse University Press, 1987).
peoples and cultures as ‘medieval’ or ‘feudal’. In this context, ‘secularism’ refers not simply to a failed sociological thesis, but might be read as an ideological construction worthy of politico-theological critique.

Second, ‘political theology’ may refer to the appropriation of theological vocabulary and traditions for political critique. Such recuperations of the theological tradition have come from several quarters. The line of approach associated with the movement of Radical Orthodoxy tends to focus on the construction of the secular as a failed enterprise, which liberates a theological critique of a ‘secular reason’ which seeks to reduce political and social realities to immanent secular categories. In its most pointed form, this form of political theology argues that only the Christian theological tradition is able to describe the proper conditions for a peaceable political order. Other theorists have presented political theologies more critical of the Christian tradition, yet still drawing on some of its imaginative resources and symbols. Finally, several prominent non-religious continental philosophers, often with some connection to Marxist thought, have sought to resuscitate the notion of Christian universalism as a tool of political critique.


Third, the term ‘political theology’ may refer to the investigation of implicit religious or theological dimensions of contemporary political and cultural institutions, practices, and symbols. One could heuristically divide these investigations into two groups, although there are many crossovers between these. On the one hand, some writers follow the tradition of political theology from Carl Schmitt (more on this below) and seek to expose the implied theological dimensions of the liberal tradition, in both its institutional and intellectual forms. The intension is to subvert the liberal presumption that political rule can ever be completely secular and theologically neutral. On the other hand, a number of thinkers take aim at the theological dimensions of modern economic theory and the reduction of politics to economy in neoliberal societies.

All of these endeavours covered by the umbrella term ‘political theology’ are relevant to this dissertation. In this dissertation I offer no descriptive or normative account of modernity, no direct criticism of the classical secularisation thesis, no substantive theological vision for political or social change, and no specific analysis of the implicit theological assumptions of contemporary institutions. As I emphasised above, although I deal with a very broad set of thinkers and issues in the dissertation, I limit my aim to diagnosing a common dialectic and a common narrative in certain post-Kantian thinkers to discover the point at which political theology arises as an issue. For this reason, my description of political theology as an investigation of judgement does not intentionally compete with any of the works referred to above. At the same time, my dissertation supplements these discussions precisely by investigating the relationship between one very prominent analysis of modernity and secular order and the political theologies that return in its wake.

University Press, 2005); John Milbank, Slavoj Žižek, and Creston Davis, Paul’s New Moment: Continental Philosophy and the Future of Christian Theology (Grand Rapids, MI: Brazos, 2010).


It should be clear that while I do explore a definition of political theology, this is not intended to be a comprehensive statement about the meaning or relevance of political theology today. In fact, some of the implicit interlocutors in this dissertation are to be found among theorists of political theology earlier in the twentieth century. This is not to admit the obsolescence of this dissertation or to reduce it to a study of intellectual history, but rather to venture that many of the problems formulated in various discussions about the theo-political today have been with us for quite some time. The more immediate contexts to which I refer are, on the one hand, the disputes about political theology in the Germany in the early and middle parts of the twentieth century, and French debates about the ‘permanence of the theologico-political’ in the latter half of the century.

The first significant moment in the German debate about political theology was Carl Schmitt’s publication of Political Theology, which I discuss in chapter 3 of this dissertation. Schmitt claimed that all ‘significant concepts of the modern theory of the state are secularised theological concepts’. For Schmitt, modern politics was structurally similar to theology since that which founds political order is both inside (immanent) and outside it (transcendent). Almost three decades later, Karl Löwith in some ways extended Schmitt’s argument when he published his Meaning in History, in which he argued that modern philosophies of history were secularised versions of Judeo-Christian eschatologies. By focusing on modern philosophies of history he challenged the notion of an autonomous secular order, not only by drawing attentions to the politics of historical periodisations, but also because the philosophy of history had, in great part, functioned as primary source of legitimacy for secular political and rational order. Whereas Schmitt argued that modern liberal political theory disavowed its theological roots to its peril, Löwith came to reject both the Christian linear view of time and its secular offspring. Schmitt and Löwith’s theories raised crucial questions about the legitimacy of modernity as a political, rational, and historical order. This was confirmed by Hans Blumenberg’s spirited reaction to their theories in his The Legitimacy of the Modern Age. According to Blumenberg, such theories consider secularisation as the illegitimate

27 PT. See the next section for more context on Schmitt.
28 PT, 28.
expropriation of some property or substance belonging to an earlier Christian tradition. He argued that Löwith’s genealogies were blown out of proportion, and claimed that the modern notion of history (as endless process) did not grow out of the Christian view of history. More importantly, however, he argued that modern reason can appropriate old conceptual structures despite their having belonged to a religious past. The central question in German political theology around the middle of the twentieth century is whether a secular rationality can appropriate institutions, concepts, and practices, without depending on theological justification. In this sense, the German debate about secularisation exhibits a concern with the procedural and juridical side of what I call the trial of reason: Blumenberg’s charge is that theological concepts and symbols can be expropriated from the Christian tradition without renouncing the autonomy of reason. Schmitt and Löwith raise the question on whether expropriation can take place without renouncing the secular rationality one is defending.

The French interest in political theology developed later than the German, and on quite different terms. With the demise of the Marxist Left, and in view of the totalitarianism of the Soviet regime, thinkers such as Cornelius Castoriadis, Claude Lefort and Marcel Gauchet sought for ways of escaping Marxism without espousing what they took to be an essentially ‘Christian’ liberalism. In this sense they continued to promote a tradition since the French Revolution which sought to think the institution of a radically new secular and political sphere. Thus, Castoriadis conceived of the institution of the society as the creation of a sphere of significations which organises the world in relatively stable terms. Whereas religious societies seek to deny the chaotic origins of this realm of meaning and signification, secularity is born when human beings realise that societies are self-creations and that human laws are self-legislations. Claude Lefort wrote the essay “The Permanence of the Theologico-Political?” partially as a response to


34 This project is continued even today, as seen in Pierre Rosanvallon, Le sacre du citoyen: histoire du suffrage universel en France (Paris: Gallimard, 2008).

Castoriadis. Lefort recognises that the theological continues to haunt the political, and shows how, through a discussion of Jules Michelet’s work on the French Revolution, every attempt to transfer symbolic ‘goods’ from a religious and absolutists past, ends up repeating the religious logic it sought to avoid. Similarly, the difficulty with positing a radical break with the theological and the groundless institution of a secular order is readily apparent in Marcel Gauchet’s *Le désenchantement du monde: une histoire politique de la religion*. Gauchet sought to overcome the unfortunate tendency on the part of religion to rebound after a secular revolution, characterising Christianity as a religion ‘that departs from religion’ by replacing the transcendence of God with the non-theological transcendence of the State. This is not, however, a reformist narrative, as the crucial point is that as Christianity gave birth to the secular, it stripped itself of all its power. Gauchet’s book illustrated the growing but ambivalent recognition in French thought of the permanence of the theo-political. Increasingly it is acknowledged that the institution of a radical new political order seems to repeat a number of theological relations: both the violent revolutionary act and the ‘transcendent’ secular State to which one must continually make one’s offerings, look suspiciously like the theological forms of heteronomy and sacrifice one seeks to avoid.

Schmitt is the only thinker mentioned above with whom I explicitly engage. It should be clear, however, that the German and French debates may be taken as two of the central impulses for this dissertation: in various ways, they gesture towards two ways of relating secularisation, legitimation of rational-political order and the question of political theology. The German debate resonates with a logic which might be traced back to the Reformation: secularisation is here a project of legitimising modern secular reason’s right to freely appropriate institutions, symbols, and religious practices inherited from the religious past. The French debate, for its part, is concerned with the revolutionary event: how to radically break with religion without

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37 Vries and Sullivan, 172–73.
39 Gauchet, iii.
40 Breckman points out that Gauchet is vulnerable to a Blumenbergian critique in ‘Democracy between Disenchantment and Political Theology: French Post-Marxism and the Return of Religion’, *New German Critique*, no. 94 (2005): 104.
repeating it in a different guise? In both contexts, political theologies loom on the horizon when these institutions of secular order fail. This dissertation contributes to the task of elucidating the difficult logics that are at stake in these debates by showing how secular order can only be instituted by enacting both at the same time, and how various political theologies arise when such attempts fail.

III. REVIEW BY CHAPTERS

Due to the very large volume of commentary on the thinkers I deal with in the dissertation, it is not possible to provide an overview of the current state of the scholarship and the discussions of the thinkers in questions. Still, in the following I will situate my own readings of these thinkers within some of the most relevant works and debates in the literature. It should be said that the original contribution of this dissertation is primarily the way in which I read these thinkers as contributors to a single problematic. I do not intend to contribute in any significant way to the ever-rising sea of historical commentary on them.

Chapter 1: Immanuel Kant

Interpretive scholarship on Kant has grown out of all proportion, making it difficult to see the forest for the trees. It is nonetheless possible to relate my reading of Kant to some discernible trajectories within the scholarship.

First, my reading of Kant is heavily inspired by a strand of scholarship that has traced the teleological dimensions of Kant’s early critical philosophy, which has too often been neglected. Richard Velkley has uncovered the important influence of Rousseau on the development of Kant’s philosophy. Rousseau led Kant to recognise the teleological structure of human reason: if reason is to be the highest authority and avoid being dependent on natural inclinations or religious authorities, it cannot simply be a lawgiver, but must determine its own goals and legislate in accordance with these goals. This has gradually been recognised among interpreters and especially invited new readings of the first Critique. The first Critique has tended to be

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read with an emphasis on how it establishes the transcendental conditions for truth and limits knowledge to empirical experience, while the Transcendental Dialectic has been read as an argument against every teleological projection.\footnote{One example is Strawson’s famous commentary on the first Critique: Peter Frederick Strawson, \textit{The Bounds of Sense: An Essay on Kant’s Critique of Pure Reason} (London: Routledge, 1995).} In contrast, these reinterpretations of the early Kant and the first \textit{Critique} allow one to see how the first \textit{Critique} was inspired by a teleological view of reason. Perhaps the most ambitious reinterpretation in this regard is that by Alfredo Ferrarin, who argues that Kant’s rewritings of the first \textit{Critique} gradually effaced its teleological character. Because of this, the teleological ideas of reason was given a primarily negative role, being taken as unfortunate illusions, and the task was handed over to the second \textit{Critique} to establish their legitimacy. Ferrarin argues that Kant already had a notion of rational faith in the first \textit{Critique}, and that the controversial ‘metaphysical’ arguments of the \textit{Groundwork of the Metaphysics of Morals} were unnecessary. Ferrarin’s argument shares a lot with so-called constructivists and Rawlsian readings of Kant, where the ideas of reason are necessary teleological orientations for reason’s work.\footnote{John Rawls, ‘Kantian Constructivism and Moral Theory’, \textit{Journal of Philosophy} 77, no. 9 (1980): 515–72; Onora O’Neill, \textit{Constructions of Reason: Explorations of Kant’s Practical Philosophy} (Cambridge: Cambridge University Press, 1989); Christine M. Korsgaard, \textit{Creating the Kingdom of Ends} (Cambridge: Cambridge University Press, 1996); Henry E. Allison, \textit{Idealism and Freedom: Essays on Kant’s Theoretical and Practical Philosophy} (Cambridge: Cambridge University Press, 1996); Christine M. Korsgaard and Onora O’Neill, \textit{The Sources of Normativity} (Cambridge, NY: Cambridge University Press, 1996).} My own reading of Kant does not seek to settle these interpretive debates, but grants that there are two clear tendencies in Kant’s works, essentially motivated by the same teleological structure of reason. Reason’s goal is to find satisfaction in a world ordered according to its own laws, which means that reason seeks to construct an autonomous world. This might lead in two directions: either, one stresses the regulative sense of this goal, which motivated constructivist readings of Kant which claim that he never sought to demonstrate the reality of autonomy, or one stresses that Kant must establish with certainty that reason is in fact autonomous and that its teleological goals are in some sense already real.\footnote{Established scholars have presented strong criticisms of the constructivist reading: Karl Ameriks, \textit{Kant and the Fate of Autonomy: Problems in the Appropriation of the Critical Philosophy} (Cambridge: Cambridge University Press, 2000); Paul Guyer, ‘Kant’s Theory of Freedom by Henry E. Allison’, \textit{The Journal of Philosophy} 89, no. 2 (1992): 99–110.}

Second, I take into account the political dimension of Kant’s philosophy. This does not simply mean that I attend to Kant’s immediate political contexts and the political controversies he was...
responding to. Nor does it mean that I am primarily concerned with Kant’s political writings. The point is rather to consider Kant’s philosophy as an attempt to legitimise reason as the foundation of thought and praxis in modernity. For this reason, my reading of the first Critique takes the political and legal metaphors very seriously. Kant’s critical project, also in its theoretical part, takes place in a courtroom, but seeks to build a city, inspired by Hobbes and Rousseau. Finally, my reading of Kant is inspired by Rebecca Comay’s brilliant reading of the German reaction to the French Revolution. I do not think reading Kant through the lens of the Revolution means that I flatten his ambiguous views on the Revolution and the trial of Louis XVI. Instead, as Comay argues, such a reading demonstrates how his reaction to these events revealed the central tensions of his own philosophy.

Chapter 2: F.W.J. Schelling

The history of commentary on Schelling is a bit more manageable. Schelling had long lived in the shadow of Hegel, but received some significant attention in the twentieth century, especially in connection with existentialist movements. Only in recent years has there been a growth of interest among Anglo-American commentators. Additionally, and more importantly for my chapter, there is a growing attention to Schelling as a political philosopher or political theologian. Some of these readings seek to recuperate Schelling and use him, for example, as a resource against liberalism, as a critic of the Hegelian destruction of Christianity, or as a defender of Hegelian-Lacanian materialism.

My own reading of Schelling should not be highly controversial, as it spells out a story about his political theology which has already been described in part, and draws upon some common criticisms of the philosophy of his middle period. I should say a word, however, about the exclusion of the later period of Schelling’s philosophy, especially since he continued to develop some of the theological insights I draw attention to in the chapter.


63 I am referring here to Zöller and his story of the development of Schelling’s political theology: Zöller, ‘Church and State: Schelling’s Political Philosophy of Religion’.

this leads to a political theology. Although I grant that Schelling made changes after the writings of the middle period, I think my main argument is substantiated in the literature: that Schelling’s development of a political theology begs some crucial questions about the mediation between his transcendent point of indifference and the world of political and rational judgements.

Chapter 3: Carl Schmitt

Even more than Schelling, Schmitt has received an explosion of interest in the past few decades.65 There are three important foci in my chapter: Schmitt’s relationship with the tradition of liberal formalism and the neo-Kantian tradition,66 his concept of the political,67 and his political theology.68 My attempt to read these foci together should not be very controversial,


and is often the practice in synoptic studies of his work. Nor is my criticism of Schmitt for holding the same formalistic view of rationality for which he criticises the liberal tradition, which was originally put forward by Leo Strauss. I should, say, however, that the place accorded to Schmitt in this dissertation might raise some questions about the relationship between Schmitt and the Kantian Enlightenment tradition. In my chapter on Schmitt, I note how his insistence on the political decision and his turn to political theology is a rejection of the formalistic path from Kantian philosophy. At the same time, this means that Schmitt paradoxically seeks to fulfils the Kantian project: Schmitt argues that one must make a revolutionary decision to establish autonomous order, a decision whose character is distinctively theological. There is an ambiguity here, however, because Schmitt rejects the Enlightenment project, and Kant with it, as a futile bourgeois attempt to ground politics in the values of society. However, as David William Bates has argued, Schmitt is continuing a project of bourgeois Enlightenment philosophy, which was to constitute an autonomous political space. So, while Schmitt rejects liberal formalism, he in some ways continues a bourgeois project. Finally, a word on the absence of Schmitt’s debate with Erik Peterson about political theology. The reason for this is that my reading of Schmitt is oriented ‘backwards’ towards the difficulties spelled out in chapter 1. It was, therefore, appropriate to focus on Schmitt and his response to Kelsen and liberal formalism, instead of the exchange with Peterson’s conservative Catholicism. A discussion of Peterson would naturally have given more space to Schmitt’s Political Theology II, as well as many deeper questions about specific analogies between politics and theology.

Chapter 4: Giorgio Agamben

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71 Bates, States of War.

Agamben is the most recent of my primary interlocutors in this dissertation, and is still publishing books today. A number of good commentaries have been written over the past decade, but many are characterised by an apologetic tone, which speaks of the relatively immature state of the scholarship. In the context of my dissertation, Agamben is the only figure who brings into view the question of biopolitics and neoliberalism. However, my criticism of Agamben to the effect that he cannot comprehend the specificity of political alienation, and that he has no real theory of political action, takes its inspiration from those who argue that he has thereby granted that the economy has destroyed the political. This argument


Italian political philosophers have dominated biopolitical theory. Most notably among these are Roberto Esposito, Bios: Biopolitics and Philosophy (Minneapolis: University of Minnesota Press, 2008); Roberto Esposito, Immunitas: The Protection and Negation of Life (Cambridge, MA: Polity Press, 2011); Roberto Esposito, Terms of the Political: Community, Immunity, Biopolitics (New York: Fordham University Press, 2013); Michael Hardt and Antonio Negri, Empire (Cambridge, MA: Harvard University Press, 2003); Paolo Virno and Michael Hardt, eds., Radical Thought in Italy: A Potential Politics, Nachdr., Theory out of Bounds 7 (Minneapolis, MN: University of Minnesota Press, 2010); Paolo Virno and Giuseppina Mecchia, When the Word Becomes Flesh: Language and Human Nature (South Pasadena, CA: Semiotext(e), 2015). For an overview of contemporary biopolitical theory, see Catherine Mills, Biopolitics (New York: Routledge, 2018); Mills; Sergei Prozorov and Simona Rentea, eds., The Routledge Handbook of Biopolitics (New York: Routledge, 2017); Virno and Hardt, Radical Thought in Italy.
has been made by Marxists, critical theorists, Foucauldians, and theologians. The common denominator among these criticisms is that Agamben’s form of passive politics is not political at all, and that it seems dangerously close to legitimising the current state of affairs. By including Agamben in this dissertation, I inevitably contextualise him in a tradition that stretches back to Kant’s analysis of modernity and the problem of judgement. My reading of Agamben contributes to the limited scholarship on his relationship to the Kantian and idealistic tradition in modern philosophy.

Chapter 5: G.W.F. Hegel

Recently, Hegel scholarship has undergone a renaissance. Beginning in the 1960’s in Germany with authors such as Klaus Hartmann and Dieter Henrich, and developed further in significant publications by Anglo-American commentators such as Terry Pinkard, Robert Pippin and Robert Brandom, these readings have variously interpreted Hegel in directions of epistemic formalism, Kantianism, or other kinds of anti-realism. It is readily evident that such readings


of Hegel were meant to recuperate his philosophy and defend it against analytic and positivist rejections of what seemed like wild speculative pretentions. In so doing, however, it might be argued that they have also rediscovered a part of what metaphysics originally meant for Hegel. For it is hard to argue that Hegel did not conceive himself to be part of the long metaphysical tradition, and that his philosophy is closer, in certain respects, to an older form of metaphysical reflection than the modern rationalist speculation about invisible substances.\(^{81}\) My own reading of Hegel does not depend on the specifics of this debate and the problem of the metaphysical is only dealt with implicitly. Instead, the important point of contention in Hegel scholarship relevant to my argument is the question of the importance of Christianity for Hegel’s philosophy. There are a number of theological interpretations of Hegel, spanning from more ‘orthodox’ readings,\(^{82}\) panentheistic or pantheistic readings,\(^{83}\) kenotic\(^ {84}\) and gnostic\(^ {85}\) interpretations, and atheistic readings.\(^ {86}\) What is crucial, however, is whether Hegel thought his own theology, heterodox or not, was a necessary moment of the realisation of his philosophy. I argue that Hegel’s philosophy shows how the attempt to overcome political alienation and establish a secular order depends on a successful secularisation of Christianity, and thereby follow a number of scholars who have argued that Hegel thought of his philosophy as the


\(^{83}\) Taylor, *Hegel and Modern Society*.


consummation of Christian experience. Interestingly, this reading is also confirmed by certain atheistic or liberal readings of Hegel. Objections tend to devalue both the historical importance of Christianity for Hegel, but also its political relevance. In short, most of the experts on Hegel’s philosophy of religion tend to accept the central place of religion for Hegel.

The very brief outline of the relevant context of this dissertation indicates its large scope. Although it might raise some questions about to which field this dissertation could contribute, I believe its scope is limited by its neither being primarily a historical study of a certain philosophical tradition, nor a radically new proposal. Instead, it is best read as a reflection of some key philosophical and theological dilemmas which can legitimately be traced across philosophers and theologians. The intended audience of this dissertation is, therefore, those with an interest in the relationship between political theology and the philosophical legitimation of modernity—secular or Christian.

Chapter 1

The Trial of Reason in Kant’s Critical Philosophy

Introduction

On the 7th November 1792, Jean-Baptiste Mahle stood in front of the National Convention, reporting on the legal issues in one of the strangest trials in history:

Louis XVI has been charged with crimes committed while he reigned under the Constitution: shall he be subject to judgment for them? By whom should he be judged? Shall he be brought before an ordinary tribunal, like any other citizen accused of treason?¹

The Committee on Legislation, on which Mahle sat, had been given no easy task: to figure out whether and how the king of France could be charged and judged for treason during his reign. The legal complexities involved in judging a king were only increased by the fact that the National Assembly had declared France a republic, and that at this point the prosecuted went under the name of Citizen Louis Capet.

There is no doubt that the status of Louis XVI was radically changed as a result of the constitution of 1791 and before that the events of 1789. There is equally no doubt that it was too easy to claim that a mere citizen was on trial. The public perception of Louis, the presence of powers wanting to bring back the Ancien Régime, as well as the agonising process of working out the juridical rationality of the trial, all made it clear that the trial was necessary to decide the status of Louis and to settle accounts with the old regime once and for all.

The trial of Louis XVI is one of those dense events that give the French Revolution its paradigmatic value while considering the transition to the modern world and thought. It has imprinted itself in the French and German imaginations and is perhaps the most important event for discussing the modern transition to a new form of political life.² Setting aside its many

¹ Michael Walzer, Regicide and Revolution; Speeches at the Trial of Louis XVI (London: Cambridge University Press, 1974), 93.
historical complexities and uncertainties, the trial of the king has paradigmatic value because in it many important questions of principle arise.

In a seminal article, the political historian Michael Walzer considered the political and legal ramifications of the trial. If what was needed was to impeach and remove Louis XVI, Walzer argues, then presumably one would not need a trial since the new constitution provided the means of removing the head of State if he waged war against the nation. If the king should be found to do so, he could be ‘held’ to have abdicated, but not tried for the crimes committed before he lost his royalty. In other words, not even within the new constitution could one imagine how the king could, before or after the loss of his royalty, be put on trial and executed for his actions as king. A greater complicating factor, however, was that of his public persona, his history and the perception of his allies who were eager to see him return to his former sovereignty, which meant that ‘the members of the convention could hardly disregard his kingship when they debated what was to be done with him’.

The fact of the matter, whether a formal-juridical reality or not, was that they were dealing with the trial of a king. Louis was charged with the crime of having been king, and as such, for being a traitor. Such a charge was paradoxical at best since traditionally one understood treason to mean committing a crime against the king. Critics insisted that there was no legal basis for a trial, and in one sense, Walzer agrees. To the extent that the king was on trial for being a king, monarchy as such was on trial, and the sovereign was being judged according to a law of dubious authority. However, if Louis was on trial for being a king, a rational juridical procedure seemed out of the question. How is it possible to execute the sovereign according to law, when it is the sovereign who founds the law and grants it its authority? It was clear that the difficulty of the trial went beyond legal procedure because the very foundation of political order was at stake.

The notion of charging a king with treason would have been almost unimaginable only years before. The trial went ahead nonetheless, and, in effect, the Convention brought ‘the king simultaneously to impeachment and trial by the Convention (as if he had not yet been

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3 Walzer, *Regicide and Revolution*; *Speeches at the Trial of Louis XVI*, 185.
5 Walzer, *Regicide and Revolution*; *Speeches at the Trial of Louis XVI*, 42–43.
The impossibility of establishing a juridical rationality for the trial makes Walzer conclude that the trial and execution was a political act in the sense that the king and his judges enacted, using the rituals of law, the transition from the monarchy to the republic. That the king was no longer inviolable was demonstrated by the trial itself; that he was a citizen was attested by his judges, citizens themselves, representatives of the people, and now his peers; that he was borne by the law like any other citizen was proven by the examination, the verdict and the sentence.

Walzer’s claim highlights the spectacular and dramatic character of the trial and execution. The juridical impossibility of what was taking place was powerfully mitigated by the theatrical, even liturgical, drama that was played out.

Walzer’s insistence on the appropriateness of the trial raises some deeper philosophical questions. Beyond the decision between ‘real’ alternatives, which might insinuate a pragmatic politics of force which is free to dispense with the question of the good, is the question of whether there are any possible alternatives for a rational transition from monarchy to republic, from an absolutist regime founded on the divine right of the king to the self-rule of an emancipated people. A merely pragmatic justification of the trial demands an exploration of the rational possibility of establishing a secular republic, and, furthermore, whether a regicide is the very condition for such an order. Is there in principle a possible transition that is lawful and, therefore, not violent or sacrificial? Perhaps Maximilien Robespierre rightly described the only viable alternative when he said in his speech on December 3rd that the

[t]rial of a tyrant is the insurrection; his sentence is the end of his power; his punishment, whatever the liberty of the people demands. A people does not judge as does a court of law. It does not hand down sentences, it hurls down thunderbolts; it does not condemn kings, it plunges them into the abyss; such justice is as compelling as the justice of courts.

For Robespierre, the republic is not founded on the legal procedure of the courtroom, but on the inherent justice of a people demanding its emancipation. The guillotine is just another ‘thunderbolt’ overthrowing the rule of Louis XVI.

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6 Walzer, ‘The King’s Trial and the Political Culture of the French Revolution’, 186.
7 Walzer, 188.
8 Walzer, Regicide and Revolution; Speeches at the Trial of Louis XVI, 133.
Walzer’s reading of the trial of the king as an enacted transition presses the problem we have in mind: Is the transition from monarchy and heteronomy to a republic of autonomous citizens based on a lawful procedure, or must the new order be erected on the basis of a dramatic sacrifice? This is the problem impressed on us by the courtroom and the guillotine.

In this chapter, I will present a reading of Kant’s philosophy in light of these issues raised by the trial of Louis XVI. Kant supported the republican vision of the French Revolution but was uncertain about the usurpation of power, the Terror, and the trial. The Revolution and the trial of the king are paradigmatic events through which we can read Kant’s philosophy. In so doing, we will see that Kant is unable to establish the rule of reason without facing the same aporias as did the revolutionaries. At the end of the chapter, we will see that Kant’s philosophy suffers two fates: either it must ‘enact’ a revolution by flouting legal procedure, or the verdict of the trial must be endlessly deferred.

**Part one**

*Kant on the Revolution*

_I. REVOLUTION AND SACRIFICE_

In this section, I will briefly consider Kant’s response to the French Revolution. We will see that while he was positive towards the republican vision championed by the revolutionaries, he could not find a justification for the trial and execution of Louis XVI. This suggests that the trial of Louis XVI reveals the limit of Kant’s own philosophy: the trial is necessary to establish a new order based on the ideal of autonomy, yet there seems no way of founding this order without committing a sacrificial and violent act.

Kant did not write much on politics until after the most crucial years of the Revolution. Only then was his republican ideal of reason expressed in political theory.\(^9\) Kant’s stance on the Revolution was always ambiguous and has been the object of dispute among interpreters.\(^{10}\) It is clear that his philosophical trajectory took a decisive turn when he discovered Jean-Jacques Rousseau’s political vision of self-legislation, which undergirded his positive views towards


the Revolution. Kant’s philosophy became a philosophy of freedom when he began to see, with Rousseau, that order originates neither with the dictates of a heteronomous power, nor with the arbitrary givens of human passions and impulses. Instead, Kant shaped his conception of reason on the image of a society of equal citizens and the idea of a government founded on a social contract. Reason should only subject itself to laws that were legislated and enforced in accordance with reason’s own plan.

Kant was, therefore, essentially in agreement with the revolutionary project, yet he continued to display an ambivalent attitude towards the Revolution. This was especially true with regards to the trial of Louis XVI. In a long footnote on the Revolution in On the Common Saying: That May be Correct in Theory, but it is Of No Use in Practice, Kant asserts that the execution of a king ‘strikes horror in a soul filled with the idea of human rights’. It is a horrible sight, and ‘a crime that remains forever and can never be expiated (crimen immortale, inexpiable)’, the unforgivable sin of the civil union. This dreadful event and the feeling of disgust it stirs in Kant’s heart demands an explanation: How can the criminal minds of the revolutionaries—indeed, any mind—commit such an act?

The horrible nature of this execution reveals a particularly disturbing relation in the mind of the criminal. Unless this execution happened from a ‘sensible impulse’, the criminal must have acted on a maxim—a subjective, practical principle that contains a ‘general determination of the will’ according to the second Critique—which can be unlawful in two ways: if the maxim acted upon is taken as a contingent exception to a moral law, the act is certainly wicked, although the constitution of law is still upheld (since the act is recognised as an exception to law). This is equivalent of stealing a cookie from the cookie jar, knowing you are not supposed to. The execution of Louis XVI, however, stirs a far greater disgust because it was an attack on a law whose maxim was the denial of law—it was an act of wilful disregard for the moral law. The suspension of law is the irrational event par excellence. It is like ‘a chasm that irretrievably swallows everything’.

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11 Velkley, Freedom and the End of Reason.
15 KpV, 5:19 / 156.
Kant wrote his final word on the subject of the Revolution in *The Conflict of the Faculties* of 1789. In this essay, he continued to express an ambivalent attitude towards the revolutionary project. He stated that the Revolution might be of such a nature that to ‘a right-thinking human being, it would be, in hindsight, unthinkable to go through the same process again’.17 Yet, precisely because the Revolution had happened, it filled its ‘spectators’ with a ‘wishful participation’ due to a ‘moral predisposition’ of the human race which saw the goodness inherent in the republican constitution. It is as if the Revolution represented a violent break which could not be morally justified by its actors but which nonetheless resulted in a more rational and good constitution, and thus created an ambiguous feeling in the spectator who could applaud the result without wanting to suffer the moral irrationality of the transition itself.

This take on the Revolution gestures at a providential and sacrificial logic to which we will return in the final part of this chapter.18 The contrast between the violence on the part of the revolutionaries and the positive effects of the Revolution on the country and the world, hints at a vision of a city which cannot be instituted without the spilling of blood. Kant states the problem succinctly in *Religion within the Boundaries of mere Reason*:

The sublime, never fully attainable idea of an ethical community is greatly scaled down under human hands, namely to an institution which, at best capable of representing with purity only the form of such a community, with respect to the means for establishing a whole of this kind is greatly restricted under the conditions of sensuous human nature. But how could one expect to construct something completely straight from such crooked wood?19

How is the ethical community to be realised? By forcing the crooked wood into its right shape or by patiently waiting for coming kingdom? Historically and politically Kant chooses a more conservative route and refers to the workings of providence; philosophically the problem is the following: How can we enact a Revolution and establish the ethical community and rational rule without using force in the process, so as to make the crooked wood straight? If this is impossible, and we are asked to submit to the law while we await the ethical community, how much suffering and injustice can we accept in the interim, before we begin to suspect that the community will never arrive? This is not merely a political problem, but can be traced back to the foundations of Kant’s philosophy.

17 *Streit*, 7:85 / 302.
Although Kant denounces the execution of Louis XVI, his earlier flirtation with the Revolution and the admiration from afar in *The Conflict of the Faculties* suggests that this trial is so disturbing because it is a trial Kant must, but cannot think. It presents a conflict internal to reason on the plane of historical appearance because it raises the question of how to justify the authority of the secular order when past authority has crumbled, and how to do so without asking its citizens once again to subject themselves, without again demanding a sacrifice. In the rest of this chapter, we will see how these conflicts appear within Kant’s own philosophy.

**Part two**

*The Trial of Reason*

**I. BEGINNING AT THE BATTLEFIELD**

In the following, we will see how Kant’s philosophy stages a ‘trial of reason’ with striking similarities to the trial of Louis XVI. According to Kant, this trial takes place in a condition much like that of the French Revolution. In this section, we will begin unpacking the origin and motivation for Kant’s philosophical trial, before we move on to its goals and method. We will see how Kant initiates the trial of reason in reaction to a condition of anarchy and despotism, so as to bring about a much-needed order and autonomy within the domain of human rationality.

In the preface to the A edition of the *Critique of Pure Reason*, Kant describes the condition within which his critical philosophy beings as a battlefield.20 This metaphorical battlefield is filled with violent, anarchic, and despotic forces. Although the first *Critique* is a work about the powers and rights of human reason, the preface is ripe with political metaphors. The history of philosophy and the contemporary state of philosophical reflection are characterised by disorder and unlawful and violent actions. Reason’s desire is the source of this state of disorder.

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20 *KrV*, A vi. A word ought to be given on the selection of material. I have chosen to emphasize the period around the time Kant wrote the first *Critique*, although I do occasionally refer to later writings. The absence of the *Critique of the Power of Judgement* is, I am sure, a noticeable absence—especially in a thesis focusing on the notion of judgement. To this two responses can be given: First, concerning Kant’s philosophy, I am interested in the metaphor of the trial and of the formation of a political community, which is most explicit in the first *Critique*. By the time of the third *Critique*, Kant has made subtle changes to his system that partially veil the teleological dimension to even his theoretical philosophy, as argued in Ferrarin, *The Powers of Pure Reason*. Second, in the larger context of this thesis I have had to leave out all considerations of aesthetics. I do not dispute that debates about judgement—also as a political problem, think only of Schiller!—often took place from the perspective of the aesthetic. This is a loss, but some judgement always has to be made about what or who to exclude.
Human reason is propelled by a desire for cognition and is ‘burdened with questions it cannot dismiss’.\textsuperscript{21} This desire, which grounds what one could call the ‘conative’ character of reason and whose importance for Kant’s philosophy is often missed, is given to reason by its very nature, yet demands more than reason could ever satisfy.\textsuperscript{22} Reason desires to know; to lay claim to everything it comes to know by means of its conceptual and systematising activity. When demand is not satisfied due to reason’s limitations, the powers of desire move reason into conflict with itself and others.

The instigation of conflict on this imagined battlefield is described as a fall into ‘obscurity and contradictions’.\textsuperscript{23} Contradiction (contra-diction) is the result of the incompatibility of claims. This happens when one person makes a claim to the same thing as another. The truth or property in question cannot, therefore, be universally available, because the claimant will take hold of it without remainder. Universal availability is tantamount to visibility; only that which can be equally shared, used or inspected is perceptible. It follows that contradiction gives rise to obscurity, because the claims of the contradiction are by definition ruled out by each other and thereby made private and invisible. In this sense, the metaphorical battlefield is a sort of state of nature where everything is up for grabs, and there are no laws or rules which prescribe what belongs to whom.\textsuperscript{24}

As the preface goes on, Kant claims that this battlefield is the realm of metaphysical speculation. Then, however, he conflates his metaphors and begins to describe metaphysics as a queen. The queen of metaphysics is also a battlefield because her rule comes in two forms, one as bad as, and ultimately the same as, the other. When the metaphysical dogmatists were in control, her rule was despotic; under the rule of the sceptics, anarchy reigned.\textsuperscript{25} Dogmatism is inspired by the progress of the mathematical sciences and seeks to erect rule and incontrovertible knowledge on the basis of unshakeable foundations and transparent method. But these foundations are sure to be arbitrary assumptions, mere positing of power that takes what is really a flight in mid-air for a firm and grounded position.\textsuperscript{26} In the course of the battle, the sceptics overthrew the fortresses of the dogmatists but supplied no positive alternative—

\textsuperscript{21} KrV, A vi.
\textsuperscript{23} KrV, A iii.
\textsuperscript{25} KrV, A ix.
\textsuperscript{26} KrV, A ix.
they simply replaced despotic law with lawlessness. This is incidentally the final consequence of dogmatism, as it has no prior law according to which its positing is granted legitimacy.

In light of this sad state of affairs, Kant admits that it is easy to become indifferent to the claims and speculations of reason. Genuine indifferentism is nonetheless impossible, because reason’s desire can only be suppressed for a time, until it becomes apparent that the indifferentists ‘unavoidably fall back into metaphysical assertions’. Yet indifferentism is helpful in one regard. The indifferentist has realised the vanity of those who seek to immediately satisfy reason’s desire for knowledge.

The battlefield of metaphysics represents the failure of previous philosophers and theologians to order reason’s infinite desire for knowledge. When it is allowed to run free, reason’s desire will impel us to make all sorts of unjustified claims which come into contradiction with the speculations and claims of others. As we will see in the next section, Kant, therefore, needs to show how reason’s desire can be limited and ordered by laws. At the same time, he must avoid the mistake of the dogmatists who erect arbitrary rational constructions and subject reason to despotic laws.

II. THE TWO GOALS OF THE TRIAL

Kant’s critical project begins with this moment of resignation and revulsion, and it is up to him to find a way out of the battlefield, without positing another set of despotic laws. Kant’s solution, to which we now turn, is to

institute a court of justice, by which reason may secure its rightful claims while dismissing all its groundless pretentions, and this not by mere decrees but according to its own eternal and unchangeable laws; and this court is none other than the critique of pure reason itself.

This is the Kantian courtroom in which the transition from despotic to lawful rule is to be negotiated. The critique of pure reason seeks to establish the extent of reason’s rightful claims while avoiding groundless pretentions and overreaches due to its insatiable desire. It might seem that the trial of reason is instituted to prevent conflict in general. It seeks to take us from

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27 KrV, A x.
28 KrV, A ix.
29 KrV, A xi.
the present state of affairs—a battlefield—into an ordered realm of unchangeable laws. However, as we will see, this is only one side of the trial of reason.

At this point it is important to note that Kant’s description of the trial looks very much like the institution of a city. The trial succeeds if it is able to transition from a battlefield as a kind of political state of nature, to the ordered realm of a rational city. Thus, Kant notes two goals of the trial of reason, which are essentially two aspects of an autonomous city with universal laws.

We just noted that the trial must prevent the obscurity and contradictions on the battlefield of metaphysics. This goal of the trial corresponds in political terms to the Hobbesian vision of human order, in which the function of the laws of the city is to prevent conflict and ground universal rights of property. Thomas Hobbes rejected the classical tradition which established the order of the city on the basis of some objective good and instituted a politics of negation which organizes space by limitation. Order is created out of nothing so as to allow for a free space of action and for an equal right of property among all its citizens. Following Hobbes, then, Kant believes that laws must specify universal principles that apply to every citizen and prevent conflict. These laws present conflict by defining property rights which specify under what conditions something may be claimed. This enables the satisfaction of the desires of individuals in a way that is guaranteed to be free from conflict with others. Kant brings this political metaphor directly into his description of the trial of reason so as to order all claims to knowledge.

Whether one is speaking of political or rational laws, this form of order looks very much like the absolutist systems that the Revolution and Kant’s critical project are working against. On this basis alone, it looks like reason is restrained by laws foreign to itself, and thus subject to a despotic regime. That is why Kant specifies a second goal of the trial of reason. A critique of pure reason cannot simply uncover the laws that restrain and orders reason’s activity. Lest these

31 Zöller, “‘The Platonic Republic.’” The Beginnings of Kant’s Juridico-Political Philosophy in the Critique of Pure Reason”, 19.
34 KrV, A xi; KrV, A 752 / B 780.
laws should appear to be arbitrary restraints, one must explain how they actually steer reason towards a satisfaction of its desire, and, thus, how they guide reason towards its teleological realisation. In terms of political vision, we see here the influence of Jean-Jacques Rousseau.\textsuperscript{35} The Rousseauian influence on Kant is evident in his insistence that reason’s laws and reason’s goals cannot be arbitrary limits on its activity, but the expressions of its essence and the realisation of its inherent \textit{telos}. Reason’s laws must regulate its activity, yet also be the very satisfaction of its desire. Here the classical tradition is revived so as to provide a positive and substantial good for the rational order.\textsuperscript{36} Without this, the laws discovered in the trial of reason will enable another form of heteronomy. In contrast, if one is able to show that reason only subjects itself to laws that help realise its own teleological destiny, reason may recognise these laws as its own. In this way, reason becomes \textit{autonomous}.

To summarise: should Kant’s trial succeed, it (1) needs to institute a lawful realm that coheres with the formal requirement of universality, which ensures the equal right of all citizens to make claims to property (knowledge) by avoiding contradiction and (2) which shows how this realm satisfies reason’s desire and brings it into harmony with itself.\textsuperscript{37} The final end towards which reason is striving is the construction of a realm ordered by universal laws and united in a systematic and consistent unity according to a goal projected by reason itself.

We can see how these two aspects of the trial of reason are meant to take reason from a condition in which it oscillates between anarchy and despotism, to an ordered city based on the ideal of autonomy. To fail in either aspect is to regress to one of the conditions of the battlefield. If the trial of reason only succeeds in establishing universal laws, these laws may seem to be enforced by a despotic ruler. Similarly, if the criterion of lawfulness is flouted at any part of the trial, it might seem that one has risked an unlawful or anarchic move to satisfy reason’s desire.

