The Structures of Authority and Political Use of Religious Practices in Thomas Hobbes and Carl Schmitt

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Abstract

This thesis examines the structures of authority in the political theories of Thomas Hobbes and Carl Schmitt. In milieux marked by crises of political legitimacy, civil unrest and war, both Hobbes and Schmitt strove to develop new theoretical foundations in support of their conservative visions of the authority of the state. The exhaustion of traditional means of legitimation, such as divine right or romantic ideals of community, demanded innovative alternatives. Though Hobbes and Schmitt drew on a wide range of sources, I argue that religious practices were centrally important. Focussing on questions of the source and genesis of authority, my study argues that in different ways both identify participation as key to the origination of authority.

In part one, through a chronological investigation of Hobbes' works, I demonstrate that he assembles a multi-faceted theoretical support for authority. While the covenant is essential for establishing the artifice of sovereign *potestas*, I argue that Hobbes progressively supplements this fragile artifice with a series of additional apparatuses: civil worship based on religious practices, authorisation based on theatrical analogies and educational and pedagogical practices drawn from a general, almost polytheistic, conception of religion. However, I show that ultimately Hobbes' mechanistic psychology undermines his attempt at an integrated and scientific account of worship and pedagogy.

In part two, I divide Schmitt's oeuvre into monarchical and democratic writings. Investigating the monarchical works, I trace his elaboration of a distinctive 'commissary authority' from the Roman dictator to the *katechon*. I show that this 'personalist office' can be understood as an attempt to renovate the traditional doctrine of divine right. Returning to the democratic writings of 1923-32, I contextualise Schmitt's revisionist conception of democracy and focus on the legitimating role of acts of acclamation, understood as an act of *assent*, rather than legal or contractual consent. I argue that a key influence on this participatory model of authority is Georges Sorel's energetic and enthusiastic vision of political activity.

Acknowledgements

Contents

Abbreviations

Thomas Hobbes

3D	Thomas Hobbes, *Three Discourses: A Critical Modern Edition of Newly Identified Work of the Young Hobbes, Ed*, ed. Noel B. Reynolds and Arlene W. Saxonhouse (Chicago: University of Chicago Press, 1995).
AW	Thomas Hobbes, *Thomas White's De Mundo Examined*, trans. Harold Whitmore Jones (London: Crosby Lockwood Staples, 1976).
B	Thomas Hobbes, 'Behemoth, or the Long Parliament', in *The Clarendon Edition of the Works of Thomas Hobbes, Vol. 10: Behemoth, or The Long Parliament*, ed. Paul Seaward, Thomas Hobbes, and Paul Seaward (Oxford: Oxford University Press, 2009).
Corresp	Thomas Hobbes, *The Correspondence: Volume I: 1622-1659* (Oxford: Clarendon Press, 1994).
DC	Thomas Hobbes, *On the Citizen*, ed. Richard Tuck and M. Silverthorne (Cambridge: Cambridge University Press, 1998). Latin edition used: Thomas Hobbes, *De Cive. The Latin Version: A Critical Edition by Howard Warrender*, ed. Howard Warrender, The Clarendon Edition of the Philosophical Works of Thomas Hobbes (Oxford: Oxford: Clarendon Press, 1983).
DCLE	Thomas Hobbes, *A Dialogue Between a Philosopher and a Student of the Common Laws of England* (Chicago: University of Chicago Press, 1997).
EL	Thomas Hobbes, *The Elements of Law, Natural & Politic*, ed. M. M. Goldsmith Ferdinand Tönnes (London: Frank Cass & Co. Ltd, 1969).
EW	Thomas Hobbes, *The English Works of Thomas Hobbes of Malmesbury* (London: J. Bohn, 1845).
HE	Thomas Hobbes, *Historia Ecclesiastica. Critical Edition, Including Text, Translation, Introduction, Commentary and Notes*, ed. Patricia Springborg, Patricia Stablein, and Paul Wilson, trans. Patricia Springborg, vol. 31 (Paris: Honoré Champion, 2008).
L&N	Thomas Hobbes and John Bramhall, *Hobbes and Bramhall on Liberty and Necessity* (Cambridge: Cambridge University Press, 1999).
Lev	Thomas Hobbes, *Leviathan, with Selected Variants from the Latin*

Edition of 1668, ed. Edwin Curley (Cambridge: Hackett, 1994). Latin edition used: Thomas Hobbes, *The Clarendon Edition of the Works of Thomas Hobbes, Vol. 4: Leviathan: The English and Latin Texts* (Oxford: Oxford University Press, 2012). I follow the convention advocated by the European Hobbes Society and cite the chapter and paragraph numbers, rather than page numbers.

TTE   Thomas Hobbes, *Three-Text Edition of Thomas Hobbes's Political Theory: The Elements of Law, De Cive and Leviathan*, ed. Deborah Baumgold (Cambridge: Cambridge University Press, 2017).

Carl Schmitt

Where specific terminology is at stake, I distinguish the English and German (*Deutsch*) page numbers by a preceding 'E' or 'D' respectively. Otherwise, I cite only the English translations where they are available.

3P   Carl Schmitt, 'Three Possibilities for a Christian Conception of History', *Telos*, no. 147 (2009): 167–70. The review essay '*Drei Möglichkeiten eines christlichen Geschichtsbildes*' was originally published as '*Drei Stufen historischer Sinngebung*' in *Universitas* 5 (1950): 927–31.

3T   Carl Schmitt, *On the Three Types of Juristic Thought*, trans. Joseph W. Bendersky (London: Praeger Publishers, 2004 [1934]).

CP   Carl Schmitt and Leo Strauss, *The Concept of the Political Expanded Edition*, ed. and trans. George Schwab (Chicago: University of Chicago Press, 2007 [1927, 1932]). German editions used: Carl Schmitt, 'Der Begriff des Politischen', ed. Emil Lederer, *Archiv für Sozialwissenschaft und Sozialpolitik* 58, no. 10 (1927): 1–33; Carl Schmitt, *Der Begriff des Politischen: Text von 1932 mit einem Vorwort und drei Corollarien* (Berlin: Duncker & Humblot, 1991).

Crisis   Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 1988 [1923]). German edition used: Carl Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, vol. 1 (Berlin: Duncker & Humblot, 2017).

CT   Carl Schmitt, *Constitutional Theory*, ed. and trans. Jeffrey Seitzer (London: Duke University Press, 2008 [1928]). German edition used: Carl Schmitt, *Verfassungslehre* (Berlin: Duncker & Humblot, 2017).

D   Carl Schmitt, *Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class Struggle*, trans. Michael Hoelzl and Graham Ward (Cambridge: Polity Press, 2014 [1921]). German edition used: Carl Schmitt, *Die Diktatur* (Berlin:

Duncker & Humblot, 2015).

DPS	Carl Schmitt, '"Dialogue on New Space" [1958]', in *Dialogues on Power and Space*, ed. Federico Finchelstein and Andreas Kalyvas (Cambridge: Polity Press, 2015), 51–83.
Ex	Carl Schmitt, *Ex Captivitate Salus: Experiences, 1945 - 47*, ed. Andreas Kalyvas and Federico Finchelstein, trans. Matthew Hannah (Cambridge: Polity, 2017 [1950]).
Gloss	Carl Schmitt, *Glossarium: Aufzeichnungen der Jahre 1947 - 1951*, ed. Eberhard Freiherr von Medem (Berlin: Duncker und Humblot, 1991).
H	Carl Schmitt, *Hamlet or Hecuba: The Intrusion of the Time into the Play*, trans. David Pan and Jennifer R. Rust (New York: Telos Press Publishing, 2009 [1956]).
L&L	Carl Schmitt, *Legality and Legitimacy*, trans. Jeffrey Seitzer (London: Duke University Press, 2004 [1932]). German edition used: Carl Schmitt, *Legalität und Legitimität* (Berlin: Duncker & Humblot, 1988).
LST	Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol* (Chicago: University of Chicago Press, 2008).
N	Carl Schmitt, *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum*, trans. G. L. Ulmen (New York: Telos Press Publishing, 2006 [1950]). German edition used: Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Berlin: Duncker & Humblot, 1974).
P&B	Carl Schmitt, *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles 1923-1939* (Hamburg: Hanseatische Verlagsanstalt Hamburg, 1940).
PR	Carl Schmitt, *Political Romanticism*, trans. Guy Oakes (Cambridge, MA: MIT Press, 1988 [1919]). German edition used: Carl Schmitt, *Politische Romantik* (München: Verlag von Duncker & Humblot, 1919).
PT	Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Chicago: University of Chicago Press, 2005 [1922]). German edition used: Carl Schmitt, *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Berlin, Germany: Duncker & Humblot, 2015).
RCPF	Carl Schmitt, *Roman Catholicism and Political Form*, ed. George Schwab and G. L. Ulmen, trans. G. L. Ulmen (London: Greenwood Press, 1996 [1923]). German edition used: Carl Schmitt, *Römischer*

Katholizismus und politische Form (Stuttgart: Klett-Cotta, 2016).

SGN   Carl Schmitt, *Staat, Großraum, Nomos: Arbeiten aus den Jahren 1916-1969*, ed. Günter Maschke (Berlin: Duncker & Humblot, 1995).

SMP   Carl Schmitt, *State, Movement, People: The Triadic Structure of the Political Unity [1933]; The Question of Legality [1950]*, ed. and trans. Simona Draghici (Corvallis: Plutarch Press, 2001). German edition used: Carl Schmitt, *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (Hamburg: Hanseatische Verlagsanstalt, 1933).

T1919-24   Carl Schmitt, *Der schatten Gottes. Introspektionen, Tagebücher und Briefe 1921 bis 1924*, ed. Ernst Hüsmert u. Wolfgang H. Spindler Gerd Giesler (Berlin: Duncker & Humblot, 2014).

T1925-29   Carl Schmitt, *Tagebücher 1925 bis 1929*, ed. Martin Tielke and Gerd Giesler (Berlin: Duncker & Humblot, 2018).

T1930-34   Carl Schmitt, *Tagebücher 1930 bis 1934*, ed. Gerd Giesler Wolfgang Schuller (Berlin: Akademie Verlag, 2010).

VA   Carl Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954: Materialien zu einer Verfassungslehre* (Berlin: Duncker & Humblot, 2003).

V&V   Carl Schmitt, *Volksentscheid und Volksbegehren: Ein Beitrag zur Auslegung der Weimarer Verfassung und zur Lehre von der unmittelbaren Demokratie* (Berlin: Walter de Gruyter & Company, 1927).

Other

NRSV   Michael D. Coogan, Mark Z. Brettler, Carol A Newsom, ed., *The New Oxford Annotated Bible: New Revised Standard Version With the Apocrypha*, Fully Revised Fourth Edition (Oxford: Oxford University Press, 2010).

Introduction: Hobbes, Schmitt, *Auctoritas*, Religion and Law

> ...the gods are not directly responsible for every fissure in the liver or for every song of a bird; since, manifestly, that would not be seemly or proper in a god and furthermore is impossible.[1]

1   The Problem of Authority in Hobbes and Schmitt

In *Leviathan*, Thomas Hobbes writes that '*auctoritas non veritas facit legem*' (authority, not truth makes the law).[2] For Hobbes, it is the authority of the sovereign power (the *summa potestas*) that gives law its legitimacy not its relation to reason and truth. But is there a truth of authority? Is there a logic or science capable of explaining authority and its genesis? Can the mechanisms, techniques and practices that constitute authority be explained without destroying it, as Pascal alleged would be unavoidable.[3] Hobbes' ambition to develop a science or geometry of the 'patterns of human action' suggests that he thought understanding authority, its genesis and its operation would be possible. But moreover that only through such a rational explanation of politics would 'the human race … enjoy such peace that … it seems unlikely that it would ever have to fight again.'[4]

The main problem I've set out to study is that of political authority, its foundation, structure and genesis and, in particular, its relation to or reliance on religion. The Roman etymology connecting authority and *auctoritas* continues to assert an influence on the interpretation of the former, aligning it with concepts such as reputation, dignity or prestige.[5] However, the possibility of distinguishing this

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[1] Cicero, *De divinatione*, trans. W. A. Falconer, Loeb Classical Library 154 (Cambridge, MA: Harvard University Press, 1923), bk I.LXII.118, 351.