The burden of Kant’s trial of reason is, in sum, to make the transition from a state of metaphysical lawlessness, to a state of lawfulness and the possibility of reason’s satisfaction in a peaceful and well-ordered city. The difficulty of this task is to manage the transition without

\textsuperscript{35} Velkley, \textit{Freedom and the End of Reason}, 17-43.
\textsuperscript{37} These requirements correspond more or less to what Paul Guyer calls ‘systematicity’ and ‘completeness’. Systematicity concerns the unity and ordering of ‘representations’ rather than objects themselves, whereas completeness suggests some kind of unconditioned unity of whole of a set of objects of knowledge. These together, argues Guyer, are supposed to make up the unity of reason in Kant’s critical philosophy before the third \textit{Critique}. See Guyer, ‘The Unity of Reason: Pure Reason as Practical Reason in Kant’s Early Conception of the Transcendental Dialectic’, 140.
effecting a mistrial. This would happen if one did not follow rational procedure at every step of the way, and would entail that the newly established city was yet another positing by an unlawful force. When reason is to hold its own trial, the paradox of sovereignty—that reason is at once above and subject to its own laws—is close at hand.38

In the following section, we will see how Kant begins the trial by seeking to satisfy the first of his two criteria, that of universal lawfulness. We will do so by looking at the transcendental analytic of the first Critique, in which he seeks to uncover the universal laws that ground and limit reason’s claims to knowledge. As we will see in the subsequent sections, however, Kant must also demonstrate that these laws are realisations of reason’s own ends.

III. THE DEDUCTION OF LAW AND THE INSTITUTION OF PROPERTY RIGHTS

In the transcendental deduction of the first Critique, Kant takes reason to court. Kant explicitly frames the deduction, which we will explore in this section, as a court case about a legal dispute. In this part of the Critique, the legal metaphors are very explicit and guide the shape of Kant’s argument. The deduction begins after the Transcendental Aesthetic, which establishes that we receive indeterminate intuition from without, but that these intuitions are always situated within the transcendental conditions of space and time.39 I will not discuss the Aesthetic here, but it should be noted that from the perspective of the deduction, the Aesthetic has set up a context in which we receive ‘matter’ from without on which we may lay our claim and turn into property (knowledge) by subsuming it under concepts. However, in order to avoid the lawlessness described above, Kant must establish the laws according to which such claims can be made. This is the task of the deduction.

Kant begins by distinguishing between quid facti and quid juris. In a property dispute these terms are used to distinguish between the claims that have been actually made to a certain property and the right to make those claims.40 The question is whether reason has the right to the property (knowledge) it claims to have. The legal deduction moves from quid facti to quid juris by ‘deducing’ the laws which would demonstrate reason’s rightful claim.

Once again, it is important for us to see how Kant’s metaphors interlock. Through this legal deduction, Kant not only seeks to show that reason has rightful claims to knowledge given a

39 KrV, A 19-49 / B 33-73
40 KrV, A 84-86 / B 116-18.
pre-existing legal constitution. Instead, he is actually trying to discover a wholly new legal framework in and through this deduction. Thus, through a legal deduction, Kant helps us to see which kind of laws reason would need to be subject to in order to make rightful claims to property. Through this trial we are gradually discovering the constitutional laws of a city in which property and peaceful activity would be possible.

In the deduction, Kant seeks to establish our right to an a priori knowledge. This is something we can know without reference to any specific empirical condition. Within the metaphor of the trial, these a priori cognitions represent the act of laying claim to property as such. To prove our right to a priori cognition is then simply to prove that we have the right to make property claims, and that the laws (or ‘pure concepts’) relevant to such pure claims to property are, therefore, relevant to all specific, empirical claims. Thus, when reason goes to trial to prove its right or legal entitlement to the pure concepts (i.e., laws or rules) of the understanding, a successful deduction will show reason’s entitlement to these concepts. But being entitled to these concepts simply means that they are some of the necessary laws of the just city, that is, the city whose laws prevent contradiction and secure property rights.

According to Kant, the categories—another term for the pure concepts of the understanding—are right insofar as they satisfy the criteria of universality and necessity. These two criteria are the distinguishing marks of a priori cognitions. A concept can be a right law in the city or a priori if it provides the possibility of claims that are at once universally true and necessary independently of experiential context. This juridico-political metaphor corresponds to Kant’s claim that a concept is a priori if it is ‘possible through it alone to cognise something as an object’. The argument, then, is that given the fact that reason has made objective claims, the concepts established by the transcendental deduction are the ‘laws’ according to which such a claim would be possible.

In the introduction to the B edition of the first Critique, Kant specifies universality and necessity as the distinguishing marks of rightful metaphysical concepts. For there is an infinity of other cognitions that are relatively universal in scope, namely empirical ones. Such cognitions are nonetheless not a priori, as their universality is limited. The specific nature of this limitation is of high importance, for there are universal empirical claims that are indeed universally true, but

41 KrV, B 3-4.
42 KrV, B 3-4.
43 KrV, A 92 / B 125.
44 KrV, B 3-6.
not necessarily so. What distinguishes a priori cognitions from empirical claims is that the latter, being based on inductive investigation, could one day be contradicted.\textsuperscript{45} That is why empirical concepts cannot be legislated as necessary parts of any rational order.

A transcendental deduction seeks to establish reason’s entitlement to using the pure concepts of the understanding, which are the forms or laws of a priori claims and cognitions. Once one has deduced that reason’s laws are right, a city inhabited by rational agents striving to satisfy reason’s desire for knowledge without contradiction and conflict seems to be possible. This is a city where every empirical claim is made within and based upon the universality of the pure concepts of the understanding. As Velkley notes:

The “deduction” of the valid use of the pure concepts is the principal part of the “propaedeutic” that will ground a new culture in which human reason will truly satisfy that striving, nondialectically.\textsuperscript{46}

Kant famously distinguished between two deductions and significantly rewrote the section on the deduction in the second edition of the first Critique. We are not concerned with the details of these deductions except to note the general structure of the argument. So far in this section we have described the so-called ‘objective deduction’, which, according to the A preface, ‘belong essentially’ to the ends of the critique.\textsuperscript{47} We have seen that proceeds by making the claim that experience or knowledge, as the judgement which unites sensible intuition and concept, would not be possible without the pure concepts of the understanding.

The objective deduction installs property rights and outlines the fundamental structure for a lawful city. It does not, however, prove that the ‘matter’ or intuition is of such a character that it could ever be suitable to be claimed as a property, i.e., that it can become the matter of objective knowledge. It might be that all the appearances in sensibility (intuitions in space and time) are such that no categories or concepts could ever apply to them. Kant’s reply is the ‘subjective’ deduction, which is meant to prove that everything presented to us could become an object for us. The subjective deduction demonstrates a ‘relation between understanding and sensibility’ such that one could not have intuition that could not be cognised with the categories, nor that one could have categories with no relation to intuition.\textsuperscript{48} The subjective deduction is

\textsuperscript{45} KrV, A 137 / B 3-4.
\textsuperscript{46} Velkley, Freedom and the End of Reason, 24.
\textsuperscript{47} KrV, A xvi.
\textsuperscript{48} KrV, A 97.
achieved, briefly, by showing the interdependence between the unity of apperception and the unity of representations. The unity of apperception unifies sensible intuition temporally and across its range of individual ‘looks’, and further makes every it ‘mine’. Kant argues that appearances can only first appear to us because they are already subject to the process which unifies our subjective experiences. The upshot of his argument is that the self-consciousness which make all of experience ‘mine’ is impossible without the consciousness of objects and vice-versa. In the words of Eckart Förster, the ‘thought of something that is distinct from myself and in which different representations are unified is the thought of an object’. The subjective deduction establishes that the categories are never idle laws because there is no such thing as experience that is not also objective experience; these categories are the necessary condition for every real knowledge claim there could possibly be—there is no space where property could be acquired outside this polis governed by the laws of the understanding.

In this section, we have thus seen the first step of the trial of reason. The transcendental deduction is meant to take reason from a state of lawlessness and disorder, to a state of order in which knowledge claims are made in accordance with universal rules or laws. In this way reason has made the first step out of the battlefield, and distinguished itself from the anarchists and sceptics whose only interest is in tearing down every rightful claim. However, for the trial to succeed, Kant must go beyond this, as he has yet to show how these laws can be considered as legislated by reason itself, and as realisations of reason’s goals.

**IV. THE IDEA OF A UNIFIED ORDER**

The Transcendental Aesthetic and the Transcendental Analytic are meant to establish the first, and most important part of the critique. The deductions of the Analytic uncovered the laws that regulate the right to property (or knowledge) within the city. However, this is only part of the step. For to maintain order in the city, laws must be applied and property claims made in an orderly fashion. In the following we will see how Kant deals with this problematic.

At the beginning of the Transcendental Dialectic, Kant draws attention to a problem. Although he has shown how one may deduce the universal laws according to which one might make an objective claim, he has not offered an account of how these laws are to be applied or to what end. All we know is that any knowledge claim must accord with these laws. However, if the categories of the understanding are the only right laws of the city, it is still possible to make an

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infinite number of contrary claims about objects. Furthermore, we are left with a tremendous amount of empirical concepts, and an equally large amount of cognitions and claims that in no way need to cohere or relate to each other. The problem is that the understanding itself needs some guidance: it orders the world by subsuming it to its categories and concepts, but this activity must be guided by some higher order plan. In short, it seems that Kant must show how the laws of the understanding may function as parts of a higher plan to order the world into a unified whole. Thus, Kant notes that it is ‘an ancient wish’

that in place of the endless manifold of civil laws, their principles may be sought out; for in this alone can consist the secret, as one says, of simplifying legislation.

Kant thinks that the understanding, as that faculty which legislates laws and makes objective claims according to these laws, must be guided by higher order principles. These are the principles of reason, which are meant to guide understanding so as to maintain a unified and systematic order. The order represented by these principles, however, is not simply one of strict boundaries, but rather a projection of the maximal satisfaction of reason’s desire. It is, in short, the plan of a city in which one can lay claim to everything one longs for without preventing others from doing the same. It is easy to miss the importance of these principles, for most of the Transcendental Dialectic is about the dangers associated with them. However, as we will see, these principles are essential for the trial of reason, not only because they are meant to help reason to order the world in a consistent and systematic manner, but also because they are Kant’s solution to the second goal of the trial, namely that of proving that reason only subjects itself to laws conducive to its own realisation.

Before we attend to the positive role of these principles, however, we must attend to their negative role. The Dialectic is a ‘logic of illusion’, more specifically ‘transcendental illusions’. We have already seen that Kant described this tendency to illusion and contradiction in the A preface, where he says that reason

falls into this perplexity through no fault of its own. It begins from principles whose use is unavoidable in the course of experience and at the same time warranted by it. With these principles it rises (as its nature also requires) ever higher, to more remote conditions. But since it becomes aware in this way that its business must always remain

51 KrV, A 301 / B 358.
52 KrV, A 293-5 / B 349-52.
incomplete because the questions never cease, reason sees itself necessitated to take refuge in principles that overstep all possible use in experience, and yet seem so unsuspicious that even ordinary common sense agrees with them.\textsuperscript{53}

The logic of illusion is intended to explain exactly this condition with which the critique started. In this sense, the Transcendental Dialectic, is one of the most important parts of the first \textit{Critique}. Here Kant seeks to explain how reason, due to its incessant thirst for wholeness and need to judge, is tempted to overstep the bounds of possible experience and the laws we have now established. Because these principles of reason represent everything reason longs for, it is not surprising that attempts have been made to immediately arrive at the condition represented by them.

We shall not delve deep into the Dialectic except to note the procedure of Kant’s critique: reason’s desire is expressed as a need or ‘demand’ to judge and thereby ‘to bring the understanding into thoroughgoing connection with itself’.\textsuperscript{54} However, these principles are not to be used to make claims to what they represent, but serve only to organise and guide the judgements of the understanding towards the end they prescribe. For this reason, they can only be ‘subjective’ and never objective. This means that a principle of reason can never be used as a concept or rule in an objective claim, but can only guide the subjective procedure of making such claims. These principles are consequently transcendent ‘in respect of all appearances, i.e., no adequate empirical use can ever be made of that principle’.\textsuperscript{55} In terms of the metaphors of the civil laws of the city, the principles of reason are a form of plan, or a higher-order law which prescribes how the laws of the understanding should be employed. The principles are, therefore, called ideas and described as ‘maxims’, in order to draw attention to their regulative and practical character.\textsuperscript{56} The ideas of reason regulate the judging understanding in its use, because they are visions of the order which reason seeks.

Whereas the understanding unites subject and predicate in the judgement, reason works on the level of the syllogism, which creates connections and relations among concepts, and ultimately aims for the totality of conditions, or, in short, the unconditioned.\textsuperscript{57} The ideas are, therefore,

\begin{footnotes}
\item[53] \textit{KrV}, A vii-viii.
\item[54] \textit{KrV}, A 305 / B 362.
\item[55] \textit{KrV}, A 308 / B 365.
\item[56] \textit{KrV}, A 314 / B 371; \textit{KrV}, A 666 / B 694.
\item[57] \textit{KrV}, A 322 / B 379.
\end{footnotes}
projections of unity, representations of the unconditioned that guide understanding so as to guide reason’s striving

in order to prescribe the direction toward a certain unity of which the understanding has no concept, proceeding to comprehend all the actions of the understanding in respect of every object into an absolute whole.\textsuperscript{58}

However, when reason forgets that objective claims can only be made about things that can become objects of experience, and, therefore, have corresponding sensible intuition, the principles of reason are used to make objective claims beyond the limits of possible experience. Illusion thereby arises when reason hypostasises the unconditioned and thinks of it as an object. Traditional and dogmatic metaphysics has consistently fallen into these sorts of illusions and confused the principle of the unconditioned unity of consciousness with an objective unity (paralogism), the unconditioned unity of the series of conditions of appearance (antinomies), and the unconditional necessity of judgements with the necessity of things themselves (transcendental ideal).\textsuperscript{59}

Although the Transcendental Dialectic’s account of reason’s illusions is of momentous importance, it must not be overemphasised to the point of neglecting the positive contribution of reason’s principles.\textsuperscript{60} The projection of unity is a necessary feature of reason which it demands, and follows directly from its desire for knowledge.\textsuperscript{61} Reason must legislate according to these laws because it needs unity, and without them, the laws of the understanding look like arbitrary constraints on reason’s activity.\textsuperscript{62} We, therefore, ought to elucidate the connection between the ideas and the structure of the trial of reason. As we saw earlier, for the trial of reason to succeed, Kant must not only show how reason may subject itself to universal laws, but also how these laws are the realisation of its teleological goal. The ideas of reason are projections of this goal and thus projections of reason’s very essence. The argument is that if reason subjects itself to the laws deduced in the Transcendental Analytic, and judges with these laws in a way that accords with the ideas, reason can find true satisfaction. Gradually it will

\textsuperscript{58} KrV, A 326-7 / B 383.
\textsuperscript{59} KrV, A 334-5 / B 391-2; Förster, The Twenty-Five Years of Philosophy, 38.
\textsuperscript{60} Ferrarin, The Powers of Pure Reason, 16.
\textsuperscript{61} ‘The thought of the unconditional is not a mistake of speculative reason that we suddenly realize as we gasp in disbelief at the sight of the ruins of dogmatic metaphysics. Ideas are necessary concepts of reason. They are not arbitrarily invented’. Ferrarin, The Powers of Pure Reason, 17.
\textsuperscript{62} KrV, A 561 / B 699.
order the world (of knowledge) in a way that conforms with its highest good (the ideas). On this basis, we might be able to see why Kant thinks reason so often seeks to know these ideas in the same way it knows objects. To know the ideas would be for reason to be fully satisfied and free, it would mean reaching that telos for which reason is always striving.

In this section, then, we have seen how reason projects ideas which it needs to guide the judgements of the understanding, and which are realisations of its very essence. We are now, however, left with two questions. First, there is the question of how to avoid the constant tendency towards overreaching and to treating ideas as objects we can know. We will deal with this in the next section. Second, there is the more fundamental problem of how to establish the very legitimacy of these ideas. Kant claims that the ideas are the projections of the very essence of reason, and thus that if reason’s activity is regulated by these ideas, it is autonomous. But how do we know that the ideas are not mere illusions? We will return to this problem in the subsequent section.

V. DISCIPLINE

In the Doctrine of Method, Kant introduces the notion of a ‘discipline of reason’. The discipline of reason extends the scope of the Transcendental Dialectic by proposing a practice of limiting and eradicating the compulsion to make claims about matters beyond reason’s capacity which causes a ‘constant propensity to stray from certain rules’. As we will see in this section, Kant thinks that reason needs discipline, lest its desire will overstep the laws and boundaries of experience which it has set for itself.

Discipline is wholly negative and concerns the ordering of desire for the purpose of excluding strife and conflict. The Dialectic demonstrates that there can be no justified claims about the reality of the ideas of reason, but it does not show what is wrong with unjustified speculation about the matter. This clears a space for the battlefield of metaphysics on which actors fight in a polemical use of reason to defeat the opponent and achieve victory. The very moment reason has proved that the ideas are not contradictory as such, and are in fact necessary for the work of the understanding, these ideas constantly invite unjustified and contradictory claims as to whether or not they correspond to a reality. This polemic in the state of nature is not new to us, as it was announced already in the beginning of the first Critique, but the question Kant raises is: on what basis do we judge that the state of nature is not acceptable? This question would not

63 KrV, A 709 / B 737.
64 KrV, A 709 / B 737.
arise if Kant had already settled the dispute with reference to reason alone such that there is no possible polemical use of reason. So far, however, the laws of pure reason have just been shown to be subjectively necessary but objectively idle. If reason cannot decide on the issue in a procedural and lawful manner, why not allow for a polemical use?

Kant’s response is that the only ‘success’ in the polemical use of reason is ‘victory’, which is restricted to providing ‘an uncertain peace, arranged by an authority in the middle’, whereas in ‘in the state of law, it is the verdict, which, since it goes to the origin of the controversies themselves, must secure a perpetual peace’. The grounds for the transition from the state of nature to that of law are nowhere specified and hide behind the claim that the controversies of dogmatic reason ‘make it necessary to seek peace’. This necessity is explicitly Hobbesian:

just as Hobbes asserted, the state of nature is a state of injustice and violence, and one must necessarily leave it in order to submit himself to the lawful coercion which alone limits our freedom in such a way that it can be consistent with the freedom of everyone else and thereby with the common good.

Kant’s promise is freedom and peace in a city of ‘lawful coercion’. To enjoy these benefits, however, one must constrain oneself only to claiming ownership to that which accords with universal laws that regulate real property. However, it is only acceptable to submit to these laws if they help reason realise its highest good. For the freedom that Kant proposes here is not that of Hobbes, but one inspired by Rousseau, namely a certain teleological perfection of human reason by its satisfaction in an unconditioned and autonomous order. The Hobbesian argument which seeks to discipline reason is only persuasive if Kant can demonstrate the possibility of real satisfaction in the highest, unconditioned good.

What we have gathered so far, then, is that reason needs ideas of its highest good, in order to guide the judgements of the understanding. Yet the Dialectic has established that it is impossible to establish that these ideas have reality, and the Discipline shows that unjustified claims about their reality inevitably take us back to the battlefield. At the end of these discussions on reason’s ability to make constitutive use of the ideas, however, we must wonder whether or not these ideas are mere fantasies. If there is no way of establishing the reality of the highest good, maybe

65 KrV, A 751-2 / B 779-80.
66 KrV, A 752 / B 780.
67 KrV, A 752 / B 780.
68 KrV, A 752 / B 780.
the ideas are just projected illusions which serve to legitimise laws that subject reason to an order and a discipline that takes it nowhere? This is the question we now will deal with.

Part three
The Gap between Law and Autonomy

I. JUSTIFYING THE IDEAS

As we will see in this section, Kant recognises the problem of the reality of the ideas. When Kant arrives at the canon of pure reason, the ambiguity of what has been achieved in the first Critique is clearly evident:

In its speculative use reason led us through the field of experiences, and, since it could never find complete satisfaction for itself there, it led us on from there to speculative ideas, which in the end, however, led us back again to experience, and thus fulfilled its aim in a way that is quite useful but not quite in accord with our expectation.⁶⁹

Given what has been said so far, it seems that only pure reason plays a negative role, serving ‘the determination of boundaries’, ‘guarding against errors’.⁷⁰ Yet the whole trial began with reason’s desire for knowledge and its tendency to strive to satisfy its thirst for knowledge. Thus,

there must somewhere be a source of positive cognitions that belong in the domain of pure reason, and that perhaps give occasion for errors only through misunderstanding, but that in fact constitute the goal of the strenuous effort of reason. For to what cause should the unquenchable desire to find a firm footing beyond all possible experience otherwise be ascribed?⁷¹

The Dialectic demonstrated that while reason needs its ideas for its direction and orientation, it finds itself unable to ‘deduce’ its right to an objective use of these. As far as speculative reason is concerned, there is no knowledge of the unconditioned. This means that reason does not have any way of fully satisfying its desire and thereby reaching its highest good.⁷²

⁶⁹ KrV, A 804 / B 832.
⁷⁰ KrV, A 795 / B 823.
⁷¹ KrV, A 795 / B 823.
⁷² For critical discussions of the roles of the ideas and the highest good, see Thomas Höwing, ed., The Highest Good in Kant’s Philosophy (Berlin: De Gruyter, 2016).
Yet Kant’s insistence that there must be a source of positive cognitions is an expression of the dissatisfaction with an exclusively negative view of reason, and implies that legislating laws and disciplining reason not to reach for its projected goal is not sufficient. Because what reason desires is to find ‘peace only in the completion of its circle in a self-subsisting systematic whole’, and denying it from reaching this goal is to admit that reason has been enslaved to arbitrary laws.73

But now Kant rushes from speculative to practical reason.74 The final end of speculative reason is found in three objects that only practical reason can establish, namely the freedom of the will, the immortality of the soul and the existence of God. Thus, when the critique of speculative reason is finished, we have come to learn that the trial is not over. For the regulative character of reason’s ideas means that there is a persisting gap in Kant’s speculative reason between reason’s laws and its projected idea. We do not know whether reason can ever find satisfaction in its own end in ‘a self-subsisting systematic whole’, and thus whether subjecting it to the laws of the city will be conducive to realising its freedom. This means that there is, at this point, a gap between what is and what ought to be: between the city as it is and as it should be. Autonomy is merely a goal, not something that has been achieved.

It will be objected that it is the very point of the second half of the first Critique that there is a gap between concepts of the understanding and reason’s ideas, as this is the intended result of the critique of metaphysics. But the problem Kant is touching on in the canon is whether reason’s desire has a right to hope for autonomy: ‘what may I hope for?’75 Everything comes down to this question, and without a justified reply to this answer, we must declare a mistrial. If Kant is to complete the trial of reason, he must show that the ideas of reason are not vain projections, and that the laws to which reason is subject are conducive to realising its end.

Kant goes about this in two ways. In the next section, I will argue that Kant tries to establish the knowledge of our freedom and thereby to complete the trial of reason. However, we will see that he failed to do so. Consequently, he took refuge in the notion of rational faith. This represented an attempt to legitimise the laws of reason, without demonstrating the reality of its freedom. In recent years, interpreters have put more emphasis on faith, and sought to reinterpret both Kant’s practical and theoretical philosophy as grounded in regulative ideas, and, in so

73 *KrV*, A 797 / B 825.
74 *KrV*, A 796 / B 824.
doing, shed light on the inherently political justification of his project. I will argue that these interpretations work well with the broadly negative justification he tends to adopt after the strict demonstration failed. But they also inherit the difficulty of such a justification: now the only justification of rational order is that it is not anarchy. First, however, we turn to his attempt to complete the trial and establish the autonomy of reason.

II. Establishing Autonomy

Towards the end of the second section of the *Groundwork of the Metaphysics of Morals*, we find a key moment in Kant’s practical philosophy. Here he notes that he must undertake a transition from his analysis of common morality or duty to a synthetic deduction of the moral law *a priori*. Most people have a conscience and a sense of duty—they feel like they are subject to a moral law. However, unless Kant explains how this law is a law of reason, and that we are subject to it precisely because we are rational beings, the moral law to which we are subject is of heteronomous origin. Thus, Kant must show how we are rational beings, and thereby that we are autonomous and self-legislating beings. The stakes are high, because if he is able to do so, he will complete the trial of reason and show that the ideal of autonomy is not a vain projection, but a reality.

Kant starts out his argument by establishing the so-called reciprocity thesis, which stipulates the identity of morality and freedom. He will use this thesis to prove that we are free and thus that we are subject to a moral law legislated by ourselves. Freedom can be defined negatively as the property of a will which is not determined by ‘alien causes,’ that is, causes in the natural-phenomenal world. Furthermore, if the will is a form of causation, and causation happens in accordance with laws, it follows that a freedom in a positive sense is one which wills in accordance with its own laws. A positively free will is one which acts ‘on no other maxim than that which can also have as object itself as a universal law’.

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76 I am indebted to Nandan M. Ratnam for helpful insights towards the following discussion of the *Groundwork*. See his ‘“This Isthmus of a Middle State”: Dignity beyond Kant’ (University of Oxford, 2015), chapter 1.
77 *Grundlegung*, 4:444 / 92-93.
79 *Grundlegung*, 4:446 / 94.
80 *Grundlegung*, 4:447 / 94.
morality’. This, therefore, is the reciprocity thesis, that ‘a free will and a will under moral laws are one and the same’. 81

So far, nothing is proved, since the reciprocity thesis only claims that morality follows analytically from freedom; it does not prove that we actually are free, autonomous beings. Before proving our freedom, however, Kant adds another analytic relationship by claiming that every rational being is a free being because reason ‘must regard itself as the author of its principles independently of alien influences’. 82 Now the question to be answered is why ‘ought I to subject myself to this principle [of providing myself with my own universal laws], and indeed as a rational being in general, thus also subjecting to it all other beings endowed with reason?’ 83 For there is no interest that ‘impels’ us to do so. This is an important clarification which rules out a heteronomous cause for our taking ourselves as free beings. Thus, while there might be a subjective feeling of ‘ought’, the problem in question is establishing the reality of this ought, or why we are subjected to this subjective ought. 84

Kant’s attempt to enter the circle starts out with his reiteration of the distinction between appearances and things in themselves, a distinction that provides us with the concepts of a sensual and an intelligible world, or a world of understanding. 85 This distinction means that when we think of who we are in ourselves, we can rely on neither outer nor inner sense, because even in the case of us there is a distinction between appearance and thing in itself. Consequently, we must be members of two worlds. We are how we appear to ourselves and what we are in ourselves; we belong to the world of phenomena, and the world of intelligibility.

While this membership of two worlds applies to all sensible things, the human being is distinguished by its capacity for reason. This capacity, which is a capacity of ‘pure self-activity’, brings sensible representation under rules and unites them in consciousness, which means that it is raised above understanding and gains nothing directly from sensibility. This means that reason must necessarily belong to the world of intelligibility. But if the human being

81 Grundlegung, 4:447 / 95.
82 Grundlegung, 4:448 / 96.
83 Grundlegung, 4:449 / 96. I have modified the translation at this point.
84 Grundlegung, 4:449-50 / 96-97.
85 Grundlegung, 4:451 / 98-99. We do not need to concern ourselves with the differences between the so-called two-worlds interpretation and the two-aspects interpretation of Kant, as the following objections against Kant’s practical philosophy applies across those interpretative differences. One of the most influential interpretations of Kant’s practical philosophy through the two-aspects theory can be found in Henry E. Allison, Kant’s Theory of Freedom (Cambridge: Cambridge University Press, 1990).
is rational, and the rational will belongs to the intelligible world, ‘the human being can never think of the causality of his own will otherwise than under the idea of freedom’, because the negative idea of freedom was that of being independent from the sensible realm, which, again, leads to the positive idea of autonomous freedom, according to which the will is governed by its own laws. Kant summarises the whole of this argument in the following way:

[B]ecause the world of understanding contains the ground of the world of sense and so too of its laws, and is therefore immediately lawgiving with respect to my will (which belongs wholly to the world of understanding) and must accordingly also be thought as such, it follows that I shall cognize myself as intelligence, though on the other side as belonging to the world of sense, as nevertheless subject to the law of the world of understanding, that is, of reason, which contains in the idea of freedom the law of the world of understanding, and thus cognize myself as subject to the autonomy of the will; consequently the laws of the world of understanding must be regarded as imperatives for me, and actions in conformity with these as duties.86

While this argument can and has been attacked from several angles, including those that challenge the whole critical project on which the argument is built, we shall repeat an unjustified leap internal to the argument itself: Kant’s transition from our membership in the world of understanding to the claim that we are rational, free, and moral. This leap is actually repeated in two different ways: both in his transition from a negative to a positive notion of freedom, and in his transition from dual membership to human beings as rational.

For the move from negative to positive freedom, which Kant reiterates at the beginning and end of his argument, is based on a non-sequitur: While negative freedom means that we are operating according to a causality other to that of nature, it does by no means follow that the free, noumenal will, must operate according to its own causes. One could very well imagine the possibility that the noumenal will acts according to heteronomous, external causes, that is, causes within the world of understanding outside of the will itself.87

This procedural gap may be the reason why Kant makes the apparently unjustified claim that whereas other things are members of both the sensible and noumenal world, only human beings are rational. While Kant spends some time showing why rationality has priority over sensibility, and, therefore, that rationality must belong to the noumenal realm, this effort is in vain: we must question his assumption that human beings are rational, if rational means autonomous,

86 Grundlegung, 4:453-54 / 100.
87 Karl Ameriks, Interpreting Kant’s Critiques (Oxford: Oxford University Press, 2003), 230–32; Ratnam, “‘This Isthmus of a Middle State’: Dignity beyond Kant”, chapter 1.
noumenal wills. While the rationality of human nature is a very common assumption, that does not suffice by any means, since rationality is precisely what is to be proved, and any inference from appearance (humans seem to behave rationally) to the noumenal is ruled out by the whole of Kant’s critical project. Be that as it may, even though Kant claims that rationality stands outside the realm of sensibility, that does not mean that a rational being is free, due to the illegitimacy of the leap from negative to positive freedom: just because a rational being does not stand under the laws of nature, does not allow us to claim that it stands under its own laws. Consequently, the idea of freedom—one of the projections of unity that represented the unconditioned in his theoretical philosophy—has not been demonstrated, nor our being subject to the moral law.

By the time Kant wrote the *Critique of Practical Reason*, he had taken the consequences of the failed argument of the *Groundwork*. This significant change is already signalled in the opening of the preface:

> Now, the concept of freedom, insofar as its reality is proved by an apodictic law of practical reason, constitutes the *keystone* of the whole structure of a system of pure reason, even of speculative reason; and all other concepts (those of God and immortality), which as mere ideas remain without support in the latter, now attach themselves to this concept and with it and by means of it get stability and objective reality, that is, their possibility is proved by this: that freedom is real, for this idea reveals itself through the moral law.  

The project now seems to be reversed: if the *Groundwork* tried to establish human autonomy, and thereby analytically move to the moral law, Kant now wants to move from the notion of the moral law to freedom. We gain the knowledge of freedom because it is the condition for the validity of the moral law. Thus, ‘whereas freedom is indeed the *ratio essendi* of the moral law, the moral law is the *ratio cognoscendi* of freedom’.  

This change of tactic, however, does not help him out of the vicious circle of the reciprocity thesis. If Kant should prove the possibility of a critique of practical reason, he must show how we got into the circle in the first place; how we know the moral law and, as a consequence, freedom. In the analytic of pure practical reason, he approaches exactly this question. Kant’s answer is baffling:

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88 *KpV*, 5:3-4 / 139.  
89 *KrV*, 5:4-5n / 139-40n.
It is therefore the moral law, of which we become immediately conscious [...] that first offers itself to us and, [...] leads directly to the concept of freedom.\textsuperscript{90}

We can know the moral law ‘by attending to the necessity with which reason prescribes them to us’.\textsuperscript{91} The moral law is a \textit{brutum factum} which defies any deduction because here we have arrived at a basic power or faculty of reason, and there is ‘nothing through which [its] possibility can be conceived’\textsuperscript{92}. The moral law is ‘given’ as an apodictic ‘fact of pure reason’\textsuperscript{93}.

Kant’s turn in the second \textit{Critique} seems to be a resignation: in place of a proper procedure, Kant postulates an authoritative law and refuses to ask from where it has its authority. While he certainly wants to say that the moral law has the authority in itself, that is, in a reason which is autonomous, self-legislating, he cannot establish the autonomy of reason without first assuming an authoritative law in place.

Kant unequivocally ruled out any impulse that would impel us to believe in the objective validity of the moral law in the \textit{Groundwork}, although he naturally assumed that every rational being felt the subjective force of the ought. His description of the moral law as a brute fact of reason, however, leaves open the question of what really impels us to believe in the objective validity of the moral law. How do we distinguish between a brute fact of reason and a subjective inclination? At no point in his practical philosophy is he able to show how reason can establish its own laws.

From what we have gathered in this section, there is no way of establishing the reality of the Ideas, and thus to prove that reason is subjecting itself to laws which accords with its own ends. If this is true, the trial of reason fails at its second step, and the laws to which reason has subjected itself seem indistinguishable from the despotism which Kant denounced. Although Kant failed in this regard, there is another tendency in his philosophy which might prevent a mistrial. We will now turn to this other alternative.

\textbf{III. Trial Deferred}

If Kant is unable to establish that reason is in fact autonomous and that it subjects itself only to laws of its own making, he could, perhaps nonetheless avoid a mistrial. This interpretation of Kant grants that there is no knowledge of the unconditioned, and thus no way of establishing

\textsuperscript{90} \textit{KrV} 5:29-30 / 162-63.
\textsuperscript{91} \textit{KrV} 5:30 / 163.
\textsuperscript{92} \textit{KrV} 5:46-47 / 177.
\textsuperscript{93} \textit{KrV} 5:47 / 177.
reason’s autonomy, but it seeks to show that reason is nonetheless warranted in subjecting itself to its laws. This tactic can be described as a deferral of the trial: it admits that, presently, one cannot think of reason’s laws as complete expressions of its autonomy. In this sense, it defers the verdict by acknowledging that only in an imagined future will we know whether reason’s laws are products of its own legislation, yet it insists that this is better than the alternative. This shift in justification can be gathered from an essay written a few years after the *Groundwork*.

With the essay *What does it mean to orient oneself in thinking?* of 1786, Kant made his contribution to the *Pantheismusstreit* between Freidrich Heinrich Jacobi and Moses Mendelssohn.\(^4\) Kant tried to salvage reason in face of Jacobi’s assertion that the rule of reason leads to nihilism, and to show how Mendelssohn’s attempts to revive a speculative metaphysic inevitably fall back into the dogmatism and absolute despotism of the rationalistic metaphysical rule.\(^5\) The essay is of interest to us because in it Kant seeks to defend the authority of reason from these frontal attacks. In this way, he faces the paradoxes involved in reason putting itself on trial more clearly than he does in other places. Significantly, however, his response is not to establish reason’s authority and autonomy by way of a conclusive and rational procedure, as he sought to do in the *Groundwork*.

In this essay, Kant describes a metaphorical journey in which we gradually move into the empty courtroom of reason.\(^6\) This journey is a kind of ascetic exercise in which we eventually strip ourselves of all laws, rules, or other footholds we normally use in our daily experience to make judgements. At the end of this journey, we have nothing but pure reason to guide us. The question is then: can it provide guidance?

The journey goes like this: We start outside on a field and see the sun in the sky. The sun allows us to get our bearings so that we can orient ourselves in the world.\(^7\) The sun, the landscape, and the background in general provide us with a point of reference for our movements and engagements with the objects in our immediate presence. But let us not fool ourselves: our ability to find our way in the world cannot be explained by the sun and our surroundings alone. We have an *a priori*, ‘subjective ground of differentiation’, a measuring rod; which allows us

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\(^4\) *Was heißt.*


\(^6\) Kant is implicitly responding to Mendelssohn here. See Beiser, *The Fate of Reason*, 92–108.

\(^7\) *Was heißt*, 8:134-35 / 8-9.
to distinguish between right and left, up and down.\textsuperscript{98} We are not able to orientate ourselves due to the sun alone, but more importantly because of the distinction between objects and the transcendental forms of space and time which establish a background against which we can perceive and navigate among these objects. The necessity of this \textit{a priori} aid to orientation becomes more evident when Kant invites us to leave the outside world and enter a dark room. Even here we are able to find our position and orient ourselves if we get hold of one object whose position we know. But now Kant clears the room, and shuts the doors—the input from the faculty of sensibility is cut off. Reason is alone and a trial begins: can reason now move around and orient itself in this ‘logical’ space?\textsuperscript{99} Can it make rational progress?

When reason has left the sensible world, can it still provide us with a point of orientation, an end or principle with which it can avoid disorientation? But what was this subjective ground of differentiation or rule we felt out there one field? Is there still available some such ground in this dark room of reason? In here, we discover that the subjective ground of differentiation is in fact ‘nothing other than reason’s feeling of its own need’, the desire which, because it is directed at its own telos, drives it towards itself.\textsuperscript{100} This need is reason’s drive to judge even when there is no sensible intuition to judge, its desire to act out its sovereignty in judgement, with nothing but itself to act on.

If there was no such need, then, no orientation would be necessary. In that case, the indifferentists would be right, and we would have to suspend judgement. Since we do become aware of this need, however, we must discover some principle ‘with which we would venture to go beyond all possible experience’.\textsuperscript{101} In other words, we must consider ‘\textit{the right} of reason’s \textit{need}’ to reach for its unconditioned end, and thus its right to holding a principle ‘for \textit{orienting} itself in thinking, solely through reason’s own need, in that immeasurable space of the supersensible, which for us is filled with dark night’.\textsuperscript{102} The outcome of the trial depends on this question.

But Kant does not provide a justification of reason’s need. Instead, he gives only a conditional justification of reason’s ideas. Practical reason ‘needs’ to judge reason’s supersensible objects, because it is demanded by a moral law that we know with certainty. But the lack of an intuition

\textsuperscript{98} \textit{Was heißt}, 8:125 / 9.
\textsuperscript{99} \textit{Was heißt}, 8:136 / 9.
\textsuperscript{100} \textit{Was heißt}, 8:136 / 10.
\textsuperscript{101} \textit{Was heißt}, 8:136 / 10.
\textsuperscript{102} \textit{Was heißt}, 8:137 / 10.
that corresponds to reason’s ideas means that this kind of judgement will have to remain a matter of rational faith or belief.\textsuperscript{103} Kant’s argument is disappointing at first, and does not live up to the high standard he set for himself in the beginning. It is difficult to see how an appeal to the moral law can settle the dispute about the right of reason’s need to judge beyond the supersensible, when it is the very existence of a moral or theoretical faculty that is in question. Kant is surely aware of how high the stakes are, which becomes evidently clear when his essay takes a surprising political turn.\textsuperscript{104} This turn in the essay, I argue, should not be read as an appendix, but is instead Kant’s answer to the question with which he began.

Whereas the essay has been read with much interest due to its relevance for rational theology—the idea of God is at the focal point of his argument—it is the framing metaphors of geographical orientation and the final part on the political dimension of this discussion which set the \textit{Orientation} essay apart.\textsuperscript{105} Now he moves from a positive defence of reason to an attack on the alternatives. The kind of philosophy based on intuitive faith proposed by Jacobi will inevitably lead to despotism, for the pure intuitive faith of Jacobi is incommunicable. Knowledge by immediate insight is a private positing which rules out all universality and rational discourse, and leads to an unlawful and violent rule. In a society governed in this fashion, civil coercion [Zwang] will actually destroy the possibility of thinking under the weight of heteronomy. Where the freedom to speak and write is restricted, thought equally suffers as well, since proper and free thinking seems to depend on an open discourse in a community.\textsuperscript{106} The lack of a principled vindication of reason and the resort to a pragmatic argument signals that Kant has come to an end of his defence, which is confirmed when his argument turns into an appeal and a mere restatement of his position:

\begin{quote}
[F]reedom in thinking signifies the subjection of reason to no laws except \textit{those which it gives itself}; and its opposite is the maxim of a \textit{lawless use} of reason.\textsuperscript{107}
\end{quote}

Reason must only subject itself to the laws it gives itself. Although Kant’s argument is based on his practical philosophy, the political turn of his argument is a sign that the substantial

\begin{footnotesize}
\begin{enumerate}
\item \textit{Was heißt}, 8:139 / 12.
\item \textit{Was heißt}, 8:144-45 / 15-17.
\item \textit{Was heißt}, 8:144 / 16.
\item \textit{Was heißt}, 8:145 / 16.
\end{enumerate}
\end{footnotesize}
demonstration of the authority of reason has failed. If Kant can provide nothing more than laws fulfilling the formal requirement of non-contradiction, which, he claims, is necessary for a public and universal discourse, he has no way to defend the authority of reason. But this is a regression to a Hobbesian state of nature and, given Kant’s description in the beginning of the first Critique, will not rule out the possibility of a tragic view of reason. Whether ordered by universal laws or busy fighting on the battlefield of metaphysics, reason is striving for its satisfaction and identity in an end whose reality it has no way to prove. At this very point the preference for order over disorder must also be judged irrelevant. If Kant has no argument for why one should enter his city of universal laws, his own position is reducible to yet another positing, another polemical attack on the historical battlefield of metaphysicians.

Towards the very end of the essay, Kant launches an attack on those who want freedom without law. There is a risk, he says, for those who discover the power of freedom, to, in their intoxication, ‘degenerate into a misuse and a presumptuous trust in the independence of its faculties from all limitations’. These fall into a ‘precarious state’ of mind, and eventually erase the force of moral laws and thus end up ‘recognizing no duty at all’. This is anarchic revolution: the instigation of lawlessness. The political implications of this unbelief of reason are not lost on the German philosopher. Moving seamlessly from the courtroom of reason to the realm of politics, Kant sees the inevitable consequence of revolutionary anarchy. In a revolution, the authorities (Obrigkeit)—any authority—come into play to prevent the complete dissolution of civil rule, and, on the rationale of establishing order, seize complete power and erect a despotic rule by abolishing freedom of thought and demanding absolute submission to the law. The attempt to escape autonomy, and thus the rational negotiation of sovereignty and law, turns into heteronomy and the death of thought.

Kant might have scorned the critics of reason much like he scorned those who committed the crimen immortale of challenging the sovereignty of the king in the Revolution in an incomprehensible act of violence, but these critics argued that the rule of Kantian reason is no less violent, and cannot be established except through an unlawful and irrational act.

Some interpreters, such as Onora O’Neill and Susan Neiman, have sought to deepen the political dimension of Kant’s argument and claim that he is in essence asking for a deferred

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108 Was heißt, 8:146 / 17.
verdict. O’Neill argues that the categorical imperative is the supreme principle of reason, and is a strategy for avoiding principles of thinking, communicating and acting that cannot be adopted by all members of a plurality whose principles of interaction… are not establishes by any transcendental reality.

The Rawlsian and constructivist ‘politics of reason’ defended by O’Neill and Neiman makes discipline the most important work of reason. The categorical imperative takes us back to the beginning of the first Critique, as it provides us with a community free from obscurity and contradiction. Consequently, one must describe the verdict as deferred. Instead, reason’s principles are justified in their being the only basis for an ongoing debate. In this context, the laws are preliminary conditions for a non-violent debate about the very meaning of autonomy.

Neiman presents a similar vision and relates it to Kant’s adherence to the French Revolution. Kant’s conception of autonomous humanity is ‘a regulative ideal’ that is coincident with the emancipatory ideals of the French Revolution. Neiman argues that there is a gap between regulative ideas and the judgements of the understanding, which means that there are no prescribed rules that can foretell the way in which the understanding will judge in any particular case. Consequently, reason’s ideas can only serve a disciplinary function. If acts or cognitive claims are made that conflict with reason’s ideas, then those can be disciplined on the basis that they would make autonomy impossible, and this is their basis. The gist of the argument is that self-legislation on an individual or collective level is only possible if laws are being legislated. Excluding contradiction—which is what laws do—is the only thing we can do with certainty. Whether these laws are legislated by ourselves, or some other power, however, we can never know. But if freedom were possible, this is what one would have to do:

111 Rawls, ‘Kantian Constructivism and Moral Theory’.
113 Neiman, The Unity of Reason, 118.
That we cannot know whether the idea will be realized is clear from the start: we have to do here with reason, not a matter of knowledge. We can, however, be certain that if we do not act accordingly, the idea will never be realized.\textsuperscript{114}

The fundamental problem with a regulative interpretation of Kant’s philosophy is the justification it provides for everything that is done in the name of this ‘as if’. The verdict is deferred; meanwhile, one must act as if autonomy were possible. But this sets up a fundamentally sacrificial logic: one must look away from all the sacrifices made by those who are forced to be free. There is no rule for how to mediate the distance between actual legislation and the end we are supposedly seeking. Until the end arrives, one must subject oneself to law, with the promise that this subjection might one day lead to autonomy.

Neiman touches on this difficulty when she compares Kant’s project to Rousseau’s \textit{Social Contract} and \textit{Emile}:

The first, taking “men as they are and laws as they should be,” shows us what kind of state might encourage the development of autonomous citizens. The second shows how, without changing current forms of social organization, a “man as he should be” might come to maturity. Rousseau never tells us how the gap between the two might be bridged.\textsuperscript{115}

Kant, like Rousseau, oscillates between the individual and the city. Either one must impose an idea of a city, with the promise that when human desire and character is properly disciplined by these laws, they will discover that they have become autonomous, or one must educate individuals, who then reform the constitution. Approaching the issue from either end entails some degree of imposed law or lawless use of force. Rulers in search of reform must act as if citizens were autonomous and rational, and citizens in search of revolution must act as if they lived in a republic.

Kant’s actual political proposal is the more conservative one of awaiting reform from people among the elite. These must decide to ‘allow people \textit{as they are now} to use their own reason; if they are permitted to do so, Kant holds, they will become a people worthy of freedom’. But, Neiman rightly remarks, ‘Hope is not a promise; Kant can only show how the alternative course of action rests on, and leads to sheer hopelessness’.\textsuperscript{116}

\textsuperscript{114} Neiman, 113.
\textsuperscript{115} Neiman, 114.
\textsuperscript{116} Neiman, 115.
Although there is a difference between morality and politics in Kant’s philosophy, or between internal and external freedom, these political problems are internal to his philosophy. The problem we have described in this chapter is what leads to the gap between external law in political life and internal, rational ethics. When reason is unable to prove its authority because it cannot show that its legislation is in fact autonomous, the political problems of realising freedom are clearly expressed even in Kant’s theoretical philosophy. Because there is a gap between the laws of the understanding and the ideas of reason, in every act of cognition one of the poles will have to be sacrificed. And because there is no rule for this negotiation, every sacrifice is arbitrary.

Kant’s critical project must end with a mistrial or defer its verdict. In the first case, legal procedure is flouted so that one can place the queen of metaphysics in the guillotine and proclaim a republic; in the other, the citizens of the new republic are provided with a hope that the laws of the city will someday be the product of their own legislation, but with no assurance that this will ever be the case. In both cases, sacrifice is necessary. The necessity, however, is finally not grounded in the goodness of autonomy, but in the fear of contradiction and obscurity.

**Conclusion**

The new city of reason cannot be established without an original and continual sacrifice. The difference that arises between the order that is presently realised (law) and the teleological point of orientation to which it ought to correspond (ethics) cannot be closed. Kant’s republican philosophy is unable to solve the difficulty of explaining how reason may recognise itself in its universal laws. The city built by Kant’s critical philosophy is one which continues to demand a sacrifice: either the present condition is violently sacrificed in order realise a projected ideal of an ethical an autonomous community, or the coercive laws of the city are legitimised with reference to an ideal that never arrives. In the ensuing chapters we will see how this sacrificial logic is the point of origin for Schmitt and Schelling’s political theologies.
Chapter 2

Against Revolution:

F.W.J. Schelling’s Political Theology of the Church

Introduction

The verdict in Kant's trial of reason is either reached without a legal basis or deferred. In this chapter I will attend to the first ending of Kant’s philosophy by attending to one of the thinkers in the idealist legacy of Kant’s philosophy, namely F.W.J. Schelling. Looking at Schelling, we will see how he provides a thorough analysis of the central problem for the trial of reason, namely that it is not possible to establish autonomous order—political or rational—without some degree of coercion. Schelling’s thought also represents the first example of a political theology developed as a response to the failure of the trial of reason. Together with the next chapter, which will deal with what we have referred to as the deferred verdict of the trial of reason, this discussion of Schelling allows us to further spell out the difficulties with the trial and how its two fates invite different political theologies.

Before I begin the exposition of Schelling’s political theology and its context, I will give a brief outline of the problem that is before us in this chapter. As we saw in the previous chapter, Kant struggles to found a new order through rational procedure. This indicates that it is not possible to establish a republic of autonomous citizens without some degree of coercion. In this chapter we will see how the political theology of Schelling’s middle period seeks to explain how the autonomy of the modern order cannot be realised without coercion. His political theology represents, therefore, a direct attack on the revolutionary attempt to realise freedom in the world and its denial of the religious basis of the State. He argues that there is a principle of contingency and disorder in reality which means that reality cannot completely be determined by law. For this reason, judgements must violently impose order or reality will push back and transgress that which is prescribed by its law. We will see that this inherent difficulty of judgement can be understood with reference to a divine and human freedom that transcends every law and definition. It is through this freedom, which exists beyond relations of power, laws, and distinctions, that a free and non-sacrificial earthly city can be realised. How this higher kind of
freedom can make autonomous freedom possible, however, is not explained in Schelling’s political theology. Until this inexplicably happens, the Church is the impotent community which keeps its faith in reconciliation.

By expositing Schelling’s work with an emphasis on his middle career, we can trace the origins of political theology as a project that responds to the failure of the trial of reason, of the Kantian project of establishing self-legislation. We will also see how he relates the predicament of reason with the difficult relation between the Church and State in modern society. This connection continues to be difficult even for Schelling. In this way, Schelling’s middle period foreshadows a dynamic that we will revisit later in this dissertation, namely that a political theology which gestures towards a freedom or a difference beyond the purview of rational judgement seems at a loss at mediating this freedom with the actual relations of power and law in society. Before getting to Schelling, however, we must begin with a brief exposition of the problem of judgement in Johann Gottlieb Fichte to understand the Kantian origins of Schelling’s project. As we will see later in this chapter, from the perspective of Schelling’s political theology of his middle period, Fichte’s philosophy exhibits the sacrificial and revolutionary violence the former comes to reject.

Part one

The System of the Revolution

I. Fichte’s System of the Revolution

In this section, we will briefly consider how Fichte viewed his own philosophy as a conceptual expression of the vision of the French Revolution. We will see the outlines of a conception of order, law, and freedom which Schelling eventually finds objectionable.

A year after he wrote his most famous work, Science of Knowledge, Fichte penned a letter which located the political impetus of his post-Kantian idealist project in the Revolution:

I believe that my system belongs to this [the French] nation. It is the first system of freedom. Just as that nation has torn away the external chains of man, my system tears away the chains of the thing-in-itself, or external causes, that still shackle him more or less in other systems, even the Kantian. My first principle establishes man as an independent being. My system arose through an inner struggle with myself and against rooted prejudices in those years that the French struggled with outer force for their
political freedom. It was their *valeur* that spurred me to conceive it. When I wrote on the Revolution there came the first hints and inklings of my system.¹

It is not possible fully to unpack the significance of Fichte’s claim that his system belongs to the French and their Revolution, but it is evident that it has to do with his development of and disagreements with the Kantian project. His development of Kant consists in radicalising Kant’s vision of a philosophy built on autonomy and free activity, instead being grounded in a starting point given from elsewhere. Fichte denies what still seems too old-fashioned and too religious in Kant’s system: the given intuition. Kant’s trial depended on a moment of reception of intuition from elsewhere and since its laws were meant to establish how one could make objective claims and thereby appropriate or ‘own’ this intuition. Speaking more broadly, Kant’s philosophy exhibited a form of thinking in which the goal was to appropriate what was given—whether it came from past traditions, from outer sense, or religious symbols—and deduce one’s right to make use of these goods in a free manner.

To Fichte, however, the moment of passivity in the reception of the given was a metaphysical and religious residue, which prevented Kant from taking the notion of autonomy to its radical conclusion. In this sense, Fichte conceived of his project more in line with the Revolution than Kant: it was not a question of reappropriation, of a transfer of ownership, but of a radical break with the past. As Frederick Beiser argues:

> The thing-in-itself was not merely the unknowable cause of experience, but much more fundamentally the hypostasis of the highest good. In attempting to de-hypostasize this concept, Fichte was saying that there is no kingdom of God, no providence, no divine justice, except that which we create here on earth. Read as a regulative principle, then, the highest good prescribes the task of establishing a just society.²

To remove the thing itself is to rid reason of its dependency on a heteronomous other. Fichte’s ‘revolutionary’ insight, then, was that a truly secular and autonomous order is only possible if one can explain how reason’s creative activity produces and determines even the passive and receptive moment of experience. In this way, the passivity, subjection, or enslavement in human experience can be explained as unrecognised self-enslavement. Prefiguring the left-Hegelian critique of religion, Fichte argued that the relations of subjection in the *Ancien Régime*, or the

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² Beiser, 56.
slavery of feudal law, were legitimised through projections of divinities and metaphysical realities that were alienations, misrecognitions of our human powers. As Beiser notes,

> [i]t was the great contribution of the critical philosophy, [Fichte] believed, to show us how man had enslaved himself: through the objectification of the laws of his own reason. Hence the task of criticism was to liberate man from this self-imposed bondage by making him self-conscious of hypostasis.

Self-legislation, which he often calls self-determination, was Fichte’s Grundgesetz. It is well and good to explain the necessity of the laws according to which we act, Fichte argued, but if we admit the heterogenesis of the stuff or ‘goods’ of experience, we will have to allow a thing in itself as their source, and thus not completely overcome sacred heteronomy and dogmatism.

Put in terms of a predicative judgement, (‘S is P’) the passive element and the reference to the thing-in-itself, means that in any judgement, the subject will resist complete determination by the predicate. No matter how many determinations reason applies to the subject, it will still refer to something unknowable not captured by reason’s legislated concepts. Fichte’s complete transcendental idealism must, therefore, demonstrate how the very thing-in-itself is a product of reason’s act, so as to completely submit the thing to reason’s legislation. In this case, both the subject and the predicate in a judgement would be completely determined by reason. A reason that produces both the subject or individual, and the predicate or universal, is by definition sovereign and autonomous.

Because Schelling originally read the Science of Knowledge of 1794-5 and responded to it in his later thought, we will briefly look at the shape of Fichte’s project there, even though the latter continued to revise and substantially change his project in the following decade. Fichte’s rejection of Kant’s matter, however, did not completely erase the fundamental logic of a transcendental argument. Fichte’s method still had to begin with the given, the result or facts (Tatsachen) of consciousness and move backwards to the transcendental activity (Tathandlung).

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5 Grundlage, 1:428 / 10-11.
6 The later lectures and revisions adopts a different presentation which begins with the postulation of the absolute I and then proceeds to elucidate the conditions for the deduction of finite difference. For an account these lectures, see Günter Zöller, Fichte’s Transcendental Philosophy: The Original Duplicity of Intelligence and Will (Cambridge: Cambridge University Press, 1998).
that gave rise to these facts. He followed Karl Leonhard Reinhold’s initial revision of the Kantian project which sought to ground philosophy in a single principle, yet disagreed with Reinhold’s construction of this principle as a fact (Tatsache). For Fichte, the absolute of his philosophy was the autonomous activity of the rational ego.

Following Fichte’s method, one must, therefore, take an already synthesised product and show how the inner structure and distinctions of this product could derive from an originally unified activity of the ego. This can be expressed in terms of a judgement: every conscious representation is a synthesis, which in a predicative judgement is expressed as a relationship between a subject and a predicate. Every conscious thought is, therefore, the result of an activity which posits a particular relationship between subject and predicate. Reason, for Fichte, is this activity, prior to every distinction, or the activity which secures the identity within every distinction. In Fichte’s words, reason is ‘that Act which does not and cannot appear among the empirical states of our consciousness, but rather lies at the basis of all consciousness and alone makes it possible’. If reason truly is autonomous, it means that it is the origin of the terms of every judgement, and their relation.

For Fichte, however, the problem was that of showing how the rational ego could be this unifying activity. Every empirical state of consciousness, that is, every representation, involves a specific relation between a subject and an object. Every time we think something, the representation we are aware of refers to an object, and its stands in a relation to us as a subject. This means that we cannot represent the subject or the ego as such, for if we try to represent it, the subject turns into a represented object. We do have an awareness of the ego, however, but only through what Fichte calls intellectual intuition. This awareness is the awareness that a particular representation or state of consciousness is ‘mine’. Nevertheless, we cannot think the ego as such because we cannot think the ego except as an ego limited by and standing in relation to a particular object. The intuited empirical ego is limited by the object and does not completely determine the latter—it is not unconditioned, sovereign, and autonomous. Thus, the

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9 *Grundlage*, 1:91 / 93.
unconditioned ego must stand prior to the division into ego and non-ego, being productive of them both.

Again, this problem can be understood in terms of judgement. Fichte wants to think the unconditioned ego. However, for us to think anything, we must take a subject and determine it with a predicate. But this means that if we are trying to think the ego as such, we must think the ego (subject) as determined by something that is not the ego (non-ego). But that means that the ego is not unconditioned, and in fact is in some sense subject to a law or determination foreign to itself. Consequently, the ego is not autonomous: to think autonomy would be to think the complete unity of subject and predicate, since that would mean that the subject is determined by its own law (predicate). However, because every predicative judgement always involves a moment of difference, autonomy seems impossible.

Thus, Fichte is unable to reconcile the infinite and finite ego, the ego of absolute, self-determining activity and the conditioned ego which stands in relation to a non-ego. Because of this, the well-known fate of Fichte’s ego was to endlessly strive towards an ideal, grounded in rational faith. Every representation implies a subject-object dichotomy, which means that the ego is not truly unconditioned, since it stands in a relation to the object. The subject can overcome the passivity of the object, either by completely determining it in theoretical knowledge, or by forming it through practical ability. But as soon as this happens, another object resurfaces, as another moment of passivity. Every cognition accordingly involves a difference between the ego and the non-ego whose overcoming becomes a ‘Sollen’, an ought. The rest of the Science of Knowledge delegates the task of mediation to the theoretical and practical faculties and shows how they mediate between the infinite and finite, between unconditioned, yet inaccessible freedom and finite and heteronomous subjectivity.

It is important to recognise that the absolute ego is not a metaphysically posited world-soul, but the transcendent condition and infinite goal of practical and theoretical activity. Fichte’s philosophy depends on the notion of an intellectual intuition of the ego, but only through its distinguishing itself from a non-ego. There is no immediate access to the unconditioned ego.

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14 Grundlage, 1:122-328 / 120-286.
Every cognition is an attempt at overcoming the division between subject and object by showing how the synthesis of the object is the result of the subject’s activity, but every such cognition reinstates the division and further defers the ultimate reconciliation. The transcendental idealist is the one who has the proper faith to go on despite the tragedy of his or her rational fate. And he or she goes on because morality, freedom itself, depends on it.

On the basis of the outline of Fichte’s philosophy I have presented in this section, we will be able to understand how Schelling developed his own thinking. As we shall see, Schelling begins to untangle the problems with Fichte’s philosophy, and exposes the inescapable moment of coercion inherent to the realisation of any ideal of autonomy.

Part two

Identity Philosophy and the Sovereign Position

I. PARADOX OF THE SOVEREIGNTY

In this section, we will see how Schelling’s philosophy arises out of the aporetic relationship between the ego and the non-ego in Fichte’s philosophy. The problem we referred to above may be understood in the following way. Imagine a map of all of reality. Is this map itself on the map or outside the map? If the map is not on the map, then something in reality is left out and the map is incomplete. Surely, the map is a part of reality and must be mapped, lest it should be incomplete. But then we need another map which can map the reality within which this map exists. An infinite regress is unavoidable here. It makes no difference whether one conceives the regress as moving ‘outwards’ toward the need of ever new maps to account for the map as an additional part of reality, or ‘inwards’, insofar as a map of a reality with a map of reality would have drawn recursively smaller, but complete, maps of reality within the map within the map and so on.\(^{15}\)

The problem with the map illustrates the paradox of sovereignty. If the sovereign is placed above and outside the law, he is by definition lawless, not subject to the regulations of legal order. In this case, the sovereign is an anomic element that undermines the absolute character

\(^{15}\) S. J. McGrath, The Dark Ground of Spirit: Schelling and the Unconscious (Hove, NY: Routledge, 2012), 122. This paradox is fundamentally the same as what Graham Priest calls the ’persistence of inclosure’; that any particular system seems unable to encompass the all: Beyond the Limits of Thought (Oxford: Clarendon Press; Oxford University Press, 2002), 227–34.
of the legal order. If located inside, he is not a sovereign, but a subject. This conundrum is also
the problem of the rational system of self-legislation. Reason must be the beginning and end of
the system, since it must be the legislator of its laws and subject to them. Yet reason will,
therefore, always appear outside the system and outside the law.

The oscillation of the ground of the system led Schelling to postulate, in his System of
Transcendental Idealism (1800), that every complete system must contain the ground of its
subsistence within itself, or else it would be incomplete. The map has to be inscribed within
the map: Self-consciousness is the ‘primary knowledge’ or ‘absolutely highest principle’ of
knowledge, because it has this fundamentally recursive and reflexive trait. That is, the ability
of the ego to claim any particular object as ‘mine’ meant that it was in some sense both
sovereign and subject, both above and under law. As Fichte discovered, however, our access is
limited to a finite subject that strives to know itself in the object. The indeterminate position
between the inside and the outside, between the ego’s position in relation to an object and the
ego as such, outside any limitation and subjection to a law or determination, created major
problems with which Schelling had to grapple. Eventually it would lead him to the recognition
of a contingent reality not reducible to the laws of reason and a freedom beyond that of self-
legislation. In that sense, Schelling began a journey from a philosophy partly inspired by Fichte
towards a political theology that sought to demonstrate the futility of a rational order and a
secular State without religion.

This development came about as Schelling realised that Fichte’s ego could not explain how the
difference between ego and non-ego arose, and thus how the ego could be the origin of the
otherness to which it was constantly subjected. In his early career, Schelling began to argue that
Fichte’s philosophy was only partial because the latter sought to explain everything out of the
ego. In short, according to Schelling, Fichte’s could not to show that the ego which always
appears to us as limited and determined by a non-ego, could be the origin of them both. As we
saw above, in terms of the structure of a judgement, Fichte could only demonstrate the
autonomy of the rational ego if he could show that it determined both the subject and the
predicate. But every time one tries to state this autonomous ego, it appears as only one of the
terms in the judgement.

16 Stl, 3:354 / 15.
17 Stl, 3:354 / 15.
18 Bowie, Schelling and Modern European Philosophy, 15–90.
In response to these problems, Schelling developed a philosophy of nature that came to be envisioned as a correlate to transcendental philosophy, corresponding to the division of subject and object. The idea is that reason, or the absolute, is beyond subject and object, yet unfolds and develops in the world as both (as spirit and nature). However, the System of Transcendental Idealism, as well as other works, seems at times to waver between the claim that transcendental philosophy is the complete system or only one part of it. In this sense, Schelling seeks to explain how the ego’s other, the nature which it seeks to comprehend or transform, develops out of the absolute, so that the self-legislating absolute produces both the individual subject of the judgement (matter/nature/non-ego), and the universal predicative term (the laws of the subject’s practical and theoretical activity, i.e., the ego). The absolute, as the point of unity between individual and universal, is the origin of them both, which explains why they may be harmoniously unified in a judgement.

Eventually this incited Schelling to develop his identity-philosophy, where nature is the all-encompassing and unconditioned term within which subjectivity and objectivity, the ideal and the real are unified. Fichte, so Schelling claimed, had only presented the philosophy of a relative identity, because in his philosophy subjectivity dominated objectivity, as concept dominated intuition and law determined existence, which meant that the identity point at which these terms would meet was unduly located in one of the terms themselves. One truly important consequence of this development in Schelling’s philosophy is that the dichotomy between moral freedom and natural determination was overcome. Whereas the objective world might seem to be passive and mechanistic, and the subject might seem to be free and self-determining, both the subjective and objective aspects of reality were now the outcomes of an absolute autonomous reality. The whole world, in its material and spiritual aspects, unfolded like a large, organic, and self-determining cosmopolis. Consequently, both the real part of reality and the ideal would themselves already have traces of their counterpart in them, and in fact, there would be various degrees of reconciliation between these terms. Hence by partly extending Kant’s teleological conceptions of nature in the third Critique, Schelling thought that self-determination took place in both the real and the ideal realm.

The indeterminacy of the first principle, however, would lead to another problem, which turned out to be a fundamental disruption of the rationality of Schelling’s identity philosophy. Having

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19 Bowie, 57.
20 Ffytche, The Foundation of the Unconscious, 75–95.
vouched for a strict philosophy of identity, the problem first announced itself in the configuration of the relationship between the absolute and the relative, that is, between the absolute identity of all things beyond any distinction and the world we live in, the world where subject and object, mind, and nature, the real and ideal are all distinguished in various ways. Although these terms now were thought to be balanced and not in opposition, since the ego and the non-ego equally had to be developed out from the starting point whose essence was located in neither, Schelling nonetheless had to explain the relationship between this starting point and these differentiations.

In the dialogue *Bruno* of 1802, Schelling argues that if the essence of the absolute is to be the identity of every distinction (universal/individual; real/ideal; subject/object and so on), the absolute itself must be beyond these and thus properly speaking *indifference*. The indeterminate position of reason in an autonomous conception (at once sovereign and subject) can only be resolved if reason hovers sovereignly above every distinction between inside and outside, being indifferent to them. It does not make sense to say that the absolute is a subject or an object, because it is indifferent to all such distinctions.

Schelling thus began to develop a theory of an absolute which lay beyond the relations of the subject-predicate sentence, and, therefore, beyond any comprehensible reconciliation of the universal and the individual. The unity and freedom Schelling is increasingly seeking, is beyond the confines of the legal apparatus. In his *Philosophy and Religion* of 1804, therefore, he argues that the concept of the absolute cannot be reached through negation, or by conceiving its indifference as if the philosopher were

holding the ideal or subjective in one hand and the real or objective in the other and then have him strike the palms of his hands together so that one abrades the other. The product of this abrasion is the Absolute.22

The absolute and its true indifference is not reachable ‘through reflective cognition’, that is, through discursive thought, and can be reached ‘only through intuition’.23 Philosophers can gesture towards the absolute through negations, the production of contradictions or by other means, but there remains an essential chasm that intuition must bridge.

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21 *Bruno*, 4:213-332
22 *P*, 6:22 / 12.
23 *P*, 6:26-7 / 16.
Fichte’s project is, therefore, strikingly described as a quasi-religious vocation, negating and sacrificing everything motivated by a blind faith in the rational reconciliation of the universal and the individual:

Each of us is compelled by nature to seek an Absolute, even those still wrapped up in finite things, but if we want to fix one’s thoughts on it, it eludes us. It hovers around us eternally, but, as Fichte has said, it is only there if one does not have it; as soon as one possesses it, it vanishes. It appears before the soul only at the moment when subjective activity joins the objective in unexpected harmony, which because it is unexpected has an advantage over free, desireless rational cognition to manifest itself as happiness, as illumination, or as revelation. But as soon as this harmony is brought about, reasoning sets in, and the apparition takes flight.24

In this sense, Fichte’s revolutionary philosophy represents a false religion of self-legislation which tries to reach the absolute (here conceived as a sovereign self-legislation), by way of rational striving. The only way of escaping this striving, a route that also implicitly challenges the ideal of rational self-legislation, is by way of intuition, an immediate contact with something beyond the duality of law and subject, universal and individual.

This epistemological solution to our knowledge of the absolute suggests that Schelling is imagining a radical gap between the absolute as such and the world of our experience. That is why Philosophy and Religion is in great part about the origin of the finite world from the absolute. If there is no passage from the absolute to the world of finite things, it means that the world describable in universal terms is radically different from the absolute as such.

To mediate between the absolute and the world comprehensible by discursive judgements, Schelling describes a kind of doubling of the absolute, a distinction between the ‘sheer absoluteness, in its simple-per-se-nature [schlechthin-einfache]’, and the ‘form’ of the absolute.25 This rather obscure distinction is an attempt to describe the world of distinction, reason and self-determination—in short, the world within which judgements can be made—as the form of the absolute, but not the absolute in an unqualified sense.

We will explain this distinction in clearer terms below. Suffice it to say, however, that by the time of Bruno and Philosophy and Religion, Schelling had recognised that if one tries to conceive of freedom as self-determination, then a point beyond these distinctions is needed, and thus a point which is not describable in rational-legal terms at all. If the paradox of

25 P, 6:30 / 19.
sovereignty reveals a point of origin which is both inside and outside the law, that is only because the sovereign is beyond even the distinction between inside and outside. In that case, the major issue with which Schelling will grapple, which in Philosophy and Religion he begins to describe as a ‘fall’, is the relation between this absolute point beyond every distinction and relation and the finite world of law, subjects, power, and conflict.26

III. THE ABSTRACT FREEDOM OF THE REVOLUTION

Before we see how Schelling developed a political theology in response to the coercion of the ideal of autonomy, we will attend to one of his early writings on the French Revolution. As his lectures On University Studies of 1803 demonstrate, the developments in Schelling’s philosophy recounted above entailed a re-evaluation of the French Revolution. However, as we will see, Schelling had at that time not fully drawn the consequences of his discoveries.

In these lectures, the Revolution is described as an unfortunate result due to the French tendency towards abstract reasoning.27 The French thought in dichotomies and extremities, which turned them to a sacrificial and falsely religious logic as evidenced in Fichte’s philosophy. This was the result of the French valorisation of non-philosophical reasoning, and its lack of holistic and teleological rigor. However, the obstacles to the political realisation of freedom are greater than those produced by the historical contingency of the state of French politics and philosophy.

In the same lectures, Schelling explains the problem of modern political life as the diremption between the public and the private, law and life.28 The distinction, which arose in post-feudal society, means that the unconditioned character of political life is prohibited from extending all the way down to the private life of individuality. The State is supposed to bring about the ‘harmony between necessity and freedom’ by assuring that ‘the particular and universal are absolute one’, yet the diremption of public and private life means that the particular or the individual escapes the territory defined by the universal.29 The private life is a life in which one’s status as a citizen is of no concern, in which the citizens’ convictions and dispositions are more or less allowed to run free. Thus, the State provides a civil freedom that muddles freedom and slavery and its institutions of the middle are ‘caught between the ruler and the ruled’.30 This is freedom because the State does not meddle in private affairs, but also slavery, because the

27 VM, 5:258-59 / 52.
28 VM, 5:313 / 110.
29 VM, 5:313-14 / 110-11.
30 VM, 5:315 / 112.
citizens do not recognize themselves in the State’s legislation. Religion becomes, in turn, the ‘subjective ideal of unity’ in the form of the Church. Relegated to the private, it has no power to realise the unity and freedom it espouses. Consequently, modern life is characterised by a finite State and a finite religion: neither the Church nor the State can realise freedom.

But Schelling does not yet deny the State as the horizon for the expression of the absolute. The problem with the French Revolution was that it sought to realise an abstract conception of freedom. Until the State has become an ‘absolute organism’, the highest end to which all other activity is oriented, freedom cannot be realised. But this is not to deny that the freedom realised in the State is the unity of the universal and the individual. In these lectures, then, Schelling still presents a view of freedom as moral self-legislation. He has nonetheless yet to consider how this is to be achieved, and how the freedom and unity represented in the Church may play an essential part in the political realisation of freedom.

In this sense, the Stuttgart Seminars represents a transition stage on the way to a political theology. Freedom as autonomy must be realised in the world, but there is something preventing this from happening. This is an obstacle whose metaphysical and theological conditions Schelling will seek to uncover.

**Part three**

*Political Theology of Judgement*

**I. A NEW ACCOUNT OF JUDGEMENT**

In the theosophical drama of the *Philosophical Investigations into the Essence of Human Freedom* (1809), Schelling presents an obscure metaphysical vision which contains a radical critique of the revolutionary ideal of autonomy. As we shall see, he develops a new understanding of freedom which explains why judgements in a secular human order will always be coercive to some degree.

It is not easy to enter this enigmatic text, but one might want to start with comparing it to the structure of the highest principles of reason in Fichte’s *Science of Knowledge*. We saw that, according to Fichte, every time the ego tries to think itself, it disappears into subconscious

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31 *VM*, 5:316 / 114.
32 *FS*. 
darkness, and instead one is given another ego in relation to an object. These structures all appear in Schelling’s philosophy at this point. Put in terms of subjective consciousness, Schelling argues that the conscious arises only as a suppression of the subconscious: it is precisely because consciousness remains opaque to its subconscious origins that it is able to be conscious of an object.\[^{33}\]

Schelling thus theorises the failure of Fichte’s system and argues that for any rational structure or lawful order to come to light, a prior ejection of disorder must take place. This means that there is an interdependence of these principles, to which Schelling refers to as ground (ejected subconscious) and existence (conscious presence), and variously as darkness/gravity on the one hand, and light on the other. As with Fichte’s absolute ego, all these terms arise from a prior unity, but now that is understood as absolute indifference, which Schelling designates as the non-ground (\textit{Ungrund}).\[^{34}\] This highest absolute is a pure undifferentiated will, which in a primordial ejection of the ground into itself, comes to light as existence and order. We have, therefore, a prior indifferent will and two ‘potencies’, which now appear as self-will (ground) and universal will (existence).\[^{35}\] It must be stressed that the two latter terms are such that the self-will first begins to exist precisely because it is suppressed by the universal will, whose existence equally depends on this suppression. Prior to these, there is only the indifferent \textit{Ungrund}.

What we see here, is a complex theory of judgement as the unity between an individual and the universal. In this sense, we see that the problem is still that of autonomy: how can one account for a judgement in which the individual (subject), is determined by a universal law (predicate) which it may recognise as an expression of itself? For Schelling, the ground is the principle of individuality, concreteness, and disorderliness, whereas existence, or light, is the principle of universality, lawfulness, and divinity. The first and second potencies repeat the old Augustinian distinction between love of self and the divine love of the other. In this sense, one could argue that Schelling is still working within the French republican tradition (through Rousseau) that thinks of the absolute as the coincidence of \textit{amour-de-soi} and \textit{amour-propre}.\[^{36}\] The new republic is founded on love: the autonomy of the citizens is secured only if each and every one (the individual) submits completely and unconditionally to the universal (the general or

\[^{33}\] FS, 7:361-62 / 30-1.
\[^{34}\] FS, 7:406 / 68.
\[^{36}\] James, \textit{Rousseau and German Idealism}. 92
universal will), in other words, if people put their love of the neighbour above their love of themselves.

The coincidence of the individual and the universal does not mean the complete effacement of self-love or self-will, but rather its radical submission to universal will. Consequently, love is realised as a third potency, namely the bond between individual and universal will. The fact that this is possible is a consequence of their having their origin in the indifferent God. However, their mere existence is the result of God’s decision for love, which is only possible by this fundamental ejection and distinction within God Himself. As indifferent Ungrund, God is beyond every distinction, and thus beyond love of self or love of other. But by distinguishing himself into individualising and universalising potencies God is able to present His love as their unity. God, then, makes a decision for love.

The judgement seeks to produce a unity between self-will and universal will. The copula is where love happens. The judgement mediates between the subject and predicate, and succeeds when it accounts for their identity without effacing their difference. The universal must be the individual, and the individual the universal, yet without them being indistinguishable. The account of judgement we have begun to unpack in this section needs to be developed further.

Schelling explicitly addresses the problem of judgement early in the Freedom essay. The essay begins with a surprising discussion of the problem of pantheism (no doubt in response to the Pantheismusstreit mentioned in the previous chapter), and how it could be said that all things are in some sense God, without them being indistinguishable from the latter. To elucidate this, he discusses the function of the copula in a judgement:

It can at once be made comprehensible to a child that in no possible proposition (which according to the assumed explanation states the identity of the subject with the predicate) is stated a sameness [Einerleiheit] or even only an unmediated connection of these two—in so far as, for example, the proposition, “This body is blue,” does not have the meaning that the body is, in and through that in and through which it is a body, also blue, but rather only the meaning that the same thing which is this body is also blue, although not in the same respect: and yet this assumption, which indicates complete ignorance regarding the nature [Wesen] of the copula, has constantly been made in relation to the higher application of the law of identity in our time.

37 FS, 7:410 / 71.
38 FS, 7:410 / 71.
Manfred Frank has helpfully spelled out the background to Schelling’s logic of the judgement in a way that clarifies this passage. For Kant, ‘positing’ \([\text{Position, Setzung]}\) is the general term for being or existence, but appears in a relative and absolute form. Whereas the copula does the work of relative positing in normal predicative sentences (‘this snow is white’), to posit absolutely is to claim that there is an object that falls under a particular concept (‘there is snow’). But what ‘positing’ or ‘existence’ means in absolute positing is difficult to gather, for existence is not a predicate. As Kant famously argued, to say that God exist, is not to add cognitive content to the concept of God. Whatever is understood in an act of absolute positing, is already contained in the concept thus posited. In contrast, relative positing gives rise to conscious comprehension, because the predicate specifies the subject. To say, ‘this snow is white’ is to further determine the meaning of the subject. For Schelling, this distinction between absolute and relative positing reappears as the metaphysical distinction between absolute essence, which is indifference, and absolute form, which is the judgement and its identity.

Coming back to Schelling’s discussion, then, the absolute as such is like a pure act of the positing of existence: it cannot be specified in any way or understood as such. However, the entity thus posited is the underlying ‘thing’ which can be said to be manifested in the terms of the judgements. To say, ‘this body is blue’, is to render comprehensible a unity which as such is unavailable to rational definition, yet without effacing the difference between the subject and predicate. If X is the underlying unity, the subject is ‘X considered as a body’, and the predicate is ‘X considered as blue’. Although these predicates are not identical, they are expressions of the same reality. Later, in *The Ages of the World*, he describes the judgement ‘A is B’ in the following way: ‘A in this judgement is not A, but “something = x, that A is.”’ Likewise, B is not B, but “something = x, that B is”. In this way Schelling thinks he can overcome the irreconcilable differences of Fichte’s finite terms: the universal is the individual, and the individual is the universal, not, however, because they are absolutely identical, but because they both consider their underlying unity under different aspects. The ground (the individual) is the manifestation of indifferent will as self-will, and existence (the universal) is the manifestation of indifferent will as universal will. We cannot come to know the *Ungrund* because it is the

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absolute positing, as it were, the presumed underlying unity among the terms of the copula. It also provides a way for him to deny that ‘infinite substance considered in its consequences is the same [einerlei] as infinite substance considered as such’, and thus refute the charge that pantheism erases all individuality.\textsuperscript{44}

In this section, we have seen how Schelling’s original insight that the absolute origin of every distinction must be beyond every distinction leads to a new and complex account of judgement. An important part of this insight, however, is that this absolute indifference is not fully comprehensible in terms rational judgements. The momentous consequence of this is that Schelling thereby admits the limits of the legal apparatus of Fichte’s philosophy: the judgement traces a relation between the subject and predicate which never corresponds exactly to the reality in itself. For the unity of judgement is not identical to the prior indifference; in theological terms, the divine love expressed in autonomous and harmonious freedom, is not identical to God as He is prior to his decision to love. In the next section, we will see how this entails an analysis of the coercion of political and rational order.

\textit{IV. Evil as the Obstacle to Autonomy}

Schelling develops his new account of judgement through a sustained reflection on the reality of evil. Within Schelling’s political theology, evil is a term for that aspect of reality which prevents harmonious relationships between universal laws and individuals. As we shall see, although these are really supposed to harmonise, the presence of evil means that law will always be coercive to some degree.

First, Schelling explains how the distinctions of the world (subject/predicate; individual/universal; ground/existence) arise out of God: God’s decision for love means that he creates the possibility not only for good, but also evil.\textsuperscript{45} For Schelling, this means that the distinction between ground and existence, between the unruly ground and law, came about precisely as God’s decision to subject the unruly basis to the rule of law. For to choose the universal is goodness, while a choice for the self or the ground is evil. However, if one chooses the universal will over self-will, this principle of universality does not simply suppress the unruly and disordering egoistic principle, but orders and actualises its inherent possibility. Even the irrational ground has the same origin as law and can, therefore, be realised and satisfied by

\textsuperscript{44} \textit{FS}, 7:345 / 16.
\textsuperscript{45} \textit{FS}, 7:363-64 / 32-3.
giving in to the latter.\textsuperscript{46} Thus, the love of the universal becomes a higher, third potency, which is the true realisation of the love of self.

This is what God has done with his own nature, which means that God is not simply the absolute indifference, but also realises the truest identity of the copula: In a dramatic kenotic decision, God has chosen to submit his love of self to the love of the other, and thereby committed himself to a world of law, individuality, and distinctions. Without this decision, there would have been no distinction, no relation and thus no love. In this sense, there would have been no good or evil. But then we must admit that God’s decision for universal will and the submission of self-will is the immediate condition of possibility for evil as well.

Human beings are the peak of creation, and their divinity is revealed in the fact that they can decide for or against their freedom, that they can choose between good and evil. If they choose to love their neighbour, if they renounce their egoism and give themselves over to the universal, they will mysteriously receive back tenfold, so that even their individualising part is satisfied. Self-determination, the harmony of universal and individual is, therefore, possible in the world. The bond of love in the divine life is upheld by God’s decision and power, but humans must decide for themselves and make use of their own freedom to judge:

\begin{quote}
Man is placed on that summit where he has in himself the source of self-movement toward good or evil in equal portions: the bond of principles in him is not a necessary but rather a free one.\textsuperscript{47}
\end{quote}

The decision for evil is a decision for the ground, for matter. The ground is not bad as such, but a decision for ground against existence is a decision for the disorderly principle; it is a decision to be unfree by enslaving oneself to self-love and the passions. Equally, the decision for divine love is a decision for self-determination, and thus a decision for autonomy. The choice for either potency, however, is subject to an eternal decision at the liberty of both God and the human being. Human beings have the ability to set themselves in opposition to the self-determining order, and thus become aporetic individuals that cannot be subsumed by a larger whole. It means, then, that human beings are creatures who can choose not to partake of God’s love by resisting the freedom of self-legislation. The consequences of human sin are, in biblical fashion, expressed in creation as a whole, as the appearance of brute contingency and disorder.\textsuperscript{48}

\textsuperscript{46} FS, 7:410 / 71.
\textsuperscript{47} FS, 7:374 / 41.
\textsuperscript{48} FS, 7:376-77 / 43-4.
Because human beings have opposed their individuality to the universal order, the egoistic principle has broken free. For this reality is forever broken, and the principle of individuality will never willingly submit to universal will and order.

This freedom of human beings to choose to partake in a self-legislating order creates a tension within Schelling’s system. On the one hand, the judgement can be fulfilled if the law that it applies comes to be seen as a legislation of the subject to which it is applied. If it is recognised that the individualising principle has the same Ungrund as the universalising one, harmony may arise. On the other hand, the presence of human evil has now precluded the certainty of the total rational self-determination of the cosmos. The limit to the universal and the rational created by the independent status granted to the ground means that order always appears as resistance to anarchy: ‘nowhere does it appear as if order and form were what is original but rather as if initial anarchy had been brought to order’. The independence of the ground forever prevents complete self-determination, for that is only possible given a complete submission of anarchy to law. Insofar as the ground has some degree of independence it appears as the contradictory and disorderly state of nature, and law appears as a violent imposition of form. In other words, until human beings wholeheartedly opt for the universal, an act which is almost beyond their finite capacity, their place in the rational order will involve some degree of coercion.

We see, then, how evil functions as an obstacle to the completion of judgement in a harmonious way. To successfully complete a judgement would be to realise autonomy, in the sense that there is a harmony between the individual (subject) and the universal (predicate). However, as long as there is evil in the world, the individual will always resist the imposition of the universal law. This account of judgement allows us to understand why Schelling began developing a political theology, to which we turn in the next section.