[2] *Lev*, 26.[22].

[3] Blaise Pascal, *Pensées and Other Writings* (Oxford: Oxford University Press, 1999), 24.

[4] *DC*, 'Epistle dedicatory', 5.

[5] Karl Galinsky, *Augustan Culture: An Interpretive Introduction* (Princeton: Princeton University Press, 1998), 18.

sense of authority as *auctoritas* from alternatives such as legal power, rational persuasion or coercion remains contested.[6] While the problematic nature of the concept in modern political thought provides the general impetus for this study, the specific foci of the thesis are the treatment of the concept in the works of Thomas Hobbes and Carl Schmitt. In milieux marked by crises of political legitimacy, civil unrest and war, both Hobbes and Schmitt strove to develop new theoretical foundations in support of their conservative visions of the authority of the state. The exhaustion of traditional means of legitimation, such as divine right or romantic ideals of community, demanded innovative alternatives.

Writers preceding Hobbes, such as Jean Bodin, Justus Lipsius or John Selden, largely continued to appeal to Roman law, history, or classical sources for theoretical support.[7] Hobbes breaks with this tradition and attempts to develop a novel form of civil science, influenced by Euclid's geometry, Francis Bacon's visions of science and Hobbes' personal encounters with proponents of a new rationalism such as Galileo, Mersenne, Descartes and Gassendi. Similarly, Schmitt's writings and those of contemporaries such as Max Weber struggle to adjust to the changed political and theoretical circumstances of the early twentieth-century. Conservatives of the nineteenth century such as Benjamin Disraeli or Otto von Bismark had thought that traditional forms of authority could continue to contain the political demands of the emerging democratic mass-politics. However, by the turn of the century the growing strength of political parties rendered such hopes untenable.

Hobbes' works make an ideal focus for a study of authority both because of his canonical status in the history of modern political thought and because his works arguably attempt to produce a unified and systematic theory of politics, religion and law, three domains entangled with the problem of authority. Hobbes' political theory develops across a series of consecutive works each recapitulating and expanding on previous attempts, beginning with the 'Discourse on Tacitus' of 1620 and extending to the posthumously published *Behemoth* written around 1668. Questions of political authority are a central concern throughout this development, thus it provides a

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[6] Leonard Krieger, 'Authority', in *Dictionary of the History of Ideas; Studies of Selected Pivotal Ideas*, ed. P. Wiener (New York: Charles Scribner and Sons, 1968), 141–62; Giorgio Agamben, *The Omnibus Homo Sacer* (Stanford: Stanford University Press, 2017), 240–2.

[7] On the continuous importance of Roman law for European political thought and Jean Bodin in particular see Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford: Oxford University Press, 2016), chap. 5 and 6. On John Selden see Richard Tuck, *Philosophy and Government 1572-1651* (Cambridge: Cambridge University Press, 1993), 208–14.

medium in which the difficulties of elaborating a theory of authority are progressively illustrated. Less studied elements of Hobbes' civil science remain (i) his attempt to articulate a systematic and rational theory of natural religion and (ii) the relations between the covenant, authorisation and religious and educational practices and how (or if) they constitute a unified and effective basis for sovereign power.[8] In part one, I attempt to address these through a close chronological investigation of Hobbes' works, with particular attention to the role Hobbes assigns religion and the intertwining of religion and rationalism in Hobbes' attempts to support the artifice of the commonwealth.

The second focus of my study is the work of Carl Schmitt. I investigate Schmitt's attempts to rearticulate politics, religion and authority amid the political crises of early twentieth-century Europe. The expansion of suffrage and advent of modern mass-democracy in the late nineteenth and early twentieth century transformed political expectations and theory. In these reshaped circumstances, Schmitt asserts a radical dependency between politics, authority and an ethos — 'there is no politics without authority and no authority without an ethos of conviction'.[9] In the reception of Schmitt's political theory, a number of lacunae remain. My work aims to address some of these, by demonstrating (i) the significance of the Roman dictator and the doctrine of divine right for understanding the later works on the *katechon* and *nomos*, and (ii) the importance of acclamation to the structural and causal relations Schmitt asserts between authority and an ethos.

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[8] Although there exists a considerable literature on Hobbes and authority, an account unifying the covenantal, ceremonial, authorisational and educational mechanisms is lacking. See for instance: Richard E. Flathman, *Thomas Hobbes: Skepticism, Individuality, and Chastened Politics* (Lanham: Rowman & Littlefield Publishers, 2002), 95–127; Clifford Orwin, 'On the Sovereign Authorization', *Political Theory* 3, no. 1 (1 February 1975): 26–44; Raia Prokhovnik, 'Hobbes's Artifice as Social Construction', *Hobbes Studies* 18, no. 1 (1 January 2005): 80–4; Maria L. Lukac De Stier, 'Hobbes on Authority - *De Cive* and *Leviathan*: A Comparison', *Hobbes Studies* 10, no. 1 (1 January 1997): 51; Edgar Straehle, 'Thomas Hobbes and the Secularization of Authority', in *The Sources of Secularism: Enlightenment and Beyond*, ed. Anna Tomaszewska and Hasse Hämäläinen (Dordrecht: Springer International Publishing, 2017), 101–20; Jeremy Waldron, 'Hobbes on Public Worship', *Nomos* 48 (2008): 31–53; Marin Terpstra, 'The Political Theology of a *Potestas Indirecta*', *Religion, State and Society* 41, no. 2 (1 June 2013): 133–51; Marcus Schultz-Bergin, 'The Authority Dilemma: Eternal Salvation and Authorization in Hobbes's *Leviathan*', *Hobbes Studies* 29, no. 2 (2016): 148–67; Thomas Holden, 'Hobbes on the Authority of Scripture', *Oxford Studies in Early Modern Philosophy* 8 (2019): 68–95; Michael J. Green, 'Authorization and Political Authority in Hobbes', *Journal of the History of Philosophy* 53, no. 1 (2015): 25–47; David Dyzenhaus, 'Hobbes on the Authority of Law', in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012), 186–209.

[9] *RCPF*, 17. Translation modified.

The contention defended in this thesis is that concrete religious practices are centrally important (if in different ways) to Hobbes' and Schmitt's attempts to reinforce political authority. I argue that the key political practices for Hobbes' are worship and the pedagogical methods of religious education, while for Schmitt they are ecclesiastial modes of office and acts of acclamation.

The thesis is divided into two parts addressing the works of Hobbes and Schmitt respectively. In part one, I argue that authority constitutes a recurrent problem for Hobbes' political theory. I demonstrate that across his works he elaborates a series of supplementary theoretical mechanisms each aiming to address shortcomings in his earlier theorisations. Hobbes' strategy is initially motivated by his recognition of the ineffectiveness of the artificial power [*potestas*] given to the sovereign by the covenant. To address this ineffectiveness, Hobbes introduces a series of additional mechanisms of support: commanded worship, authorisation, a juridical and a pedagogical role for the sovereign. Although the ineffectiveness of the covenantal artifice of the sovereign is often recognised in the secondary literature, there remains no interpretation of Hobbes' account of authority connecting the multi-faceted theoretical supports.[10] One reason for this lacunae in the secondary literature is the persistent neglect of Hobbes' theory of religion. Although there has been a growth of interest in Hobbes' theory of religion, Hobbes' integration of religion and political theory remains ambiguous.[11] By tracing the progressive development of Hobbes' political theory with close attention to his discussion of religion, Christianity, Scripture and the history of the papacy, I identify the importance of

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[10] Literature recognising the ineffectiveness of the covenant includes: David Johnston, *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation* (Princeton: Princeton University Press, 1989), 45. On the difficulties see Richard Tuck, *Hobbes* (Oxford: Oxford University Press, 1989), 68; Deborah Baumgold, *Hobbes's Political Theory* (Cambridge: Cambridge University Press, 1988), 3, 39; Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford: Oxford University Press, 1957), 235; A. P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 2003), 151–53. However, there is also considerable literature that continues to focus on the contract alone as the legitimating source of authority: Richard E. Flathman, 'Hobbes: Premier Theorist of Authority', *Hobbes Studies* 10, no. 1 (1 January 1997): 3–22; Straehle, 'Secularization'; Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford: Oxford University Press, 2005), 11–2; Michael Lobban, 'Thomas Hobbes and the Common Law', in *Hobbes and the Law*, ed. David Dyzenhaus (Cambridge: Cambridge University Press, 2012), 39–67.
[11] This is demonstrated in the antithetical readings of *Leviathan* offered by Leo Strauss and Giorigio Agamben. Leo Strauss, *Hobbes's Critique of Religion and Related Writings* (Chicago: University of Chicago Press, 2011); Agamben, *Omnibus*, 'Stasis: 2 Leviathan and Behemoth', 265–92.

religion for Hobbes' account of authority (and in the process, substantiate Hobbes' critical stance towards Christianity identified by Strauss, Curley and others).[12]

The key to my reading is the radicalised distinction between command (law) and counsel (advice) Hobbes develops in *De Cive* (1642). According to Hobbes, in a genuine command, the particular content of the commanded act remains radically unquestionable. To evaluate the content before compliance transforms a command into counsel. I show that Hobbes generalises this distinction, utilising it for a theory of natural religion (based in rites and practices) rivaling that of Edward Herbert, whose alternative is based in theological doctrine.[13] I argue that with this distinction Hobbes brackets the particular content of religious acts and develops an account of civil or political worship which both demonstrates and cultivates power relations between individuals. In *Leviathan*, Hobbes introduces 'authorisation' but also expands political worship, to include a pedagogical role for the sovereign as 'supreme pastor' or teacher.

Chapter one first situates Hobbes in his intellectual milieu. After a brief discussion of Lipsius' doctrine of reason of state and the Stuart monarchy's attempts to revive the nobility, I turn to Hobbes' theory of the commonwealth. I discuss certain difficulties and inadequacies of the contract constituting the sovereign, before demonstrating that in *De Cive*, Hobbes supplements this artificial-contractual power with a material power [*potentia*] constituted and supported through political worship [*cultus*]. While civil worship introduces a means of cultivating this power, it fails to account for the initial 'seed' of worship. I show that Hobbes' introduction of authorisation in *Leviathan* aims to addresses this issue.

In chapter two, I turn to Hobbes' political use of religion. Focussing on *Leviathan* and the later works, *Behemoth* and *Historia Ecclesiastica*, I argue that Hobbes derives two additional forms of authority from religious sources. From his revisionist interpretation of Judeo-Christian history, Hobbes supports a juridical

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[12] Edwin Curley, '"I Durst Not Write So Boldly" Or, How to Read Hobbes's Theological-Political Treatise', in *Hobbes e Spinoza: scienza e politica: atti del convegno internazionale, Urbino, 14-17 Ott., 1988*, ed. Daniela Bostrenghi (Napoli: Bibliopolis, 1992), 497–593; Strauss, *Hobbes's Critique of Religion and Related Writings*. My reading is largely in agreement with Leo Strauss' recently published manuscript.

[13] Edward Herbert, *The Antient Religion of the Gentiles and Causes of Their Errors Considered-By the Learned and Judicious Edward Ld'Herbert of Cherbury* (London: John Nutt, 1705), 4–5. Edward Herbert's *Tractatus De Veritate* was first published in 1627 but he reworked it repeatedly over the years. Revisions were published in 1645 and 1663. See also Talal Asad, *Genealogies of Religion: Discipline and Reasons of Power in Christianity and Islam* (Baltimore: Johns Hopkins University Press, 1993), 40.

concept of authority resembling Erastus's subordination of the Church to the sovereign as arbiter or judge. However, Hobbes also constructs a second pedagogical form of authority under the name of the 'supreme pastor'. I show that the latter is derived from a general conception of natural religion which draws indiscriminately on pagan, Judaic and Christian practices and traditions as from a general anthropological model of religion. As I demonstrate, the 'supreme pastor' is given a 'divine right' to control the internal beliefs of the subject, whichs conflicts with Hobbes' insistence that sovereign command is limited to the outward performance of obedience. I conclude part one with a discussion of this tension in Hobbes' limits on political influence, followed by some reflections on the significance of the diversity of mechanisms in Hobbes account. These political aspects of *cultus* are under-represented in the secondary literature and my thesis aims to address this gap.

The neglect of the role of *cultus* in Hobbes' work is one aspect of a more general issue in the literature concerning the interpretation of Hobbes on religion and his use of religion in politics. In one tradition, Hobbes is explicitly described as a 'sincere, and relatively orthodox, Christian,' to quote Martinich, or implicitly taken as a devout, if heterodox eschatologically minded millenarian.[14] These are not entirely incompatible with off-hand descriptions of Hobbes as an 'Erastian'.[15] However, an assumption of agnosticism or atheism underlies the more recent depictions of his civil religion as either Epicurean in origin or as representing a 'Judaicization of Christianity'.[16] My thesis instead, takes the influence of Roman polytheistic conceptions of religion as a key influence on Hobbes. In particular, I read Hobbes on religion informed by John Scheid's concept of *orthopraxis* rather

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[14] Martinich, *Two Gods*, 1; John G. A. Pocock, 'Time, History and Eschatology in the Thought of Thomas Hobbes', in *Politics, Language and Time* (Chicago: University of Chicago Press, 1971), 161–3; Matthew Rose, 'Hobbes as Political Theologian', *Political Theology* 14, no. 1 (1 February 2013): 11–9; Agamben, *Omnibus*, 'Stasis: 2 Leviathan and Behemoth', 285.

[15] Baumgold, *HPT*, 72, 167 n.80; John Neville Figgis, *The Divine Right of Kings* (Cambridge: Cambridge University Press, 1914), 293–342.

[16] Ronald Beiner, *Civil Religion: A Dialogue in the History of Political Philosophy* (Cambridge: Cambridge University Press, 2010), 46–60; Patricia Springborg, 'Hobbes and Epicurean Religion', in *Der Garten und die Moderne: Epikureische Moral und Politik vom Humanismus zur Aufklärung*, ed. Gianni Paganini and Edoardo Tortarolo, vol. 151, Problemata (Stuttgart: Frommann-Holzboog, 2004), 170–189; Gianni Paganini, 'Hobbes, Gassendi and the Tradition of Political Epicureanism', *Hobbes Studies* 14, no. 1 (1 January 2001): 10; J. P. Sommerville, *Thomas Hobbes: Political Ideas in Historical Context* (New York: St. Martin's Press, 1992), 39; Richard Tuck, 'The Civil Religion of Thomas Hobbes', in *Political Discourse in Early Modern Britain*, ed. Nicholas Phillipson and Quentin Skinner (Cambridge: Cambridge University Press, 1993), 123–4; Tuck, *Philosophy and Government 1572-1651*, 329–330.

than *orthodoxy*.[17] This is clarified and discussed in detail in the section three 'Religion, Theology and Politics' below. The guiding idea is that Hobbes' conception of 'natural religion' and his use of religion in politics demonstrates an affinity with Cicero's claim that 'religion is the science of divine worship'.[18] That is, a knowledge, skill or expertise in the practices of worship.[19]

In part two, I turn to Carl Schmitt's work. Several reasons justify this juxtaposition of Hobbes and Schmitt. The first is Schmitt's long engagement with Hobbes' political writings, one that stretches across much of his career. Hobbes is a common interlocutor, from early texts such as *Dictatorship* (1921), to the late work *Political Theology II* (1970) and the monograph on Hobbes, *The Leviathan in the State Theory of Thomas Hobbes* (1938). A proximity between the two thinkers on the problem of authority is implied by Schmitt's regular use of Hobbes' remark: *'auctoritas non veritas facit legem'*. Their concern with authority appears to stem from similar political contexts, marred by (civil) war, parliamentary disruption and general unrest. As John Tralau notes 'for Hobbes and Schmitt, the overarching, perhaps overwhelming concern is the problem of war versus order'.[20] However, Schmitt's position on Hobbes' political theory varied over his career, from championing of Hobbes' decisionism in *Political Theology* to diagnosing Hobbes' failure in *Leviathan of the State*. My study of authority is not a systematic comparison or contrast of Hobbes and Schmitt, nonetheless their proximity on authority throws into relief the nuances of their different positions.

My analysis of Schmitt's works is structured by his claim that distinct fundamental principles (monarchical, democratic etc) engender distinct systems of political forms and concepts, including modes of legitimation and authority. On the basis of this assumption, I distinguish between and treat successively Schmitt's

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[17] M. Linder and John Scheid, 'Quand croire c'est faire. Le problème de la croyance dans la Rome ancienne', *Archives de sciences sociales des religions* 38, no. 81 (1993): 47–8.

[18] Cicero, *On the Nature of the Gods*, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1933), bks I.VIII, 116.; Linder and Scheid, 'Quand croire c'est faire.', 47. They cite Cicero's *'Sanctitas autem est scientia colendorum deorum'*.

[19] On Hobbes 'changing conception of civil science', I am guided by Skinner's detailed juxtaposition of Hobbes and classical conceptions of *scientia* of which Cicero is exemplary. At issue in Hobbes' reception of Cicero's *scientia civilis* is the status of eloquence, which was to compliment reason and explanation. Quentin Skinner, *Visions of Politics: Hobbes and Civil Science*, vol. III (Cambridge: Cambridge University Press, 2002), 66–72 (in particular). Charlton T. Lewis and Charles Short, *A Latin Dictionary, by Charlton T. Lewis and Charles Short* (Oxford: Oxford Clarendon Press, 1879). See the entry for 'scientia'.

[20] Johan Tralau, *Thomas Hobbes and Carl Schmitt: The Politics of Order and Myth* (London: Routledge, 2013), 5.

'monarchical writings' (loosely spanning 1917-1923 and 1939-1960), his 'democratic writings' (1923-32) and his 'Nazi writings' (1932-39). According to Schmitt, since each of the political institutions in these periods is based on a distinct political principle the resulting 'structure and content' must also be distinct.[21] Although this is occasionally noted in the secondary literature, it is seldom accorded the significance it would demand if it were true. A distinctive aspect of my study is an attentiveness to this structural partition of his political theory. As a result, I identify three distinct senses of authority in Schmitt's writings: the commissary authority of the monarchical works (chapter three); the acclamative authority of the democratic works (chapter four); and the *Führer*-authority Schmitt sketches in the Nazi works (chapter four).

Any work dealing with Schmitt's political theory requires at least a marginal discussion of Schmitt's conceptualisation of authority. However in English, there is no systematic treatment of Schmitt on authority.[22] Renato Cristi's polemical *Carl Schmitt and Authoritarian Liberalism* includes a chapter on 'Freedom and Authority', but is flawed by its forced and unpersuasive attempt to describe Schmitt as a 'political liberal'.[23] Dyzenhaus' comparative study of Schmitt, Kelsen and Heller on *Legality and Legitimacy* is a valuable resource given the conceptual correlation between legitimacy and authority.[24] Nonetheless, his goal is primarily to defend Heller against Schmitt. Another comparative study, Andreas Kalyvas's *Democracy and the Politics of the Extraordinary*, while a regular point of reference in my chapter four, is only concerned with the democratic authority based on the *pouvoir constituant*.[25] More literary treatments of Schmitt on authority (and representation) focus on his late work *Hamlet or Hecuba* and fail to adequately take account of Schmitt's early text *Dictatorship*.[26] As I argue in chapter three, Schmitt's account, in

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[21] *Crisis*, 30.

[22] One German study on Schmitt and authority is Roger Köppel's 1995 dissertation *Autorität und Mythos: Carl Schmitt und die Wiederverzauberung staatlicher Gewalt (1916-1938)*. I have not been able to obtain a copy of this text, which seems to be available only from the Zürich central library.

[23] Renato Cristi, *Carl Schmitt and Authoritarian Liberalism: Strong State, Free Economy* (Cardiff: University of Wales Press, 1998), 79–95.

[24] David Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar* (Oxford: Oxford University Press, 1997), 38–101.

[25] Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, Hannah Arendt* (Cambridge, UK: Cambridge University Press, 2008), 79–186.

[26] David Pan addresses authority from a literary-aesthetic point of view juxtaposing it with Theodore Adorno's aesthetic theory. David Pan, 'Afterword: Historical Event and Mythic Meaning in Carl Schmitt's *Hamlet or Hecuba*', in *Carl Schmitt's Hamlet or Hecuba*, ed. Carl Schmitt, David Pan, and

this early text, of a historical and theoretical break in the conditions of possibility of the commissary dictator marking the shift to the sovereign dictator is one manifestation of the structural rupture between monarchical authority and its democratic counterpart.

In chapter three, I demonstrate that the monarchical texts are unified by an attempt to preserve a specifically 'commissarial' conception of limited authority as an alternative to the legal-rational alternative offered in Max Weber's depiction of modern bureaucracy. For Schmitt, this is an authority derived from two elements: the force of necessity (the 'power [*Macht*] of the facts') and a presupposed (and essentially transcendent) social order or hierarchy, ostensibly independent of political authority. Schmitt insists that the personal form of office, in which these are combined, is distinct from the mechanistic and procedurally determined alternative of the legal-rational office. I trace the chronological elaboration of this concept of authority through *Dictatorship*, *Political Theology*, *Roman Catholicism and Political Form* and *Nomos of the Earth*. In the process I highlight a number of difficulties and ambiguities in Schmitt's theorisations. One notable corollary is that this chronological account demonstrates conclusively that for Schmitt himself, the concept of the *katechon* represents the safeguard *against* the charge embodied in Dostoevsky's 'Grand Inquisitor'. That is, that the worldly practices of the Catholic Church represent an alliance with the Antichrist.[27]

In chapter four, on the subject of democratic authority, my analysis of Schmitt's texts between 1923-1932 largely confirms the presupposition of a distinct political structure. I argue that Schmitt's concerns with authority are inextricable from this critical position on the supposed abilities or capacities of the collective democratic subject. Substantiating but also expanding on Bockenförde's claim that the friend/enemy distinction is the 'key to understanding' Schmitt's *Constitutional Theory*, I argue that the decision on the friend/enemy constitutes the very capacities

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Jennifer Rust (New York: Telos Press Publishing, 2009), 69–119. Johannes Türk centers on Schmitt's 'theory of rhetoric' and the sense of an *auctoritas* of literature. See Johannes Türk, 'At the Limits of Rhetoric', in *The Oxford Handbook of Carl Schmitt*, ed. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2017), 751–75. See also: Victoria Kahn, 'Hamlet or Hecuba: Carl Schmitt's Decision', *Representations* 83, no. 1 (2003): 67–96.