**V. SCHELLING’S POLITICAL THEOLOGY**

As we will see, the newly developed theory of judgement meant that Schelling became critical of the possibility of realising an immanent secular order based on autonomy. This is most clearly evident in his Stuttgart Seminars, where he clearly denounces the revolutionary project:

We all know of efforts that have been made, especially since the advent of the French Revolution and the Kantian concepts, to demonstrate how unity could possibly be reconciled with the existence of free beings; that is, the highest possible freedom of the

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49 *FS*, 7:359 / 29.
individuals. Quite simply, such a state is an impossibility. Either the state is deprived of the proper force or, where it is granted such [force], we have despotism.\textsuperscript{50}

In the \textit{Stuttgart Seminars}, Schelling notes that mankind had the option of finding its unity as a ‘threshold or point of indifference’ in God Himself.\textsuperscript{51} However, the choice for evil over goodness has made this indifference impossible. The only unity to be found outside of God is in finite nature. In the natural world, there is no complete self-determination and only limited degrees of unity and freedom. However, since human beings refuse to recognise that the true unity of things is in God, they have to replicate a ‘bond of all entities […] which binds together inorganic nature’.\textsuperscript{52}

The modern State is, therefore, a kind of ‘second nature superimposed on the first’. The transition from the state of nature to the city is, therefore, not a complete leap out of coercion, but rather a limited remedy for the ‘curse that has been placed on humanity’.\textsuperscript{53} The State nevertheless seeks to arrogate power by pretending to be able to ‘create a moral setting’, that is, to create an ethical community where the universal and the individual are reconciled. Yet no ‘free spirit’ will be deceived. This argument leads directly to the criticism of the French Revolution and Kantian philosophy as a false arrogation of power.

As we saw, Schelling nevertheless thinks that there is an ideal State, although it exists only in heaven. Its realisation requires innocence, which is precisely what we do not have.\textsuperscript{54} For innocence belongs to those who have not taken a bite of the forbidden fruit; innocence also includes the innocence of the knowledge of good and evil. Only in such a State could the world and our communities reconcile themselves in pure self-legislation. The complete determination of judgement, where subject and predicate unite as the expression of divine love, cannot take place in a world where self-will has become an independent principle and people continue to love themselves more than their neighbour. For that reason, the coercion of the inside of the political community, posing as a community of free citizens, is betrayed by the outside which appears quite clearly as a State of war among states.\textsuperscript{55}

\textsuperscript{50} \textit{SP}, 7:461-62 / 277.
\textsuperscript{51} \textit{SP}, 7:461 / 226.
\textsuperscript{52} \textit{SP}, 7:461 / 227.
\textsuperscript{53} \textit{SP}, 7:461 / 227.
\textsuperscript{54} \textit{SP}, 7:462 / 227.
\textsuperscript{55} \textit{SP}, 7:462 / 228.
The origin of Schelling’s political theology is to be found, therefore, in the theory of decision and the principle of evil as the limit of self-legislation. ‘After’ the fall, human and immanent organisation and political action cannot go beyond the politics of restriction. The State can at best function as a realm of lesser evil. Rational and political judgement can impose order, but not enforce the reconciliation of the universal and individual.

The divine response to the fallenness of the world was for God to incarnate and reveal Himself so that He might redeem it. This is no metaphor, but has a real historical referent and serves as the foundation of a political theology of freedom. God becomes a human being and makes Himself finite (verendlicht) to restore the bond between the ground and existence. Christ is the mediator between God and man and restores the latter to ‘spiritual life’. Christ was ‘the lord of nature by virtue of His mere will and He entered into that magic relation with nature that man originally meant to assume’. He made, in other words, a total decision for the bond of love and the restoration of judgement.

Christ’s act served as the origin of a spiritual community of human beings who recognise that true freedom comes only through a decision to be free in and through the divine plan and order. Today, however, this community exists as a unity of interiority in the Church, and is opposed to the external unity of the State. Until the dichotomy between the internal and external and private and public is broken, the spiritual unity of the Church cannot take hold. This dichotomy, it seems, is not purely bad, for the old Church of the ‘hierarchical period’ gave up its purity by assimilating the institutions and power structures of the State, and thus imposed spiritual unity through force. The Church was never meant to curb violence in the way of the temporal states, as the ‘true and divine may not be promoted by an external force’. The break with the hierarchical or feudal past was good, because the ‘one-dimensional attempts’ to enforce freedom through external means demonstrated the necessity of an inner, non-coercive unity. It is, therefore, apparent that true unity and freedom can only come through religion. What is needed is ‘the supreme and most diverse culture of religious knowledge’, which will help the State divest itself of blind force. Neither Church nor State should dominate,

56 SP, 7:463 / 228.
57 SP, 7:463 / 228.
58 SP, 7:464 / 228.
but the latter should ‘cultivate the religious principles itself’ so that the community is ‘founded on religious convictions that, themselves, ought to be universal’.  

So far we have seen the way in which Schelling develops a political theology in response to the coercion of every attempt to fully realise an autonomous order. He shows how the autonomy of the modern republic cannot be realised through political means and that only another kind of freedom, revealed in the incarnation and remembered by the Church, can one day overcome the coercion of political and rational relations. Until then, political and rational laws will continue to appear as restraining forces on a chaotic state of nature. Now, however, I will argue that political theology cannot account for how Church could ever redeem the failure of the secular State.

VI. THE FAILURE OF MEDIATION

In this section, we will see how the political theology of Schelling’s middle period is underdeveloped and betrays the inner tensions of his metaphysical system. The modern State has failed to make human beings free. Although its ideal of self-legislation and autonomous judgement is good and absolute, it can only erect its order by betraying the freedom for which it is aiming. It is impossible to realise freedom through a revolution which denies the religious basis of political life. Religion, on the other hand, represents the harmony not realisable by the State as something accessible through a free choice beyond every form of legislation and coercion. Only religious convictions can create the spiritual community without force. But for that very reason the dichotomy between the ethical and the legal—between the ideal of freedom and actual legislation—that runs through Kant’s philosophy reappears as the dichotomy between the State and religion in Schelling’s political theology.

This problematic relation is a direct consequence of what Michelle Kosch takes to be two incompatible views of freedom, or what Arthur O. Lovejoy and Matt Ffytche after him have characterised as two different descriptions of the absolute. 61 The two kinds of freedom are, as we have intimated already, the freedom of self-determination and the freedom to do good and evil. For Schelling, this distinction is possible on the basis of a wider distinction between

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60 SP, 7:465 / 229.

necessity and freedom. Necessity is not merely defined as the absence of contingency and the complete determination of effects through their causes. Idealism has discovered a ‘higher necessity’ which is that ‘inner necessity springing from the essence of the acting individual itself’, that is, necessity as self-legislation or self-determination. In this Kantian and Fichtean understanding, freedom is identified with necessity. But according to Schelling, this freedom is still merely formal. By disregarding the possibility of evil, that of opposing oneself to rational and self-determining order, they are unable to demonstrate the identity of subject and predicate. For this is the point: in a fallen world, such an identity cannot be demonstrated or produced with rational necessity; only with an act of love can one choose to be free by subjecting oneself to necessary laws. As a result, the two freedoms—autonomy and radical freedom to do good and evil—are to be understood as freedom and necessity, respectively. However, as we saw in the Stuttgart Seminars, Schelling is not able to reconcile these dimensions, other than to say that freedom and necessity ought to be the same; the State ought to be founded on religious principles, which means that its citizens ought to choose the order of the city due to a conviction that it is and can become a manifestation of God in His indifferent unity, so that the law of the city can sustain a community of love. What Schelling is unable to prove is that the radically free choice of the will prior to any law or necessity is, at the end of the day, expressed as the bond of love in judgement. As long as there is contingency in the world, as long as the love of self dominates the love of others, there is no way of proving or enforcing the common telos of these two conceptions of freedom. Until the eschaton inexplicably arrives, rational self-legislation will take the form of coercion, and true unity is relegated to the inner citadel of the soul.

Ffytche notes the same paradox with reference to the Ages of the World, which develops the insights of the Stuttgart Seminars and the Freedom essay:

How can the absolute be preserved intact, to allow for notions of providence and harmonisation (without which the concept of freedom begins to self-destruct), and yet at the same time be displaced from existence? [...] How can the absolute be real enough to found identity, but immaterial enough not to disturb the processes of individual self-authorisation?

63 FS, 7:383 / 49.
64 Ffytche, The Foundation of the Unconscious, 106.
The conflicting roles of the absolute in the *Ages of the World* is for Ffycthe, and Lovejoy before him, the result of an attempt to harmonise two radically different conceptions of God. The conflict begins to appear already before the *Freedom* essay in a period when Schelling is increasingly inspired by Neoplatonistic sources. The discovery of Neoplatonism and the mystical tradition lead to an increasing emphasis on safeguarding God’s transcendence over the becoming of the world.

There are really two ‘origins’ in Schelling’s philosophy. On the one hand there is the highest, eternal God of radical indifference, from whom all things flow and all things return. This is the point of unity that *ought* to be recreated in a judgement of identity. On the other, there is the origin of the ground, which is the beginning of the unfolding cosmos. Here, Ffycthe points out the Aristotelian heritage of this second absolute: The world begins with the ground, which has the character of an indeterminate matter that implicitly contains the divine plenitude in a confused form. God, as the totality of the cosmos, unfolds and gradually determines Himself as form determines matter.

The tension we are dealing with is thus still that between the indifference of God prior to distinction and the world that comes into being when God chooses to eject His ground within Himself. But the world that thus appears can never show itself as a complete manifestation of the Neoplatonic One beyond all difference and relation. The transition from a groundlessness to a cosmos or city based on the rejection of the unruly ground involves a gap. If this gap is not bridged, we have no way of showing that the potencies—ground, existence, and their bond—are ultimately compatible. Andrew Bowie puts the problem in this way:

> If the divinity were to negate pronominal being [i.e., the world comprehensible by rational judgement] by incorporating it into itself, then the divinity would not be able to manifest itself as free; if it were to leave pronominal being independent of itself the divinity would deny its essence as ‘the equally eternal no and the equally eternal yes’.

God understood as absolutely free and indifferent must simultaneously be identical and different from the world in which differences have to be negotiated (‘pronominal being’). The difficulty of negotiating between God as a Neoplatonic one and as Aristotelian process can be understood as the problem of accounting for the former through the latter, or how to understand indifferent freedom in a world in which judgement, law and relations of power are the only

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resources we have for understanding anything. If absolute indifference or freedom is not comprehensible through rational judgement, then this absolute might seem to fall away, being merely a marker for the failure of rational judgement, thus becoming ‘indistinguishable from the idea that the emergence of a manifest universe is inexplicable or merely contingent’.

**Conclusion**

Schelling discovered the coercion of idealism’s understanding of freedom as self-legislation. There can be no Revolution and no realisation of freedom that does not collapse into an imposition of law on disorder. The impossibility of fitting finite reality or individuals into a rational order, brought Schelling to posit a higher freedom and higher absolute beyond the self-determining whole. Human and divine freedom are taken to imply a point of indifference prior to the rational city. At the same time, temporal and spiritual freedom must at the end of the day be related so that the former is an expression of the latter. The divine love which chooses good over evil, must transform human communities. But our freedom to choose good or evil prevents this unity from being enforced in any comprehensible way. The theological representations of divine love and freedom by the religious community risks being nothing other than expressions of the failure of the State to realise the freedom it promises. In itself, the spiritual community of the Church remains powerless, and serves to uphold an ideal that ought to be realised. Because there is finally no way of mediating the two conceptions of freedom and the two absolutes, one must understand Schelling’s political theology as a reflection on the failure of judgement. His theology is of a God that stands for the failure of judgement in light of the radical contingency of the world. His politics is of a coming community that ought to and will be realised, but only inexplicably so. The highest point in Schelling’s political theology is, therefore, a sovereign and indifferent God who rules over everything, so distant from the finite negotiation of the world we live in that He does and says nothing.

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66 Bowie, 125.
Chapter 3
Against Deferral:
Carl Schmitt’s Political Theology of the State

Introduction
In this chapter, we will explore the second fate of the trial of reason. In chapter 1, we saw that since the trial of reason could not be completed without flouting legal procedure, one way out was to defer the verdict. Such a deferral was legitimised by the hope that, although there is no way of proving that reason was autonomous, autonomy could still be a regulative idea. At the end of chapter 1, I argued that this approach is no different from admitting that the establishment of reason’s laws is violent. The law, therefore, continues to demand a sacrifice from those subjected to it. Meanwhile, this deferral sustains a dichotomy between the law it upholds and the ethical ideal it purports to defend. In the following, we will investigate this fate of the trial by discussing the work of legal theorist Carl Schmitt and his response to the neo-Kantian formalism of Hans Kelsen. We will see how Schmitt points to the hidden judgement or decision that characterises a liberal formalism which seeks to defer the verdict. For Schmitt, the need to account for judgement meant that he had to develop a political theology which affirmed that all political orders are built on sacrifice. Despite his attentiveness to the origin of political order, I will argue that Schmitt’s own political theory fails to provide an adequate account of this origin.

Part one
The Ethics of Endless Chatter

I. THE CREATION OF BOURGEOIS SOCIETY
Schmitt’s critique of liberal formalism draws on a specific narrative of the beginnings of modernity, which is spelled out by Reinhart Koselleck in his Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society, as mentioned in the introduction. By attending to Koselleck’s narrative in this section, we will see how Schmitt’s analysis of the problem of judgement depends on his understanding of how civil society and the bourgeoisie arose in the wake of the absolutist regimes.
For his part, Koselleck developed implicit narratives in Schmitt’s work, and argued that the absolutist system, which arose after the wars of religion, provided the condition within which the modern individual could come into being. As European societies moved out of feudalism and monarchs and sovereigns gradually consolidated power, rulers were increasingly held responsible for all political relations but relieved of guilt for their actions. The doctrine of raison d’état accounts for this shift. The ruler was the undisputable source of political action but was subject to no moral criteria. The individual, on the other hand, free of all political responsibility, was ‘divided into human being and citizen’, between a public half, which was subjected to the law, and a private half, in which his mind was free. The reason of State, for its part, ‘interested solely in terminating civil war, was not concerned with the difference between the moral and political sphere’.

Reason’s obliviousness to the distinction between the moral and the political, or between ethics and law, was the beginning of the end of the absolutist system. A non-political ethic and a non-political moral conscience became possible when a new notion of the individual appeared. By definition, this individual resided outside the bounds of the law, even if that outside was merely the inner space of conscience. With the ascendancy of the bourgeoisie, people began considering themselves as bound by a law whose construction depended on a ‘society’ of equals. Gradually, society and the State came into conflict, and positive law was considered incompatible with the demands of the moral law. The experience of the stark contrast between private relations and political subjection meant that the bourgeoisie conceived their institutions and their society in non-political terms, although the political ramifications of these developments were considerable and the power of the bourgeoisie only increased.

Critique or criticism was the weapon of bourgeoisie morality, who suddenly had the power to criticise even the State itself. The critic became the new sovereign, the one who could judge all men, and criticism implied ‘the levelling of everything and everyone, including the King’. The decisive moment came when the reach of critique ‘extended to the State and the legal difference between its own authority of judging and that of the State was negated’. Within the confines of philosophy, Koselleck finds the clearest expression of this identification of law and ethics in

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1 Koselleck, *Critique and Crisis*, 16.
2 Koselleck, 36.
3 Koselleck, 38.
4 Koselleck, 62–85.
5 Koselleck, 118.
6 Koselleck, 122.
the work of Rousseau—a move we are familiar with by now. According to Koselleck, Rousseau’s city depends on the identity of ethics and law, or ‘the fictive identity of bourgeois morality and sovereign decision’.  

Nevertheless, even in the realm of criticism, the individual’s experience of alienation, so present in the absolutist system, abided. The individual continued to be located outside or inside the bounds of its neatly defined order, and the harmonious whole of Rousseau’s city revealed its crack in the precarious position of its inhabitants, who were constantly corrected and brought in line when and where they diverged from the general will. For Koselleck, most of the bourgeois elite did not see the impending crisis and the decisions, exclusions and sacrifices on which politics depends despite their pretence of autonomy and harmonious self-regulation. Accordingly, Koselleck considered this as an example of the hypocrisy of a self-defined ethical community which refuses to recognise the coercion of its regulations.

When Koselleck originally published the book, Schmitt only appeared in the bibliography. This muted acknowledgment was most likely an act of prudence, given Schmitt’s problematic ties with the Nazi regime. But despite this lack of reference, Koselleck’s book was heavily influenced by Schmitt’s work and puts historical flesh on a narrative often repeated therein. For Schmitt, bourgeois society became a sphere that pretended to stand outside of the political; and it considered itself as a domain without relations of power. It represented a non-political realm in which one did not need to make definitive judgements. The bourgeoisie provided an ethic that sought to relegate coercion and actual power relations to a feudal or absolutist past. When this ethic gained control over the political, a development that produced liberal democracy and eventually the parliamentary system, people began acting as if governing were possible without coercion, and that politics could proceed without sacrifice.

This story situates Schmitt’s criticism of liberal formalism. In short, it accounts for the way in which the transition from feudalism to the absolutist systems gives rise to the notion of an individual alienated from the law, one who sought to create a community independently of coercive relations: civil society; the realm of criticism. In the next section we will, therefore, attend to Schmitt’s reaction to the development of civil society.

**II. SCHMITT ON BOURGEOIS SOCIETY AND THE CREATION OF LIBERAL FORMALISM**

7 Koselleck, 164.
Schmitt’s criticism of civil society is already evident in his earlier works, such as *Political Romanticism* of 1919, where he accuses it of embracing political romanticism. Schmitt was, as commentator Guy Oakes points out, a ‘prosecutorial thinker’. Though Schmitt’s polemic deals with the romantic movements, it is directed at a long liberal tradition which, he believes, continues to defer the verdict and to avoid real political decisions. The political dominance of the bourgeoisie inspired a vision of the world in which the individual is ‘its own point of reference’, where man has to be his own poet, priest and king. The romantic individual directs himself to a world ‘without consistency and definition, without decision, without a final court of appeal’. Because everything stands aesthetically in direct relation to the individual, no worldly distinction or conflict matters, and he or she can endlessly discuss every topic without ever coming to a conclusion or making a decision. This indecisiveness is always grounded in a ‘higher third’, a point of indifference beyond antitheses, a point which is always hidden away in the ego itself.

The endless chatter of the romantics was characteristic of the liberal tradition as a whole. For Schmitt, the defining feature of liberalism might be its never-ending conversation, an inheritance politics received from the cafés and the printing presses of bourgeois life. A few years after *Political Romanticism*, in his attack on parliamentary and liberal democracy in *The Crisis of Parliamentary Democracy*, he argued that openness and discussion had become the defining distinction between might and right. Whereas the former work presented a critique of the metaphysics of modern liberalism, the latter analysed the dire state of liberal politics after the disappearance of the old society of the seventeenth and eighteenth centuries and the transition to mass democracy.

Schmitt presented a similar criticism in his *Political Theology*. In dialogue with counterrevolutionary philosophers, he gave a damning characterisation of bourgeois liberalism:

> According to Donoso Cortes, it was characteristic of bourgeois liberalism not to decide in this battle but instead to begin a discussion. He straightforwardly defined the

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8 *PR*, xi.
9 *PR*, 20.
10 *PR*, 18.
11 *PR*, 117.
12 *CPR*, 48-50.
bourgeoisie as a “discussing class,” *una clasa discutidora*. It has thus been sentenced. This definition contains the class characteristic of wanting to evade the decision.  

The anti-political instinct of liberalism answers the question ‘Christ or Barabbas?’ with ‘a proposal to adjourn or appoint a commission of investigation’. Schmitt’s claim that everlasting discussion is the ‘essence of liberalism’ can be understood in light of his frustration with the inefficient parliamentary system of the Weimar Republic. But Schmitt’s hatred of the endless discussion of the liberals and the abstract formalism and compromise of the parliamentary system was not merely a frustration with ineffectiveness. His analysis was a philosophical one, which had far-reaching consequences for political problems in their theoretical and practical dimensions. Behind his charge lay the conviction that liberalism had veiled the sacrificial character of political action, and had thus suppressed its relationship with the theological.

The outline of Schmitt's argument is as follows: The end goal of liberalism is a political form where the people rule the people, and thus where the State is grounded in civil society. But the autonomy of the people is impossible to realise because society will always display a degree of pluralism that prevents it from non-coercively producing a harmonious general will or legal order. Until the moment comes when all members of society recognise themselves in the law of the State, the only sure rule of governing is that one should not preclude the possibility of its citizens one day becoming autonomous. In a parliamentary system, this takes the form of countless compromises where the only laws legislated are those that safeguard the prospect of everyone one day agreeing about the issue. Formalism is the political form of liberalism. Hence society is paradoxically reflected by the State, not as the laws produced by the sovereign general will, but because the State becomes a place of the empty discussions that resemble the endless chatter of the cafés or of the romantic aesthetes whose words are many but matter little.

For liberal politics, the goal of autonomy is practically irrelevant, for nobody knows whether or when they will become autonomous and truly represented by the State. Instead, public discussion and parliamentary legislation are guided by the principle of formal lawfulness and

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13 PT, 59.
14 PT, 62.
the requirement that everyone and everything is included in their not being excluded. The essence of liberalism is, therefore, not autonomy, but universality understood as non-contradiction. If nothing is excluded, everything is in play, and the discussion can go on.

Schmitt does not argue that this is a wrong view of order, but rather that the legal order depends on something that transcends it. Legal order needs a decision for it to have non-contradictory unity and to preserve itself in the face of an enemy. Liberal democracy depends on such decisions, as does any political order, but it is marked by the tendency to minimise and hide them. Schmitt’s point, then, is that liberalism veils the decision and sacrifice at the foundation of political order.

In the next part, we will discuss the liberal formalism of Hans Kelsen, who was arguably Schmitt’s nemesis, and attend to Schmitt’s criticism of the former. Kelsen’s work is of interest to us because it exemplifies the liberal tendency to evade the problem of judgement or decision, that is, the question of the origin and application of law. His work brings liberal formalism to its radical conclusion, by reducing even ethics and the goal of autonomy to pure formality.

**Part two**

*The Formalist Suppression of Judgement*

1. **THE NEO-KANTIAN FORMALISM OF HANS KELSEN**

In chapter 1, we saw how Kant struggled with the problem of judgement, as the question of how to end the trial of reason and reach a verdict. The neo-Kantian philosophy of the nineteenth and early twentieth century extended the formalist tendencies of Kant’s philosophy and sought to defer the verdict. In this section, we will see how Hans Kelsen developed a legal theory which was inspired by this tradition, but also pushed its formalism to an extreme point.

The neo-Kantian tradition arose at a time when the ruptures and eventual death of Hegelianism in the first half of the nineteenth century had made philosophy seem redundant. The so-called materialism controversy posed one major challenge. Inspired by the rapid progress of the natural sciences, materialism seemed to make philosophy superfluous, as there was no longer any realm about which philosophy could make material claims. Philosophy had no object about which it could judge. This threat of obsolescence extended even to political philosophy, which was replaced by economic theory on the one hand, and by social theory on the other. These
sciences were inspired by the notion of a self-adjusting society with organisations that needed no authority, and thus had no need for political philosophy to judge their claims.\textsuperscript{16}

One significant early moment in the origin of neo-Kantianism can be found in Kuno Fischer and Eduard Zeller’s attempt to save philosophy by reconceiving it as epistemology.\textsuperscript{17} They rejected both options by avoiding material judgements altogether and defining epistemology as ‘the examination of the methods, standards and presuppositions of the empirical sciences’.\textsuperscript{18} Fisher and Zeller were some of the early thinkers in a long and complex tradition which tended to turn philosophy into a formal ‘logic of the sciences’, instead of a science which made material judgements. \textsuperscript{19} The relegation of philosophy to the formal plane of the transcendental logic, to tracing the necessary conditions for valid judgements, took the modest and anti-foundationalist tendency of Kant’s formalism to its radical conclusion. Instead of deducing the legitimacy of reason’s power to legislate and judge, it examined its necessary categorical and formal structure in light of the experience (at first empirical-scientific, but then also social-historical) that we do in fact have.\textsuperscript{20} In many cases the basic move of neo-Kantian philosophers was to take a given experience already containing particular judgements and to ask for its necessary and universal conditions. In this way, philosophy reinstated itself in a positivist milieu by insisting on a radical distinction between positive fact and logical form, thereby reinforcing the dualisms of Kantian philosophy.\textsuperscript{21}

The formalism of the neo-Kantian tradition extended to juridical thought, and exerted a strong influence on legal scholars. Hans Kelsen, for his part, echoed ideas often connected with the so-called Marburg school of the neo-Kantian tradition.\textsuperscript{22} In the following we will, therefore, give an account of how his legal theory developed concepts from the neo-Kantian philosopher Hermann Cohen, who provides Kelsen with some formalist distinctions.

\begin{itemize}
  \item \textsuperscript{16} Wolin, \textit{Politics and Vision}, 257–314.
  \item \textsuperscript{18} Frederick C. Beiser, \textit{The Genesis of Neo-Kantianism, 1796-1880} (Oxford: Oxford University Press, 2014), 6.
  \item \textsuperscript{19} Beiser, 6.
  \item \textsuperscript{20} On the Neo-Kantian background of twentieth century sociology, see HCS, 1-47.
  \item \textsuperscript{21} Beiser, \textit{The Genesis of Neo-Kantianism, 1796-1880}, 6.
  \item \textsuperscript{22} Trejo-Mathys, ‘Neo-Kantianism in the Philosophy of Law’, 148.
\end{itemize}
The fundamental distinction of Cohen’s philosophy is that between the is (Sein) and the ought (Sollen). This division, which itself depends on Hermann Lotze’s construction of the realm of validity alongside the realm of existence, can be traced back to the way in which Kant separates constitutive concepts and regulative ideas.²³ Cohen thereby proposes two kinds of being: the being of fact and the being of the ought—that is, the being of normative values. The ethical is, therefore, a realm of norms independent from existence, with its own consistency and categorical structure.²⁴

According to Cohen, the unfolding of human culture is a factum, the result of the historical work (facere) of humanity, from which one can trace transcendental forms of truth and value.²⁵ The upshot of this argument is that one can read the a priori categories of a transcendental deduction from a historical project in becoming. The theoretical categories—the basic forms of truth—are derived from the scientific project which investigates factual existence. But the realm of Sollen, of ethical value, is a region that has its own coherence and also belongs to the unfolding of culture. It is, therefore, possible to study ethical values in a way analogous to scientific cognition. Ethical norms or values subsist in human culture, and in the objects of jurisprudence.²⁶ The somewhat odd conclusion that laws and legal practice are the primary objects of ethical cognition makes sense when one realises that the ethical State was the highest ideal of Cohen’s realm of ethics. He followed the liberal and Kantian tradition of positing the identity of law and ethics as the regulative idea.²⁷ The perfect State is that within which the written laws are expressions of norms to which every individual would assent. But this idea was only realised in greater or lesser degrees in actually existing states. The investigation of ethical norms begins with a consideration of the norms expressed in juridical systems, and from there traces the way in which they aim towards being expressions of an autonomous moral will. We will leave to the side the problem of grounding this teleological point of orientation. Suffice it to say that Cohen’s philosophy claims that there is a connection between the realm of normative values and jurisprudence, and that these normative values were only in partial conformity with the ethical ideal.

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²⁶ Luft, 228–29.
²⁷ Andrea Poma, Yearning for Form and Other Essays on Hermann Cohen’s Thought (Dordrecht: Springer, 2006), 261–71.
Cohen’s distinction between the realm of existence and the realm of norms inspired Kelsen’s pure theory of law, in which he made a clear-cut distinction between facts of existence and the realm of normativity. Kelsen’s approach still maintained a broadly Kantian outlook, which is evident in his English publication *General Theory of Law and State*, first published in 1945 as a restatement and defence of ideas already presented in his 1934 *Pure Theory of Law*. The realm of legality stands in a normative relation to the realm of facticity. Legal science in its pure form does not create these norms, however, but reconstructs them in light of the sociological context of actual legislation. Although a system of legislation and its many written laws may be studied by other sciences such as political history, legal science treats these laws as the expression of a systematic order of norms. Hence it is the task of a science of law to furnish ‘the fundamental concepts by which the positive law of a definite legal community can be described’, which means that the pure theory of law should describe what a legal norm is and how it can become an object of cognition. A pure science of law establishes legal objectivity. Given these conditions, jurisprudence can provide a ‘structural analysis of positive law’ by investigating the legal norms at play in the legal order in question.

It must be noted that in Kelsen’s account, legal norms are not regulated by or grounded in an ethical ideal. Legal norms are in no way related to a vision of what a true or ethical legal order should be. Unlike Cohen’s study of jurisprudence, the norms embodied in juridical systems are not taken as preliminary or deficient attempts to be expressions of the moral will. Yet, just as Cohen’s study of ethics was oriented towards the idea of the State as the place for ethical norms, Kelsen identifies the legal order of norms with the State. But this means that the State as such is no longer understood in terms of power or even ethical values. For the pure theory of law, which deduces the transcendental forms of legal cognition, is not concerned with politics, sociology, or morality, and is guided by no regulative idea. Instead, it is limited to describing the conditions for any law’s validity as law. Kelsen’s system is, therefore, paradoxically a ‘positivist’ system in the precise sense that legal norms are neither subject to, nor criticised by, a higher moral standard, or natural law. In fact, as far as the legal scholar is concerned, legal

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30 Kelsen, xv.

31 Kelsen, xiv.

32 Kelsen, xv.
normativity is the only kind of normativity there is, which means that Kelsen's pure theory of law rejects moral, aesthetic, and religious norms.

We have thus seen so far that Kelsen’s development and revision of the key concepts of Cohen’s philosophy emphasises its formalist tendency by completely removing any connection between what is and what ought to be. In the following we will turn to Schmitt’s criticism of Kelsen, which is aimed at precisely this aspect of Kelsen’s thought.

**IV. SCHMITT’S CRITIQUE OF KELSEN**

Schmitt’s fierce attack on Kelsen in *Political Theology: Four Chapters on the Concept of Sovereignty* is concerned with the origin and application of law. 33 By circumventing these issues, Schmitt contends, Kelsen and the liberal legal tradition have solved ‘the problem of the concept of sovereignty by negating it’, and, therefore, left the question of who gets to decide on the relation between law and fact unanswered. 34 The liberal juridical tradition, Schmitt argues, ‘separates juristic treatment from changes in political conditions and achieves scientific objectivity precisely by a firm formal method of treatment’. 35 Schmitt’s response is evident in the opening salvo of *Political Theology*: ‘Sovereign is he who decides on the exception’. 36 We will expound Schmitt’s criticism in the following, before attending to his political theology later in this chapter. In effect, his political theology takes form as a theory of the very decision which the liberal tradition negates.

Schmitt’s criticism of the liberal formalism of Kelsen fits well with modern theories of the legislative State that assume that the State is ‘governed by impersonal, that is, general and pre-established, norms’, so that consequently there ‘is no ruling and mere power at all anymore’, as Schmitt argues in *Legality and Legitimacy*. 37 When legal order is formalised and identified with the State, the origin and inner workings of the State seem a matter of harmless procedure. Underneath this appearance, however, there are moments of real decision, when laws have to be instituted, interpreted, applied, or suspended, and this is always a process within which real power is wielded, whether or not it is recognised as such. Schmitt’s critique is concerned with

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33 This attack and its implications is our concern, not the whole range of Schmitt’s work or its many consequences, critics, and interpreters. A good introduction can be found in McCormick, *Carl Schmitt’s Critique of Liberalism*.
34 *PT*, 21.
35 *PT*, 16.
36 *PT*, 5.
37 *LL*, 3-4.
a legal tradition, but its metaphysical and political origins lie close to the surface; his object of attack is precisely this flight into formality.

The fundamental problem of Kelsen’s liberal formalism is that it provides no theory of how laws come to be and are being applied in political contexts. As Schmitt voiced an attack on liberal juridical theory, he echoed the scholar Hermann Kantorowicz’s parody of the servant partaking in the decision process in the liberal republic:

[A] higher state servant with academic training, he sits in his cell armed only with a thought machine—of the finest variety, of course—the only furniture a green table on which before him the state book lies. One presents him with an arbitrary case, real or only invented, and, corresponding to his duty, with the help of purely logical operations and a secret technique comprehensible only to him, he is able to establish with absolute exactitude the decision previously defined by the legislator in the statute book.38

Such a picture of a subservient State which only formalises and recognises a norm from without, which it then proceeds to effortlessly ‘apply’ to relevant cases, does not do justice to the complex process that occurs in reality and leaves out what could be described as the ‘subjective’ element in the workings of the state. For there are moments of its process that cannot be reduced to a schematic formalisation of rules and to a procedure executed by a State servant-cum-thought-machine, as Kantorowicz described him. These moments require a thicker account of how decisions or judgements are made.

The unity and the purity of the legal order is gained precisely by ignoring the ‘basic difficulty’ of sovereignty. This difficulty is the problem of the origin of the legal order (which the ambiguous status of the basic norm betrays) and the problem of the realisation or application of law.39 To deal with the problem of sovereignty requires accounting for the exception. The exception is often a state of emergency when the legal order must be suspended in order to save that same order. It means that there is a condition that must be recognised even within the purview of law, but as precisely that condition in which the legal order is suspended. For a liberal formalism which equates the State with the legal order, the exception seems like the destruction of the notion of the State. Schmitt’s riposte is that only a theory of sovereignty which accounts for the exception can show how the State remains even when the legal order does not.

38 Quoted in Caldwell, Popular Sovereignty and the Crisis of German Constitutional Law, 44.
39 PT, 21.
More importantly, however, the exception poses a challenge to formalism because a general norm, as represented by an ordinary legal prescription, can never encompass a total exception, the decision that a real exception exists cannot therefore be entirely derived from this norm.\textsuperscript{40}

A legal order of norms cannot prescribe when and how a state of exception is to be announced, which means that someone has to decide when there is, in fact, an exception. The sovereign is the one who decides on the exception. The sovereign transcends but also belongs to the legal order and supplies the essentially subjective decision necessary for keeping the order in place.\textsuperscript{41} The subjective element of a sovereign decision which cannot formally be prescribed or decided beforehand, hints at the broader scope of Schmitt’s argument. Not only is the exception a case where subjectivity comes into play, but the very notion of a legal judgement involves reference to an element that cannot be accounted for with reference to general norms.

This subjective element comes into focus as the question of who decides or judges on a legal prescription and arises as a problem due to the gap between legal norms and existence. As Schmitt points out, in the context of jurisprudence, every legal thought brings a legal idea, which in its purity can never become reality, into another aggregate condition and adds an element that cannot be derived either from the content of the legal idea or from the content of a general positive legal norm that is to be applied.\textsuperscript{42}

Here Schmitt brings into view the gap between valid norms and concrete facts, between the realm of norms and the realm of existence. The mediation of this gap requires a ‘subjective’ element, which Kelsen sought to exclude.

Schmitt’s criticism draws on an analysis already present in the sadly neglected early work \textit{Der Wert des Staates und die Bedeutung des Einzelnen}, written in 1914. In this book Schmitt seeks to lay bare the gap between the universal and the individual as the problem of judgement: ‘Between every concrete and abstract reality there is an insurmountable chasm [\textit{Kluff}], which cannot be closed through any gradual transition’.\textsuperscript{43} Whereas some would view law as coercive

\textsuperscript{40} PT, 6.
\textsuperscript{41} PT, 7.
\textsuperscript{42} PT, 30.
\textsuperscript{43} WS, 79. Translation my own.
in contrast to ethics, Schmitt argues, it is not law as such, but its application or realisation (Verwirklichung) which is the real point of contention. It is when the law is applied that the question of coercion becomes relevant. For ‘the law [Recht] is abstract thought, which cannot be derived from facts nor influence facts’, and instead the ‘problem consists in connecting both realms, to determine […] the point from which an effect, in the sense of legal norms, is produced upon being. The real problem is that of the universal and the individual, and the answer, for Schmitt, is the State: ‘the meaning of the State is found exclusively in realising law in the world, thus making the State the middle point in the series: “law, State and individual”’. The State, in fact, ‘enforces the connection of this world of thought with the world of real empirical appearances’. The essence of the State is to judge.

The gap between the legal idea or norm and a concrete case which characterises every decision—in other words, the problem of judgement—goes to the question of the very meaning of normativity in Kelsen’s theoretical apparatus. Kelsen does consider the question of application: he recognises that a court decision will produce an individual norm that is at best only a possible, but not a necessary interpretation of the general norm by which it is made. This account rules out a procedural or deterministic hermeneutical theory of judgement. But the larger point is that whatever this judgement or decision is, it can be disregarded from the perspective of a formal science of law. Kelsen does not say that there are no political, sociological, or subjective stakes in judgements of law, but nevertheless maintains that legal science must remain impervious to these. Such judgements are made by persons who, from the perspective of law, can be considered legal fictions.

For Schmitt, however, this is simply to disregard the decisions that make legal order possible, and thus it provides the clearest expression of the ethos of liberal formalism. In response, Schmitt develops his political theology, which emphasises the importance of the decision for political order. As we shall see, the sovereign decision implies the notion of a sacrifice, which implies a return of the theological.

44 WS, 37.
45 WS, 38.
46 WS, 2.
47 WS, 2.
Part three
Political Theology and the Decision

I. THE POLITICAL DISTINCTION

On the basis of his criticism of liberal formalism and the argument that legal order is incomprehensible without connecting it to actual relations of power, Schmitt presents a theory which would bring back together politics and legal theory. In the foregoing we have seen that the gap between norm and fact, or universality and individuality, required a reference to a sovereign power which stands outside of the normative realm. In this section, we will present his positive political theory whose focus is the sovereign decision which creates and sustains political and legal order. Without a sovereign decision outside of the legal order, Schmitt claims, autonomy and democracy are not possible. In this way, he defends his seemingly authoritarian account of politics by arguing that only a personal and incomprehensible decision can realise the unity of the universal and individual.

Schmitt’s theory of the political is stated, as always with great confidence, in *The Concept of the Political*. It opens with a transcendental claim: ‘The concept of the State presupposes the concept of the political’.49 If the State is restricted, it seems that the political would play a minor role in a political theory. However, even though the eighteenth and nineteenth century produced a number of supposedly non-political realms (society, morality, religion or the market), Schmitt thinks that the reign of bourgeois society means that gradually State and society have so thoroughly interpenetrated that everything ‘is at least potentially political’ in this condition.50 The ascendancy of the bourgeoisie has led to the neutralisation of politics, and the rising belief in the neutrality of society, economy and technology. Nevertheless, Schmitt insists upon the fact that the political is not neutral, and claims that it demands a subjective decision, as we have seen above. If he is right, everything is, at least potentially, subject to the political decision. We will examine these claims in the following.

Schmitt defines the basic category of the political as the distinction between friend and enemy.51 This distinction resembles the distinction between good or evil in morality, or the beautiful and ugly in aesthetics.52 But the political has its own consistency and coherence, and cannot be

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49 CP, 19.
50 CP, 22.
51 CP, 26.
52 CP, 26.
reduced to these other distinctions. The political distinction ‘denotes the utmost degree of intensity of a union or separation, of an association or dissociation’, and marks the unequivocal difference between those who seek to negate one’s way of life, and those who wish to preserve it.\textsuperscript{53} Liberalism has effaced the concept of the enemy by transforming it into a notion of economic competitors and intellectual debating adversaries.\textsuperscript{54} For Schmitt, these distinctions are not absolute enough, and depend on the implausible claim that it is possible to live a life without sacrifice. Economics at least holds open the door for a mutual benefit from a state of competition, and intellectual arguments end in compromises or settlements in the shared court of reason.

The distinction between friend and enemy presumes a collective of friends united in opposition to the enemy. Political distinctions demarcate the communities that matter absolutely, that is, whose consistency and existence are matters of life and death.\textsuperscript{55} The political community, then, is a community of friends for whom one is, in principle, willing to die. This means that if a community within a State has gained such a strong sway among its members that they are willing to die for it, the community has become a \textit{de facto} political group which might be considered the enemy of the State. Hence a communist party, or a religious community can become political sovereignties and potential friends or enemies, if they take on the sacrificial character of the political.\textsuperscript{56}

At this point, it may be surprising to learn that Schmitt thought he was defending a democratic theory. Overcoming the illusion of neutral and depoliticised realms, Schmitt argued, was in fact a condition for democratic politics.\textsuperscript{57} If Schmitt’s theory is a theory of democracy, the order of the city must somehow correspond to or represent the \textit{demos}. But this was not a problem for Schmitt. Instead, he argued that his theory of the decision explained the only way autonomous democracy could be realised. This is precisely his argument in \textit{The Crisis of Parliamentary Democracy}, where he argues that the notion of democracy, of autonomy, is only possible, as a coincidence between the individual and the universal: ‘it belongs to the essence of democracy that every and all decision which are taken are only valid for those who themselves decide’.\textsuperscript{58} But there is no way, it seems, of reaching this coincidence in a liberal fashion: either nothing

\textsuperscript{53} CP, 26-7.  
\textsuperscript{54} CP, 28.  
\textsuperscript{55} CP, 29.  
\textsuperscript{56} CP, 37-8.  
\textsuperscript{57} CP, 23.  
\textsuperscript{58} CPD, 25.
substantive is legislated upon, something wholly trivial that nobody can disagree with, or there is always an ‘outvoted minority’.