[27] This is against Prozorov and Palaver who read the *katechon* as equivalent to the Grand Inquisitor. Sergei Prozorov, 'The *katechon* in the Age of Biopolitical Nihilism', *Continental Philosophy Review* 45, no. 4 (1 December 2012): 483–503; Wolfgang Palaver, 'Hobbes and the *Katéchon*: The Secularization of Sacrificial Christianity', *Contagion: Journal of Violence, Mimesis, and Culture* 2, no. 1 (1995): 57–74.

of the collective political entity itself.[28] In addition, I show that the *ability* to make a decision on the friend/enemy, to assent or reject, also forms the operative principle of acclamation, which in the democratic works is the ultimate source of political authority/power [*Gewalt*]. Precisely how acclamation works to produce authority or legitimacy is seldom discussed.[29] While Herrero and Kelly (respectively) assert that it functions as a form of legalisation or consent on the model of a contract, I argue that Schmitt implicitly relies on an energetic/enthusiastic model adopted from Georges Sorel's works.[30] My thesis substantiates and develops Heinrich Meier's brief remark that acclamation is the '*assenting or rejecting* of the assembled multitude'.[31]

On the works of the Nazi period, I argue that Schmitt attempts to construct a third political form, which replaces acclamation with the oath of allegiance, and thereby immanentises aspects of his monarchical works. The works in this period thus represent a partial reversion to an earlier position, and can thus be distinguished from the democratic writings, at least by the resulting political form advocated. I argue that, rather than a 'break' between the democratic and Nazi writings, there is a shift of focus. The general political framework of the democratic works remains intact, but Schmitt takes up and develops a political form, which in *Constitutional Theory*, he had derogated as a degenerate radicalisation of the identity principle.

In outline, in chapter three, I trace the development of Schmitt's conception of 'commissary authority' from its origin in the 'commissary dictator' of *Dictatorship*. I argue that Schmitt repeatedly rearticulates and develops this structure of authority across his monarchical writings through a number of politico-religious figures: the Roman dictator, the military general, the pope, the judge, the Catholic priest, the great orator and the *katechon*. I show that this form of authority is constituted from two elements: the commission or task and an independent social

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[28] Ernst-Wolfgang Böckenförde, 'The Concept of the Political: A Key to Understanding Carl Schmitt's Constitutional Theory', *Canadian Journal of Law & Jurisprudence* 10, no. 1 (January 1997): 10, 15.

[29] Mitchell Dean, 'Three Forms of Democratic Political Acclamation', *Telos* 179 (2017): 9. Although a valuable study, Dean does not give an explicit account of how acclamation provides legitimacy or authority beyond references to a 'model of liturgy' and 'public mood'.

[30] Montserrat Herrero López, 'Acclamations: A Theological-Political Topic in the Crossed Dialogue between Erik Peterson, Ernst H. Kantorowicz and Carl Schmitt', *History of European Ideas* 45, no. 7 (3 October 2019): 1047.

[31] Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy, Expanded Edition* (Chicago: University of Chicago Press, 2011), 142. My Italics.

hierarchy. Rejecting Weber's typology of *Herrschaft* and progressive narrative of the development of bureaucracy, Schmitt develops an alternative based on a personalist concept of the office. This chapter charts Schmitt's strategies and reformulations of 'commissary authority', drawing attention to his use of and parallels with structures and concepts common to traditional divine right doctrine.

In chapter four, I focus on Schmitts works between 1923-1939 and his attempts to theorise a form of democratic authority. I argue that through a revisionist and antiliberal re-interpretation of 'democracy', Schmitt elaborates a concept of authority based on the act of popular acclamation. In his works prior to 1933 this concept is fundamental to Schmitt's adoption of Sieyès' *pouvoir constituant*. I argue that prior to 1933 Schmitt's political theory, utilising a Hegelian Marxist conception of negation and Georges Sorel's vitalism, attempts to reformulate an active alternative to the conservative doctrine of the *Volksgeist*, represented in his 'intensified' concept of the political as a decision on the enemy. However, after 1933 Schmitt discards the acclamatory aspects of this vision of democracy for the *Führerprinzip*, legitimated by the personal oath. I argue that this marks a return to the theoretical structure of his monarchical works (if in an immanentised form). Finally I conclude with a summary account of the dissertation and briefly remarks on the possible significance of the results of my investigation.

The bulk of the study consists of a close investigation of the primary texts, tracing the shifts and changes in structure within the iterations of their political theories, with some references to contemporaneous alternatives for contextualisation. Methodological inspiration has been drawn from multiple sources: the methods of conceptual history developed by Reinhardt Koselleck, partly inspired by Schmitt's own work;[32] the genealogical and archaeological methods of Foucault and Agamben;[33] Heinrich Meier's close readings of each edition of *The Concept of the Political*;[34] and Quentin Skinner and Deborah Baumgold's attention to the shifts between iterations of Hobbes' political theory.[35]

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[32] Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge, MA: MIT Press, 1988).

[33] Giorgio Agamben, *The Signature of All Things: On Method*, trans. Luca D'isanto and Kevin Attell (New York: Zone Books, 2009), chaps 1, 3.

[34] Heinrich Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue* (Chicago: University of Chicago Press, 1995).

[35] Thomas Hobbes, *Three-Text Edition of Thomas Hobbes's Political Theory: The Elements of Law, De Cive and Leviathan*, ed. Deborah Baumgold (Cambridge: Cambridge University Press, 2017).

There is already some work on the subject of 'Hobbes and Schmitt'. Johan Tralau's recent edited volume is perhaps the most substantial simultaneous engagement with Hobbes *and* Schmitt.[36] There are also a few significant essays by Étienne Balibar, Horst Bredekamp, Carlo Altini, John McCormick and others.[37] By focussing on the problem of authority, my study centres on a form of political crisis that both experienced concretely and to which each responded with theoretical inventions. Both Hobbes and Schmitt lived through a cycle of political transformation resembling the classical sequence, *ancien regime* - revolution - restoration, initiated by a crisis in authority. In Hobbes' case, this consisted of a sequence initiated by the instability and weakened authority of King Charles I resulting in Civil War; the establishment of the Protectorate of Oliver Cromwell and the New Model Army; the death of Oliver Cromwell and the restoration of the Stuart monarchy under Charles II. For Schmitt, there is a corresponding sequence running from the instability and failing legitimacy of the democratic Weimar parliament; the 1933 establishment of the Third Riech under Adolf Hitler; and on the death of Hitler the re-establishment (in the West) of a liberal-parliamentary constitution. Both were confronted with the question of accommodation to a regime change they had earlier opposed. Hobbes fled to Paris fearing reprisals from Cromwell for public views supporting the Stuart monarchy. Only to return after he had made a case for the duty to accommodate oneself to the *de facto* holder of power. In parallel, prior to 1933, Schmitt argued vocally that the Nazi party should be banned. After they came to power, he quickly adjusted to accommodate and support the new regime. For both Hobbes and Schmitt, the restoration demanded a second, and perhaps even more difficult, accommodation.

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[36] Tralau, *Thomas Hobbes and Carl Schmitt: The Politics of Order and Myth*, 5.

[37] Étienne Balibar, 'The Mortal God and His Faithful Subjects: Hobbes, Schmitt and the Antinomies of Secularism', in *Balibar and the Citizen Subject*, ed. Hanan Elsayed Warren Montag (Edinburgh: Edinburgh University Press, 2017), 94–108; Étienne Balibar, 'Schmitt's Hobbes, Hobbes's Schmitt', in *Balibar and the Citizen Subject*, ed. Warren Montag (Edinburgh: Edinburgh University Press, 2017), 37–93; Horst Bredekamp, Melissa Thorson Hause, and Jackson Bond, 'From Walter Benjamin to Carl Schmitt, via Thomas Hobbes', *Critical Inquiry* 25, no. 2 (1999): 247–66; Carlo Altini, '"Potentia" as "potestas" An Interpretation of Modern Politics between Thomas Hobbes and Carl Schmitt', *Philosophy & Social Criticism* 36, no. 2 (2010): 231–52; David Dyzenhaus, 'Now the Machine Runs Itself: Carl Schmitt on Hobbes and Kelson', *Cardozo Law Review* 16, no. 1 (1994): 1–19; Kahn, 'Hamlet or Hecuba: Carl Schmitt's Decision', 69–74; Martin Rhonheimer, '*Auctoritas non veritas facit legem*: Thomas Hobbes, Carl Schmitt, and the Idea of the Constitutional State', in *The Common Good of Constitutional Democracy*, ed. William F. Murphy (Washington D.C.: The Catholic University of America Press, 2013), 142–60.

Before turning to Hobbes' and Schmitt's works a few clarifications of concepts central to the thesis are required. Firstly, the concept of authority itself requires some preliminary clarification. Secondly, I need to address the specificity of religion, theology and politics in the works of Hobbes and Schmitt and thirdly, I discuss briefly the meaning of 'law'

2 Authority, *Auctoritas* and Power

Given the central position of authority to my study, some clarification of the history and debate concerning the concept is necessary. The etymological root of authority and its European cognates *autorité* and *Autorität* is the Roman term *auctoritas*. In Republican Rome one referent of the term was the specific power of rule possessed by the senate. While there was no direct equivalent in the Greek lexicon, there are a number of synonymous terms overlapping in different ways such as *kratos* (rule), *basileus* (king), *axíōmai*, *exousíā*, *hēgemṓn*, *kúrios*, *arkhḗ* (origin, command).[38] The Greek term *basileus* (dating from the Homeric and Geometric period of Greek history) may represent one of the earliest conceptions of political authority and shares various aspects with the Roman *auctoritas*, it based on physical and martial power (*kratos*), wisdom at council (*euboulia*) and a reputation for justice (*themis*).[39] Nevertheless, in more recent debate the Roman *auctoritas* is often treated as the original source for the specificity of the concept.

A canonical source on the earliest meanings of the term is Benveniste's research on the prehistory of Indo-European vocabulary. He traces the root of

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[38] Cassius Dio (55.5.5), Balsdon, 'Auctoritas, Dignitas, Otium', *Classical Quarterly* 10, no. 1–2 (May 1960): 43; Hannah Arendt, 'What Is Authority?', in *Between Past and Future* (New York: Viking Press, 1961), 104; Malcolm Schofield, 'Liberty, Equality, and Authority: A Political Discourse in the Later Roman Republic', in *A Companion to Greek Democracy and the Roman Republic*, ed. Dean Hammer, vol. 23 (Chichester: John Wiley & Sons, 2014), 124–5. In discourse on authority, the influence of the ancient Greek lexicon has been more limited. Kojeve and Oakshottt rely on Greek models of the *hegemon* to typify the authority of the leader. Lobban links the Greek term *kurion* to the authority over one's own property and Bodin describes sovereignty in terms of 'the Greeks *akra exousia*, *kurion arche*, and *kurion politeuma*.' Michael Oakeshott, *Lectures in the History of Political Thought* (Luton: Andrews UK Limited, 2011), 66.; Fred D. Miller Jr, 'Aristotle's Philosophy of Law', in *A Treatise of Legal Philosophy and General Jurisprudence: A History of the Philosophy of Law from the Ancient Greeks to the Scholastics;*, ed. Fred D. Miller Jr and Carrie-Ann Biondi (Dordrecht: Springer, 2007), 106, §4.8.3; Jean Bodin, *Bodin: On Sovereignty* (Cambridge: Cambridge University Press, 1992), bk. 1.8, 1.

[39] Vincent Farenga, 'Liberty, Equality, and Authority: A Political Discourse in Greek Participatory Communities', in *A Companion to Greek Democracy and the Roman Republic*, ed. Dean Hammer, vol. 5 (Chichester: John Wiley & Sons, 2014), 103.

auctoritas to *augeo*, a term meaning increase or augment.[40] However, he also connects the term with a range of related concepts: *auctor* (author), *augur* (divine), *augustus* (a title), and *auxilium* (auxiliary) and specifically writes that *auctoritas* belongs to both the 'spheres of politics and religion'.[41] The political use of the term *auctoritas* to mark the specific power of the senate appears to have arisen in the early period of the Roman Republic, in part to distinguish the senate's power from the *imperium* possessed by the kings of the earlier period (the latter term adopted from the Etruscans).[42] As Nippel notes, *auctoritas* had two spheres of use: (i) the *auctoritas patris* and *auctoritas tutoris* referring to the authority of the father or guardian of a minor, and (ii) the *auctoritas patrum* referring to the authority of the senate (the fathers of the city).[43] Nevertheless, as Agamben points out, these are clearly correlated by the reference to a familial origin implied by the *patrum* of the senate.[44]

In discourse on the political significance of *auctoritas*, the dominant conception of the term is derived from the late Republic where it is often distinguished from two alternative senses of power: *potestas* and *potentia*. For instance, in Cicero's *On the Republic*, he articulates the political structure by allocating *auctoritas* to the senate, *potestas* to the magistrates and *potentia* or *libertas* to the people.[45] In addition, a conceptual opposition between *auctoritas* and *potestas* was confirmed with the discovery of new fragments of a Latin copy of Caesar Augustus' *Res Gestae* in the 1920s.[46] The Latin fragments of the *Res Gestae* proved that Augustus considered his political power to be founded on *auctoritas* rather than

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[40] Emile Benveniste, *Indo-European Language and Society*, ed. Trans by Elizabeth Palmer (London: Faber & Faber, 1973), 342–431; Barbara Cassin et al., eds., *Dictionary of Untranslatables: A Philosophical Lexicon* (Princeton: Princeton University Press, 2014), 76.

[41] Benveniste, *Language and Society*, 421.

[42] Fred K. Drogula, *Commanders and Command in the Roman Republic and Early Empire* (Chapel Hill: University of North Carolina Press, 2015), 100.

[43] Wilfried Nippel, *The Roman Notion of Auctoritas* (Rome: Fondazione Adriano Olivetti, 2007), 15–6.

[44] Agamben, *Omnibus*, 232.

[45] Cicero, *De re publica*, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1970), bk. II.XXXII; Balsdon, 'Auctoritas, Dignitas, Otium', 43; Krieger, 'Authority', 143. Oakeshott describes this as an 'equilibrium' of powers, if also 'a situation of immense tension'. However, in Cicero's works *auctoritas* of the senate clearly exercises a superior influence. Oakeshott, *Lectures in the History of Political Thought*, 224.

[46] Augustus, *Res Gestae*, Loeb Classical Library (Cambridge, MA: Harvard University Press, 1924), 400–1, §34.

dignitas, as earlier translations from Greek versions of the text presumed.[47] In Augustus' *Res Gestae* he specifically juxtaposes his *auctoritas* to the *potestas* of the regular office. Referring to his successes in restoring peace and taking control of the republic, Augustus recites a list of the honors offered by the senate and the people, 'in recognition of my valour, my clemency, my justice and my piety. After that time I took precedence over all in *auctoritas*, but of *potestas* I possessed no more than those who were my colleagues in any magistracy.'[48] In the reception of the term, this passage forms a key support for the sense that authority in Rome referred to one's 'social and political standing' and 'impressiveness in character and judgment' rather than any official post which was merely a form of *potestas*.[49] Further, although the debate assumes *dignitas* and *auctoritas* are not equivalent, in Cicero's various writings the terms are clearly closely associated.[50]

The broad legacy of the Roman concept *auctoritas* is a series of conceptual antitheses distinguishing a supposedly 'genuine' sense of authority captured by *auctoritas*, from alternative modes of influence: including rational persuasion (*ratio*), legally or formally determined office (*potestas*) and coercive force or power (*potentia*). However, each of these has been contested in various ways. For example, Cicero's discussion of the *auctoritas* of legal argument invokes an economy of *auctoritas* in the art of persuasion. Authority, persuasiveness, honour and dignity form a kind of nexus in the art of public speaking.[51] The qualities of the individual enhance their effectiveness in persuasion and argument and hence their influence and *auctoritas*.

Preserving the distinction between *auctoritas* and *potestas* was made possible by the distinctive dual juridical context of Roman law. The Romans recognised both a *ius civile*, a set of (positive) legal regulations applying only to Roman citizens and the *ius gentium*, a precursor to theories of natural law/right, which applied to all other

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[47] For details, see R. Heinze, '*Auctoritas*', *Hermes* 60, no. 3 (1925): 348–66. The new fragments also gave precedent to a relationship between the Roman concept *auctoritas* and the Greek *axíōma* (ἀξίωμα).

[48] Augustus, *Res Gestae*, 401, §34.

[49] Schofield, 'Liberty, Equality, and Authority: A Political Discourse in the Later Roman Republic', 124–5.

[50] Balsdon, 'Auctoritas, Dignitas, Otium', 45.

[51] William Carnill Stull, 'The Representation of Authority in Cicero's Dialogues' ((PhD) The University of Chicago, 2002), 52.

peoples and was based on common principles.[52] While *potestas* was native to the *ius civile*, which regulated the civil and religious conduct of citizens, *auctoritas* could stand beyond the *ius civile*, yet, remain within the sphere of *ius gentium*. Thus the authority of the senate could stand outside the legally determined offices of the *ius civile*.

In the juridical contexts of the Middle Ages, this distinction became difficult to maintain. The disappearance of Roman Law and the dominance of customary law in Germanic and Anglo-saxon territories meant they lacked the framework to recognise *auctoritas*.[53] It was often acknowledged that the king possessed *auctoritas* but his authority could not exceed the common law framework. In the early thirteenth century Henry of Bracton's use of *auctoritas* is partly consistent with the Roman tradition, linking *auctoritas* to the roles of tutor and guarantor.[54] However, although he accords *auctoritas* to the king, he insists that the king remains 'bridled' to the common law (essentially civil law).[55] In a similar manner, John of Salisbury writes that 'the authority of the prince [*principet autoritas*]' is determined by the law, which he is obligated to submit to.[56] In addition, in the Church of the Middle Ages, '*auctoritas* and *potestas* came to be used interchangeably.'[57] In the Christian Empire, *auctoritas* ostensibly belonged to the Emperor, and *potestas* to the Pope. Despite this, since the Pope appointed the Emperor, he must also, in some sense act as the source of *auctoritas*.[58]

In the Middle Ages the antithesis of authority and reason was implicitly contested in the very concept of the *auctores*, the idea that texts by classical authors carried a certain weight precisely because their authors were considered 'masters of

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[52] Ellen Meiksins Wood, *Citizens to Lords: A Social History of Western Political Thought from Antiquity to the Late Middle Ages* (London: Verso, 2008), 126–7.

[53] *N*, 61. Schmitt refers to the interchangeable use of *auctoritas* and *potestas* during the *respublica Christiana*.

[54] Henry de Bracton, *On the Laws and Customs of England*, ed. Samuel Edmund Thorne (New Haven: Harvard University Press, 1977), 54, 94.

[55] Bracton, 19, 21.

[56] John of Salisbury, *John of Salisbury: Policraticus* (Cambridge: Cambridge University Press, 1990), 29.

[57] Steven Lukes, 'Power and Authority', in *A History of Sociological Analysis*, ed. Tom Bottomore And (New York: Basic Books, 1978), 644.

[58] Dante Alighieri, *Dante's Monarchia*, ed. Richard Kay (Toronto: Pontifical Institute of Mediaeval Studies, 1998), sec. 3.15.15.

right thinking and of right expression'.[59] Similarly, the authority of philosophy or the Protestant conception of the authority of Scripture is not independent of its content or rationality.[60]

In the modern era, the authority granted by divine right continued to blur together the three terms, *auctoritas*, *potestas* and *ratio*. We find this in Edward Coke's assertion that the common law was the immemorial embodiment of 'natural reason'.[61] But also, in later centuries the opposition between revolutionary politics inspired by Rousseau's 'general will' and counter-revolutionary thought concerned the relation between reason and authority. The counter-revolutionaries insisted on a mystification of the rational element. For instance, in Joseph de Maistre's works the authority of the sovereign comes directly from God. It is absolute within the state, but limited by the unwritten constitution of the nation.[62] It is a divine gift that appears as a 'man invested with an indefinable power: he speaks and makes himself obeyed'.[63] Appealing to Providence, Maistre mystifies authority as an 'infallible instinct' given to the founders of nations.[64] This mystified conception of authority continues to guide conservative thought into the nineteenth century. Donoso Cortés' describes the Catholic Church as a 'sublime, infallible authority' from which is derived all human authority (familial authority and political authority) as well as the criteria of the sciences, affections and human actions. In this respect, 'Catholicity is a complete system of civilisation, so complete that in its immensity it embraces everything'.[65]

However, an alternative debate on authority arises out of the liberal thought of the same period. Mill and Guizot as well as radical leftists such as Mikhail Bakunin and Friedrich Engels attempt to distinguish the legitimate influence of

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[59] Marie-Dominique Chenu, *Towards Understanding St. Thomas* (Chicago: Henry Regnery, 1964), 126.

[60] Rudolf Sohm, *Outlines of Church History*, trans. Miss May Sinclair (London: Macmillan and Co, 1895); Edwin Hatch, *The Organization of the Early Christian Churches* (Oxford, UK: Rivingtons, 1881); Adolf Harnack, *The Constitution and Law of the Church in the First Two Centuries*, ed. H. D. A. Major, trans. F. L. Pogson (London: Williams and Norgate, 1910).

[61] J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: A Study of English Historical Thought in the Seventeenth Century* (Cambridge: Cambridge University Press, 1987), 162–3.

[62] Joseph de Maistre, *The Works of Joseph de Maistre*, ed. Robert Nisbet, trans. Jack Lively (London: George Allen and Unwin Ltd, 1965), 'The Pope', 139.

[63] Joseph de Maistre, *Considerations on France,* ed. Lebrun, (Cambridge: Cambridge University Press, 2003), 51.

[64] Maistre, *Works Maistre*, 102.