The only way to account for the existence of the outvoted minority is to fudge the idea of the identity of ruler and ruled:

In democracy the citizen even agrees to the law that is against his own will, for the law is the General will and, in turn, the will of the free citizen. Thus a citizen never really gives his consent to a specific content but rather *in abstracto* to the result that evolves out of the general will.\(^\text{59}\)

Schmitt recalls Rousseau’s theory of the general will in this extract, a theory that we have examined at several points in this dissertation. The general will entails that when a gap arises between an individual’s vote and the general will, the citizen must recognise that he has made a mistake. The gap between the individual and the universal is closed by forcing the former into conformity with the latter. The problem with the general will is that it equivocates between the All and the Whole, between each and every one and everyone as a whole. Sometimes it is taken to refer to the sum of individuals, at other, the expression of the true will and unity of the people—even if a minority disagrees. This equivocation of general will prescribes the contradictory identification of the universal and the individual: each citizen is supposed to identify him or herself with the whole. However, there is no non-contradictory way of mediating this identity between the All and the Whole. That is why Schmitt refers to the necessity of an abstraction: the general will, or the people, is an abstraction, a representation or ‘myth’ with a determinate content. Whoever does not identify with this content, must be excluded, so as to ensure the true identity of everyone (the people) and each and every one.

In his preface to the second edition of the same work, Schmitt brilliantly elaborates the problem of liberalism. Democracy requires homogeneity and the ‘elimination or eradication of heterogeneity’.\(^\text{60}\) The only way a people can be democratic is if they are unified by sharing a concrete, substantive value:

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\(^{59}\) *CPD*, 26.  
\(^{60}\) *CPD*, 9.
The question of equality is precisely not one of abstract, logical-arithmetic games. It is about the substance of equality. It can be found in certain physical and moral qualities, for example, in civic virtue, in arête, the classical democracy of *vertus* [sic] (*vertu*).\(^6\)

Liberalism excludes such a substantive value and assumes an abstract ‘human equality’ as a regulative idea. This is because it is not attentive to the problem of judgement, i.e., that autonomy requires that the universal and the individual are identical, and this cannot be realised through a formal process. In each case the individual escapes the universal, or the universal dominates and imposes itself on the individual. Accordingly, the demand for a homogenous unity and a clear distinction between the citizens of the city and the outside will request sacrifice from the individuals. In other words, Schmitt’s points to the sacrificial economy of political order that liberalism disavows. The gap between the universal and the individual can only be bridged through a sacrifice of the individual for the universal. The universal, for its part, must be decided upon to ensure that it is homogenous and unified. The paradox of democracy is, therefore, that it needs someone who decides. This is the meaning of the political distinction between friend and enemy. The absolute distinction between the inside and the outside of the city depends on the willingness of its citizens to die rather than to loose their community.\(^6\)

If we consider Schmitt’s concept of the political in light of his criticism of the development of civil society and its opposition of law and ethics, Schmitt’s contention is that only a decision can achieve the goal of the bourgeoisie to create an ethical community where individuals are being subjected to an alien law. However, this means, in terms of the trial of reason, that the verdict cannot be deferred forever. Someone has to judge or decide. So far, we have discussed the trial of reason in terms of a judgement. Schmitt, however, refers to the judgement as a decision, and now we see why: for him, there is no rational way of achieving autonomy, which entails the necessity of a subjective decision which cannot be explained or guided by formal rules.

Thus, we see that Schmitt actually agrees with his contemporary liberal thinkers that the contradiction between the universal and individual cannot be thought. Despite his insistence on the hostility between friend and enemy and on the mere formality of liberal order, Schmitt only intensifies what one may call liberalism’s insistence on the principle of non-contradiction: on the one hand, he insists that political unity is only possible without any conflicting definitions

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\(^6\) *CPD*, 9.

\(^6\) *CP*, 47-8.
of the people, on the other, he insists on the absolute distinction between inside and outside. This is why the sovereign is so important for Schmitt: even when the legal order is suspended, someone must be there to safeguard the distinction by making a decision.

For this reason, a foundational myth is needed in order to mark the common character of the people. In his study of *The Leviathan in the State Theory of Thomas Hobbes*, the symbol of the Leviathan functions as the ‘substance’ that defines the people. As he argues in *The Crisis of Parliamentary Democracy*, the failure of parliamentary democracy leads to novel theories of myths, which opens up the possibility for ‘an authority based on the new feeling for order, discipline, and hierarchy’. The function of the myth is to define a concrete characteristic which demarcates the inside from the outside. To be a citizen is to be identified with specific characteristics; whoever is not, is not one of the people.

For Schmitt, a true democracy is a substance with clearly defined limits and positive content. The political community is defined by a number of distinguishing characteristics which coincide with the individual citizens. This is only possible if the aporia of the people as a whole and as a number of individuals is overcome through a decision which defines a clearly demarcated ‘substance’ with which everyone must identify. However, as we will see in the following section, it is unclear whether this decision imposes or recognises the substance of the people.

**II. POLITICAL THEOLOGY AND THE AMBIGUITY OF THE ORIGIN OF ORDER**

Throughout this chapter we have claimed that Schmitt’s criticism of liberal formalism makes room for political theology. Now we can finally turn to his conception of political theology, focusing on the proposals in his *Political Theology*.

Schmitt proposes a rather underdetermined theory of the relationship between political and theological concepts. It is nonetheless readily evident that the connection which sustains the analogy between such concepts is a similar configuration of the decision and order. The judgement and the sacrifice which it demands is, therefore, the object of his political theology. Finally, at the end of this section, I develop further my argument that Schmitt’s account of the decision equivocates about the origin of order.

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63 *LST.*

64 *CPD*, 76.
Liberalism denies the problem of sovereignty, but the question of the decision keeps coming back. For Schmitt, the problem of sovereignty is the problem of the theological. Or, if that puts the issue too strongly given his ambiguities in this issue, Schmitt at least thought that admitting sovereignty meant admitting the possibility of the theological. The rejection of sovereignty is equivalent to the rejection of the religious, in that it dialectically repeats what it sought to negate.

In Political Theology, Schmitt first claimed that all ‘significant concepts of the modern theory of the state are secularized theological concepts’, not primarily due to their ‘historical development’ but rather because of their ‘systematic structure’. The meaning and significance of the connection or ‘analogy’ between concepts of theology and of the State is at first difficult to fathom. With reference to Kelsen, for example, Schmitt argues that his identification of the State and legal order rests on a metaphysical identification of the ‘lawfulness of nature and normative lawfulness’. It is clear, then, that what Schmitt means by ‘theology’ is not simply a Christian or biblical theology in particular, but the fundamental conceptualisation of the absolute dimension of any particular society. Political theology is to be a ‘sociology of concepts’, which compares the ‘basic, radically systematic structure’, or the ‘general state of consciousness’ with the ‘conceptually represented social structure of a certain period’. Political theology is, therefore, faintly reminiscent of the Platonic project of tracing the analogies between the soul, the sacred and the city, or perhaps the Roman theologica civilis. But such comparisons are only partly helpful, for Schmitt’s political theology is more directly connected to the notion of civil religion—it has to do with the role of the sacred in modern sovereignties. The sacrifice demanded by the State which was exhibited in the Revolution, and which Schelling determined as a kind of religiosity in Fichte’s philosophy, is here urged as the necessary condition for political order. As a result, there will be traces of religious or metaphysical representations in any political order. Stated in very clear terms, Schmitt’s thesis is that

65 The definitive ‘theological’ interpretation, dangerously mimicking Schmitt’s voice, is Meier, The Lesson of Carl Schmitt. For a reading that circumscribes his political theology as a jurisprudential enterprise, see Vatter, ‘The Political Theology of Carl Schmitt’.
66 PTII, 34.
67 PT, 36.
68 PT, 41.
69 PT, 45.
[t]he metaphysical image that a definite epoch forges of the world has the same structure as what the world immediately understands to be appropriate as a form of its political organization. The determination of such an identity is the sociology of the concept of sovereignty.\textsuperscript{71}

The final sentence of this clarification gives us the clue that political theology is not primarily a theological discipline, but rather has to do with a kind of sociological jurisprudence in which the theological becomes relevant to the study of the concept of sovereignty. The precise function of political theology, then, is not to say that all modern concepts of the State are caused by theological movements or influences, but that the ‘conceptually represented structure of society’—its legal and political form, in short—will reflect its metaphysical form. In a time when the legal or political form of society no longer explicitly refers to theological concepts, they still correspond to a certain metaphysical image of the world. Thus, Schmitt can say that ‘the omnipotent God became the omnipotent lawgiver’, and that this is demonstrated by the structural similarity between the theological and juridical representations which is due to their both being reflections of a certain metaphysical structure.\textsuperscript{72}

But what is the tertium quid which sustains this analogical comparison of metaphysical and legal form? Schmitt is not exactly saying that theology can legitimise political orders, or that the sovereign is omnipotent because he gains his power from God. Instead, the analogy must be taken to rest on the analysis of the problem of the judgement or decision which sustains the whole of Schmitt’s oeuvre. According to Schmitt, a political theology is neither spiritualist nor materialist. It enlists a sociology of concepts which refuses to reduce metaphysical and juridical representations to the effect of a material or spiritual basis.\textsuperscript{73} The structural similarity between metaphysical and juridico-political forms can, therefore, be read as based on their common configuration of the problem of judgement, of the gap between universal and individual, between Whole and All. While liberal legal and political theory has avoided the problem of sovereignty by negating it, modern metaphysics has sought immanent and univocal cosmological forms that hide the ‘irrational’ or non-formal side of things and the origin of their intelligibility. But in either case, further investigation exposes their groundless foundations. The decision closes the chasm and constructs a legal order, but only by demanding a sacrifice. To close the gap between the universal and the individual and to bring law and ethics into unity,

\textsuperscript{71} PT, 46.
\textsuperscript{72} PT, 36.
\textsuperscript{73} PT, 42-3.
the ‘political entity must demand the sacrifice of life’.\textsuperscript{74} In a work that develops and defends Schmitt’s conception of the political, Paul W. Kahn summarises the core of Schmitt’s insight:

> Political authenticity, as it emerges in a study of political theology, is that experience of the unity of being and meaning that marks the presence of the sacred. It is the leap of faith in the possibility that we can give up the finite and take on the infinite. Our tradition of the theological—in both its religious and political forms—have modelled that double moment of destruction and creation as sacrifice. […] Lodged between the free act of political creation, revolution, and the free act of discourse, philosophy, is the judgement.\textsuperscript{75}

At this point, we must ask whether such a political theology of the sacrificial origin of order is at all possible. By putting the problem this way, I circumvent the question of whether Schmitt’s theory is desirable. A more pertinent question is whether Schmitt overcomes the gap between the universal and the individual to which he was so attentive. Does Schmitt deliver on his promise, and must we accept his claim that a political and legal order is only possible given the clear distinction between a homogenous people (friend) and an antagonistic enemy? Is there no alternative to a decision if one wanted to prevent a deferred verdict and endless chatter? And, is this decision completely inscrutable, an unintelligible fact?

Not necessarily. For there is a clear ambiguity at the centre of Schmitt’s political theology. Chantal Mouffe has drawn attention to the false dilemma on which his theory is based:

> either there is unity of the people, and this requires expelling every division and antagonism outside the demos — the exterior it needs if it is to establish its unity; or some forms of division inside the demos are considered legitimate, and this will lead inexorably to the kind of pluralism which negates political unity and the very existence of the people.\textsuperscript{76}

Mouffe argues that this dilemma is only self-evident given the assumption that political unity is something given. For Schmitt, ‘the unity of the state must … be a concrete unity, already given and therefore stable’.\textsuperscript{77} The unity must be an unequivocal and homogenous substance, and there is no way of accounting for how this substance might arise in a procedural fashion.

\textsuperscript{74} Kahn, \textit{Political Theology}, 71.
\textsuperscript{75} Kahn, 152.
\textsuperscript{76} Chantal Mouffe, \textit{The Democratic Paradox} (NY: Verso, 2000), 54.
\textsuperscript{77} Mouffe, 54. Similarly Mariano Croce and Andrea Salvatore claims that one could only distinguish between friend and enemy if the people is already aware of their ‘way of life’. Mariano Croce and Andrea Salvatore, \textit{The Legal Theory of Carl Schmitt} (New York: Routledge, 2013), 23.
out of the plurality of the people. Schmitt cannot account for the construction of unity. This applies to how he conceives of the people, which means that, for Schmitt, the political distinction is ‘not really politically constructed; it is merely a recognition of already existing borders’. On second thought, however, Mouffe acknowledges that the problem is actually that Schmitt equivocates on the origin of political order: does the sovereign simply decide what the unity of the people and thus of political order should be, or is the job of the sovereign to recognise this unity and publicly declare it? Is the political factum constructed, or is it merely given? Does the universal (the unity of the people) arise from the individual (the people as sum of individuals), or is the universal constructed by the sovereign and imposed on the individual?

This ambiguity plays out in Schmitt’s tantalising definition of the sovereign as he who decides on the state of exception. As David Dyzenhaus points out, the statement equivocates between the normative and the factual on two levels. Schmitt leaves it unclear in Political Theology whether the sovereign is whoever actually decides on the exception, or whether it is the one, in virtue of being sovereign, who gets to decide. The decision is similarly ambiguous: is a decision valid only when pronounced by a sovereign, or is the one who decides the sovereign?

The problem is essentially of the origin of the myth which produces a unified substance. In his earlier period, including his work on Political Romanticism and Roman Catholicism and Political Form, Roman Catholicism supplied that myth for Schmitt, but from The Concept of the Political onwards, the decision and the need for substance, not the particularity of the substance became more important. At the same time, not just any myth or substance will do. For a substantive definition does not produce an antagonistic conflict, and does not necessarily demarcate clearly the difference between the inside and the outside. Thus, the political myth of Schmitt’s work is an antagonistic myth, one of conflict and war. By mythologising the exception and the decision as a necessary act in face of existential threat, one can justify the concrete imposition of limits. It is a real question whether Schmitt’s political thought is fundamentally based on the same motivation which was characteristic of liberalism: the fear of disorder. The ultimate motivation of political order seems to be the avoidance of disorder and contradiction, which means that one must produce a myth of extreme conflict, the battle that

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79 Dyzenhaus, Legality and Legitimacy, 42–50.
threatens to eradicate all distinction. Such an extreme conflict motivates the clear demarcation of limits and the absolute distinction between A and not-A.

The production of myth easily takes on a magical form which is subject to the instrumental and formal rationality that Schmitt is reacting against. It is not sufficient to say that the sovereign decides, and that this decision creates a united people around a central myth. Again, how is this even possible, given Schmitt's own analysis of the problem of judgement? Is the myth spread out over the airwaves through the propaganda machinery of the State, miraculously to create a people from above? Or are the people already united against an enemy, so that all the sovereign needs do is to provide a myth (like the battle against the Soviet East, for example) with which the people publicly identify themselves in moments of acclamation? The problem essentially replays the difficulties we have discovered with the factum of human order in modern politics: is the order simply given, ready to be appropriated and claimed as ours? Because Schmitt has ruled out any inquiry into the rationality of the decision, he has ruled out an answer to these questions. When the questions are recognised, however, it is clear that we must return to the problem of judgement, and the persisting gap between the universal and the individual. In sacrificial terms, we might, therefore, ask whether the sovereign is the one who decides the cause (universal) for which people should sacrifice their lives, or whether he is the one who recognises and affirms that for which people (individuals) are willing to sacrifice their lives.

In the preceding section we have seen that Schmitt’s political theology establishes an analogy between theology and political concepts through his theory of the decision and the sacrificial character of political order. The equivocal nature of this decision, however, seems once again to open the gap between universal and individual.

**Conclusion**

Had Schmitt investigated the equivocations of his own decisionism, he would have discovered the problem of judgement yet again. The gap between everyone as a whole and each and every one means that the possibility of a self-enclosed political community cannot be realised by a decision. Schmitt struggles to show how the gap between the ideal of self-rule and the actual political and juridical relations of the State coincide, because he does not answer whether the unity is created or recognised by the sovereign. Koselleck and Schmitt’s attack on the bourgeois project was precisely that it resisted the decision necessary to achieve the ideal of democratic autonomy it espoused. Until one is willing to commit to a decision, and thus to make a sacrifice,
autonomy remains impossible. But the equivocations of the decision means that it is not readily apparent how the gap between law and ethics, between the coercion of a legal order and the expression of a people’s ethos may be closed.

Furthermore, the equivocation between the activity and passivity of the sovereign decision and the ambiguity of the origin of political order means that Schmitt forecloses the real investigation of his thesis on political theology. Instead of developing further a theory of political theology that concerns itself with the equivocation of the origin of order in modernity, he mythologises the chasm of judgement and closes it in a decision. Consequently, he is unable to overcome the dichotomy between rational formalism and irrational decision, and ends up aggravating the liberal exclusion of contradiction. What remains uninterrogated, then, is the tertium quid between metaphysical and political representations—the judgement that unites the soul, the city and the sacred.
Chapter 4

Suspending Judgement:

Giorgio Agamben’s Political Theology of Bare Life

Introduction

So far in this dissertation law has appeared to be violent. Schelling and Schmitt agreed that law functions as a restraining force in a chaotic world. If one fails to show how the law is an expression of self-rule, it takes on the character of a limit to the irrational forces of an original condition of strife and conflict. For Schmitt, this meant that sacrifice is a condition for political order and unity: individuals had to be willing to sacrifice their identities to partake in a political order and to sacrifice their lives to sustain it. The necessity of sacrifice entailed the relevance of political theology.

In this chapter, I will discuss the work of Giorgio Agamben, a contemporary Italian philosopher. According to Agamben the relation between law and the reality to which it applies is violent, which is to say that it is judgement, not the law as such, that is violent. The relation of judgement is always a specific configuration of the universal and the particular—two terms that often go by the names of law and life in Agamben’s works, where judgement takes on a distinct shape. Here, law does not simply impose itself on life, so that life must sacrifice itself to conform with law. Instead, life is made ‘sacred’ when it is subjected to the force of a law that prescribes or demands nothing. Because the content of law is empty, the sovereign, who is the one with the power to judge, can legally do anything he pleases. For Agamben, the ‘sacredness’ of life binds together politics and theology: divine and human judgements equally capture life under a law whose force is always present, but which demands nothing from it.

Agamben’s political theology despairs of the possibility of giving an account of non-violent judgements. Every attempt at reconciling the current political condition (law) and the ethical ideal fails, because this is already to presume that the problem can be overcome by constituting a new relation and a new order. There is no non-coercive way of relating law and life, which means that we must resist the temptation to judge. According to Agamben, to insist on overcoming the imperative to connect law and life is not to surrender to tragedy, but to gesture towards a ‘contact’ between the terms in question—precisely because they are indifferent.
I will argue that Agamben’s alternative does not do away with the modern ideal of a coincidence of the universal and the individual. Instead, the ethical ideal is reached by renouncing the work of judgement as violent and deactivating the ‘force’ which law has over life. In this sense, Agamben is not instituting a new order or building a city, but proposes a feast at its gates—a place where the difference between being inside or outside the walls of the city is irrelevant because divisions no longer matter. In so doing, he leaves unthought precisely what he sought to account for: the relation of judgement. For this reason, the experience of the gap between the universal and the individual or the alienation of the individual in relation to law, becomes at once inescapable and incomprehensible.

Part one
Political Indistinction

I. THE PRODUCTION OF THE BIOPOLITICAL BODY

Agamben’s rejection of judgement comes as a result of his reflection on the ‘biopolitical’ condition of neoliberal societies in late modernity. Like most theorists of biopolitics, Agamben is inspired by Foucault, but unlike some, Agamben does not think the ‘juridico-political’ concepts of sovereignty, law and judgement have become redundant in the contemporary condition.1 Instead, as we will see, the biopolitical condition reveals the dangerous relation of judgement, and a machinery that has always operated in the political, religious, and philosophical cultures and institutions of the West.

In Homo Sacer: Sovereign Power and Bare Life, Agamben initiated a considerable project which aims to analyse the paradoxes of law, power and sovereignty haunting Western societies ever since the Greek city-states.2 In Agamben’s analysis, modernity is marked by the ancient, and the secular is always already religious. Not, of course, because they are the same, but because such terms are part of a ‘machinery’ within which these notions have now been torn

2 My discussion of Agamben will primarily refer to his works in this series.
apart; made indistinguishable from each other. This omnipresent machine, which represents the power of judgement, reproduces a constant oscillation and ‘indistinction’ between the terms that order human life. Agamben’s theory of biopolitics is a first step towards analysing this dynamic.

*Homo Sacer* opens with a definition of the Greek concepts of *zoē* and *bios*. In Greek language and thought *zoē* denoted the simple life shared by all beings and was, therefore, a very general category. *Bios*, on the other hand, designated a particular form of life, a ‘way of living proper to an individual or a group’.³ This distinction bequeathed a series of problems to Western society. Its significance is due not only to its history, but also to the form it exhibits. This form is the relation between a general category and a particular instance of that category, in this case natural life and political life, the latter being a subset of the former.⁴ One could argue that this distinction is the one topic with which Agamben is concerned, and it is repeated throughout his works in the distinctions between the ‘common’ and the ‘proper’, Being and beings, the one and the many, subject and predicate.⁵

The difference between *zoē* and *bios* delineates the border between the non-political and the political. Natural life, shared by all animals and living things, had to be excluded when human beings entered the political domain. Within the domain of human experience, natural or biological life belonged to the *oikos* and its management was a question of economics. Whereas the city was a public realm of visibility, contingency and freedom, the house was the place where one took care of one’s basic needs for survival, as Hannah Arendt also stressed.⁶ The man who was bound to the *oikos* was subject to necessity and slavery, living a life not very different from that of an animal. Only when he had sufficient resources not to worry about sustaining himself, could he participate in political life. The Greeks accordingly deemed *zoē* politically irrelevant and located it outside the city. The citizens of Athens had *bios* because

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³ HS, 1.
⁴ So far in this essay I have referred to the distinction between the universal and the individual to highlight the gap between a concrete reality and a law which may or may not apply to it. Agamben, in contrast, focused on the universal and the particular. This is the difference between the universal man and a particular man. For Agamben, the dialectic between the universal and particular arises out of the same difficulty we have dealt with so far, namely that a man is also an individual, and that he, in his individuality seems to elude complete description by the universal category.
⁵ Watkin, *Agamben and Indifference*, xi.
⁶ ‘The distinctive trait of the household sphere was that in it men lived together because they were driven by their wants and needs. The driving force was life itself’. Arendt, *The Human Condition*, 30.
they partook in a particular form of life, but it would ‘have made no sense’ to speak of them having a natural political life (zoē politikē).\footnote{HS, 1.}

Agamben refers to these distinctions to show that the modern city is ancient and beset with problems that were already there in the Greek idea of political life. From the standpoint of this distinction in Greek political life, he argues, we can behold the fate of the modern political condition. In fact, for Agamben, the changing relationship between life in general and particular forms of life delineate the fundamental political changes in modern neoliberal societies.

Agamben develops a theory of biopolitics by building on Michel Foucault’s works, particularly his lectures on liberalism and neoliberalism delivered at the \textit{Collège de France} during the years 1977-79.\footnote{See especially Michel Foucault et al., \textit{Security, Territory, Population: Lectures at the Collège de France, 1977-78} (Basingstoke: Palgrave Macmillan : République Française, 2007); Michel Foucault, \textit{The Birth of Biopolitics: Lectures at the Collège de France, 1978-79}, ed. Michel Senellart, trans. Graham Burchell (New York: Palgrave Macmillan, 2010).} These lectures present a much more sophisticated theory of the power relations of the neoliberal State than Schmitt’s critique of the liberal State did. Schmitt’s theory accounted for the gradual shift from political action and legislation to administration and instrumental governing, yet he primarily explained this transition as a consequence of a problematic political form and the dominance of the bourgeoisie, who de-politicised the law and suppressed the political decision and the sacrifices that are necessary to sustain an autonomous people. By contrast, Foucault theorised a whole new set of relations of power and truth. According to him, the rise of the apolitical civil society was not ushered in by the alienated bourgeoisie under the absolutist regime, but correlated with the State’s new apparatus of security and increased focus on governing and managing populations. A new object of the State’s power appeared: The State governed over a population that was treated as a biological phenomenon, much as one would manage the population of a certain species in a biological reserve. In this sense, Foucault showed how zoē, the bare life of human beings became the main object of political power, instead of its subjects or citizens. This new form of ‘governmentality’ treated a population which ‘extends from biological rootedness through the species up to the surface that gives one a hold provided by the public’.\footnote{Foucault et al., \textit{Security, Territory, Population}, 75.} This population was self-regulating in some degree, and echoes the bourgeois projection of a civil society where coercion would be unnecessary.\footnote{‘[C]ivil society assures-the spontaneous synthesis of individuals. […] spontaneous synthesis means there is no explicit contract, no voluntary union, no renunciation of rights, and no delegation of natural rights to someone else; in short, there is no constitution of sovereignty by a sort of pact of subjection.} Instead of
the State relating to citizens or subjects, it could now govern a population mostly without legislating do’s and don’ts. If managed correctly, such governing would lead to a higher degree of ‘utility’: lower mortality rates, fewer riots, a better performing economy and so on.\textsuperscript{11}

In post-war neoliberalism, this condition extended so far that the legitimacy of the State did not depend on civil society or the collection of citizens, but on a well-functioning and free market. To achieve such a market, the biological life of the citizens (if, where, and how they lived) had to be governed in numerous ways. This is the key insight on which Agamben builds:

\begin{quote}
[T]he entry of \textit{zoē} into the sphere of the polis—the politicization of bare life as such—constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought. […] Only within a biopolitical horizon will it be possible to decide whether the categories whose opposition founded modern politics (right/left, private/public, absolutism/democracy, etc.)—and which have been steadily dissolving, to the point of entering today into a real zone of indistinction—will have to be abandoned or will, instead, eventually regain the meaning they lost in that very horizon.\textsuperscript{12}
\end{quote}

A ‘zone of indistinction’ is the description most apt for the condition of modernity for Agamben and refers to the point at which the difference between any two terms collapses so that they become indistinguishable from each other. In fact, any configuration of universality and particularity is always moving towards this ambiguous condition. When we unpack this part of Agamben’s argument in more detail below, we will see that he is moving beyond Foucault.

Foucault’s theory of neoliberalism and the regimes of power and truth represents a ‘decisive abandonment of the traditional approach to the problem of power, which is based on juridico-institutional models (the definition of sovereignty, the theory of the State)’.\textsuperscript{13} These traditional models had their origins in earlier political regimes and understood power primarily in terms of law. They could not account for the more recent political developments in the European states, during which there was a shift from the importance of sovereignty, law, the people, and so on, to that of governing a population through a form and power not reducible to the application of laws of prohibitions and prescriptions to concrete cases. Foucault himself argues that these two models of biopolitical and juridico-institutional power did not necessarily

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In fact, if civil society actually carries out a synthesis, it will quite simply be through a summation of individual satisfactions within the social bond itself.’ Foucault, The Birth of Biopolitics, 300.
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\textsuperscript{11} Foucault et al., \textit{Security, Territory, Population}, 1–88.
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\textsuperscript{12} \textit{HS}, 4.
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\textsuperscript{13} \textit{HS}, 5.
\end{flushright}
conflict, but were heterogeneous in nature. He distanced himself from a ‘dialectical logic’, which would entail putting to work ‘contradictory terms within the homogenous’ and situate these models within a larger frame. He argued that the politico-juridical model of power was inadequate to explain the development of political power, and focused on his new theory of political techniques for governing populations. Agamben argues that this approach is insufficient because it meant that Foucault was not able to construct a unified theory of power—although this was intentional on Foucault’s part. The aim of Agamben’s theory, then, is to analyse the machine that operates at the ‘intersection between the juridico-institutional and the biopolitical models of power’.

To mitigate this problem and create a unified theory of power, Agamben presents a theory of judgement which is supposed to encapsulate the central insights of Foucault’s theory of politics without leaving behind the old relations of judgement, law, and sovereignty. Agamben wants to account for the transition described by Foucault by showing how juridico-political power and its law relates to life in such a way that it creates the condition of possibility for an unaccountable Government. In short, he hopes to make a juridico-political relation (a particular form of law) the condition for the Government’s power over life. In this way, he seeks to explain how the sovereign power functions as a machine that captures natural life within itself and creates the precarious condition of individuals so characteristic of life in late modern neoliberal societies. His central thesis, then, is that ‘the production of a biopolitical body is the original activity of sovereign power’.

The sovereign power is a machine that produces a ‘biopolitical body’ over which it has unrestrained power to decide on matters of life and death. The entry of zoē into the political sphere is the completion of the production process of the sovereign machine. Far from being a contingent development in modernity, for Agamben, the process by which law captured life and subjected it to unaccountable government has always already been under way. As we saw

14 Foucault, The Birth of Biopolitics, 42.
15 Agamben’s theory has been criticised from a Foucauldian perspective. Critics warn against his attempt to ontologise the current condition, and thereby render what was a contingent development in Foucault’s theory a revelation of a universal and transcendental logic: Blencowe, ‘Foucault’s and Arendt’s “Insider View” of Biopolitics’; Paul Patton, ‘Agamben and Foucault on Biopower and Biopolitics’, in Giorgio Agamben: Sovereignty and Life, ed. Matthew Calarco and Steven DeCaroli (Stanford, CA: Stanford University Press, 2007), 201–18.
16 HS, 6.
17 KG, 273.
18 HS, 6.
above, Agamben claimed that the opposition between the outside and the inside of the city is built on the relation between unqualified and qualified life. This, he argues, entails ‘an implication of the first in the second’. The implication of natural life (zoē) in the political domain (bios) is sustained by a particular relation whereby the former is included in the latter precisely by being excluded from it. The relation here is similar to Schelling’s theory of rational order: the law exists only through and as an ejection of the anarchic principle (zoē, the ground, the state of nature, and so on). Importantly, this is an internal ejection, so that disorder is somehow included within order, yet precisely as ejected within itself. In this way law makes itself the all-inclusive term.

It is, furthermore, a significant aspect of Agamben’s analysis that the relata in question were never truly distinct, since they arise through and have their meaning in this relation of inclusion and exclusion. The aporetic relation of inclusion-exclusion is the ‘original political relation’, and it follows that the biopolitical body is not so much a life outside the city, as a life where it is impossible to distinguish between the inside and the outside. To say that life has entered the city, then, means that there never was a natural life outside of the city, just as for Hobbes, the state of nature refers not to a historical moment, but is a projection of a something that has already been captured by the state of law. Hence, the bare life that is captured by law, or ‘produced’ by the sovereign machine, is not identical with natural life, but a product of the aporetic relation between natural and political life.

In short, Agamben combines two metaphors, one of a machine producing bare life, and one of a sovereign decision and judgement, to present a theory of how life is captured in an aporetic relation between the universal (zoē) and particular (bios). Bare life is a condition within which natural and political life have become indistinguishable. Combined, they express a general theory of how the sovereign machine inevitably produces the dangerous position of bare life. In the next section, I will consider why Agamben thinks this position is so dangerous, and how human beings become subject to a power that increasingly governs their life in an unaccountable manner.

19 *HS*, 7.
20 On the similarities between Scheling and Agamben, see Ugilt Holten Jensen, ‘Agamben and Schelling on Potentiality’.
21 *SE*, 88.
22 *HS*, 102.
II. THE SOVEREIGN POWER AND THE STATE OF EXCEPTION

As pointed out in the last section, Agamben combines an account of biopower—the sovereign power to govern bare life—with one of juridico-political power. Unlike Foucault he thinks that the concepts of juridico-political power play a crucial part in explaining our current biopolitical condition. Nevertheless, in contrast to the thinkers we have discussed so far in this dissertation, he does not think that the judgement, as the application of law or the relation between a universal prescription and an individual case, can ever be acquitted of its violence. For Agamben, the sovereign power relates law to life in such a way that no matter what the sovereign does or how he governs, its acts are lawful. William E. Connolly succinctly summarises Agamben’s position: ‘the state requires a final authority to resolve questions of law, while the final authority is insufficiently informed by any law that precedes it’.24

By theorising the political relation of inclusion and exclusion Agamben is also responding to Schmitt’s theory of the sovereign decision. Agamben focuses on the paradox of sovereignty, which ‘consists in the fact that the sovereign is, at the same time, outside and inside of the juridical order’.25 As we saw in chapter 3, Schmitt argued that the sovereign is present even when the legal order is suspended, as happens in a state of exception. Indeed, the sovereign is the one who decides when and where there is a state of exception. Still, Schmitt’s emphasis on the strict demarcation between law and anarchy means that he did not realise the momentous consequences of the double position of the sovereign, nor did he understand the full meaning of the state of exception. Both the sovereign and the exception, Agamben argues, are thresholds between the inside and outside of the law for which Schmitt could not account:

[T]he most proper characteristic of the exception is that what is excluded in it is not, on account of being excluded, absolutely without relation to the rule. On the contrary, what is excluded in the exception maintains itself in relation to the rule in the form of the rule’s suspension. The rule applies to the exception in no longer applying, in withdrawing from it. The state of exception is thus not the chaos that precedes order but rather the situation that results from its suspension.26

This relation can be broken down into two steps: first, the exception is not wholly unrelated to law, since if there were no law, there would be no exception. Second, the relation between law

25 HS, 15.
26 HS, 17-8.
and exception is such that the law applies to it precisely in not applying to it, since all the prescriptions of the law are suspended. This is not a dialectical relation: Agamben is not saying that the exception is the negation of law and thus depends on the law for its meaning. Instead, the relation between the law and exception depends on a distinction between the content and force of the law.

In the state of exception the law withdraws in the sense that all of its prescriptions are suspended, while its ‘force’ is still in place. The notion of a law that is in force by withdrawing from the case means in neo-Kantian terms that it has validity (Geltung) without significance or content (Bedeutung).27 This distinction is extremely important since it is the only way in which Agamben escapes a dialectical interpretation of the relation between the universal and particular. He relates this distinction to Kant’s categorical imperative in the ethical sphere and the transcendental object in the theoretical. These principles define a law in its pure form and pure universality, and ‘neither prescribes nor forbids any determinate end’. To say that law is in force but does not signify is to say that those who live in a state of exception are subject to an empty law which nonetheless stands in a relation to them. Their relation to the law is simply ‘the “zero point” of their own content’. The law relates ‘to the individual case only because it is in force, in the sovereign exception, as a pure potentiality in the suspension of every actual reference’.28 To stand in relation to an absolutely formal law, to a law that has ‘withdrawn’ by suspending all its particular definition and content, means that there is no difference between being guilty or innocent and that every part of one’s life could at any moment be read as a violation of the law. All that one can know is that one is subject to the law that one is always somehow guilty.

The sovereign decision or judgement produces this state of exception, and frees the sovereign to act as if one were in the state of nature. In this condition, life can be killed without legal repercussions and with the sanction of the law. The state of exception is, therefore, experienced as the indistinction of law and anarchy. In Schmitt’s theory, the state of exception was not the normal state of affairs. The sovereign’s ability to pronounce an exception, where the difference between anarchy and law disappears, permits the sovereign to take the necessary action to restore normal order and a clear distinction between the terms in question. However, following Walter Benjamin, who argued that in modernity the exception has become the rule, Agamben

27 HS, 51.
28 HS, 20.
claims that the state of exception is in fact always the truest expression of sovereignty and its judgement. That is why Agamben claims that the ‘camp’—a space created by sovereign decision in which the most inhumane and unspeakable crimes are allowed—is ‘the hidden matrix and nomos of the political space in which we are still living’.

In a complex manoeuvre Agamben identifies the sovereign decision to create a state of exception with the production of the biopolitical body. This means that the relation between the law and life in a state of exception is the relation by which the sovereign institutes its power: ‘The “sovereign” structure of the law, its peculiar and original “force”, has the form of a state of exception in which fact and law are indistinguishable (yet must, nevertheless, be decided on)’. In modernity, then, it becomes evident that life is and has always been subject to a law that holds sway without prescribing anything in particular. In this state of things, the outside and inside, law and life, have become indistinct, and the sovereign is able to use or dispense with life as he pleases. This is the meaning of what Agamben calls a ‘zone of indistinction’.

The juridico-political and the biopolitical forms of power are united in the relation of the sovereign decision: sovereign power subjects and produces ‘bare life’ as a condition in which life is under the force of a law emptied of its content. The understanding of judgement implied by this theory is that the judgement of the sovereign subjects a ‘bare’ and indeterminate individual to a completely empty law. None of the identities or actions of the individual matter any longer, just as the laws prescribes nothing in particular.

As we have seen, then, as a sovereign decision, the judgement empties both the universal and the particular of their contents, as it subjects life to an empty force of law. In the next section we will see how Agamben connects this theory of the biopolitical condition with a political theology. This is a political theology, we shall see, which has entirely rejected the possibility of redeeming judgement.

Part two

The Sacred on the Threshold between Divine and Human Law

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29 SE, 2.
30 HS, 166.
31 HS, 27.
32 HS, 4.
Agamben’s theory of biopolitics is a more damning attack on judgement than we have seen so far in this dissertation. For Schelling and Schmitt, the gap between law and life or universal and individual meant that human order was characterised by a sacrificial character. Their political theologies investigated the meaning of this sacrifice. While Schelling concluded that only the Church could overcome sacrifice and the violence of judgement, Schmitt insisted that sacrifice was necessary to maintain the State. Agamben’s political theology develops out of the sacred character of judgement, which he clearly distinguishes from the sacrificial. In this section we will see how, for him, the sacred is the point of unity between the theological and political. This unity stems from the fact that political discourses, on the one hand, and theological discourses about God’s relation to the world, on the other hand, exhibit the same logic of judgement. Agamben’s explorations of the theological tradition will also enable us to see how the judgement enables the sovereign power to govern without being held accountable.

Life, Agamben argues, has been captured by law. In contrast to Schmitt’s Hobbesian sacrifice of freedom for security, being a citizen in the neoliberal condition described by Agamben is tantamount to being subject to a force that effaces the distinction between lawfulness and violence. This is why Agamben turns to the homo sacer as a paradigm for life captured in the state of exception: In Roman law, the homo sacer was a person banned from law, one whom anyone could kill, but who could not be sacrificed in religious ritual. Those who are in the position of the homo sacer are excluded from law, but included in the exclusion, and, therefore, live in a precarious state where they can be killed at any moment, for the very reason that law has withdrawn from them. The sovereign stands at the opposite pole of the homo sacer, yet the two are similar insofar they both are at once inside and outside of law. For the sovereign, everyone is potentially a homo sacer.

Both the homo sacer and the sovereign are sacred. This claim is based on Agamben’s redefinition of the notion of the sacred. The reason why the homo sacer could not be sacrificed, he argues, was because he or she already belonged to God. Only that which was not already claimed by God could sacrificed. But just as the homo sacer still was included in human law precisely by being excluded from it, so it was also excluded from divine law:

33 *HS*, 71-4.
34 *HS*, 84.
sacratio takes the form of a double exception, both from the ius humanum and from the ius divinum, both from the sphere of the profane and from that of the religious.35

Thus, consistent with Agamben’s claim that judgement has become impossible, his political theology must distinguish between the sacred and the sacrificial. A sacrificial logic depends on a law with particular demands and an individual that may or may not fulfil these demands. In contrast, Agamben defines the sacred as a life in which sacrifice has become impossible, where there is no demand to be fulfilled, and nothing to offer to either God or the State. Thus, through this notion of the sacred Agamben is able to define the relationship between the political and the religious:

The political sphere of sovereignty was thus constituted through a double exclusion, as an excrescence of the profane in the religious and of the religious in the profane, which takes the form of a zone of indistinction between sacrifice and homicide. The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life—that is, life that may be killed but not sacrificed—is the life that has been captured in this sphere.36

Just as human law obscures the position of the sovereign, theological constructions of order enable the sovereign power by representing a God who withdraws from life, and allows it to exist on its own. The sacred appears through the double withdrawal of divine and human laws and their subjection of life to empty ‘force’.

In this way Agamben can argue in The Kingdom and the Glory: For a Theological Genealogy of Economy and Government that there never has been a complete secularisation of the West.37 Instead, both theological and political concepts function within the same machinery which sustains the sovereign power over life. In effect, they both exemplify the same structure of judgement. Agamben, therefore, avoids any causal theory of the relationship between theological and political concepts. Instead, ‘secularization operates in the conceptual system of modernity as a signature that refers it back to theology’.38 This means that the production of secular sovereignty ‘can be understood’ as ‘a specific performance of Christian faith’.39

35 HS, 82.
36 HS, 82. Author’s own emphasis.
37 KG, 4. For a critical discussion of Agamben’s understanding of theology and secularisation in this book, see Toscano, ‘Divine Management’.
38 KG, 4.
39 KG, 4.
*The Kingdom and the Glory* marks a point at which Agamben begins to read the sovereign power over life in the biopolitical condition through the lens of the Christian theological tradition. Agamben seeks to show exactly how life is rendered precarious in the biopolitical condition by examining the notion of divine *oikonomía* in theology. In this sense, the work expands on his earlier book *The State of Exception*, which interrogated the relation between juridical and governmental forms of power. This analysis is refined and expanded in *The Kingdom and the Glory*. Here the tradition of Christian Trinitarian theology is pinpointed as a ‘privileged laboratory for the observation of the working and articulation [...] of the governmental machine’. The theological distinction between the immanent and economic Trinity, is considered a paradigm of the ‘articulation between Kingdom and Government’. The Kingdom is juridical and legislative power, while the Government is economic-governmental power.

Agamben’s genealogy of the economic and governmental paradigms in the Christian theological tradition is supposed to demonstrate how the Pauline origins of the Christian understanding of *oikonomía* was transformed in the Patristic tradition such that it laid the foundation for the machinery of modern economic government as a political apparatus that avoids accountability for its violence. In the early Christian writings of the New Testament the Christian community is charged with the economic mission of ‘announcing the mystery of redemption hidden in the will of God that has not come to completion’. Here the Church is given a ‘domestic rather than political’ task, a task of effective management by executing a plan which expresses the mystery in God. In this sense *bare life* (*zôê*) is the object of the Church’s task from the beginning.