[65] Juan Donoso Cortés, *Essays on Catholicism, Liberalism, and Socialism: Considered in Their Fundamental Principles*, trans. Rev William M'Donald (Dublin: MH Gill & Son, 1879), 24.

science from traditional authority.[66] This rational form of authority was implicitly rejected by Roman historian Theodore Mommsen's claim that *auctoritas* referred to an instruction that is 'more than advice and less than command, it is advice that one cannot escape following'.[67] Developing Mommsen's definition, Hannah Arendt suggested that genuinely *political* authority forms a tripartite structure with tradition and religion and develops out of a foundational event. Arendt contrasts the Roman foundation with the philosophical (rational) politics of Ancient Greece: '[w]here arguments are used, authority is left in abeyance'.[68] Instead, Arendt bases political authority on the religious memorialisation of the act of foundation. Due to the influence of Arendt's essay, 'What is Authority?' (1954), the opposition between authority and rational persuasion is often taken as definitive. However, Max Weber's taxonomy of *Herrschaft* into the ideal types, traditional authority, charismatic authority and legal-rational authority, rejects this antithesis, as does Alexandre Kojève's manuscript of 1942 *La notion d'autorité*, (the latter was unpublished until recently).[69] Kojeve introduced a quadripartite analysis linking types of authority with their respective philosophical traditions: master/slave (Hegel), leader/band (Aristotle), judge/judged (Plato) and father/child (Scholastic-Theological). He specifically identifies the authority found in wisdom and knowledge is a genuine form of authority.[70]

More recently, the antithesis between authority and force has become the central point of debate in the later twentieth century. In the Frankfurt School studies of authority, the intertwining of force and authority is implicit in their pathologisation of the 'authoritarian personality'.[71] In this vein, Leonard Krieger's encyclopedia entry on authority also speaks of fluctuations in the term across history as it oscillates between the poles of voluntary compliance and legitimate coercion.[72]

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[66] Mikhail Bakunin, 'God and The State', in *Michael Bakunin: Selected Writings*, ed. Arthur Lehning, trans. Steven Cox and Olive Stevens (London: Jonathan Cape, 1973), 113–135; Friedrich Engels, 'On Authority (Letter of 1872)', in *The Marx-Engels Reader*, ed. Robert C. Tucker (New York: Norton & Company, 1978), 730–34; Max Weber, *The Theory Of Social And Economic Organization*, ed. and trans. Talcott Parsons (Oxford: Oxford University Press, 1947).

[67] Theodor Mommsen, *Römisches Staatsrecht, vol 3,* (Leipzig: S. Hirzel, 1888), 1034.

[68] Arendt, 'Authority', 93.

[69] Alexandre Kojève, *The Notion of Authority* (London: Verso Books, 2014), 1–2.

[70] Kojève, 2.

[71] Theodor W. Adorno et al., *The Authoritarian Personality* (New York: Harper, 1950); Herbert Marcuse, 'A Study on Authority [1936]', in *Studies in Critical Philosophy*, ed. Herbert Marcuse, trans. Joris de Bres (Boston: Beacon Press, 1973), 49–156.

[72] Krieger, 'Authority', 141.

More radically, Michel Foucault attempted to 'dispense with the psycho-sociological notion of authority' altogether.[73] The canonical examples of authority he recoded as relations of power [*pouvoir*]. The concept of authority was displaced by 'disciplinary power', extending from the power of 'parents over children', to the 'administration over the ways people live' and on to 'pastoral power'.[74] Critically developing Foucault, Agamben's recent work also rejects the independence of authority and force, describing instead two concepts held together in a dynamic machinic opposition which maintains their effectiveness.[75] In fact, as I demonstrate in chapter two, Hobbes' work foreshadows aspects of Foucault insofar as he undermines the distinction between authority and power, through an expansive conception of *potentia*, as force, might or ability and associating it with religion and worship.

Despite the difficulties of definitively distinguishing authority from imperatives based on coercion, reason and law, there remains something captivating about the Roman concept *auctoritas*. It seems to resist assimilation to the category of power (as well as reason, or law). Or rather something specific about its operation and the experience of authority is lost in this displacement by 'power relations'. Throughout my research, I have been guided by an intuition that authority remains ineradicable. As Robert Michels, Jo Freeman and others have argued, in 'political' contexts, whether parties, communities or nations, attempts to eliminate authority seem predetermined to fail.[76] If authority is unavoidable, then a scientific understanding of its bases, its modes of operation and its effects appears the most likely way of managing its negative aspects. Can we imagine a *legitimate* form of political authority today? Would this be distinct from the technocratic visions of society that appear to accompany attempts to rationalise politics?

In the twentieth century, liberal visions of politics attempted to displace questions of authority with legalistic models: written constitutions, international agreements and declarations of (universal) human rights. However, wider recognition of the arbitrary nature of particular declarations of rights or political constitutions

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[73] Michel Foucault, *Psychiatric Power: Lectures at the College de France, 1973--1974* (New York: Macmillan, 2008), 40.

[74] Michel Foucault, 'The Subject and Power', in *Power: The Essential Works of Michel Foucault 1954-1984*, ed. James D. Faubion (London: Penguin, 2002), 327–35. 'The Subject and Power'

[75] Agamben, *Omnibus*, 240–2.

[76] Robert Michels, *Political Parties A Sociological Study of the Oligarchical Tendencies of Modern Democracy*, trans. Eden &. Cedar Paul (New York: Hearst's International Library Co., 1915); Jo Freeman, 'The Tyranny of Structurelessness', *Berkeley Journal of Sociology* 17 (1972): 151–64.

and their inadequacy to their universalist aspirations, has resulted in a demand for more participatory models of politics. But, in the interwar period similar demands for participation promoted the rise of authoritarian politics across Europe.[77]

The Roman concept *auctoritas* appears to capture something of the specific social and reputational aspects of authority and their connection with religious ritual and practices. It is for this reason that the Roman concept *auctoritas* frames my research on Hobbes and Schmitt on authority.

3 Religion, Theology and Politics

Throughout its history, theories of political authority are intertwined with religious concepts and themes: from the augury of Rome, to the divine right of the Middle ages and to the fascist 'sacralisation of politics' in the early twentieth century.[78] Before turning to Hobbes' and Schmitt's political theory, this intertwining prompts some clarification of the term 'religion' and its relation to theology and politics. The Roman practices of civil religion are of particular interest for two reasons. Firstly, the etymology connecting *auctoritas* and augury and the importance of practices of divination in supporting the political decisions of the senate in Rome entails an original intertwining of *auctoritas* and practices of 'religion'. Secondly, it is my contention that Hobbes' conception of religion is based partly on a model of polytheistic civil religion derived from classical Roman sources. On this point, Cicero's definition of religion as 'the science of divine worship' could equally describe Hobbes' attempt, in *De Cive*, to provide a rational explanation of civil worship as a form of signification (discussed in detail in chapter one).[79] In fact the formal conception of obedience (simple obedience) that Hobbes develops bears a resemblance to the formalistic rigour required of Roman religious practices. Thus I suggest that a proper interpretation of Hobbes on religion, which has repercussions

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[77] Dylan Riley, *The Civic Foundations of Fascism in Europe: Italy, Spain and Romania 1870-1945* (Baltimore: John Hopkins University Press, 2010), 1–20. Against the consensus that fascism was 'anti-democratic', Riley argues that it was a broad participatory and hence democratic model of politics that promoted the fascist regimes of interwar Europe.

[78] Emilio Gentile, 'Fascism as Political Religion', *Journal of Contemporary History* 25, no. 2 (1 April 1990): 229. The phrase is taken from Gentile and his attempt, inspired by Voegelin, to describe fascism as a 'political religion'.

[79] Cicero, *On the Nature of the Gods*, bk. I.VIII, 116; Linder and Scheid, 'Quand croire c'est faire.', 47.

for understanding his account of political power, requires reversing the cumulative effects of the late seventeenth century theories of 'natural religion' developed by Edward Herbert, James Toland and others.[80]

The primary effect of seventeenth century theories of natural religion was to centre the general anthropological category of religion on doctrine rather than practices such as liturgy, ritual participation and worship. Herbert for instance, focused on identifying 'five undeniable propositions' that were universally accepted by all 'religions'.[81] However, as Talal Asad demonstrates, this focus implicitly took the particular Post-reformation Protestant vision of Christianity (with its emphasis on adherence to scripture, doctrinal fidelity, beliefs and theology) as a model for 'religion' in general.[82] This represented a considerable redefinition of the Roman term *religio*, which in this period often continued to refer to the formulaic and practical aspects of participation rather than 'inner belief'.[83] But also, this ignored the broader range of possible relations to the 'divine' that could perhaps be included under such a category as 'religion', such as the various duties and activities required in polytheistic cultures. The paradox of this redefinition was that the various civil and political practices classed as *religio* in polytheistic Rome, which could include sporting events, theatre, divination, augury, and the distribution of civil offices and tasks, no longer fit under the category of 'religion'.

Hobbes stands on the threshold of this conceptual shift to doctrine. Herbert's works span the period from 1624 to 1648 and Toland's consolidation of this redefinition occurred only after Hobbes' death. As I demonstrate in chapter two, Hobbes appears quite resistant to the shift, derogating theology and the emphasis on doctrine. Instead, he insists that the truth of religion lies in 'keeping of the Feasts and Fasts'.[84] With respect to doctrine, Hobbes was satisfied with the most minimal single proposition, 'Jesus is the Christ'. The term 'Christ' meant 'the anointed', but as

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[80] Asad, *Genealogies*, 41. My return to Herbert and Toland follows Talal Asad's genealogy of the contemporary anthropological category of religion.

[81] Herbert, *The Antient Religion of the Gentiles and Causes of Their Errors Considered-By the Learned and Judicious Edward Ld'Herbert of Cherbury*, 3–4.

[82] Ernst Fell, 'From the Classical *Religio* to the Modern Religion: Elements of Transformation between 1550 and 1650', *Religion dans l'histoire*, no. 13 (1992): 32. Fell traces the first shift in the term 'religion' to Martin Luther's letters, in a citation from Melanchthon.

[83] Fell, 32. In Fell's detailed study of this transformation he writes, 'up to the middle of the sixteenth century' there is 'an astonishingly strong attachment to a classical and Roman concept of *religio*'. In this period he writes *religio* means 'the careful and even fearful fulfillment of all that man owes to God or to the gods', emphasising the 'concrete', formulaic and practical aspects over the inner belief.

[84] *B*, 170.

Hobbes makes clear, alluding to the practice described in the Old Testament by which the kings of the Israelites were anointed, this proposition means only that Jesus was the 'king which God had before promised'. This ostensibly political proposition is 'the only necessary article of faith'.[85] In a similar manner, Cicero reduced doctrine to the basic claim that there exists an 'excellent and eternal Being, who deserves the respect and homage of men'.[86]

The historiography of Roman religion is mirrored in the reception of Hobbes on religion. Established as a distinct field of study in the nineteenth century, the early 'historians of Roman religion had little or no appreciation for polytheism' and treated Roman religion as a deformed monotheism or 'primitive' precursor to Christianity.[87] With its emphasis on formalism, ritual observance, civil duties and external practice, Roman religion was interpreted as dry and prosaic, an empty husk that had degenerated and lost its interiority.[88] However, as Beard and North note, 'many of our familiar categories of thinking about religion and religious experience simply cannot be usefully applied' to Roman religion.[89] For example, Wissowa's classic study of 1902, *Religion und Kultus der Römer*, makes free use of concepts such as 'tolerance', 'divine right ', 'religious feeling', exhibiting no critical awareness of the colouration they impose.[90] The apparently self-evident 'idea of "personal *belief*" … provides a strikingly *in*appropriate model for understanding the religious experience of early Rome.'[91] As a result Roman religion appeared as something rather irreligious and impious. In recent decades, historians employing a broader sense of 'religion' have developed an account of Roman religion as an *orthopraxis* rather than an *orthodoxy*. For Scheid and Linder, for instance, Roman religion is essentially an

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[85] *Lev*, 43.[11].

[86] Cicero, *De divinatione*, bk 2. cf *Lev*, 12.

[87] C. Robert Phillips III, 'Approaching Roman Religion: The Case for *Wissenschaftsgeschichte*', in *A Companion to Roman Religion*, ed. Jörg Rüpke (London: Blackwell, 2007), 23; John Scheid, 'Polytheism Impossible; Or, the Empty Gods: Reasons behind a Void in the History of Roman Religion', *History and Anthropology* 3, no. 1 (1 March 1987): 305–10.