According to Agamben, two significant developments take place in early Patristic theology. First, *oikonomía* becomes a technical term in Trinitarian formulations to distinguish the divine being from its work in history. The distinction between the immanent and economic Trinity, which later becomes so important to Christian theology, originates as a new way of understanding God’s transcendence: now one can clearly distinguish God in his nature from God as He is in His active relation with the world. Second, the Pauline phrase of the economy

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40 *SE.*
41 *KG*, xi.
42 *KG*, xi.
43 *KG*, 23.
44 *KG*, 25.
of the mystery—the administration and expression of a plan hidden in the divine being—is subtly reversed to mean ‘the mystery of the economy’.\textsuperscript{45} God’s work in the world through the Church is itself granted a kind of mystery, rather than being the expression of a mystery hidden in God. These two developments are crucial to Agamben’s genealogy, because they allow for an implicit understanding of transcendence which cuts off God’s work (immanence) from God’s being (transcendence). It means that on the ontological level, being and act are kept neatly separate. The reversal of mystery and economy bestows a sense of mystery to God’s work and keeps us distracted from his being, or what the work expresses about God’s being.

These developments created the theo-political space for the unfolding notions of Kingdom and Government. The terms correspond to, and are indeed indebted to, the theological notions of transcendence and immanence, which we will see in further detail below.\textsuperscript{46} The structure of sovereign power sustains itself splitting into two. The Kingdom, which signifies the sovereign power in itself, always remains at a distance from its actual management through the Government.\textsuperscript{47} The relation of the Kingdom and the Government creates this rhythm between transcendence and immanence:

The Kingdom […] exceeds and always in some way precedes the Government […], which reaches and determines it only at the moment of the execution, yet without ever exhausting it completely.\textsuperscript{48}

The distinction between sovereign power and mere economic management or governing, allows sovereign power to do everything while withdrawing precisely at the moment of its execution, and thereby ridding itself of its responsibility. For Agamben, this is analogous to how theologians have made sure that any horrible events in His providential outworking of history are not expressions of His being by saying that God’s being withdraws the moment He begins to act.

Through his engagement with theology, Agamben develops a unified theory of power that encompasses both the juridical and the bio-political forms of power by explaining the sovereign relation of transcendence and immanence. In this theory, no coherent view of the city arises and no political action is possible, because the city walls are always already on the verge of

\textsuperscript{45} KG, 25.
\textsuperscript{46} KG, 92.
\textsuperscript{47} KG, 68-105.
\textsuperscript{48} KG, 108.
collapsing into a dangerous space where life is at once inside and outside. As we shall see, to escape this machine, Agamben will formulate a new ontology of radical potentiality and a new ethic of the ‘form of life’. Before we move to his alternative, we must elucidate the significance of modernity in his works. Although Agamben’s investigations traverses millennia and cross theological, philosophical, and juridical disciplines, his position is based on the biopolitical condition in neoliberal societies. This means that the condition we now experience must somehow have always been under way.

II. THE EVENT OF MODERNITY

Modernity is a decisive and revealing event for Agamben. In his readings of ancient metaphysical, theological, and political constructions, these constructions are always on their way towards the biopolitical condition of modernity. Modernity is a further aggravation of a process already there, yet also a revelation of the transcendental conditions of this process. It uncovers what was true all along and marks the moment when the terms of the relations of political, theological, and metaphysical conceptions of order become indistinct. The theological distinctions between God’s immanence and transcendence, the metaphysical distinctions between intelligible essence and unintelligible existence, and the political distinctions between non-political and political life, all collapse in modernity. In short, the universal and particular terms of judgement have become indistinct.

In Opus Dei: an Archaeology of Duty, Agamben explicitly relates this process to the diremption of law and ethics we have explored so far in this dissertation, and states that these two notions correspond to the difference between the real and the ideal. In his book he presents a genealogy which traces the connection between the religious concept of the office and the ethical concept of duty in modern philosophy. As we saw above, the Kingdom represents the sovereign power whose work and violence begins the very moment it withdraws, such that it is relieved of all responsibility for its actual government of the world. In this way, Agamben’s point is very similar to Martin Heidegger’s analysis of the relation between Being and beings, according to which beings come to be by the withdrawal of Being as such. There is an imperative for the one term to reduce itself to the other: potentiality disappears the moment it is actualised, Being disappears as it gives rise to beings, and the Kingdom withdraws and gives rise to the work of Government.

49 OD.
50 HS, 59-60.
These relations express an imperative to work, to transition from passive potentiality to actuality. In the political condition of neoliberal modernity, the State is reduced to effectively managing life in order to sustain the market economy. Agamben places Kant at the end of this long process and claims that his philosophy embodies the ‘threshold of modernity’. This threshold is a moment when two irreconcilable ‘ontologies’ co-exist in one system.\(^{51}\) The modern tendency to separate the world into what is and what ought to be realised expresses two different ontologies. Following Heidegger, one can designate these as ‘being (Sein) and having-to-be (Sollen)’. According to Agamben, this separation was completed in Kant. The ontology of Sollen is predicated on a mutual contraction of being and acting so that being ‘becomes something that does not simply exist but has to be brought about’.\(^{53}\) This contraction is sustained by a command or an imperative. Sollen and the pure imperative of having-to-be express the ‘ontology of modernity’, in contrast to the ontology of substance of the ancients.

In Kant, whom Agamben portrays as the representative of this decisive moment of modernity, the ontology of the command penetrates and transforms the ontology of substance from within so as to make the will and the command coextensive with Being. As Agamben notes, Kant’s ideas of reasons are imperatives, not constitutive descriptions of what is, and at the end of the day, reason exists only as a work towards the realisation of these ideas. Kant thereby effects the ‘catastrophic reemergence of law and religion in the bosom of philosophy’. His philosophy produces bare or sacred life.\(^{54}\)

It should not come as a surprise that Agamben then turns to Kelsen, whom we dealt with in chapter 3. Kelsen creates a dualistic system by absolutising the distinction between being and having-to-be, expressed as the distinction between actual relations of power and a legal system of norms.\(^{55}\) Sollen is never reduced to Sein, since legal norms are kept separate from factual descriptions. His program cannot be fulfilled, however, for the two ontologies and the spheres of law and ethics continue to ‘refer to and presuppose one another’.\(^{56}\) Agamben argues that the violence of judgement is the uninterrogated tertium quid of Kelsen, the relation which still is there in his thought in an unrecognised manner. Kelsen gives no account of how the realisation of norm can happen in a non-violent way because he does not deal with how a judgement relates

\(^{51}\) OD, 122.  
\(^{53}\) OD, 118.  
\(^{54}\) OD, 122.  
\(^{55}\) OD, 123.  
\(^{56}\) OD, 124-25.
the universal norm and the individual case. Agamben’s argument is consistent with what Schmitt argued precisely, namely, that since Kelsen gives no account of how to relate these realms, the application of legal norms is an extrinsic and arbitrary transgression of what is. Violence ‘cannot easily be expunged from law and ethics and constitutes a tangent point between the two ontologies’.

Agamben thus identifies the relation of judgement with violence. To expunge the violent relation from ontology and ethics means overcoming every duty and imperative, that is, the imperative to relate law and life in judgement. As we will see in the next part of this chapter, Agamben thinks ontology is rescued from violence when the notion of the will is entirely removed, and that ethics becomes peaceful when it no longer depends on the command. In short, the relationship between law and ethics can only be resolved by removing the force of Sollen, of having-to-be. Autonomy cannot be realised by making what is conform to what it ought to be. Judgements do not unite the universal and the individual, but institute a relation of a pure and empty command over life. Thus,

[t]he problem of the coming philosophy is that of thinking an ontology beyond operativity and command and an ethics and a politics entirely liberated from the concepts of duty and will.

Agamben believes, we now have seen, that modernity reveals the violence of the judgement. Not surprisingly, then, he seeks to formulate a way of being and acting that resists the judgement as such. In the next section, therefore, we will see how he argues that it is possible to suspend judgement and overcome the violence of its relation.

**Part three**

*The Persistence of Judgement*

**I. THE SUSPENSION OF JUDGEMENT**

In the state of exception, human life is prosecuted like Josef K. in Franz Kafka’s *The Trial:* ‘The court does not want anything from you. It receives you when you come and dismisses you

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57 OD, 125.
58 OD, 129.
The difference between guilty and innocent has been suspended, and it is up to the judge, whom nobody has seen, to render the verdict as he pleases. One cannot secure oneself against the verdict by hiring a better lawyer, or hoping for a fair judge or the chance of an appeal. The one available option is to stop the trial—not to infinitely defer the verdict, but to halt the process, to put a wrench in the machine, so that one deactivates the very force of the law. Otherwise, one will simply replace one judgement with another.

In this section, we will see how Agamben seeks to halt the trial and suspend the judgement. It involves overcoming the ‘imperative’ of law which demands nothing in particular, but controls everything. However, every positive proposal involves a judgement as a configuration of the universal and the particular. Can Agamben denounce judgement without restarting the machine in a different guise? This is what we will explore in the following.

Agamben’s alternative to the violence of judgement is scepticism. Ancient scepticism was predicated upon the realisation that the judgement is inherently aporetic. Whenever there is a clear option before us, its opposite soon appears as an equally viable alternative. Soon one begins to realise that the two alternatives are equally untenable, which invites a suspension of judgement. As the third century philosopher Sextus Empiricus noted:

Scepticism is an ability, or mental attitude, which opposes appearances to judgements in any way whatsoever, with the result that owing to the equipollence of the objects and reasons thus opposed, we are brought first to a state of mental suspense and next to a state of ‘unperturbedness’ or quietude.

Whether by accident or by deliberate evaluation of alternatives, the sceptic discovers that on any issue, there are at least two mutually incompatible positions to take, and that they both seem equally supported by argument. This results in a moment of aporia, a situation in which there is no plausible path forward, because one has come to a fork in the road where there are no traffic signs or maps to see. When there is no orientation in thinking, there is no orientation in

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60 TTR, 102-4.
61 Agamben mentions Martin Heidegger, Reiner Schürmann and Walter Benjamin as some of his intellectual predecessors in search for the same ‘destitution’ of power and ‘deactivation’ of the law, but who fail to do so. *UB*, 275.
living. Consequently, scepticism often leads to the abstention from political action.\textsuperscript{63} Agamben adopts this passive approach and seeks to make the sceptical non-position viable. This is not an easy task, for the common objection to any sceptical position is precisely that it is a position, and thus implies an unspoken judgement about the matter in question. The decision not to decide equally seems like a decision.

Agamben’s most detailed defence of this position is to be found in his essay ‘Bartleby, or On Contingency’.\textsuperscript{64} He begins with a discussion of the Aristotelian account of the intellect. Aristotle famously considered \textit{nous} or intellect as in potentiality to \textit{noesis}, the active or divine intellect.\textsuperscript{65} For Aristotle, when we think a determinate form, the intellect ‘somehow’ becomes the form in question, because thinking is the actualisation of the form in one’s intellect. The capacity to think is a kind of matter or receptacle. In his essay, Agamben draws on the metaphor of the mind as a blank sheet, on which the determinate form impresses or writes itself.\textsuperscript{66} This process of inscription enacts a judgement (\textit{krisis}) and insinuates the law of non-contradiction in the sense that the first stroke of a pen divides the sheet in two. To think one thing is not to think another. To account for the possibility of scepticism, then, one would have to demonstrate how the blank sheet, the passive intellect (\textit{nous}), can exist without having to actualise in a determinate form.

Agamben notes that the will is a possible candidate for understanding the transition from potency to act, and also as an explanation of how one could suspend judgement. However, the will always makes a choice between one thing and another. To will not to think is already to will something and thus to be bound by the imperative to judge. In contrast, Agamben must account for a radically transcendent potentiality which is able to stand outside any relation to actuality. Only so can he escape the rule of law, since

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\textsuperscript{64} B.


\textsuperscript{66} B, 243-45.
potentiality, insofar as it can be or not be, is by definition withdrawn from both truth conditions and, prior to the action of ‘the strongest of all principles,’ the principle of contradiction.\(^67\)

For this reason he argues elsewhere that,

> Until a new and coherent ontology of potentiality (beyond the steps that have been made in the direction by Spinoza, Schelling, Nietzsche, and Heidegger) has replaced the ontology founded on the primacy of actuality and its relation to potentiality, a political theory freed from the aporias of sovereignty remains unthinkable.\(^68\)

An event that can be and cannot be is what we call a contingency. Bartleby of Melville’s story ‘Bartleby, the Scrivener: A Story of Wall Street’ becomes Agamben’s champion and defender of absolute contingency, and thus of a sceptical position beyond judgement.\(^69\) Acquiring work as a scrivener at a legal office, Bartleby approaches the job with vigour, but eventually stops working all-together, taking shelter in his office where he resides and remains idle. Bartleby consistently reacts to requests put to him by the lawyers and other employees with ‘I would prefer not to’.\(^70\) The absence of reference to an act of will, emphasised even more strongly by his occasional ‘I prefer not to’, relieves him from the force of the law. Bartleby never refuses to obey, he just prefers not to, and thereby calls into question ‘the supremacy of the will over potentiality’.\(^71\)

Bartleby’s preference retains both his potentiality to do and his potentiality not to do what is asked of him. Elsewhere, Agamben argues that for Aristotle, potentiality is double: a dancer is both able to dance and able not to dance.\(^72\) In actualisation, however, the potentiality not to dance is set aside, since one is actually and not potentially dancing. In contrast, for Bartleby, the potentiality not to perform certain acts always remain, independently of what is actual at any moment. Bartleby maintains a position vis-à-vis being which circumscribes every actuality with its potentiality not to be. Every event is radically contingent in the sense that it cannot

\(^{67}\) B, 261.  
\(^{68}\) HS, 44.  
\(^{69}\) Herman Melville, Bartleby, the Scrivener, ed. James Mason (Albany, NY: State University of NY, 1999).  
\(^{70}\) Melville and Mason, 12.  
\(^{71}\) B, 254.  
\(^{72}\) OP; HS, 144-8.
occur. So much so that even that which has occurred still can have not occurred. By so construing potentiality, Agamben seeks to truly deactivate judgement.

This deactivation does not mean the destruction of the law, but that its force has been effaced. It is still true that the law of non-contradiction holds for all of being, ‘it-will-occur-or-it-will-not-occur’ is true in the sense that an actuality excludes its own negation. Bartleby’s sceptical position does not mean that all distinctions disappear. The world is still one way and not another. The point is rather that these distinctions do not matter any longer. Nothing is necessary and everything can still be different: whatever has occurred is rendered absolutely contingent by its potentiality to be and not be. The force of the law demands that you choose: either A or not-A. But to retain one’s potentiality is to overcome the force of this demand, and thus to remove the necessity with which distinctions are made. Every judgement involves a decision between one or the other, but it is now possible not to decide and not to let the distinctions of the law matter.

In his *The Time that Remains: A Commentary on the Letter to the Romans*, Agamben intimates this absolute primacy of potentiality by reinterpreting St. Paul’s ecclesiological universality. In 1 Corinthians 7, the apostle triangulates the specificity of Christian identity. In verse 21 he says: ‘Art thou called being a slave? care not for it: but if thou mayest be made free, use it rather’. In this passage Agamben finds a deactivation of the force of law which replaces the mode of possession (*dominium*) with a form of use. The messianic *usus* of the law takes the form of an ‘as not’: ‘those buying as not possessing, and those using the world as not using it up’ (verse 30-1). For Agamben this ‘as not’ means ‘to not ever make the calling an object of ownership, only of use’. The mode of possession involves a judgement, it insinuates subjects, properties, distinctions, and relations.

In Agamben’s reading, St. Paul is, therefore, saying that Christians are no longer bound by their particular identities and their demands. Salvation is not granted by being a good Jew, a good slave or spouse. To become a Christian does not mean to possess a new identity, whether it includes or excludes all other identities. Instead, to use one’s calling, or one’s identity, means to make use of the law as Bartleby did and to take up the messianic calling so as to efface the force of law, and thus the force and necessity of every identity. This means denouncing every

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73 *B*, 266.
74 Following Agamben’s own translation in *TTR*, 26.
75 *TTR*, 26.
76 *TTR*, 26.
property form and every relation between the universal and particular. To live in faith ‘signifies the expropriation of each and every juridical-factual property (circumcised/uncircumcised; free/slave; man/woman) under the form of the as not’.

This ‘expropriation’ happens through the production of a quasi-relation that subverts the very force of the law. This implies the transcategorical identity ‘non-non-Jew’, which is a kind subversion of the double negation of the law of non-contradiction (A is not not A). The force of the principle of non-contradiction is effaced because the claim that something is non-non-A cannot be reduced to the claim that it is A. The purpose of this formulation is to avoid denying one’s particular identity while removing its necessity. For the apostle, to take up the Christian calling was not to renounce his Jewish identity, but to make the distinction between Jew and Gentile immaterial, because it had no force. Hence, Christians may sit around the same table because their particularities (Jews, Gentiles, tax collectors, slaves and so on) no longer matter.

We have now seen how Agamben portrays his political act, which is supposed to destitute the sovereign power by deactivating the force of law and suspending judgement. The reinterpretation of the messianic calling seems to allow for the possibility of a radically new community beyond the violence of judgement. However, as we will see below, Agamben’s proposal is so tied to the biopolitical condition of modernity that he offers no way of escaping it.

II. THE DIREMPTION OF LAW AND ETHICS

Despite its genealogical and archaeological approach, Agamben’s political theology does not rid itself of its modern character. In the following I will argue that he abides by the Kantian tradition in contrasting an unreachable ethical ideal with the prevailing relations of law. Hence, he offers us no way of overcoming the lack of freedom experienced in modernity. In a remarkable passage in his essay ‘What is an apparatus?’, Agamben writes the following, which is instructive in the present context:

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77 TTR, 26.
78 TTR, 52.
79 TTR, 51.
80 Slavoj Žižek has suggested that Agamben’s category of the non-non-Jew is akin to Kant’s infinite judgement that supplements the affirmative and negative qualities of judgement. This is an affirmative judgement which contains a negation in the predicate so that the judgement takes the form ‘S is non-P’. According to Kant, this judgement works by taking its point of departure in the total field of all possible predicates—out of which every determinate concept is carved—and exclude the predicate in question, namely that of being a Jew. (KrV, A 71-73 / B 97-98) But this interpretation fails to capture Agamben’s point, which is that the predicate is not denied. Žižek, Less than Nothing, 75.
I wish to propose to you nothing less than a general and massive partitioning of beings into two large groups or classes: on the one hand, living beings (or substances), and on the other, apparatuses in which living beings are incessantly captured. On one side, then, to return to the terminology of the theologians, lies the ontology of creatures, and on the other side, the oikonomia of apparatuses that seek to govern and guide them toward the good. […] And between these two, as a third class, subjects. I call a subject that which results from the relation and, so to speak, from the relentless fight between living beings and apparatuses.81

In this passage, we find three interrelated conceptual spaces. First, there is a trace of what Agamben called the ontology of having-to-be (Sollen), represented by the apparatuses (the concept of an apparatus is borrowed from Foucault’s theory of biopolitics, and designates the means by which the sovereign governs living beings), and the ontology of being (Sein), represented by living beings or substances. Second, we see the trace of his analysis of the Aristotelian substance into primary and secondary substance, which we will explain in more detail below. This appears as the distinction between what he calls ‘subjects’ and ‘living beings’. The subject is what appears in the ‘struggle’ with apparatuses, in the submission to and resistance with the force of law. The subject appears in Aristotelian metaphysics as the comprehensible aspect of a substance. What Agamben calls ‘substance’ is the unspeakable primary ousia, which stands under the comprehensible essence in Aristotelian philosophy. Thirdly, we find a trace of the experience of modernity we referred to in chapter 3. In Koselleck’s account of modernity, the transition from the feudal system to the absolutist regime resulted in a spilt between the individual and the subject which stood in relation to law. The individual thereby found itself alienated from its status as a subject under the sovereign. As Koselleck argued, the modern ideal of freedom expresses a wish to overcome this alienation and to create a harmony between the universal (law) and the individual (life).

In chapter 2, we saw, with reference to Fichte, that a transcendental account of freedom must explain the experience of unfreedom in the world as a result of our self-subjection. The alienation experienced in political and social relations can be overcome if one realises that all otherness, passivity, and subjection is itself a product of reason. This initiates an infinite striving to overcome the subjection to a foreign law, oriented towards the goal of explaining every law as the product of one’s own activity and thus in harmony with oneself.

Despite their many differences, Agamben follows Kant and Fichte in giving a transcendental account of judgement and the experience of unfreedom in modernity. With them, he

81 WA, 13-4.
universalises the condition of Western modernity. Agamben repeats the Kantian distinction between receptive intuition and conceptual activity as the difference between the pre-subjective potentiality exhibited by Bartleby, on the one hand, and the world of language, relation, and history, on the other hand. The subject, standing under the law, comes to be through a fall away from his or her pre-subjective freedom. This is reminiscent of how the judgement in Kant’s theoretical reason relates passive and incomprehensible intuition to the concepts of the understanding. According to Kant, although the reception of intuition has a priority, we only come to be as judging subjects when we subsume these intuitions under conceptual rules. Judgement is the violent activity that seeks to subsume intuition (life) under the concept (law), and thereby move us from a position of pre-subjective receptivity to subjects in a world of objects and relations.

We find a clear example of this structure in The Time that Remains, where Agamben presents an alternative to the traditional predicative sentence. This is motivated by a reflection upon the meaning of the copula in Aristotelian metaphysics. Aristotle famously distinguishes between primary and secondary substance (ousia) as that which ‘lies under’ (hypokeimenon) and what is said of a thing (essences, genus, and species). When a thing is judged or ‘accused’ (kategorien), it is asked both what it is and about the fact that it is. The lineaments of its order, the universals under which it is subsumed and its existence as such are all put into question. But primary substance is not possible to express as such, since its universal communicability is grounded in the secondary substance.

The problem is present in predication. The verb ‘to be’ functions in two different ways in the Western tradition: as we saw in our discussion of Schelling, the verb functions as a copula which determines an essence, but also as a postulation of existence. This double sense of ‘to be’

is at the base of the many aporias and difficulties in the history of Western ontology, which has been constituted, so to speak, as a double machine, set on distinguishing and,
at the same time, articulating together the two notions into a hierarchy or into a coincidence.\textsuperscript{85}

In \textit{The Time that Remains}, Agamben, therefore, rejects the judgement and the predicative sentence, and takes refuge in the nominal sentence which binds together nouns without the copula. One example of such a sentence is ‘Jesus Messiah’. In this sentence, ‘Messiah’ is not a name nor a predicate of Jesus, but conjoined with Jesus in a non-relational way.\textsuperscript{86} By effacing the copula, one does not have to deal with the contradictory relation between the subject and predicate, substance and its properties, life, and law. Faith is a sort of intuition inasmuch as it is ‘an experience of being beyond existence and essence, as much beyond subject as beyond predicate’. In what might come across as a Protestant pastiche of Christian \textit{agape} as that which transcends every distinction, Agamben claims that one does not love subjects and their predicates, but people in their suchness: ‘I love beautiful-brunette-tender Mary’.\textsuperscript{87} But this love ‘has not reason’, it is empty of \textit{logos} and nothing is really said or understood, because all one can do is intuit it in silence. To say, ‘the snow’s-being-white’ is at best to draw attention to something that might be intuited by someone else.\textsuperscript{88} Whatever is thus intuited is unspeakable:

The moment when I realize that my beloved has such-and-such a quality, or such-and-such a defect, then I have irrevocably stepped out of love.\textsuperscript{89}

This ‘step’ is actually no step at all, for there is no mediation and no passage from intuition to judgement. To comprehend and communicate is to move from a state of pure receptivity vis-à-vis the beloved to a position of a subject who judges. Accordingly, for Agamben, love must be so transcendent, so beyond every form of work, ownership and relation, every hierarchy and distinction, that it perceives everything ‘as such’.

To insist on the gap between intuition and judgement, however, is not to overcome the modern diremption of law and ethics, but to refuse to understand it. Agamben seeks to escape the relation of judgement, and in so doing, propose an ethics which ‘corresponds to a life that, in use, is constituted as inseparable from its form’ together with an ontology in which the

\textsuperscript{85} \textit{UB}, 118. 
\textsuperscript{86} \textit{TTR}, 128. 
\textsuperscript{87} \textit{TTR}, 128. 
\textsuperscript{88} \textit{TTR}, 128. 
\textsuperscript{89} \textit{TTR}, 129.
properties of a substance are inseparable from its being.\textsuperscript{90} A life (individual) which is inseparable from its form (universal) is the very definition of the modern ideal of autonomy. In contrast to Kant and Fichte, however, Agamben recognises that the gap cannot be closed through relational judgement, and, therefore, denounces every form of work, every reconfiguration of individuality and universality.

Thus, in the next and final section, we will argue that there is no way of showing what such a freedom would be like, or how to achieve it. As a result, Agamben is unable to understand our lack of freedom in the world.

\textit{III. BEYOND COMPREHENSION}

The criticism of judgement we have traced so far in this chapter can be summarised as follows: The political relation between law and life is such that all content of the law has disappeared, even though life is still captured by the force of law and managed through the Government. Modernity is a revelatory event which shows that the indistinction which appears between law and life, or order and disorder, is the state towards which all relations of judgement move. While this is a catastrophe, it also opens up the possibility of a politics beyond judgement. For it is the very force of the law that is problematic, not the indistinction between law and life itself. In this section, I will argue that this final move shows that Agamben has reduced judgement and relationality to a mysterious sense of alienation. For him, every social and political condition is equally violent and inexplicable. Because of this, he is unable to account for exactly what needs to be changed in order to realise freedom, and his ethical ideal is but a negation of the alienation of our current experience.

If the ‘pure form of law is only the empty form of relation’ and the law is ‘in force without significance’, it follows that the ‘force’ of the law is meaningless as such.\textsuperscript{91} In other words, the force of law is nothing. The experience of unfreedom in modernity, that of being held to account by a force one cannot question, leads Agamben to denounce judgement as alienation, violence, or force. It must be countered, however, that violence thus becomes coextensive with every social relation, which means that his theory is unable to explain any particular instance of violence. This also explains why Agamben cannot to account for why modernity happened now, or why it is worse or more violent than other times.\textsuperscript{92} How can modernity, therefore, be a

\textsuperscript{90} \textit{HP}, 144.
\textsuperscript{91} \textit{HS}, 51.
\textsuperscript{92} Agamben describes history as back-and-forth between a force which constructs relations and one which breaks them down, but gives no account of the workings of this struggle. \textit{CK}, 34-5; \textit{SE}, 87.
revelation of what was always already the case? As Jacques Derrida has pointed out, Agamben always pretends ‘to be the first to discover absolutely new, “decisive and foundational” events, events that are at the same time said to be ageless and in fact “immemorial’’. Agamben’s archaeology and genealogies cannot account for change, and are unable to explain how certain social relations become violent. The problem is that temporality itself is only possible if there are relations and distinctions between before, now, and after. In contrast, Agamben’s own counter-temporality is a Messianic ‘kairos’ stops the machinery of history itself. Thus, there are actually no points in history that have been worse or better, only a continual operation of a machinery always on the verge of destroying itself.

Violence coincides with the world and is everywhere the same. The absolute diremption between law and ethics, between the experience of being unfree in a world of relations and the pre-subjective experience of freedom as potentiality, means that Agamben has spent all his resources to understand how and why violence takes place. In the words of Peter Gratton, Agamben must accordingly ‘equate all threats, and think the mediation of the spectacle with the death camps with the accidental death on highways’.

The relation of judgement is everywhere experienced as the alienation of the individual under a foreign law. Accordingly, Agamben denies a way to freedom through the work of judgement. In spite of this, he is still an optimist, according to commentator Sergei Prozorov:

Agamben’s political thought is optimistic because the inoperative form-of-life that it affirms is no longer posited as a historical task, something to be attained in reformist or revolutionary praxis, but merely requires the subtraction of the subjects from the existing apparatuses.

The meaning of this subtraction, however, is to be understood in light of Agamben’s insistence on the identity of the positive and negative in his philosophy:

In a philosophical inquiry, not only can the pars destruens not be separated from the pars construens, but the latter coincides, at every point and without remainder, with the former. A theory that, to the extent possible, has cleared the field of all errors has, with

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94 *TTR*, 65-71.
that, exhausted its raison d’être and cannot presume to subsist as separate from practice.97

The philosophical exposition of the problems with the machine coincides with Agamben’s positive vision. That is why Agamben ultimately has no practical solution to how the machinery will eventually end.98 Instead, the freedom and the ethics to which Agamben is gesturing are identical to the deactivation of the force of law. This is repeated again and again in his works: the biopolitical body produced by the sovereign machine is ‘the site for the constitution and installation of a form of life that is wholly exhausted in bare life’;99 the empty throne of sovereign power surrounded by Glory opens up the possibility for inoperativity;100 the alternative to the relation between law and life is something ‘to which we have no other access than through the fiction of their articulation and the patient work that, by unmasking this fiction, separates what it had claimed to unite’;101 destitution coincides without remainder with constitution; position has no other consistency than in deposition.102

The identification of the positive and negative insinuates a radical liberation of the life caught in the machinery of judgement, but serves only to aggravate the power of law over life. The completion of the biopolitical production of a condition in which law and life are indistinct is both the greatest catastrophe and the possibility of redemption. The zone of indistinctness dispels the fiction of the necessity of a relation, since when we see that the condition of bare life is a condition in which life is indistinguishable from law, we might come to affirm precisely this indistinction and thus forego the necessity of a relation. For this reason, the bare, helpless condition in the biopolitical regime is precisely the life affirmed by Agamben, the life ‘subtracted’ from the Government apparatuses.

What is the apparatus from which bare life is subtracted and set free? It is an empty relation, the force of the law upheld by the sovereign judgement. But this force is nothing, has no content and cannot be understood. To recover bare life from the apparatuses of the sovereign power is to recover everything but this meaningless force. The deactivation of the force of law and the disavowal of judgement is nothing but the affirmation of our current condition without the

97 UB, xiii.
98 Franchi, ‘Passive Politics’.
99 HS, 188.
100 KF, xii.
101 SE, 88.
102 UB, 275.
mysterious experience of alienation and lack of freedom. Our subjection to an accountable law which insists on our choosing, means that we constantly feel alienated in relation to our identities. This experience seems to imply a pure, living being standing under these identities, and sustains a hope of this being reconciled with its identities, its particular form of life. Agamben’s category of the non-non-Jew wants to establish a way of being that is able to affirm one’s identity without its force, that is, without the feeling of alienation. In the words of Susanne Dianne Brophy, what ‘are lived experiences of alienation then become abstracted and depoliticized as the fatalist circumstances of non-non-being’. Because the relation or force cannot be understood, Agamben’s political subject ‘only approximates, but does not realize’ freedom. Although he so often speaks about a pure experience beyond relation or about a suspension of judgement, this is an experience which affords no comprehension and no actualisation. It remains an ethical ideal at a distance from all our comprehensible relations and identities.

For Agamben, ethical life begins with the negation of the force of law, the double negation of non-non-Jew. But to deny our alienated selves serves only to further our self-alienation and thus to remove our power to change our condition. Refusing to understand the social, political, and religious relations that capture and produce unfree lives, Agamben wants to remove a force which he has made so elusive that it amounts to nothing. His political theology replaces the notion of sacrifice with the sacred as the point at which politics and theology unite. The sacrificial character of judgement implies a problematic relation between the political and theology: within politics it implies that human order has been granted an improper sense of transcendence; within theology, it implies that believers are made to sacrifice themselves for what are in reality finite and less than divine causes. This means that we have not yet solved the problem of judgement, and that our political and religious institutions are still implicated in ways we have yet to understand. In contrast, Agamben’s notion of the sacred prevents an exploration of the relation between political and religious institutions. At the point of contact between the political and the theological we find a pure force, or an empty relation. The vacuity of this alienating force means that nothing is improved by changing the relationship between political religious institutions.

In *The Coming Community*, Agamben repeats a story told by Walter Benjamin:

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104 Brophy, 13.
The *Hassidim* tell a story about the world to come that says everything there will be just as it is here. Just as our room is now, so it will be in the world to come; where our baby sleeps now, there too it will sleep in the other world. And the clothes we wear in this world, those too we will wear there. Everything will be as it is now, just a little different.

This is the difference between ethics and law which Agamben has denied himself the ability to think. Agamben has not shown how the negation of the force of law results in ethical life, in freedom. Instead, he abstractly denounces the relation of judgement and thereby leaves everything unchanged.

**Conclusion**

Agamben’s project leaves one factor unthought and one principle unchallenged. The relation of judgement is denounced as violence, which means that the only political project is to renounce the world in the name of an incomprehensible freedom. From the perspective of pure potentiality, there is no change, no command, no relation, and ultimately no love. However, to denounce political action in the name of the complete coincidence of the universal and the individual is not to release life from its captivity under the sovereign power. It is to leave actuality unchanged, and to prevent no violence in an effort to efface violence altogether.

\[105\] *CC*, 53.
Chapter 5

Mistrial:

Hegel’s Philosophy of Judgement

Introduction

In the previous chapters of this dissertation, we have witnessed different attempts to come to terms with the aporia of judgement. In each case, the impossibility of reconciling the universal and the individual, of filling the gap between law and ethics, led to some form of political theology which explored the sacrifices demanded by political order. In this chapter, we will revisit the relationship between judgement and political theology from the perspective of G.W.F. Hegel’s philosophy. While Hegel’s analysis of Kant and the problem of judgement in modernity has been implicit in all of the previous chapters of this dissertation, it is not my intention to argue that Hegel’s philosophy completes the trial or solves all its problems. Instead, I will deal with Hegel’s failure to overcome the problem of judgement when struggling to give an account of the role of religion in the modern world.

By looking at Hegel’s philosophical presentation of judgement from the standpoint of some of his early and very last writings, we will see how the success of Hegel’s philosophy depended on it being a realisation and secularisation of the Christian representation of salvation as the reconciliation between the finite and the infinite. This reconciliation is realised in the world as autonomy in the sense of a unity between the universal (transcendence) and individual (immanence). Nevertheless, we will see that Hegel struggled with presenting the modern world as a realisation of a secularised Christian freedom, because his philosophy depended upon two incompatible accounts of secularisation: that of a break with and that of a realisation of Christianity. The completion of the trial of reason depends on it enacting both a violent break with the previous regime (regicide) and a rational and an accountable transition of power (formal legal procedure), simultaneously. In Hegel’s analysis, these two operations correlate with two different accounts of secularisation: On the one hand, the Revolution as the break with and the end of religion (finis); on the other, the Reformation as the reform and realisation (telos) of religion. Because Hegel failed to show how both could be achieved at the same time, I will argue with reference to the Hegelian project of Gillian Rose, that Hegel’s philosophy can only
be understood (and indeed, performed) as a secularisation which it is impossible to realise perfectly or complete. This secularisation takes the form of a political theology which investigates the recurrence of sacrifice in our contemporary society, since the sacrificial character of political order suggests that the creation of an autonomous secular order will never be complete. Finally, my reading of Hegel and my discussion of Rose’s project, will enable me to ask some critical questions about the assumptions of the trial of reason as a whole.

**Part one**

*Hegel’s Reconciliation of Judgement*

1. **THINKING THE CONTRADICTION OF JUDGEMENT**

Before we turn to Hegel’s view of religion and politics, we must consider how he thought that he had managed to overcome the trial of reason. In the *Phenomenology of Spirit* and the *Science of Logic*, Hegel sought to solve the problem of judgement by turning its vice into its virtue: here, as we shall see below, Hegel seeks to convert the experience of the mismatch between the universal and the individual into a success by showing how reason is able to think and thus find truth and freedom in the contradiction of judgement.

In the preface to the *Phenomenology*, Hegel spells out the predicament and task of philosophy in the modern world through the lens of ‘Spirit’ (*Geist*):¹

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¹ There is no unambiguous translation of the German word ‘*Geist*’ in Hegel’s philosophy, and ‘consciousness’ and ‘mind’ have been variously attempted. The term is difficult, because it covers not only individual rational capacities, but implies a view of reason as a collective and historically determined enterprise, which enables him also to talk about a national *Geist*. There is also surely a reference to the Holy Ghost as a mediating third and the active unity of the community. Ludwig Siep, *Hegel’s Phenomenology of Spirit* (Cambridge: Cambridge University Press, 2013), 2. For a classic work on the *Phenomenology*, see Jean Hyppolite, *Genesis and Structure of Hegel’s Phenomenology of Spirit* (Evanston: Northwestern University Press, 1974). Another ‘standard’ reading is Werner Marx, *Hegel’s Phenomenology of Spirit, Its Point and Purpose: A Commentary on the Preface and Introduction* (New York: Harper & Row, 1975). Recently, the non-metaphysical readings have reread the *Phenomenology* to challenge analytical and non-historical accounts of reason in the late twentieth century: Terry P Pinkard, *Hegel’s Phenomenology: The Sociality of Reason* (Cambridge: Cambridge University Press, 1994); Kenneth R. Westphal, *Hegel’s Epistemology: A Philosophical Introduction to the Phenomenology of Spirit* (Indianapolis, IN: Hackett Pub, 2003).
[I]t is clear that Spirit has now moved beyond the substantial life it formerly led in the element of thought […] Spirit has not only lost its essential life; it is also conscious of this loss and of the finitude that is its own content.²

The Spirit of the modern world is alienated because it has lost its ‘substance’, that is, all its previous identities and definitions have been put into question. Consequently, modern human beings feel alienated from their communities. The world is fragmented and none of the available candidates—be it love, religion, or the republic—are able to overcome this sense of fragmentation and unfreedom. Those who try to avoid alienation end up ‘running together what thought has put asunder’ and ‘restoring the feeling’ of essential being.³ They seek to overcome the feeling of brokenness, lack of freedom, and alienation by imposing a formal and abstract universal on the concreteness of reality so as to find comfort in the absolute identity of ‘A=A’.⁴

For Hegel, such visions of uncompromised unity tend towards nostalgic religious impotence on the one hand and violent political sacrifice on the other. In the first case, this absolute identity might be represented at a distance from the real world, thereby displacing freedom through religious symbols and ritual sacrifice. This is the stance of the unhappy consciousness who knows that alienation must be overcome, but does not know how to realise it in the world. Thus the unhappy consciousness is a split and contradictory individual, who finds him or herself at once free in a transcendent realm, yet broken in the present life.⁵ In contrast, if this abstract unity is thought of as an ‘undivided Substance of absolute freedom’ which ought to be imposed on the world, the result is the violent logic exemplified in the Terror of the French Revolution.⁶ In this bloodbath of reason, all the complex mediations and spheres of society are levelled and the ‘two worlds’ of the individual ‘are done away with’, but only at the cost of unleashing a ‘fury of destruction’.⁷ This is because the Terror is built on a sacrificial logic which effaces everything that stands in the way of the purity of the political community.

In lieu of these two alternatives, Hegel claims that we must think the true ‘not only as Substance, but equally as Subject’.⁸ In metaphysical terms, this means that the true nature of the world cannot be an abstract immediacy or unity, as, for instance, Schelling presents it at an early point

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² *PhG*, 9:12 / 4 (§7).
³ *PhG*, 9:13 / 5 (§7).
⁴ *PhG*, 9:17 / 9 (§16).
⁸ *PhG*, 9:18 / 10 (§17).
in his career by appealing to Spinoza. In his account of the transcendental subject, Kant’s decisively proved that every claim to truth or freedom involves a reference to a subjective and self-conscious moment. Hegel restates here in the most succinct manner the lesson of the narrative of modernity we are now familiar with: The modern individual is able to consider himself and take a position on what it is, but is, therefore, separated from the identity (substance) imposed on it from above, whether this ‘substance’ is the religious community, the nation State, or a profession. Thus, Hegel’s assertion implies that a true account of judgement will be able to make sense of the identity (substance is subject) and difference (subject is not substance) we experience in modernity. This condition entails a strange combination of description and prescription: on the one hand, the experience that individuals are alienated from the universal implies that they ought to be identical with it; on the other hand, individuals in some sense already are united with the universal, because the latter is essential to their identity.

It is the strange experience of this ambiguous relation which we have dealt with above as the problem of judgement; it is the same problem that Hegel is trying to overcome in his *Phenomenology*. As we have seen previously in this dissertation, the problem of judgement is readily evident in the simplest predicative sentence as the question of the meaning of the copula. Hegel deals with this basic definition in the preface by presenting an account of the ‘speculative proposition’. An ordinary proposition or judgement reduces the subject to the predicate or the predicate to the subject, and thereby removes the copula’s contradictory relation of identity and difference. In contrast, the speculative proposition ‘destroys’ the identity of the ordinary proposition and asserts a contradiction by granting that the copula contains within itself a ‘counter-thrust’ against the identity it is positing. By explaining how this is possible, Hegel hopes to convince us that the contradictory relation between the universal and the individual can enter into thought and language.

The speculative proposition does not deflate the judgement to something which can be understood in a single moment, but initiates a process of experience which unfolds the contradictory relation of the judgement. Hence, Hegel recognises the inherent contradiction between the two terms of the proposition, and invites an exploration of this contradiction. The

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9 Siep, *Hegel’s Phenomenology of Spirit*, 56.
10 *PhG*, 9:42-43/ 36-37 (§60).
judgements that the universal is the individual or that substance is subject do not assume the identity of the terms as a given. As Gillian Rose puts it:

[T]his different kind of identity cannot be pre-judged, that is, it cannot be justified in a transcendental sense, and it cannot be stated in a proposition of the kind to be eschewed. This different kind of identity must be understood as a result to be achieved.13

In the case of Hegel, this does not mean that the contradiction in the speculative proposition is simply a placeholder for a more complex assertion, as if the statement could be broken down into a series or hierarchy of simple and comprehensible relations. Instead, the process initiated by the speculative proposition goes something like this: We begin with a lack of identity, with the experience that two terms are problematically different. Such an experience, however, implies that there is a relation between the two terms that begs to be understood; the experience of difference implies a prior or simultaneous experience of unity. As one tries to understand the relation between the terms, however, they do not simply collapse into identity. Instead, when one explores the meaning of the identity and difference of two terms, the meaning of the terms themselves shifts at every turn. After this shift has occurred, a new contradiction arises which itself asks to be understood. In the words of Catherine Malabou, to understand the speculative proposition is thus tantamount to attending to the meaning of the subject and the copula as they change through a series of experiences, the unity of which must be ‘unfolding of the substance-subject’.14 Thus, she continues, within ‘the process of self-determination, the universal (the substance) and particular (the accidents as something independent) give form to each other’.15

This account of the speculative proposition might give us an idea of the process of the Phenomenology. The treatise seeks to bring the reader to the point where he or she is able to see that the unfolding of the speculative proposition is not a series of failures but a ‘Bildung’, that is, a process of formation or education whose end is ultimately ‘Absolute Knowledge’.16 At each moment of this journey, a certain condition is posited; a certain statement is made.17 When we look more closely, we find that the concept which has been constructed of the object

13 HCS, 49.
15 Malabou, 11.
in question ‘fails to correspond to the state of affairs or object which we have also defined as the state of affairs or object to which it should correspond’.\textsuperscript{18} This produces a contradiction, a simultaneous identity and difference in the proposition. On this basis, the universal (concept) and individual (object) in question are changed, so as to overcome the contradiction.\textsuperscript{19} In this formation of the Spirit, we come to see that the individual contradictions are parts of an unfolding whole, and in this forming process ‘consciousness will arrive at the point at which it gets rid of its semblance of being burdened with something alien’.\textsuperscript{20}

For Hegel, the Absolute is the standpoint which sees that reason cannot overcome its experience of alienation through a formal trial of reason and thus that judgement cannot be solved by finding the right universal to correspond with the right individual.\textsuperscript{21} Instead, reason only ‘justifies’ itself through its repeatedly failed ‘trials’ of history, until it finally realises that truth is to be found in those very relations of identity and contradiction that it has experienced. When the Spirit has climbed the ladder to Absolute Knowledge it learns that truth is found precisely through its own alienations and failed reconciliations in its trials in history, and thus that it might find its place in this history:

\begin{quote}
Spirit is all the phases of content in which it externalizes itself, and the process of leading these phases back to a full consciousness of itself.\textsuperscript{22}
\end{quote}

Sublation (\textit{Aufhebung}) is the process by which these externalisations and diremptions of Spirit are made productive and contribute to its developing ‘substance’. It suggests both a cancellation and preservation of these historical trials.

The \textit{Phenomenology} was meant as a ladder to a standpoint from which one could move to the \textit{Science of Logic}. Although there is much dispute about how the \textit{Phenomenology} relates to the \textit{Logic}, it is clear that the latter is intended as a statement of the truth to which the reader has been led in the former.\textsuperscript{23} In other words, the \textit{Phenomenology} invites the reader to experience

\begin{itemize}
\item \textsuperscript{18} \textit{HCS}, 49.
\item \textsuperscript{19} \textit{PhG}, 9:58-62 / 52-57 (§§82-89).
\item \textsuperscript{20} \textit{PhG}, 9:61-62 / 56 (§89).
\item \textsuperscript{21} \textit{PhG}, 9:53-62 / 46-57 (§§73-89). Hegel famously notes the sceptical and Kantian tendency to go to court to ensure that one’s claims are secure before one actually dears to judge. In contrast, true science has no such 'scruples' and 'gets on with the work itself, and actually cognizes something'. \textit{PhG}, 9:54 / 47 (§74).
\item \textsuperscript{22} \textit{PhG}, 9:432 / 491 (§805).
\item \textsuperscript{23} \textit{PhG}, 9:29-30 / 20-22 (§§35-37). There is much dispute about whether the phenomenology is simply a ladder for the sceptic, which can be subsequently ‘kicked away’ when one is convinced of the
\end{itemize}
the gradual unfolding of the speculative proposition in history, until she reaches the point at which she understands that the truth of the proposition is not reached by avoiding or resolving the contradiction, but in and through the contradiction itself. Truth is found by ‘tarrying with the negative’, that is, by accepting that freedom is found in diremption and truth in contradiction. In this way, all the significant features of the world that seem so alienating and broken, might actually be the conditions for human freedom. The modern world might become a home of human beings.

Whereas the Phenomenology leads the reader by the hand to the point at which they might come to accept the modern world and all the contradictions of judgement, the Logic seeks to give an account of this contradiction as such and thereby to think the ‘absolute’ as the identity in difference of the individual and the universal. The Logic thus reworks metaphysics and logic in dialogue with the whole tradition of Western philosophy. The problem of judgement ultimately finds its resolution in the final chapter of the Logic, titled the ‘Absolute Idea’. For Hegel, the Absolute Idea is the point of unity between the ‘strivings’ of practical and theoretical reason, because it is the highest good (freedom) and the highest truth. The Absolute Idea is not only the concept of truth and freedom, but the concept as it is actually realised in the world. To think the Absolute Idea is to think the world in its truth and freedom, not as it would be if it were true or free. Thus, the Idea is the ‘activity’ of truth which is unfolded in the process driven forward by contradictory relation of identity and difference in every judgement, as Hegel showed in the Phenomenology.

Throughout our investigation we have found that rational judgements are caught in a double bind. On the one hand, rational judgements seek to impose law on reality, to order it by providing a clear classification of things. Thus, it seems that judgements are always regulated by the law of non-contradiction. Yet, as Schmitt argued, judgements themselves seem to be

standpoint of Absolute Knowledge. This is a thorny issue, given that there is some evidence that Hegel changed his position on the Phenomenology—particularly on whether it was the first part of his science, or just an introduction to that science. The by far most complete discussion of this issue is Michael N. Forster, Hegel’s Idea of a Phenomenology of Spirit (Chicago: University of Chicago Press, 1998).

25 Gillian Rose interprets the Logic in rather narrow terms as the ‘speculative rereading of Kant and Fichte’ in HCG, 186. In contrast Stanley Rosen’s reading shows many the implicit arguments with the ancient philosophical tradition: The Idea of Hegel’s ‘Science of Logic’. Stephen Houlgate reads the Logic in light of the modern Cartesian tradition and focuses on the importance of accounting for the presuppositionless beginning of thought. The Opening of Hegel’s Logic.
26 WL, 12:236 / 735.
27 WL, 12:236 / 735.
contradictory: they transgress the law they seek to impose, and thus cannot be comprehended or guided by any formal rule. Philosophy, of course, is familiar with the aporias and contradictions of thought. But Hegel argues that the philosophical tradition has treated these in a negative fashion: the moment we say that A is A and not A in the same manner and at the same time, we conclude that something has gone wrong.\(^{28}\) In short, dialectics as the exploration of contradiction has ‘only a negative result’.\(^{29}\)

To overcome this purely negative interpretation of the contradiction, Hegel seeks to make contradiction productive, to think all the ‘moments’ involved in any contradiction as necessary parts of a whole. In one sense, one might say that Hegel argues that we must transgress the law of contradiction by thinking the law itself.\(^{30}\) If the law of non-contradiction says that A is not not A, then, Hegel argues, the philosopher must account for identity (A), difference (A is not A) and their unity (A is not not A). Thus, in any judgement, the subject is identical to itself, but it is also not itself, because it is the predicate. The resolution is to see that the relation between the subject and the predicate constitutes a whole: the subject is itself precisely by being both itself and not itself. This form of thinking makes dialectical contradictions productive by ‘sublating’ them into a third moment.

In its ‘speculative’ mode, then, reason for Hegel goes through three moments: immediacy (identity), negation of immediacy (difference), and the ‘unity of the unity of the first and second moment, of the immediate and the mediated’.\(^{31}\) These moments correspond to three forms of reflection: ‘positing’, ‘external’ reflection, and determining reflection. Positing reflection is a form of thinking that affirms without acknowledging context or contrasts;\(^{32}\) it simply asserts that A is the case. This form of thinking collapses because whatever is posited is comprehensible only as existing in op-position, as set against something else. This brings the philosopher to ‘external reflection’, which acknowledges that there is always another term against which the original was contrasted.\(^{33}\) The philosopher comes to see that A is only the case because it is not B. Finally, there is determining reflection, which overcomes the abstractness of the former insofar as it recognises that the relation of the first term to the second

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31 WL, 12:247 / 746.
is not only one of necessary distinction, but that its relation to another is always also a relation to itself. Thus, A is truly itself only as the mutually excluding relation between itself and B.

This very brief exposition suffices to outline Hegel’s solution to the problem of judgement: the impossible enterprise of formulating a non-contradictory relation between the universal and the individual means that the highest realisation of our practical and cognitive capacities is the truth and freedom (‘absolute liberation’) of the Absolute Idea. The Absolute Idea simply is the highest contradiction, the ‘negative’ process or activity which runs through the universal and individual, abstract wholes and dispersed individuals, identity, and difference. Precisely because it runs through them without removing their contradictory relations, it turns the terms or moments of this process into parts of greater wholes. In short, Hegel has thus spelled out how philosophy may overcome the sense of alienation, unfreedom and disorder in the world by making us realise that we can find our true freedom and our true home as ‘opposition in unity, and unity in opposition’.

As we shall see in the next section, Hegel’s philosophy of judgement can be read as his answer to some fundamental problems in modern society which had bothered him early in his career. His philosophy enabled him to offer an interpretation of the two dominant aspects of his contemporary world, namely religion and the State, whose problematic relationship was one of the major reasons for the unfreedom and the alienation of modernity. The relationship between the religion and the State, between the theological and the political, was a constant source of trouble for Hegel. In fact, I will argue that the success of Hegel’s philosophy in some sense depended upon whether he was able to present it as a solution to the theo-political problems of his age.

II. THE QUEST FOR A CIVIL THEOLOGY

In this section, we look at some of Hegel’s early reflections on the problem of the relationship between the political and the religious in the light of the outline of his speculative solution to the problem of judgement. We will see how Hegel’s concept of freedom, that is, his sublation of the trial of reason, is supposed to be the answer to the difficult political and religious questions of his time. Hegel thereby situates the problem of judgement within a theo-political problematic.

34 WL, 12:54 / 752.
35 VGP, 551.
Let us begin with a passage from Hegel’s work of 1796, *The Positivity of the Christian Religion*:

Thus we are without any religious imagery which is homegrown or linked with our history, and we are without any political imagery whatever; all that we have is the remains of an imagery of our own, lurking amid the common people under the name of superstition.\(^{36}\)

In this piece, Hegel expresses his frustration with the fragmentation and alienation in modern society. The political community, he argues, does not have a representation of its substance and lacks the freedom that would unite its citizens. In addition, the Protestant Christianity of his time had become a set of stories with little reference to the cultural and political institutions of the modern world. This disintegration of the political and the religious was perhaps the central problem for Hegel, at least at this point in his career.\(^{37}\)

Several of Hegel’s earliest writings were concerned with the construction of what one might call a civil theology. Following a larger trend in German intellectual culture, Hegel thought of the Greek city-state as an ideal of some sort.\(^{38}\) In the Greek ideal, the unity of the State and religion corresponded with a harmony between citizens and their laws. Already in his *Tübingen Essay* of 1793, Hegel suggests the need for a ‘folk’ religion, the existence of which ‘goes hand in hand with freedom’.\(^{39}\) To Hegel, modern Protestant Christianity had become ‘objective’, which meant that it had become singularly concerned with truth and doctrine.\(^{40}\) In this way, it had effaced the important ‘subjective’ element by which religion might engage the whole person and the heart. But modern religion had also become entirely private and, therefore, impotent. For Hegel it seemed that a religion which took into account the subjective element would by no means be private. For subjective religion might shape the subjective dispositions in such a way that fragmented and alienated individuals might find their place in their political community. That is why the State must make religion subjective so as to promote a religion in conformity with universal reason and morality.\(^{41}\)

\(^{36}\) *PeR*, 1:198 / 147.


\(^{39}\) *FVC*, 1:42 / 56.

\(^{40}\) *FVC*, 1:13-21 / 33-39.

\(^{41}\) *FVC*, 1:31-33 / 71; *FVC*, 1:47-49 / 79.
The experience of the alienated individual in modern society begged for a new religion, because Hegel had ruled out a return to the ancient ideal. The invention of the individual by the Christian tradition, the reconfiguration of religion into a private matter after the Reformation, and the division of labour are all examples of the incredible developments which prevent us from returning to an immediate harmony of the universal and the individual. As Hegel will argue later on, the Christian religion goes beyond the immediate unity of the Greek life and beyond the formal legal status of Roman law, in that it recognises human beings as free individuals of infinite worth, and, therefore, as bearer of rights.

After the individual has been invented, it is not possible to recreate the unity of Greek political-religious life. However, Christianity also introduced the hope of finding some unity between the newly born individual and the community. Hegel’s 1798 essay ‘The Spirit of Christianity and its Fate’ expresses the ambiguous place of Christianity in Hegel’s vision at a time when he was despairing at the prospects of finding a religious solution to the fragmentation of modern society. Towards the end of this essay, Hegel grants Jesus the role of a Kantian prophet who announces a radically new ideal of a reconciled community of equal individuals, yet who is unable to realise this ideal and reform the prevailing society.

To Hegel, the ambiguous accomplishment of Jesus was to constitute a community that maintained its distance from the State. The citizens of the Kingdom of God ‘[became] set over against a hostile state, [became] persons excluding themselves from it’. This reinterpretation of the Gospels conveys Hegel’s growing frustration with finding any proper civil theology and reformation of Christianity. In other words, Hegel was unable to find the right ‘images’ to go with the right political institutions so as to unite the modern individual with the legal and political order of the modern State. For Hegel, the Christian representation of salvation or reconciliation (Versöhnung) was correct, but the Church has not been able to actualise its Gospel and transform the world in accordance with its vision.

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42 FVC, 1:44 / 58.
44 GCS, 1:397 / 281.
45 GCS, 1:400 / 284.
46 As the word ‘Geist’, ‘Versöhnung’ clearly brings to mind the Christian tradition and the Lutheran emphasis on God’s reconciliation of the human being with the world. It should be clear from the reading of Hegel I present in this chapter that I see no reason to downplay the significance of many Christian references and resonances in Hegel’s linguistic and metaphoric context. See Michael O. Hardimon, Hegel’s Social Philosophy: The Project of Reconciliation (Cambridge: Cambridge University Press, 1994), 85–87.
Much of the ambiguity of Hegel’s philosophical position towards religion can be summed up in the idea that philosophy seeks to present the actuality of what religion only represents. As Robert B. Pippin argues, Hegel is gradually persuaded that the hope, which found such expression in Christianity, will be fully realized, will not remain such a subjective hope or ought, in the secular ethical institutions described in objective spirit.

We thus see that the issue Hegel was struggling with during this early period of his career was that of resolving the relationship between the State and the Church. In the words of H.S. Harris, when we ask ourselves now the question with which Hegel set out, ‘How far is the Christian religion qualified to serve as a folk-religion?’, we can see at once that the problem is to establish the right relation between Church and State. Jesus wished to have no relation to the State at all; as a result the fate of his Church was to become a sort of State in itself at a level of life where authority is impossible and compulsion illegitimate. [...] A free people must have a constitution as well as a religion; and only when the two together form a living whole will authority cease to be a problem at the religious level.

Until the relationship between religion and the State is resolved, there can be no freedom. Only the State can have the means of coercion and regulate life according to objective laws, yet only a religion which forms subjective dispositions and convictions can convince people that their home is in the State and its laws. For Hegel’s point was that the question of authority cuts both ways: the authority of the State as well as of the Church will continue to be a vexing issue until their relationship has been resolved. This is the reason why philosopher Gillian Rose argued in her *Hegel Contra Sociology* that the ‘identity of religion and the state is the fundamental speculative proposition of Hegel’s thought’.

**III. The Presentation of Freedom in Political and Religious Experience**

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47 An excellent defence of the importance of Hegel’s theological vision for his philosophy can be found in Ward, ‘How Hegel Became a Philosopher: Logos and the Economy of Logic’.


50 HCS, 49.
In the foregoing section, we saw that Hegel despaired of finding a new civil religion and theology which would overcome the alienation of the modern individual. The relationship between politics and religion seemed to have been solidified in the regrettable dichotomy between impotent religious imagery and formal political structures. In this way, the Christian narratives and representations of freedom seemed dry and irrelevant to the actual condition of modern society. At the same time, the formality of modern bourgeoisie law and the gradual erosion of political symbols meant that the state’s relationship to the citizen either feels like one of violent suppression or as one of procedural and meaningless management. Neither the political nor the religious were ‘absolute’ dimensions through which people could find their meaning and home. Let us consider, briefly, how Hegel sought to overcome these problems through the philosophical account of judgement we discussed in the first section of this chapter. If Hegel is right, it follows that he must be able to show that freedom is already present in the modern world, not despite its diremptions, but in and through these. He must, in short, present the split between private individuals and public citizens with universal outlooks as the very presence of freedom in the modern world. Furthermore, and most importantly, he must show how this implicit presence of freedom in the modern world is the outworking of the Christian ideal of freedom. In this way, he hopes that the modern world can become a home.

Although we are most concerned with the relationship between Christianity and political freedom, we must briefly note how Hegel tried to present freedom in the modern world. According to the introduction of the Philosophy of Right, published in 1820, ‘[e]thical life is the Idea of Freedom’ and thus the ‘concept of freedom developed into the existing world and the nature of self-consciousness’.\(^{51}\) Hegel had already developed his notion of ethical life, or ‘Sittlichkeit’, in some of his earlier works.\(^{52}\) ‘Sittlichkeit’ could be translated as ‘custom’ or ‘tradition’ or ‘culture’, but plays a very particular role in Hegel’s works.\(^{53}\) Its most important meaning is that of having a sense of one’s essence, of who one is and what one ought to do. The Greek city-state, for example, had a form of ethical life because the Greeks had a ‘substance’. Taken in this sense, Hegel means to say that ethical life involves a unity of law and ethics: there is no conflict between what one should do and one’s identity, who one is, which means that the imperatives and duties laid upon individuals do not appear as oppressive. The individual simply wants what it should do. However, in the modern world, people know that

\(^{51}\) *PhR*, 14.1:137 / 154 (§142).
\(^{53}\) Neuhouser, *Foundations of Hegel’s Social Theory*, 82–113.
the truth is not only substance, but also subject. The modern individual is always at a distance from his or her community and from any ethical vision which would legitimise it. But that is precisely why the task of Hegel’s *Philosophy of Right* is to demonstrate that *ethical life* is not only possible in the modern world, but that its prevailing diremptions are the very condition for freedom.

The aim of the *Philosophy of Right* is to ‘*apprehend and present the state as something inherently rational*’.\(^{54}\) To present the State as rational is neither to ‘build a world *as it ought to be*’, nor to sanctify all the problems with the current institutions.\(^{55}\) Yet Hegel does argue that philosophy is able to present the presence of freedom in the modern world, and thereby overcome our sense of alienation. In fact, the many problems of the modern world are not impediments to Hegel’s presentation of freedom; they are its presupposition. To say that philosophy can bring reconciliation is to say that it is able to help the modern self-conscious individual to realise that its freedom is truly found here.\(^{56}\) Thus, Hegel thinks that the concept of freedom is sufficiently realised in the modern world for us to be made aware of it, and that if we consciously take part in its many institutions, we will in fact be free.

In previous section we saw that Hegel thought that this presence of freedom in the world was a realisation of the Christian representation of freedom. The modern State and its implied ethical life is not simply a rejection of the religious past, but just as much its culmination. That is why the irreparable duality of formal laws and religious imagery which has developed out of the Protestant Reformation does not have to induce in us a sense of alienation.\(^{57}\) If Hegel can show that the objective institutions of the modern State fully realise the structure of unity-in-opposition of the judgement, and that the Christian symbols represent this unity and freedom, it would be possible for individuals to find their place both in the State and in the Church.

In the final *Lectures on the Philosophy of Religion*, which he delivered in 1831, the year of his death, Hegel explains how his philosophical account of judgement and freedom unites the religious and the political. In these lectures Hegel puts forward what Rose referred to as the fundamental speculative proposition of his thought: ‘*religion and the foundation of the State are one and the same—they are implicitly and explicitly identical*’.\(^{58}\) This is clear, Hegel

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\(^{54}\) *PhR*, 14:15 / 14-15.  
\(^{55}\) *PhR*, 14:15 / 15.  
\(^{56}\) Hardimon, *Hegel’s Social Philosophy*, 87–92.  
\(^{57}\) *PhR*, 14:16 / 16.  
\(^{58}\) *VPR*, 452.
maintains, in ‘the patriarchal relationship and the Jewish theocracy’. However, the State and religion are naturally also different, and have become explicitly different in the course of Western history, as we saw was the fate of Christianity according to his early essays. The Christian religion represents freedom in one’s relation to God, because the Gospel is the reconciliation of the divine and human will, of the universal and individual. However, the representation of truth and freedom in the unity-in-opposition of the universal and individual is different from its realisation. The fate of Christianity, we remember, was that it set itself up as a spiritual power in opposition to the temporal power of the State. Hence it is up to the modern State to be the realisation of ‘freedom in the world, in actuality’.59 Thus the crucial link between the religious and the political is the following:

What essentially matters here is the concept of freedom that a people bears within its self-consciousness, for the concept of freedom is realized in the state, and the consciousness of this freedom, as it is implicitly, belongs essentially to this realization. […] There is one concept of freedom in religion and state. This concept is the highest concept that human beings have, and it is made real by them.60

The religious representations of God and His relation to the world is the most concrete expression of a people’s concept of freedom, and the State is its realisation.

We see from these passages in Hegel’s final lectures that the Christian religion plays an essential role in the unity of society: it represents the people’s subjective take (Gesinnungen) on their ultimate nature and freedom.61 For this reason, it is essential for Hegel to show that the Christian symbols and narrative express the very same truth as that which is realised in the State.

It follows, then, that not only must philosophy present freedom in the State; it must also show how this freedom is implicitly present in the religious experience of the Christian communities of his time.62 For this reason, Hegel must in some sense present himself as a theologian by spelling out in philosophical form what Christian doctrine represents.63

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59 VPR, 452.
60 VPR, 452.
61 VPR, 458.
62 Fackenheim, The Religious Dimension in Hegel’s Thought, 212.
63 I acknowledge that this is a controversial statement in the literature. Here I follow Emil L. Fackenheim in his claim that Hegel must in some sense also be a theologian: The Religious Dimension in Hegel’s Thought. The clearest reaction against this strong reading of the significance of Christianity for Hegel’s philosophy comes from those who wish to defend him today. This reaction is understandable, not simply due to it being unpalatable for the contemporary secular philosophy, but
‘is theology, and [one's] occupation with philosophy—or rather in philosophy—is of itself the service of God’.

Philosophy does not arbitrarily search for traces of its truth in various religious traditions. Instead, the truth of the modern freedom can only happen through and as the secularisation of the Christian Gospel. Hegel’s philosophy would thus be unthinkable without the Christian tradition. If there is a secularisation at work in Hegel’s philosophy, it is the following: the Christian tradition and religion has fundamentally shaped the modern Western world. All the major institutions, cultural and social arrangements and private endeavours are influenced by it in one way or another. Given that Hegel thinks that freedom is possible in the modern world, he argues that philosophy must be able to present the freedom represented by the Christian community. As James Doull has argued, Hegel believed that only his philosophical ‘theology can show faith as the source and continuing foundation of secular freedom’. Likewise, to Emil L. Fackenheim, Hegel claims that,

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\text{[t]his inner bond between the free Christian testimony of spirit to Spirit (which remains receptive for all its Protestant freedom) and ‘free’ modern self-activity (which by itself remains fragmented for all its infinite self-confidence) is for Hegel the ultimate revelation of Reason in modern life.}
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To summarise, we see that Hegel sought to present the freedom as the unity-in-opposition of the universal and the individual in the political and religious aspects of modern experience. By doing so, he hoped to overcome all the historical trials of reason by showing how they gradually unpack the insight of the Gospel: that only by granting the radical opposition of the infinite (universal) and the finite (individual) can we find that this opposition is also a relationship, the beginning of a community in which we find our home. However, in the next section we will examine a text in which Hegel admits that his philosophy has been unable to present the presence of freedom in the world. From the perspective of Christianity, this means that his

\[\text{64 VPR, 84.}\]
\[\text{65 See a spirited defence of the Hegel’s account of importance of Christianity for the modern secular world in Doull, ‘Hegel’s Phenomenology and Postmodern Thought’.}\]
\[\text{66 Fackenheim, } \textit{The Religious Dimension in Hegel’s Thought}, 207.\]
attempt to overcome the trial of reason fails because he is not able to show that his philosophy consummates the truth of Christianity.

**Part two**

*Secularisation and the Failure of Judgement*

I. THE ALIENATION OF THE PHILOSOPHER

Hegel admitted that he failed to present the freedom implicit in modern political and religious experience. For this reason, instead of presenting an immanent critique of his dialectic, I will examine the motivations Hegel himself gives for this failure. Thus, I propose that we return to Hegel’s final *Lectures on the Philosophy of Religion* of 1831, in which he implicitly acknowledges that his philosophy has failed, precisely because he was not able to show that his philosophy was the true secularisation of Christianity. As a result, Hegel is alienated from the political and religious communities of his time. In the following, we will see, therefore, that the failure of his philosophy to overcome the trial of reason coincides with his inability to account for the theo-political relation.

As we saw above, Hegel’s philosophical interpretation of the absolute religion of Christianity is supposed to be a presentation of the reconciliation of the universal and the individual, the reconciliation of the members with the divine body of the Church. However, Hegel’s lectures of 1831 end on a gloomy note:

> When the Gospel is no longer preached to the poor, when the salt has lost its savour and all the foundations have been tacitly removed, then the people, for whose ever-solid reason truth can only exist in representation, no longer know how to assist the impulse and emotion they feel within them. They are closest to the infinite sorrow; but since love has been perverted to a love and enjoyment from which all sorrow is absent, they find themselves deserted by their teachers. The latter have been able to help themselves by reflection and have found their satisfaction in finitude, in subjectivity and its virtuosity and so in what is empty and vain. But the substantial kernel of the people cannot find its satisfaction there.

For us, this disharmony has been resolved by philosophical knowledge, for the point of these lectures was to reconcile reason with religion [...] But this reconciliation is itself a partial one without universal validity. In this connection philosophy forms a sanctuary apart from the world and those who serve it constitute an isolated order of priests, who must preserve the truth without worldly involvement. How the actual contemporary
world is to find its way out of this dualism, what new form it is to enter into, is its own affair; that is not the immediate practical concern of philosophy.\textsuperscript{67}

For Hegel, the salt of the Gospel has lost its savour—its symbols are no longer formative—and the people are no longer able to find a religious expression through a representation of the absolute which corresponds to and satisfies their emotions. Their teachers, those who thrive on ethical Kantianism, Schleiermacher’s pietism, or conservative orthodoxy, immaneitise the religious. These teachers offer subjectivity, when what is needed is substance: a community as a reconciliation of immanence and transcendence, of what they are and should be. All the modern philosophical reinterpretations of religion have, therefore, failed.

In contrast, Hegel presents his own philosophy as having already ‘resolved’ all these disharmonies, because it has comprehended the contradiction within the religious community, and the truth of its representations. It is able to think and understand in rational terms the theological representations of freedom. And yet the philosophical discovery of the inner truth of Christianity is hampered by its being only partially accepted, which means that the Hegelian philosophers have become an ‘isolated order of priests’. This is in fact a failed secularisation, and thus a failure on philosophy’s part.\textsuperscript{68} Although it is not the ‘immediate practical concern of philosophy’ to overcome the alienation from the religious community, this alienation or isolation itself represents the failure of philosophy.\textsuperscript{69}

As we have seen above, one must take Hegel at his words when he claims that philosophy is worship (Gottesdienst).\textsuperscript{70} But if the philosopher is alienated from the religious community—if the actual worshipers of God do not recognise the philosophical expression of their belief—it means that philosophy has failed to become worship, and thus that it has not accurately presented the reconciliation of religion and reason. Hegel faces the possibility of becoming a theologian without a Church. Furthermore, Hegel is prohibited by his own philosophy to ‘act


\textsuperscript{68} Stanley Rosen makes the same point with reference to politics as a whole: ‘The sage’s “reconciliation” to actuality is equivalent to the Platonic realization that the just city is historically impossible. A Hegelian may insist that the sage will find his satisfaction in the impossibility of political satisfaction. In my view, however, this is again a contradiction for which there is no \textit{Aufhebung}. To state the contradiction in its sharpest form, the very existence of a sage is the most radical evidence of the difference between the few and the many.’ Rosen, \textit{G. W. F. Hegel; an Introduction to the Science of Wisdom}, 202.

\textsuperscript{69} HCS, 119; Fackenheim, \textit{The Religious Dimension in Hegel’s Thought}, 33–35.

as Christian priests have done’, as Rose has argued. Such a philosopher-priest, who would be the religious equivalent of the philosopher-king, would simply impose his ideal on the community, and thereby repeat all the dichotomies Hegel sought to overcome.

The experience of the philosopher vis-à-vis the religious and political community entails that there is a standpoint from which Hegel’s philosophy might become a political theology: to experience the philosophical alienation from political and religious communities is to recognise the diremption of law and ethics, it is to acknowledge philosophy as merely a concept, and thus a Sollen vis-à-vis actual communities. It follows, first, that Hegel has failed to comprehend the freedom implicit in the State and the true content of religious representations—since its success would have to overcome all diremptions of law and ethics. The alienation of the philosopher from political and religious communities is a sign that freedom has not yet been realised in the modern world. For this reason, as Schelling also argued, the modern world is characterised by a bad state and a bad religion. Hegel’s early frustrations about the theo-political condition of his time thus reappears at the end of his life: ‘A people that has a bad concept of God have also a bad state, bad government, and bad laws’.72

A bad state and a bad religion may come into conflict, and they have done so, Hegel argues, in Roman Catholic countries, especially in France. In contrast, Protestant states can in principle exhibit a ‘harmony of religion and the state’, for, having had a reformation, they acknowledge that human beings are free individuals.73 Yet this is true only in principle, which means that even here, or especially here, freedom is present only ‘in an abstract fashion’. In this modern and Protestant condition, it is very clear that ‘the political constitution ought to stay on the one side and religion on the other; but in this there is the danger that our political principles remain afflicted with one-sidedness’.74 The appearance of modern freedom as the reconciliation of the universal and the individual correlates with the split between subjective dispositions (Gesinnungen) as primarily formed by religion, and objective legal and political forms.75 This split is a theo-political problem, understood from the side of political theory as the relation between ‘the positive legislation, and the conviction with regard to it’.76 Thus in the modern

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71 HCS, 119.
72 VPR, 452.
73 VPR, 456.
74 VPR, 458.
75 VPR, 458.
76 VPR, 459.
city ‘freedom and its entire structure are maintained in a formal way, without regard for the conviction [of the people]’.\textsuperscript{77}

This analysis prompts a discussion of the formality of modern legal forms which is a clear precursor to Schmitt’s political theology. He argues that the modern relegation of religion to the private sphere assures that subjective convictions will remain indifferent to legal and political forms. The ‘one-sidedness’ of this situation is apparent, as Schmitt also argued, in the ‘administration’ of law by judges.\textsuperscript{78} The formal approach to legal and political order does not account for the fact that laws and institutions are human. Laws are written, interpreted, and applied by human beings, and rule through personal ‘decision[s]’ which bridge the gap between the abstractness of civil law and each particular case.\textsuperscript{79}

For Hegel this dilemma of judgement reveals the equal abstractness of the modern State and of modern religion. Like Schmitt, Hegel acknowledges that for ‘the people this determinate character of right and ethical life has its ultimate verification only in the form of an extant religion’.\textsuperscript{80} However, since he has admitted that he has not presented the freedom implicit in the Christianity of his time, he cannot deny that the State and religion are equally ‘bad’.\textsuperscript{81} Their badness implies a lack of freedom, which means that people’s lives and identities are governed by a sacrificial logic.

In modern society, the State is sacrificial because it demands that the individual should subject itself to a law that it does not recognise. In the same series of lectures, Hegel discusses the importance of the cultus of political order. The cultus is the individual’s sacrifice to the ‘national spirit of each people’.\textsuperscript{82} Freedom requires that one ‘gives up something’, yet unlike the old ancient cultus this negation ‘is not a renunciation’.\textsuperscript{83} This is because the modern cultus of freedom ‘assumes a state of reconciledness in-and-for-itself, i.e., that God is well disposed to humankind.’\textsuperscript{84} Without this qualification, Hegel’s account of sacrifice becomes undistinguishable from Schmitt’s: if the individual gives itself up to the ‘deity’ of the national spirit, this spirit—in its subjective-religious and political-objective aspect—must be well

\begin{itemize}
\item \textsuperscript{77} VPR, 459.
\item \textsuperscript{78} VPR, 459.
\item \textsuperscript{79} VPR, 459.
\item \textsuperscript{80} VPR, 460.
\item \textsuperscript{81} VPR, 452.
\item \textsuperscript{82} VPR, 358 / 470.
\item \textsuperscript{83} VPR, 359 / 470.
\item \textsuperscript{84} VPR, 359 / 470.
\end{itemize}
disposed to the individual. The individual must, in other words, recognise that it has its essence and freedom in the universal. Yet most people in the modern world do not recognise themselves in the institutions and communities in which they partake. Consequently, the modern cultus regresses into the logic of sacrifice we have seen before in this dissertation: the finite must deny itself to partake in the infinite.

Given Hegel’s problem with the lack of correspondence between his account of freedom and religious experience, he was not able to overcome the problem with which he began career. Hegel’s philosophy was meant to serve as a solution to the trial of reason and as an account of the relationship between the political and the theological. At the end of his career, his failure to account for the latter undermined the plausibility of the former. In the next section, we shall, therefore, attend to how his solution to the problem of judgement can be explained as the result of a problematic political theology. Once again political theology arises as a lens through which the problem of judgement may be investigated. Hegel’s frustrations, however, are singularly instructive in this regard, I shall argue, because they allows us to understand the trial of reason as a futile effort to secularise Christianity.

II. THE TWO FATES OF SECULARISATION

In the following we will unpack the meaning of that on which Hegel only touched in the lectures of 1831, namely the lack of freedom that characterised both Catholic France and Protestant Germany. Even though the former had recently undergone their Revolution and the latter underwent its Reformation long ago, Hegel thought that neither were able to realise freedom in the modern world. I will presently argue that the alienation Hegel experienced towards the end of his career and his failure to overcome the trial of reason were a result of the impossibility of reconciling the two contradictory ‘logics’ of secularisation evidenced by these spiritual and political events. Hegel’s analysis of these two logics will allow us to further elucidate the relationship between the trial of reason and political theology that we have been exploring in this dissertation.

For Hegel, the difficult relationship between religion and politics depends on his interpretation of the German Reformation and the French Revolution.85 The German Reformation was a spiritual event, a reform of subjective convictions and dispositions, which meant that German philosophy could consider consciousness as a law-giver of formal laws. Its achievement was

85 For Hegel’s account of the Reformation up to the Enlightenment, see VPG1, 431-57; VPG2, 500-16. On the Revolution see VPG1, 458-76; PhG, 9:316-22 / 355-63 (§§582-95).
then to produce a subject which, instead of denying the given, be it local custom or positive law, could reappropriate it by deducing its legal right over it. In terms of religion, it meant that Christian institutions and symbols could be accepted in the modern world, precisely because they had lost their independent power. However, for Hegel, this same reformation of rationality according to formal property law produces an inescapable dichotomy between form and content, universal and individual, which precludes the realisation of freedom in either State or religion. 86 Religion, for its part, becomes impotent and irrelevant, while the laws of the State become formal and useless as an absolute dimension people’s life. The French Revolution, for its part, sought to bootstrap a new order by denying the heteronomy of the Ancien Régime, and in so doing opposed a secular political order to religiously legitimised institutions. But this opposition betrayed the French inability to consider subjective disposition, which meant that the liberated republic demanded an irrational and absolute commitment not very different from what the Church and the king had done in the Ancien Régime. 87

Thus, Rose argues, for Hegel the ‘political future is sought in the combination of reformation and revolution’. 88 In a similar vein, Rebecca Comay has recently argued in her Mourning Sickness: Hegel and the French Revolution that Hegel’s philosophy encapsulates the German reaction to the French Revolution: Germany had their spiritual reformation, yet in the wake of the Revolution, the German intelligentsia noted ‘the startling contrast between the breathtaking modernity of France and the general decrepitude of a Germany still mired in the swamplands of feudal absolutism’. 89 Hegel needs both a reformation and a Revolution because he is trying to achieve both a break with and a transformation and transfer of legal rights. Thus, he claims in one of his lectures on world history that ‘it is a false principle that […] there can be a Revolution without a Reformation’. 90

Throughout his career, Hegel continued to equivocate about the relationship between the Reformation and the Revolution, variously interpreting the latter in light of the former or presenting the latter as a radical novum. 91 This equivocal relationship is a structural part of

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86 VPR, 458.  
88 HCS, 148.  
89 Comay, Mourning Sickness, 2.  
90 VGP1, 473.  
Hegel’s philosophy, because the two events represent two irreconcilable conceptions of secularisation. On the one hand, modern secular freedom is logically and structurally dependent on the Christian Gospel given witness to in the Church, which means that his ‘view of secular history can never command real theological assent […] unless it is rooted in the actual experience of the Christian community’. On the other hand, secularisation must represent a clean break with the past and a liberation from all the shackles of religion. These two opposing models of secularisation are so fundamental to Hegel’s philosophy, that they have been theorised in his logic as the relationship between contingency and necessity. For Hegel, contingency is structurally prior to necessity: Anything can happen in the future, every event can be a revolution and nothing is predetermined. However, when things have happened, their necessity is retroactively determined, as it were. To witness a revolution is to experience something unprecedented; to understand it is to turn it into a reformation.

The problem of the trial of reason can be understood as a result of the incompatibility of these two senses of secularisation. In chapter 1, I argued that Kant’s critical philosophy suffered two outcomes. The goal of the trial was to escape a context of strife and conflict dominated by a dialectic of anarchy and despotism, and thereby to erect an autonomous order. It could only do so, however, either by making irrational leaps so as to produce the wanted outcome, or by deferring the verdict. These two fates, I submit, can be read as the result of his trying to enact the two mutually implicating and excluding logics of secularisation discussed above. We will unpack this a bit further in the following.

In chapter 2, I described Fichte’s criticism of Kant to the effect that he had not sufficiently escaped the religious heritage of the past and was, therefore, not a true thinker of the Revolution. There is an implied distinction in Fichte’s criticism of Kant between two ‘methods’ of secularisation: both philosophers sought to secularise rational judgement in the sense that they wished to release it from transcendent authority. To show the way out of the contradictory condition of the ‘battlefield’ in the beginning of the first Critique, meant showing that reason alone had the authority to judge according to its own laws. Kant’s approach nonetheless kept a reference to something given, which implies that he was still tied to the heritage of the Reformation. This claim is to be taken in the very specific sense that Kant’s approach is one of

93 John W. Burbidge, Hegel’s Systematic Contingency (Basingstoke, UK: Palgrave Macmillan, 2007), 16–47.
reappropriation: something is given, and it is up to reason to show that it has undisputed authority to judge over it. The heritage of the Christian tradition could be reappropriated: its symbols (God, creation, and the soul) could be transferred, but stripped of its old heteronomous force. The ideal bourgeois man of Kant’s philosophy has no need of rejecting religion, precisely because it no longer has any political or rational authority. The process of appropriation means that the original source (analogous to the ‘thing in itself’ in Kant’s theoretical philosophy). As an act of reformation, the trial of reason poses itself as the consummation of Christianity, as its telos.

By contrast, the French Revolution presented itself as a radical novum, that is, a complete break whose relation to the past could only be described in terms of a negation. The Revolution represents the end of Christianity as its finis. Yet Hegel follows the political theologies of Schmitt and Schelling in maintaining the impossibility of a completely unmediated break with the past, which is why he criticises the French Revolution for repeating the Catholic demand for faith under another guise. Because the French did not consider subjective dispositions, they inevitably fell back on the past they rejected. It is no surprise, as we have seen, that the Revolution unleashed a Terror which demanded the individuals’ complete sacrifice for the transcendent State.

The incompatibility of these two logics of secularisation is the reason why Hegel could not realise his philosophy. Indeed, we can find the echo of these logics in what Rose has argued to be the ‘fates’ of Hegel philosophy. To assert that Hegel’s philosophy has suffered a fate (Schicksal), means that it has not been able to become history, that it is unable to take its historical outcome into account. According to Rose, given Hegel’s inability to complete the task of philosophy as ‘presentation, as the definite political experience’, philosophy can end in two ways. On the one hand, philosophy might reach its finis, which would mean that it would be assimilated to ‘prevailing formal law’ and stop its work of re-presenting political experience and its dichotomies. This means that the critical edge of philosophy has been lost; that it has stopped to think the relation between law and ethics. On the other hand, philosophy might reach its telos, that which it was supposed to achieve. This telos— to think the judgement and the unity of law and ethics—would be to succeed to think actual freedom: it means being satisfied as a citizen, worshiper, and philosopher. Moreover, it means being satisfied as an inhabitant in

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94 HCS, 209.
95 HCS, 209.
the city where civic, moral, and religious duties are united, and thus where law and freedom are one. But as Hegel realised, philosophy has not reached this telos, because it finds itself unable to present its achievement to the world.

What we see here that there is an inverse relationship between the fate of philosophy and the fate of Christianity: philosophy suffers its finis when it fails to present itself as the telos of Christianity. The formalism of liberal Protestant philosophy appears as a failed realisation and secularisation of the Christian tradition. Inversely, philosophy conjures up a utopian telos when it fails to end (finis) Christianity. This fate repeats the diremption of law and ethics: either by projecting the ideal in the beyond, or by sacrificing the present law in order to realise its utopian ideal. In each case, it demands the faith it disavowed.