[88] Scheid, 'Polytheism', 307; John Scheid *The Gods, the State, and the Individual: Reflections on Civic Religion in Rome* (Philadelphia: University of Pennsylvania Press, 2016), 10.

[89] Mary Beard, John North, and Simon Price, *Religions of Rome: Volume 1, A History* (Cambridge: Cambridge University Press, 1998), x.

[90] Georg Wissowa, 'The Historical Development of Roman Religion: An Overview', in *Roman Religion*, ed. Clifford Ando (Edinburgh: Edinburgh University Press, 2003), 336, 338, 344, 345.

[91] Beard, North, and Price, *Religions Vol. 1*, x, 48–9. They describe this thesis as a 'projection' onto the Romans of our own 'preconceptions of religiosity'.

obligatory practice directly tied to citizenship and political life of Rome. In addition, it had a distinctively pragmatic aspect by which it was expected to be effective.[92]

The reception of Hobbes on religion exhibits a similar incomprehension. For contemporary readers, Hobbes' minimalist doctrine, his rejection of Protestant enthusiasm and lack of concern for the particular content of doctrine or theology seems to turn Christianity into something irreligious and prosaic. In Ronald Beiner's analysis of Hobbes' civil religion, Hobbes' ambivalence to the Christian experience of religion leads him to describe it as a 'judaicization' of Christianity. [93] Instead, I suggest that the Roman precursors are a better fit. Certainly, Hobbes adopts aspects of Judaic tradition, but his overarching model for 'religion' resembles the Roman integration of religion and politics in the form of cultic participation. Springborg and Paganini have pointed to the influence of Epicureanism on Hobbes' theory of religion, connecting it with his friendship with Pierre Gassendi and the rediscovery of Lucretius' *de rerum natura*.[94] However, it seems likely that Cicero's writings on religion were also a significant influence, given that Hobbes' education and youth was spent immersed in Ancient histories and philosophy. Hobbes specifically refers to a number of Roman practices such as augury and haruspicy in his comments on religion in *Leviathan* and makes criticisms similar to those of Cicero in *De divinatione*.[95] Thus, in my analysis of Hobbes' political use of religion in support of authority, I remain open to a broader sense of 'religion' informed by recent studies on religion in Rome and the judeo-Christian tradition.[96] Hobbes' integration of religious practices in the commonwealth is reminiscent of the intertwining of religion with political and civil concerns in Rome.

While Hobbes' broad conception of religion is not shared by Schmitt, he does assert a similar interrelation between politics and religion. This includes an aspect of

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[92] Linder and Scheid, 'Quand croire c'est faire.', 49.

[93] Beiner, *Civil Religion: A Dialogue in the History of Political Philosophy*, 46–60. Beiner largely ignores Roman religion and as a result describes Hobbes' civil religion as a 'judaicization' of Christianity. While this is at least partly true, Judaism is clearly one of the models Hobbes adopts, the omission of Rome seems a significant oversight.

[94] Springborg, 'Epicurean'; Paganini, 'Hobbes, Gassendi and the Tradition of Political Epicureanism'.

[95] *Lev*, 12.[19].

[96] I rely largely on Mary Beard, John North and Simon Price's two volume *Religions of Rome*, John Scheid's writings on Roman religion as a civic-religion and his conceptualisation of ritual as an *orthopraxis*, as well as commentary from John Rüpke and Clifford Ando. See for instance: Beard, North, and Price, *Religions Vol. 1*; Linder and Scheid, 'Quand croire c'est faire.'; Jörg Rüpke, *The Religion of the Romans* (Cambridge: Polity, 2007); Clifford Ando, 'The Ontology of Religious Institutions', *History of Religions* 50, no. 1 (2010): 54–79.

external performance and rejects the individualist internalisation of religion characteristic of Protestantism. But unlike Hobbes, Schmitt does not reject theology. Rather, he treats theology as a kind of laboratory of institutional forms. The intertwining of religion and politics occurs as 'political theology'. This is discussed in more detail in chapter three, however broadly, Schmitt's conception of religion includes both doctrine and practices (theology and ecclesiology) developed through history and handed down through tradition. It is the workshop in which the general forms and principles of collective human activity are elaborated. Thus religion and politics are historically as well as logically correlated. Rather than subordinating the Church to political purposes, Schmitt demands that Christian goals orient political activity. For Schmitt, the essential character of religion is juridical and ideological. It is not irrational but exhibits a 'specific juridical logic [*juristischer Logik*]', a 'rationalism' that 'morally encompasses the psychological and sociological nature of man.'[97] That is, there is a specific affinity between religion and law and right.

4   Law and *Recht*

As Hobbes' claim that '*auctoritas non veritas facit legem*' implies, at stake in questions of authority is often the foundation of law and legality or, for Schmitt, the distinction between legality and legitimacy. Thus, it is necessary to clarify briefly some of the German legal terminology used by Schmitt. For Schmitt, authority and legitimacy are matters of *Recht* (right, *droit*) rather than *Gesetz* (law, *loi*). In at least a weak sense, the German terms *Recht* and *Gesetz* preserve a distinction between two conceptions of law largely absent in English.[98] In contrast to the term *Gesetz*, which connotes rules and regulations in the sense of positive law (law as an explicitly *posited* product of human activity), the term *Recht*, which corresponds roughly to the Latin *jus*, or French *droit* implies a relationship to what is right, meaning correct or just. *Recht* asserts a proximity to divine law or natural right/law, whereas *Gesetz* admits a certain arbitrariness.[99] This is reflected in German term for justice,

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[97] *RCPF*, 12-3.

[98] Cassin et al., *Untranslatables*, 565–570, entry on 'Lex/Jus'.

[99] The distinction between *Recht* and *Gesetz* is important for understanding Schmitt's work. Thus, where ambiguous, I have included the original German.

Gerechtigkeit. The 'juristische' nature of the Church, refers to its claim to be an administrator of *Recht*, or justice.

Schmitt's insistence on *Recht* stands in contrast with the legal positivism of his contemporary Hans Kelsen, who equated law with a hierarchical system of 'norms' (i.e. rules and procedures, essentially *Gesetze*) resting ultimately on a *Grundnorm*.[100] Hobbes' conception of law as command, determined wholly by the will of the sovereign, the 'legislator in all commonwealths', thus, appears closer to Kelsen than Schmitt.[101] However, Hobbes was aware that such a positive law required support. Although the sovereign is given the 'right' to make law by the contract, this right is undermined by the fragility of 'mere words'. As I demonstrate in part one, throughout his political writings, it is precisely the problem of giving legitimacy, authority or 'effectiveness' to such a right, that Hobbes struggles to solve. A series of theoretical apparatuses — worship, authorisation, pedagogy — are applied in order to bolster the artificial power of the sovereign. This struggle to theorise the legitimacy and authority underlying the law unites the work of Hobbes and Schmitt, and it is to this topic that I turn to now.

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[100] Hans Kelsen, *Pure Theory of Law* (Berkeley: University of California Press, 1967).
[101] *Lev*, 26.[8]-[10].

Part I: Thomas Hobbes

Chapter 1: Worship, *Potentia* and Authorisation

> And at this day, in this part of the world, private duels are and always will be honourable, though unlawful, till such time as there shall be honour ordained for them that refuse, and ignominy for them that make the challenge.[1]

In Hobbes' lifetime the Stuart monarchy of seventeenth-century England was plagued by a crisis of authority.[2] King James' attempts to buttress the doctrine of divine right had been largely unsuccessful and there was a growing political cynicism linked to the reception of works influenced by Botero's *Della ragion di stato*.[3] In this political and intellectual context, Hobbes' political writings pioneered a new systematic theory of the modern state. Across his works we can isolate four distinct apparatuses that support political power: the contract, political worship, authorisation and education. None of these is wholly congruent with the Roman concept of *auctoritas*. In fact, as Luc Foisneau recognised, Hobbes largely displaces the classical concept *auctoritas* by reference to the general category power [*pouvoir*].[4] The reception of Hobbes' political writings remains plagued by debate over the ultimate source of the political authority and legitimacy of the commonwealth. While the dominant interpretations place the most weight on the contract or authorisation, in contrast, I demonstrate, through attentiveness to the role of religion, that both worship and education are of equal if not greater significance for the actual effectiveness (and hence legitimacy) of the artifice of the sovereign, since only they motivate obedience in practice.

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[1] *Lev*, 10.[49].

[2] Malcolm Wanklyn and Frank Jones, *A Military History of the English Civil War: 1642-1649* (London: Routledge, 2014), 3–4.

[3] One centre of such interest was the Essex circle of Robert Devereux to which Hobbes was loosely connected.

[4] Luc Foisneau, 'L'invention du pouvoir', in *Hobbes. La vie inquiète* (Paris: Editions Gallimard, 2016), 68–93.

Hobbes' political works are often divided into three periods.[5] There are the youthful 'humanist' works on rhetoric and his 'Discourse on Tacitus.' A middle period is marked by his reading of Euclid's *Elements* and his attempt to formulate political theory as a new *scientia civilis*. This includes *Elements of Law* and *De Cive*. Finally, a third period includes *Leviathan*, *Behemoth*, and *Historia Ecclesiastica*, in which Hobbes returns to a partial embrace of rhetoric and eloquence as necessary supports for science. This first chapter traces themes of power and legitimation across all three periods. I start with his early interest in Tacitus's Annals and move on to his attempts to formulate a science of politics in *De Cive* and the role of authorisation in *Leviathan*. In chapter two, I focus largely on the third period and Hobbes' use of religion as a model for political pedagogy.

In this chapter, I provide a reconstruction and interpretation of Hobbes' political writings centered on his account of worship in order to demonstrate its importance in the broader structure of power in his account of the modern state. In particular, I argue that Hobbes' political writings are marked by a struggle to articulate the relation between the covenantal-legal *potestas* and the material *potentia* of the sovereign. The dualism between (i) the artifice of legal power, constituted by the covenant and (ii) the natural capacities, strengths and material powers of the commonwealth, is fundamental to the structure of the Hobbesian commonwealth. However, these two aspects must also be united in the sovereign. In the following, I argue that Hobbes makes two attempts to conjoin these spheres. The first occurs in *De Cive*, where Hobbes develops a distinctive account of worship as a mode of signification capable of generating material power. The second is given in *Leviathan*, where worship is supplemented with a theory of authorisation. Through these measures Hobbes reconfigures the Roman tripartite schema *auctoritas*/*potestas*/*potentia* or at least its early modern reception, exemplified in the works Justus Lipsius.[6] In this respect, I argue that Hobbes' works can be interpreted as an attempt to develop a new conception of authority. Against the prominent reading of Hobbes, I claim that this is not an authority arising out of the contract itself, the latter being productive of mere *potestas*.[7] Luc Foisneau is correct that Hobbes' equation '*Potestas sive Authoritas*', in the introduction of the Latin *Leviathan*, 'reflects a desire to

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[5] For details see Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996), 215–437.

[6] On Hobbes and Lipsius see, Skinner, 176–7. On Hobbes' rejection of the Roman conception see Foisneau, 'L'invention', chap. 3.