We see, therefore, that the failure of Hegel’s philosophy is the result of his inability to secularise Christianity: for secular freedom to realise itself, it must impossibly enact both a reformation and a revolution. That is why philosophy cannot realise secular autonomy. It either legitimises formal laws in which no one can find their home, or it projects an autonomous republic whose success depends on the sacrifice of all its citizens. Thus, philosophy is not able close the gap between the universal and the individual and thereby to rid modern political life of its sacrificial character. That is why political theologies keep returning in the wake of the trial of reason.

In the next section, I will, therefore, argue that the trial of reason can only continue as a political theology that investigates the sacrificial character of modern political life. I will do so by briefly attending to Gillian Rose’s rereading and extension of Hegel’s philosophy.

Part three

Sacrifice and Mediation

I. A POLITICAL THEOLOGY OF SACRIFICE

When asking what Hegel’s failure to present freedom in the modern world means for his philosophy and for our consideration of political theology, Gillian Rose grants that Hegel’s philosophy has suffered the two fates we discussed in the previous section. Thus, although Rose recognises that Hegel in some sense failed to think the absolute, she hopes to continue a Hegelian project as the perpetual completion of that task. In this sense, I will argue, philosophy

96 HCS, 210.
becomes a political theology that explores the presence of sacrifice in modern political life, yet with no guarantee of completing the secularisation of Christianity and of realising secular freedom. Thus, Rose’s promising re-reading of Hegel, though critical, ends up restating rather than overcoming the theo-political impasse of Hegel’s thought.

Rose’s Hegel Contra Sociology ends with the claim that ‘Hegel’s philosophy has no social import if the absolute cannot be thought’. In this sense she might seem to affirm a ‘strong’ metaphysical reading of Hegel’s philosophy. However, the premise of her reading is his failure to present freedom in religious and political experience. Although ‘ethical life … is neither the legitimisation of “something actual”, but not visible, nor a new imposed Sollen, “a concept which commands”’, Hegel’s own vision of ethical life became another Sollen. Absolute ethical life must be both actual and visible because in it the ethical vision is truly realised. But as long as the diremption of the universal and individual persists, we cannot think the absolute. For this reason, Rose’s rereading of Hegel is ultimately a weak or non-metaphysical interpretation, to the extent that the absolute has not been thought. In the Logic, Hegel seeks to think the Absolute Idea, but his thought remains only a thought, since he cannot show that what he has thought is present in the world.

According to Rose, this is not a reason to despair, and Hegel’s failure serves as the beginning of her own philosophy. Still, his failure defines the limits for what she thinks philosophy can achieve, and hence it is, therefore, helpful to us to see what she considers those limits to be. Hegel’s incapacity to overcome the aporias of judgement, she argues, means that ventures in thinking the absolute should happen

by acknowledging the element of Sollen in such a thinking, by acknowledging the subjective element, the limits on our thinking the absolute. This is to think the absolute and fail to think it quite differently from Kant and Fichte’s thinking and failing to think it.

According to Rose, Hegel’s failure cannot involve a return to another attempt to find the right formal conditions for thinking—Hegel was not wrong in trying to think the dichotomy between

97 HCS, 204.
98 HCS, 202.
99 HCS, 204.
101 HCS, 205.
the universal and the individual. Yet Rose now argues that the way forward for Hegelian philosophy is to recognise that every attempt to think the absolute will remain subjective to some extent. To acknowledge the element of ought in thinking is to grant that thinking is subjective in at least three senses.\textsuperscript{102}

First, it grants the social and political influence on our thinking: ‘recognising actuality as determinans of our acting by recognising it in our acts’.\textsuperscript{103} For this reason, it is the task of philosophy to return thought to the political and social problems that have been ‘displaced’ and solved in thought but not in reality.\textsuperscript{104} Philosophy arises ‘out of diremption’ and ‘without “disowning” that “edifice” […] steps away to inspect its limitations, especially when the diremptions fixated in the edifice have lost their living connections.’\textsuperscript{105} The absolute is ‘experienced both as a dichotomy and as beyond our dichotomy’—it is the ‘elusive’ possibility of ‘freedom without domination’ beyond what we can currently think.\textsuperscript{106} For this reason, ethical life is only ever ‘implied by the contradictions between political consciousness and its social and historical bases’.\textsuperscript{107} To recognise the ought in one’s thinking of the absolute, therefore, means that there is a political and social history which determines thought. It follows that one should resist pre-judging the nature of the absolute context within which our contradictions may be resolved: ‘no autonomous justification is given of a new object, and no statement is made before it is achieved’.\textsuperscript{108}

The second sense of the meaning of the ‘subjective’ in the passage quoted above is that our subjective thinking is always finite. For Rose, to recognise the subjectivity of our thinking means that Kantian or Fichtean thinking has in a certain sense ‘won’.\textsuperscript{109} When Hegel seeks to state the Absolute Idea in the end of the Logic, the Kantian dichotomies of the practical and theoretical and the universal and individual reappear:

\begin{quote}
Prevailing dichotomies must be acknowledged not suppressed, but a unity of a different kind which includes their relations has to be expounded. Hegel's concluding statement
\end{quote}

\textsuperscript{102} For a brief but incisive discussion of this crucial moment in Rose’s interpretation, see Robert Bernasconi, ‘G. Rose, Hegel Contra Sociology.’, \textit{Hegel Bulletin} 2, no. 02 (1981): 41–43.

\textsuperscript{103} \textit{HCS}, 205.

\textsuperscript{104} \textit{BM}, xxi.

\textsuperscript{105} \textit{BM}, 286.

\textsuperscript{106} \textit{HCS}, 91.

\textsuperscript{107} \textit{HCS}, 51.

\textsuperscript{108} \textit{HCS}, 46.

\textsuperscript{109} \textit{HCS}, 201-3.
of that unity is necessarily abstract, because, as a statement, it depends on the Kantian and Fichtean oppositions.\textsuperscript{110}

Hegel’s alternative cannot be stated except in a speculative manner which acknowledges the identity and non-identity of the judgement it is proposing.\textsuperscript{111} Hegel is never able to present the final contradiction and resolution, because our thinking is inherently finite. To say so, is to assert that thinking is bound by the law of non-contradiction and thus by formal laws which creates determinate boundaries. According to Andrew Bower Latz, Rose thinks ‘we have to draw a line somewhere in our analysis of mediations’.\textsuperscript{112} Of course, Rose is not saying that the finitude of our thoughts is due to a transcendental limit in our thought, since that would be to regress back to Kant. The point is rather that our thought is still limited by some political, legal, and social form which prohibits us from overcoming our dichotomous thinking. The finitude of our thought is due to our historically determined lack of freedom. That is why one could only write a successful Logic if it could be shown that freedom has been realised in the world.

Finally, the third sense of the subjective character of thought resides in Rose’s specifically Hegelian analysis of the character of modernity. ‘The diremption between law and ethics—modernity’s predicament’ means that philosophical comprehensions of judgement will remain ethical ideals, and politically speaking, will either be relegated to the impotence of civil society or imposed coercively through the State.\textsuperscript{113} Thinking is presently dirempted from the social and political reality in which we live, which means that ethical ideals continue to have an ineffectual or transgressive role vis-à-vis the arrangements of the actual world.

For these reasons, there is no resolution to the trial of reason and no available statement of the legitimacy of the modern secular order. Rose, therefore, proposes a phenomenology as ‘an alternative to Kant’s theoretical quaestio quid juris’, combining it with her restatement of the implied notion of ethical life.\textsuperscript{114} Because she replaces Kant’s quaestio quid juris with a phenomenology but without a completed Hegelian logic, Rose’s project becomes an investigation into the failures to complete the trial of reason. Her reading of the sociological tradition through the lens of neo-Kantianism in the beginning of Hegel Contra Sociology showed how sociology turned Kant’s trial of reason into a ‘metacritical’ investigation into the

\textsuperscript{110} HCS, 199.
\textsuperscript{111} HCS, 48-9.
\textsuperscript{113} BM, xii.
\textsuperscript{114} HCS, 45.
historical conditions of objectivity. As a response, Rose’s phenomenology seeks to comprehend the diremptions in these enterprises, not in order to remove them, but to point to the implied reconciliation which has yet to be thought.

In this sense Rose’s philosophy is a political theology which investigates the trials and failures of judgement. As we saw above, the trial of reason seeks to realise freedom by enacting a double secularisation of Christianity. Hegel’s failure to enact this secularisation and present secular freedom, means that Rose’s political theology explores the perennial incompleteness of secularisation:

This is how the philosophy of history should be conceived, not as a teleology of reconciliation, not as replacing the exhausted attempt to create a Christian civilization, but as perpetual repetition, as the perpetual completing of the historic Good Friday by the speculative Good Friday. There is no end of religion and no end of history, but a perpetual ‘speculative justification’ to complete the faith which ‘justifies nothing’.

Hegel is not sanguine that the rational completing of the meaning of religion will make possible a rational ethical life in the way a realization of the principle of the Christian religion would have done. But he is sure that misrepresentation and irrational political

\[115\] HCS, 1-47.
\[116\] For an insightful account of Rose’s ‘phenomenological criticism’, see Osborne, ‘Hegelian Phenomenology and the Critique of Reason and Society’.
\[117\] It should be clear that my reading of Rose stakes a certain position within an ongoing debate about Hegel’s relevance for theologians. The clearest appropriation of Rose’s work for theology is undoubtedly that of Andrew Shanks in his Against Innocence. See also his ‘Gillian Rose and Theology: Salvaging Faith’, Telos 173 (2015): 154–62. He stresses her ‘reception of faith’ at the end of her life, and the increasing presence of religious themes in her later works: BM; MBL; Love’s Work (New York: New York Review Books, 2010); Paradiso (Bristol: Shearsman Books, 2015). For Shanks, Rose’s philosophy represents an opportunity to steer between completely secular liberalism, and what he takes to be more imperialist Christian narratives such as that of the Radical Orthodoxy movement in general and John Milbank and particular. Other less polemical theological appropriations are Rowan D. Williams, ‘Between Politics and Metaphysics: Reflections in the Wake of Gillian Rose’, Modern Theology 11, no. 1 (1995): 3–22; Lost Icons: Reflections on Cultural Bereavement (Edinburgh: T&T Clark, 2000); Rowan Williams, “‘The Sadness of the King’: Gillian Rose, Hegel, and the Pathos of Reason”, Telos 173 (2015): 21–36; Graham Ward, Christ and Culture (Malden, MA: Blackwell Pub, 2005), 148. Vincent Lloyd’s readings of Rose represents a strong reaction against the ‘uses’—and abuses—of Rose in the hands of the theologians. On Lloyd’s interpretation, Rose is more secular, perhaps more ironic, than the theologians allow for. Vincent Lloyd, ‘On the Use of Gillian Rose’, The Heythrop Journal 48, no. 5 (September 2007): 697–706; Law and Transcendence; The Problem with Grace. My own discussion of Rose is far from extensive enough to untangle the already complex interpretive debate. Read in light of my dissertation as a whole, and especially the next section of this chapter, it should nonetheless be clear that Rose does not go any further than what I here call a ‘political theology of sacrifice’. I agree with Andrew Bower Latz that the substance of her social philosophy was developed before religious themes became prevalent in her work, and although her work is evidently fruitful for theologians, I think her philosophy ultimately ‘implies’ secularity as its final telos.

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life will continue in history, and that philosophy will have to be more armed against its irrationality.\textsuperscript{118}

Just as the task of philosophy is to comprehend the freedom and unfreedom of the modern world, it is also to expound ‘the truth and untruth of Christianity world-historically’.\textsuperscript{119} History is thus read as a perpetual secularisation of Christianity and it is granted that the completion of this secularisation would be the implied, but not stated, reconciliation of law and ethics, of universal and individual.

What this brief exposition of Rose’s rereading of Hegel shows, is that her philosophy can be adequately described as a political theology in the restricted sense of an exploration of the failures of judgement while seeking to comprehend the unrealised freedom implied by them. Like Schelling and Schmitt, Rose recognises that the failure to realise an autonomous community in our current legal and political order raises fundamental questions about the religious heritage of the West and the success of secularisation. Furthermore, with them, Rose agrees that the presence of sacrifice in the modern world is the most important sign that the religious impinges on the secular city. This is particularly clear in her Hegelian reading of Søren Kierkegaard in \textit{The Broken Middle}. Through pseudonymous writings such as \textit{Fear and Trembling}, Kierkegaard seeks to explore Abraham’s sacrifice of Isaac.\textsuperscript{120} According to Rose, the importance of ‘Johannes de silentio’ s narration of the \textit{Akedah} in \textit{Fear and Trembling} is that ‘nothing is sacrificed’.\textsuperscript{121} The ambiguity of sacrifice and its impossibility is explored, but never is the sacrifice stated or are its problems overcome.\textsuperscript{122} The wager of Rose’s political theology, then, is an ‘aporetic’ reading of the history of judgement, and a repeated investigations of the problematic relationships between ‘the soul, the city and the sacred’.\textsuperscript{123}

In conclusion, Rose’s rereading of Hegel suggests that philosophy must think the ‘perpetual’ secularisation of Christianity. This involves uncovering the presence of sacrifice as the aporetic configurations of universality, particularity, and individuality. Her political theology grants no victory to the secular over the sacred, but seeks to comprehend the implied secular freedom without domination. Her account nonetheless raises some difficult questions, whose answers

\textsuperscript{118} \textit{HCS}, 119-20.
\textsuperscript{119} \textit{HCS}, 39.
\textsuperscript{120} \textit{BM}, 12-16.
\textsuperscript{121} \textit{BM}, 15.
\textsuperscript{122} \textit{BM}, 15.
\textsuperscript{123} \textit{MBL}, 10;
have great ramifications for the all the investigations of the trial of reason in this dissertation. In short, given Hegel’s failure to present the definitive political experience, how does one ground the effort to continue this endless exploration of the failures of the trial of reason? This is an important question, for, as I shall now argue, Hegel’s lack of a solution to the problem of judgement allows one to question a fundamental premise of the trial of reason.

II. THE PERSISTENCE OF FAILURE

We are now in a position to ask some questions relevant to the trial of reason as a whole. Hegel is the endpoint of our discussion, and through a brief examination of Gillian Rose’s response to Hegel I have shown that even a critical Hegelianism cannot overcome the impasse we noted as the failure of Hegel’s philosophy: the never-ending investigation into the sacrificial judgements that pervade modernity, whose work of reason lacks legitimacy because it is structurally prevented from achieving its own end. At first this might seem like a trivial objection, given Rose’s insistence that the absence of legitimate judgements is our modern condition. As we shall see, however, the problem is rather that this lack of legitimacy also renders questionable her phenomenological reading of the persisting diremption in modernity. In short, when one admits that Hegel’s project has failed, it is impossible to substantiate the charge that finite judgements are always broken. As a result, I will argue, we are free to question the premise which makes the trial of reason our fate, namely the assertion that mediation between the universal and the individual is irreversibly broken.

Before we discuss these issues with reference to Rose’s political theology, it is necessary to revisit one key moment of the past discussion taken as a whole. In the first chapter, we saw that Kant’s trial of reason sought to build a city on a ‘battlefield’. Two forces dominated this battlefield: on the one hand, there was the anarchic pressure to tear down every law and every order. Such forces could be revolutionary anarchists or religious enthusiasts. Kant’s philosophy sought to curb what he took to be an irrational antinomianism. Driven by carelessness or a utopian vision, these forces had to be constrained by the institution of law. On the other hand, Kant thought that despotic forces had traditionally dominated the battlefield. Despotism represents the old illegitimate regimes based on heteronomy—it represents the imposition of law on powerless and unfree subjects.

Kant’s battlefield is a metaphorical placeholder for the difficult conditions of modernity. Temporally speaking it refers to a defining moment when a religious past and authorities must

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124 MBL, 11-12.
in some sense be left behind without unleashing anarchic forces. This is not a neutral observation on his own time, but implies a specific ‘political’ decision. This might be elucidated with reference to a recent work by Kathleen Davis in which she argues that the notion of ‘feudalism’ was constructed around the time of the French Revolution to symbolise a past which it was necessary to leave behind. The very notion of a feudalism, Davis claims in Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time, was constructed as a backwards projection legitimating the overthrow of the absolutist regimes:

first nominalized as féodalité on the eve of the French Revolution, it was brought to adjudicate between nobility, parliament, and crown, particularly in matters of property, and ultimately to embody the superstitious and fettered past being dragged to the guillotine. In this sense “feudalism” is one of our most graphic examples of Walter Benjamin’s insight that “modernity” simultaneously produced and destroyed the images of tradition to which it opposed itself.125

Davis’ claims is that the notion of feudalism sustains a ‘modern/medieval periodization [which] frequently serves as a substitute for this absent foundation of sovereignty, and thereby installs certain characteristics of the “modern” in place of the sovereign’.126 The construction of a feudal past ‘grounded arguments regarding the “free” political subject and social contract’, and thus ‘constitutes the narrative and conceptual basis of modern politics’.127 As Davis puts it elsewhere, this construction represents ‘the disavowal by “secular” politics of its founding paradox’.128

Davis’ argument enables us to question the construction of the initial condition of Kant’s trial of reason. It is clear that Kant sought to overcome the old property relations of feudal society and that his emphasis on the avoidance of contradiction in his first Critique also implies a concern with establishing individual property right. Even though our aim is not to argue that everything in Kant’s philosophy developed as a reaction to an imagined feudalism,129 it is

125 Davis, Periodization and Sovereignty, 7.
126 Davis, 80.
127 Davis, 8.
128 Andrew Cole and D. Vance Smith, eds., ‘The Sense of an Epoch’, in The Legitimacy of the Middle Ages: On the Unwritten History of Theory, by Kathleen Davis, Post-Contemporary Interventions (Durham, NC: Duke University Press, 2010), 41. It is certainly possible to develop this analysis into a critique of secular liberalism as a reaction to what it took to be religious violence after the Wars of Religion. Cavanaugh, The Myth of Religious Violence.
nevertheless clear that Kant’s philosophy does lend itself to Schmitt and Koselleck’s narrative of modernity which we recounted in chapter 3. In this narrative, Kant’s trial of reason must be read as a part of the bourgeois response to the alienation under the absolutist systems. The oddness of this political manoeuvre, is that the feudal or medieval past is rejected as at once harmonious and heteronomous. In the feudal past, political and individual identities were mediated in a peaceful manner. Yet the breakdown of mediation in the absolutist system reveals what was true all along, and thus what was implicitly broken in feudal society as well.

In *The Broken Middle*, Gillian Rose repeats this narrative by citing approvingly a long passage on the transition out of feudalism from Karl Marx’s ‘On the Jewish Question’. She summarises the narrative as follows:

The breaking of the middle is exposed here in its main configuration: the fact and fiction of the ‘individual’ who emerges split — naturalized as ‘egoism’ and allegorized as ‘ethical’ [...] with the dissolution of this feudal middle, the ‘individual’ emerges with two separate lives: merely particular existence outside any middle, and yet bearer of universalist aspirations, of citizenship.

I would argue that in this passage Rose puts her cards on the table: When the narrative of the transition out of the feudal past is stripped of its contingent character and made into a revelatory moment—the *breaking* of the middle—it is transformed into what looks very much like a transcendental condition. For Rose, the ‘middle’ is precisely the relation of judgement. The transition out of feudalism is the foundational experience which initiates the trial of reason. Because modernity reveals an eternal truth, Rose describes the split individual and the diremption of law and ethics as ‘modernity’s ancient predicament’. The predicament of modernity is that the middle is broken. In this sense, the past—whether characterised as feudal, medieval, or ancient—serves as a representation of a time in which mediation and judgement was possible, and always already broken. Thus, the ‘now’ of modernity is defined as a time in which the breakdown of mediation is ‘always “recently” repeated’.

The theologian John Milbank has recently made this point forcefully in an essay on Gillian Rose: ‘for Rose, mediation is always broken and remorselessly broken, and can only operate in

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131 *BM*, 303.
132 *BM*, xii.
133 *BM*, xii.
reality as broken’.¹³⁴ This is because, in Rose’s Hegelian narrative ‘the drastic modern undoing of the feudal order is inevitable and disclosive: it reveals to us that there truly exist no “separate” and substantive transcendent sources apart from us and over-against us, which might be finitely reflected and embodies in a social order’.¹³⁵

Milbank’s criticism echoes the main tenets of his own political theology. It will be helpful to momentarily note that this project first initiated his Theology and Social Theory: Beyond Secular reason.¹³⁶ From the standpoint of the failure of Hegel’s project, Milbank’s political theology concludes not only that the project of secularisation failed, but, following Hegel, that its very legitimacy depended on the Christian tradition. If commentators like John Walker are right about Hegel that his ‘view of secular history can never command real theological assent […] unless it is rooted in the actual experience of the Christian community’, it would follow that there could be a backlash precisely from the Christian community.¹³⁷ Hence Milbank presents a critique of the construction of the secular from the standpoint of a reconstructed metanarrative of the Christian church.

For her part, Rose criticised Milbank’s political theology strongly in The Broken Middle, and raised some critical questions about the persuasiveness of Milbank’s attempt to re-narrate the history of a peaceable ecclesia.¹³⁸ In this book, Rose argued that Milbank’s postmodern political theology constructs a nomadic Church as a ‘holy middle’ which slings us ‘between ecstasy and eschatology, between a promise of touching our utmost singularity and the irenic holy city, precisely without any disturbing middle.’¹³⁹ The core of Rose’s criticism of Milbank’s political theology is that it refuses to consider the ‘all-pervasive broken middle’ which will immediately deform Milbank’s vision into either an impotent ethical ideal or an enforced resolution of judgement.¹⁴⁰

Her reading of Milbank’s book does raise a number of important questions about his political theology, but it does not necessarily deflate the point Milbank is making in his critique of her work. Whether or not one thinks his political theology is utopian and antinomian, he presents a

¹³⁵ Milbank, ‘On the Paraethical’.
¹³⁶ Milbank, Theology and Social Theory.
¹³⁸ BM, 277-95.
¹³⁹ BM, 285.
¹⁴⁰ BM, 285.
strong argument that Rose has made the condition of modernity into a revelatory event. The
substance of his argument is not that one should deemphasise the event of modernity (as the
moment when the individual and universal are torn apart) and tell another story about an elusive
truth ‘elsewhere’. Rather, the point is that this modernity never happened, at least as represented
in the family of narratives we have considered in this dissertation.\textsuperscript{141} It is one thing to draw
attention to the political and social alienation in modernity, but it is a wholly different argument
to say that this means that judgements and mediations are irreparably broken.

Rose would of course agree that all the neat distinctions made in modern society constantly
break down in unexpected ways; this is why she insists that the absolute must be thought. The
speculative proposition of the identity of religion and the State, for example, arises from the
experience of their lack of identity—which implies that they ought to be unified, even though
they are not. According to Rose, this is the impetus for further thought. But this is precisely
where Milbank’s argument stings the most: Rose cannot substantiate her claim that every
representation of a successful judgement is merely a ‘subjective’ and impotent ideal. Rose’s
critique of Milbank and other theorists who disregard the broken middle takes the form of a
phenomenology, which is meant to show that every unified vision breaks apart in dialectical
fashion. It would seem that her phenomenological readings provide decisive proof that the
dialectic will continue: every law is formal and every successful judgement breaks open.
However, when it has been admitted that a phenomenology cannot be achieved—that we cannot
reach the absolute standpoint—it is legitimate to raise the question whether it can prove what
it is meant to prove. For only at the end of the phenomenology does Spirit become fully self-
conscious of its history, whereby it realises that all the contradictions of history were unfolding
the absolute contradiction. In other words, the alienation must be complete and final in other
for reconciliation to be possible.

Thus, Rose’s insistence on the brokenness of every judgement and the deferred arrival of the
absolute paradoxically depends on the realisation of the absolute contradiction, since the
Hegelian logic implies that it is only when the universal becomes absolutely formal and the
individual completely ‘bare’, that freedom can be realised. However, to insist on the
inevitability of diremption is to believe that such complete diremption is possible. Yet, given
that the absolute has yet to be thought, it must follow that we simply have no unambiguous

\textsuperscript{141} This is an argument with some resemblance to the one made by Bruno Latour, namely that the
fundamental categories which the ‘moderns’ struggle to keep apart were never distinct in the first
place: \textit{We Have Never Been Modern} (Cambridge, MA: Harvard University Press, 1993).
instance of a contradiction before us. Milbank’s charge that Rose has turned the narrative of the breakdown of mediation after feudalism into an unjustified commitment can, therefore, be taken to say that once Hegel’s presentation of freedom has failed, we have no definite reason why we should take the experience of the production of the individual and the experience of alienation as a disclosure of the brokenness of every judgement.

As we have seen in this chapter, for Hegel, the Reformation produced a dichotomy between Church and State that philosophy was unable to overcome. If this is the case, however, one might say that the problem was that the Reformation never completely succeeded in the first place: religion never became purely about subjective commitments, nor did politics turn into pure formality without imagery. There never was an absolute breaking point between the subjective and the objective. If this is correct, one is free to challenge the assumption that the terms which the trial of reason sought to reconcile were completely dirempted in the first place. We might end this argument by reconsidering the two pairs we have been working with throughout this dissertation: law and ethic, universal and individual.

In the previous section we saw that Rose claimed that every account of a successful judgement will remain an ethical ideal, a vision which ought, but cannot be realised. We have seen this dialectic throughout this dissertation. It seems impossible to realise an ethical ideal without compromising this ideal in the very act of realisation. The political implication of this dynamic is, therefore, also a diremption between the State, which has all the means of coercion, and the civil society, which appears formally free, but politically impotent. However, given that Hegel in fact failed, one may object that a completely impotent ethical ideal is not possible. Even the most abstract ‘idea’ is somehow already embodied, concretised, and in the process of changing the world. Similarly, the Church’s representation of its reconciled community is never completely impotent and subjective. It is not necessary to take this as an expression of an optimistic Christian hope. Rather, the point is simply that it is presumptuous to think otherwise.

Similarly, Rose said that the subjective form of our thought means that our thinking is finite and, therefore, that we must draw a line somewhere in our mediations. This means, in short, that thinking is tied to a radical separation of form and content, universal and individual. It also means that every intelligible judgement must conform to the law of non-contradiction. This is why we cannot think the judgement in an absolute sense—because that would mean thinking the absolute contradiction. However, we must ask what grounds the assumption that the historical determination of our thinking means that we are bound by completely abstract forms whose limits or boundaries can be determined. But we now have no reason to think that every
thought is bound by the law of non-contradiction. Rose would surely have admitted that once we try to determine the limits of our thought—that is, the forms and abstract universals we think with—we are faced with new contradictions and ambiguities. The most radical point here is that we have been given no proof that there is such a thing as a purely formal universal or a purely indeterminate individual. Hegel’s philosophy can only show that this is possible by thinking the absolute contradiction, and thereby show that the absolute is ‘concrete’ in the sense of being the synthesis of pure form and pure content. Pending any such justification, we are free to question the premise of the trial of reason as a whole, namely that pure diremption is possible in the first place.

It follows, then, that it is possible to object to Rose’s insistence that it is the fate of political theology to comprehend modernity’s many failed trials of reason. She is surely right that no such project would ever succeed, and thus that political theology—even today—is still concerned with accomplishing the secularisation of Christianity, as exemplified by the recent continental turn to Christian universalism. In any case, when we come to see that there is little justification for Rose’s insistence that every account of a successful judgement will remain abstract, the trial of reason is put in a very different light.

**Conclusion**

In this chapter we have presented a reading of Hegel’s analysis and failure to complete the trial of reason. We saw how Hegel realised that there was an intimate connection between the problem of judgement and the secularisation of Christianity. His philosophy sought to present autonomous freedom as the consummation and overcoming of Christianity. But this depended on the impossible reconciliation of the Reformation and Revolution. As a result, Hegel’s secularisation of Christianity and its realisation as autonomous freedom is suspended in its process. In response, Rose’s develops Hegelian political theology as a way of coming to terms with a world which is at once insufficiently secular and insufficiently religious. The end of the trial of reason is a political theology whose single task is to understand the sacrificial judgements in the world. Finally, I argued that Rose’s political theology is limited to this task because she has not challenged the premise of the trial of reason as a whole. The context of the trial was a political narrative of the alienation of the individual in modernity and the diremption of social and political relations. I argued that if one grants that Hegel has not been able to sublate the trial of reason, we are at liberty to question the assumption that the experience of modernity
reveals the ineluctable breakdown of mediation. One might surmise, then, that there never was a purely isolated individual, just as there never was a purely formal and coercive law.
In this dissertation I have presented an original account of the relationship between the philosophical justification of secular order and political theology. Beginning with Kant’s response to the trial of Louis XVI, I argued that Kant’s critical philosophy made a case for reason’s power to legislate universal laws in accordance with the ideal of autonomy. This trial could only end in a favourable verdict if Kant proved able to present a rational account of judgement as the unity of the individual and the universal. But since the legal procedure of the courtroom acknowledged only formal and non-contradictory laws, it had no way of thinking the contradictory relationship between universal law and concrete individuality. As a result, the fate of the trial is that autonomous order is imposed through an irrational and violent political act, or that autonomy is turned into a regulative ethical ideal, and no account is offered of how actual legislation will ever approach this ideal. Secular freedom is either founded upon a violent regicide or a deferred verdict and never-ending formal procedures.

In chapter 2, we saw how Schelling criticised the first of these two options. His political theology begins with the recognition that rational or political laws function as externally imposed on an irrational and anarchic condition. It is impossible to realise autonomy, he argues, since the individual always exceeds the formal definitions of the universal. The coercion of secular autonomy becomes the point of departure for a political theology which theorises a transcendent point of indifference beyond the coercive relations instituted by rational and political judgement. For Schelling, the sacrificial character of finite human order is a sign that autonomy cannot be thought or realised by secular reason. In this political theology, the Church appears as a powerless community which represents an ethical ideal of a reconciled order beyond coercion and sacrifice. At the same time, Schelling offered no description of how the Church may ever realise this ideal and redeem human judgement.

In the ensuing chapter, we explored a political theology which responded to the deferral of the trial of reason, the second of Kant’s two options from chapter 1. Schmitt’s political theology attacked the liberal formalism in its political and philosophical forms. His fundamental insight was that there is no rational account for how one may close the gap between the universal and individual, and that liberal formalism is based on the false assumption that one can have a
legal or political order without attending to this problem. Whereas for Schelling, the sacrificial character of law was a problem which had to be overcome, Schmitt’s political theology insists on the necessity of sacrifice. The theory of the decision is Schmitt’s solution to the problem of judgement: a unified, democratic, and autonomous order depends on an ineffable decision which enforces the unity of the universal and individual. This moment of decision which transgresses and creates the legal order is analogous to the theological construal of God’s transcendence and immanence. However, due to his claim that the decision is ineffable, he effectively accepts the liberal account of formal rationality and fails to account for whether the decision recognises or erects order.

In chapter 4, we dealt with Agamben’s political theology. In the context of this inquiry Agamben represents a political theology which despaired of the possibility of redeeming judgement. His political theology theorises how the economic paradigm—originating in ancient Greek and Christian traditions—has effaced the possibility of holding political power accountable. For Schelling, the sacrificial character of political order meant that the individual was subjected to a coercive law. However, he still believed that one could project the hope of one day finding the right relationship between the universal and the individual. In contrast, for Agamben the judgement does not demand sacrifice, but renders life sacred. In this sacred condition, life is subjected to the invisible force of an empty law. In the end, I argued that Agamben thereby fails to comprehend the experience of alienation in modern societies. His account is motivated by the sense that political action has become structurally impossible in the modern biopolitical condition. However, he thereby turns the centre of his analysis—the experience of alienation under the ‘force’ of law—into an incomprehensible and empty relation. His alternative ethical ideal is the coincidence of the individual and universal without a relation between them. Yet, since the relation which causes our alienation is completely empty, his alternative vision is identical with our current condition, just without the sense of alienation. I finally argued that this only aggravates the diremption between what is and what ought to be, and thus invites another investigation of judgement.

For this reason, we returned to the problem of judgement and the mediation of the universal and individual in chapter 5, in which we discussed to Hegel’s Aufhebung of the trial of reason. From the perspective of Hegel’s philosophy, we saw how the trial of reason seeks to enact a two-fold secularisation of Christianity. First, the trial aims to break with the Christian tradition and the old political regimes legitimised by that tradition. The revolutionary aspects of the trial of reason, and its tendency to short-cut legal procedure and commit regicide exhibited this logic
of secularisation. Second, Hegel showed how such a violent break with the past tends to repeat the same sacrificial logic and irrational faith for which the traditional order was denounced. Thus, the formal and procedural tendency of the trial of reason expresses a secularising logic of reform, and the conviction that secularity can be the immanent consummation of Christianity. In the final part of chapter 5, I argued that one may regard Gillian Rose’s recuperation of Hegel’s philosophy as a sort of limit-case of the political theologies that arise in the wake of the trial of reason, and suggested that it is based on the implausible assumption that the universal and individual are fully disembody in modernity.

From this chronological summary of my argument, we might draw some preliminary conclusions. I ought, however, to qualify this conclusion with some remarks about of the limits of this investigation. The unity of this dissertation depends on several analogies between conceptual problems, metaphorical spaces, and historical narratives in the different thinkers and contexts I have discussed. Consequently, one might raise some questions about the coherence of the inquiry. One should not primarily think of this inquiry as a piece of intellectual history, since I do not present a chronological reading, nor do I present a ‘theory’ of historical modernity. The dialectical analyses that appear throughout the dissertation might suggest a form of phenomenological or dialectical critique. Since much of my critique in this dissertation has been dialectical, and given that I end the inquiry with Hegel, this would not be an unnatural conclusion. I argue, for example, that Kant’s trial of reason fails because of unsolved dialectical aporias and I show how Schelling, Schmitt and Agamben all are guilty of unthought dichotomies and failed mediations. Nevertheless, my criticism of Hegel and Rose at the end of chapter 5 entails that I have reservations about a purely dialectical approach. That is why it was essential to keep in play the narratives of the modern condition, of the projection of a feudal or religious past, and the metaphorical contexts of city-building and juridical procedures. When one has accepted that the insistence on a dialectical approach depends on the unwarranted claim that judgement is ineluctably broken in modernity, then the narrative dimension becomes relevant again.

Consequently, I would argue that it is best to understand this inquiry as a sustained reflection on the nature and limits of political theologies too dependent upon the dialectical fates of a philosophical construction of secular order. Given my critical questions about the Hegelian analysis of modernity and the reduction of reason to dialectics, one could undoubtedly ask important questions about the relationship between procedural reasoning, dialectical critique
and genealogical or historical narratives. Still, I have intentionally kept all these dimensions in play in my dissertation, implying that it is the task of a future political theology to account for how one might relate genealogical descriptions of our historical heritage, dialectical critique and syllogistic reasoning.

Granting these qualifications, I will summarise the central discoveries of this dissertation in the following way:

1) The past which the trial of reason seeks to escape swings between two extremes. As we saw in chapter 1, there is a need to break with anarchy and despotism. These two extremes may be historically situated in the breakdown of the feudal hierarchies, the wars of religion, and the absolutist systems. The point is not the historical reference, but what this retrojection implies: namely that modernity is a condition in which the universal and individual have been torn apart, and consequently swings between despotism (universal law dominates individual) and anarchy (individual overthrows universal law).

2) Judgement is the conceptual core of the trial of reason: it seeks to escape this retrojected past by bringing the universal and individual into unity. A successful account of judgement is both a realisation of lawfulness and autonomy. However, these two dimensions break apart when the judgement fails. As a consequence, one must either enforce the unity of the universal and individual or accept a persisting gap between law and ethics—between actual coercion and autonomous ideal.

3) The trial of reason is a project of secularisation torn between Reformation and Revolution. The logic of the Reformation is a logic of legal reappropriation. Tradition, religion, institutions, and laws may be received from elsewhere, as long as the transfer of ownership may be completed and we can completely accept the inheritance as ours. Reform is motivated by the acknowledgement that an outright negation of the past involves an attachment and similarity with it. By contrast, the logic of the Revolution is a logic of new beginnings and violent breaks. This logic stems from the recognition that a completely rational trial will never be complete, and that pragmatic action is necessary. The incompatibility of these logics means that secular order can never establish itself, at least not in the way we have considered it in this dissertation.

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4) The trial of reason gives rise to many political theologies in its wake. These arise due to the sacrificial character of judgement. So long as the relationship between the universal and individual is broken, the law will continue to demand sacrifices from its subjects. The account of the two logics of secularisation explains why this sacrificial character implied an uneasy relationship between the political and the theological. Agamben’s failure to suspend judgement implies that Rose’s political theology is a more plausible candidate for the furthest end of a political theology developed out of the trial of reason. We may take Rose’s thought as paradigmatic in this regard: given the assumption and failure of the trial of reason, political theology arises as a reflection of the consequent presence of sacrifice in political and religious institutions.

In light of these conclusions, I will end with some reflections on the direction in which this inquiry might point. Throughout the dissertation, I sought to elucidate some of the connections between political theology and a significant strand of the modern philosophical project to legitimise a secular order. Since this relationship was the centre of attention, I intentionally left out some of the specific theological questions at stake in those debates. Schmitt’s debate with Erik Peterson, Schelling’s later philosophy of revelation, Agamben’s commentary on the Romans, and the specifics of Hegel’s philosophy of religion, are all exciting and relevant topoi I could have visited. However, I primarily aimed to pinpoint the specific moment when they see that the failed justification of secular order demands a further investigation of the many relations between politics, theology, and rationality.

The findings I made on the way, I venture to say, shed light on some of the major debates about the meaning and relevance of political theology. The German exchange between Schmitt, Karl Löwith, and Hans Blumenberg is still being investigated today, and the current inquiry brings out more clearly the philosophical stakes in these exchanges. Similarly, the French debate, initiated by notable political philosophers such as Cornelius Castoriadis, Claude Lefort, and Marcel Gauchet, is still alive today and continues to motivate defences of the political against the theological or the economic.² My response to Agamben in chapter 4 indicates that I agree with these thinkers in their assertion that one cannot avoid the question of judgement. However, it should also be evident that I do think that the theo-political problem is indeed ‘permanent’.³

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² See for example Kriegel, *The State and the Rule of Law.*
³ Lefort, ‘The Permanence of the Theologico-Political?’
Finally, my questions about the assumptions of the trial of reason as a whole should indicate that I think this inquiry might function as a sort of preamble to a more substantive and specifically Christian political theology. My hesitance about Rose’s political theology could be explained in the following way. Rebecca Comay, whose reading of Hegel is in substantial agreement with that of Rose, helpfully formulates the *cul-de-sac* into which her political theology has run: ‘how do we prevent this absence of directive from congealing into a formalism, even a decisionism that derives legitimacy from the fact (actually an appearance) of sheer novelty?’ Neither formalism nor decisionism, of course, is acceptable, and she, therefore, proposes the Hegelian move of retracing one’s steps, thinking the unthought, and exploring the problematic sacrifices of our institutions and our thinking. What she refuses to reconsider is the presupposition of her interpretation of modernity: ‘the concrete social and practical imperatives bequeathed by the Revolution are irreversible’.

What I have tried to suggest, hopefully with some weight, given my thorough reading of paradigmatic variants of these ‘social and practical imperatives’, is that a Hegelian political theology in the mode of Rose and Comay does not address the implausibility of their interpretation of the event of modernity. That is why it was important for me to keep an eye on the narrative context of the trial of reason. The point is that these narratives do not substantiate the radical claim that modernity represents a point after which mediation is impossible.

Once one has admitted that the trial of reason fails to secularise Christianity, one is free to formulate a very different political theology. The failure invites the response from political theology which asks about the legitimacy of this radical secularisation of the Christian tradition. This might take the form of a counter-narrative of the construction of the secular written from a theological standpoint, and John Milbank’s project represents one such project. My intention is neither to unequivocally applaud nor reject this proposal. The important conclusion is simply that we have reasons to doubt the implausible suggestion that there ever was a point of absolute diremption.

Such a response might take the form of a genealogy of the Church as a community where the universal body of Christ coexists in harmony with all its members. If such a narrative seems

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5 Comay and Nichols, 343.
6 Walker, ‘The Autonomy of Theology and the Impact of Idealism: From Hegel to Radical Orthodoxy’. 
implausible, however, this is because such a political theology needs another element. Given the admission that there never was a point of complete brokenness, one is free to suppose that there were always various degrees of successful mediation—even in modernity. As a result, the starting point of a different political theology, which is liberated from narrowly mourning the brokenness of judgement in modernity, would be to show how, even in radically dirempted societies—such as the absolutist system—there is always some degree of successful mediation. This suggests the need not only for a counter-genealogy, but also for a counter-phenomenology, as it were. This would attend to the complex interpenetration of symbols, formal and concrete laws, and individuals that are always already mediated through a multitude of relations.

In this dissertation, I have argued that the political theologies formulated in the wake of the trial of reason have too quickly accepted its initial premises. The trial of reason fails because it is torn between the courtroom and the guillotine, between Reformation and Revolution. A Christian political theology may, therefore, submit a very different appeal to the clerks in the court’s administration. According to this appeal, the real difficulty of judgement is not merely the question of how to judge, but the fact that we have already been judged. We are already entangled in a web of identities, laws, and communities from which we could never be completely alienated. We are already universal and individual, transcendent and immanent, and we do well to acknowledge this. If we do not, this dissertation suggests that we will find our fate somewhere between the courtroom and the guillotine.
Observe the dregs, observe the oil.

Pressure takes place ever in the world, as for instance,
through famine, war, want, inflation, indigence, morality, rape, avarice;
such are the pressures on the poorer and the worries of the states.

We have found men who grumble under these pressures and who say:
‘how bad are these Christian times!’
Thus speak the dregs of the oil which run away through the sewer;
their color is black because they blaspheme: they lack splendour.

The oil has splendour.

For here another sort of man is under the same pressure and friction which polishes him,
for is it not the very friction which refines him?

St. Augustine
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