[7] Straehle's recent commentary is exemplary. Straehle, 'Secularization', 110.

break with the Roman tradition of an essential distinction'.[8] Nevertheless, eradicating *auctoritas* as a distinct concept, Hobbes is forced to extend *potentia* to those 'psycho-sociological' aspects of authority that would much later be vilified by Foucault.[9]

This chapter is divided into four sections. In the first section, in order to contextualise Hobbes' political writings against the intellectual currents and crises of early seventeenth-century England, I provide a brief account of two alternative models of authority: the authority native to the doctrine of reason of state exemplified in Justus Lipsius' *Politica* and the authority of the chivalric ethic of divine right advocated by the Stuart monarchy. In the second section, on the basis of a dualist reading of Hobbes' political theory, I argue that while the contract establishes the artifice of the sovereign *potestas*, it is inadequate as a source of authority. In the third section, I explicate Hobbes' theory of worship, in order to demonstrate its significance to Hobbes' political theory and draw out its parallels with the Roman conception of *auctoritas*. Modelled on a radical distinction between command and counsel, Hobbes attempts to produce a general scientific theory of worship that accounts both for its universal dimension and its capacity to increase material power. However, despite its capacity to magnify and cultivate power, worship requires an initial seed. In the fourth section, I demonstrate that authorisation, introduced only in *Leviathan*, meets these requirements. On the model of theatrical performance, Hobbes depicts the personal artifice of the sovereign as an object of worship and locus of material power. In my concluding remarks, I reflect on the significance of this Hobbesian structure and its relation to the Roman concept of authority and its subsequent forms.

The texts of primary interest to this chapter are: the manuscript *Elements of Law, Natural and Politic*, written in English around 1639; the two editions of *De Cive* (1642 and 1647) written in Latin; the two editions of *Leviathan*, the first published in English in 1651 and the second, a Latin translation produced by Hobbes, published in 1661. The Latin texts offer a means of clarifying the different senses of 'power' used by Hobbes and my analysis is attentive to his particular choice of terms. To avoid excessive use of Latin, I use the term 'material power' in place of *potentia*, a term Hobbes uses to capture a broad range of capacities and faculties extending from physical force to wealth,

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[8] Foisneau, 'L'invention', chap. 3.

[9] Foucault, *Psychiatric*, 40.

reputation and beauty.[10] Where the relevant Latin term would be *potestas* or *imperium*, reflecting the artifice of *potestas* in Hobbes' account, I use 'artificial power'.

1 Chivalry or Deceit: Two Visions of Early Modern Authority

There were two alternative doctrines of authority prevalent in early modern England: reason of state and divine right. The former, which takes its name from Giovanni Botero's *Della Ragion di Stato* and developed out of Niccolò Machiavelli's writings, suggests that in political concerns the preservation and strength of the state should be prioritised over all moral or ethical concerns. The latter, in contrast, bases monarchical authority on a providential gift from God.[11] Emblematic of these two positions are the Roman figures Tacitus and Augustus. The late sixteenth-century interest in the cynical 'court-politics' of Tacitus was typical of theorists of reason of state, while the early Stuart Kings, following a tradition with medieval roots throughout Europe, took up Caesar and Augustus as direct models for their traditionalist projects.[12]

(i) Lipsius' *Auctoritas* and Reason of State

Hobbes' early essay 'A Discourse on the Beginning of Tacitus' was likely inspired by Justus Lipsius's *Politica* and its influence within Hobbes' intellectual circle.[13] In the introduction to his 1629 translation of Thucydides, Hobbes speaks approvingly of Lipsius, who was an influential source on Tacitus.[14] Lipsius' *Politica* had a particular

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[10] *EL*, 8.5.

[11] See Figgis, *Divine Right*.

[12] Paulina Kewes, 'Roman History, Essex, and Late Elizabethan Political Culture', in *The Oxford Handbook of the Age of Shakespeare*, ed. Malcolm Smuts, vol. 1 (Oxford: Oxford University Press, 2016), 251–69; Freyja Cox Jensen, *Reading the Roman Republic in Early Modern England* (Leiden: Brill, 2012); Malcolm Smuts, 'Court Centered Politics and the Uses of Roman Historians', in *Culture and Politics in Early Stuart England*, ed. Kevin Sharpe and Peter Lake (Stanford: Stanford University Press, 1993), 21–44. Anthony Pagden, *Lords of All the World: Ideologies of Empire in Spain, Britain*, vol. 1500 (New Haven: Yale University Press, 1995), chap. 1.

[13] *3D*, xii, xii fn1. Hobbes' authorship of the text is contested, but accepted by many such as Skinner and Tuck.

[14] *EW*, 8, xxxi. See Christopher Brooke, 'Justus Lipsius and the Post-Machiavellian Prince', in *Philosophic Pride: Stoicism and Political Thought From Lipsius to Rousseau*, ed. Christopher Brooke (Princeton: Princeton University Press, 2012), 12.

currency among Robert Devereux's Essex circle, which included Francis Bacon and Ben Jonson, two acquaintances of Hobbes.

In broad terms, Lipsius advocates for a well-ordered monarchy and is concerned with protecting *imperium* and *commercio*, two basic elements of 'civil life in society'.[15] On the relation between *imperium* and law, Lipsius subordinates the prince to the customs and laws of nations [*mos sive lex gentium*], but he notes that the prince submits 'only at his pleasure to the law'.[16] The only limit on the rights [*iure*] of *imperium* possessed by the prince is in matters of religion.[17] Lipsius offers a detailed discussion of three 'ways' [*via*] to authority [*auctoritas*].[18] He defines *auctoritas* as a 'reverent opinion of the king [*rex*] and his government [*statu*] impressed upon his subjects or also on foreigners'.[19] He maintains a strict separation between authority and legal office, treating it as a socially determined reputation, equated with virtue or majesty and threatened as much by contempt as by rebellion. Lipsius treats *auctoritas* as one of a number of virtues (including justice and clemency), which, alongside strength [*vis*], are essential supports to *imperium* and therefore to the peace and stability of a regime.

The three ways to *auctoritas* are character [*forma imperii*], power [*potentia imperii*] and conduct [*moribus imperantis*]. In the first, he includes 'stern character', required to instill fear of punishment, constancy in practices and laws and a small (limited) government apparatus.[20] The second way to *auctoritas* is material power [*potentiam*]. In a phrase with clear echoes in Hobbes' later writings, Lipsius notes that '[i]f everything else is there, but power [*potentia*] isn't, of what use is it? Know that majesty without force [*viribus*] is hardly stable.'[21] Under this category of power [*potentia*], he includes riches, arms, planning, alliances and fortune, foreshadowing Hobbes' use of the category. In the third way, Lipsius includes the reputation and esteem of the people, independent of how it is achieved. That is, deceit is not only permitted but advised where necessary and he offers a tripartite taxonomy of light [*levis*], middle

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[15] Justus Lipsius, *Politica: Six Books of Politics Or Political Instruction*, ed. Jan Waszink (Assen, Netherlands: Uitgeverij Van Gorcum, 2004), bk. 2.1.10, 294–5.

[16] Lipsius, bk. 2.10, 318–9.

[17] Lipsius, bk. 4.2, 386–7.

[18] The term '*potestas*' (legal or artificial power) is almost entirely absent from *Politica*, in stark contrast to Hobbes' later political writings.

[19] Lipsius, bk. 4.9, 424–5.

[20] Lipsius, bk. 4.9, 426–9.

[21] Lipsius, bk. 4.9, 432–3. Compare with Hobbes' comments in *DC 6.13*, that without obedience, from which is derived the material power of the sovereign, the right of the sovereign is 'frustrate'.

[*media*] and grave [*magna*] deceit, defining situations where each is required.[22] In the final category, grave deceit, Lipsius includes *perfidiam* and injustice. The former refers to breach of treaties (i.e. covenants and contracts) and oaths, while the latter refers to acting 'against rights and law' [*contra iura et leges*] in order to further one's own interests. The examples cited include the treacherous elimination of political enemies through secret or deceptive means.[23] For Lipsius, even grave deceit is permissible in circumstances of 'necessity'. In support, he cites Seneca: 'He is not wicked who acts wickedly involuntarily'.[24] Lipsius demonstrates little interest in legal forms of the state; instead, it is only technique, the art of rule, that is important to the sovereign. All deceit, even with malice, can be justified in some circumstances and not just against external enemies but also one's own people. The visibility of the prince demanded the prioritisation of the realm of appearance and reputation: '[t]o be invisible is no more possible for him that it is for the Sun.'[25]

Hobbes explores a number of similar themes in 'A Discourse on the Beginning of Tacitus', a commentary on the first forty lines of Tacitus's *Annales*. The topic furnishes Hobbes with an historical pretext to discuss the complexities of the foundation and reproduction of political authority.[26] Tacitus' introduction offers a condensed narrative of the origins of Rome, its transformation into an empire under Augustus and the problems of succession that plague Augustus's legacy. The central problem of the text is how a government 'which is gotten violently may be afterwards possessed quietly'. Citing Roman consuls Cinna and Sulla, Hobbes notes that it is not merely because their power was attained by 'violence and force' that it was short-lived.[27] Rather Hobbes identifies appearances, such as titles, reputation and honour as key to the maintenance of government power. He includes a range of phenomena: the role of titles and words along with the effects of 'seeming things' [appearances] on the multitude;[28] the choice of titles that would rub subjects' wounds;[29] the hope that nourishes imaginations;[30] the

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[22] Lipsius, bk. 4.14, 512–3.

[23] Lipsius, bk. 4.14, 526–7.

[24] Seneca, *Hercules Oetaeus*, 886.

[25] Lipsius, bk. 2.7, 312–3. citing Sen. Clem. 1.8.4.

[26] Skinner, *Visions*, III:55; Richard Tuck, 'Hobbes and Tacitus', in *Hobbes and History*, ed. G. A. J. Rogers and Tom Sorell (London: Routledge, 2000), 102.

[27] *3D*, 35.

[28] *3D*, 38.

[29] *3D*, 43.

[30] *3D*, 66.

management of men's desires and ambitions through the limitation of what appears possible;[31] the 'shadows' of reputation and honour, the neglect of which can have 'real and substantial damage';[32] but also the control of religion by which the 'yoke' of government is made bearable.[33] These phenomena are subsumed under the category of power 'over their minds and wills', defined in contradistinction to 'power over the bodies of the people'.[34]

The set overlaps significantly with Lipsius' 'ways to *auctoritas*', suggesting that Hobbes considered *auctoritas* a kind of *power* over minds and wills. In contrast to Lipsius, Hobbes offers a much weaker advocacy for deceit, referring only to the need for 'dissimulation'.[35] Hobbes does not endorse outright deceit and injustice, and limits dissimulation to a stoic conception of diplomatic self-mastery. The chief 'Art of government' is the 'ability upon just cause, to contain and dissemble his passions, and purposes.'[36]

Hobbes' hesitation with respect to open deceit and deception may be due to the destabilising effects, evident in the spread of propaganda since the outbreak of the Thirty Year's War, produced by generalising the doctrine of *reason of state* as a model of politics. The Thirty Years' War was accompanied by 'a flood of pamphlets, newsletters, and broadsheets, both informative and polemical', primarily in continental Europe, although England was not immune.[37] The pamphlet propaganda often took the form of 'transparent fictions' of diplomatic documents, factual reports or minutes of secret meetings. Thomas Scott's *Vox Populi: Or, News from Spayne* (1620) presented itself as the minutes of a meeting of the Spanish Council of State setting out their policies toward England.[38] One of the most sophisticated examples of the 1620s propaganda was the trilogy of pamphlets known as the *Altera Secretissima instructio*.[39] Each of the texts interweaves a rich blend of fact and fiction to present a cynical image of the unveiling of an *arcana imperii*. In the 1620s Hobbes completed a partial translation of the third *Altera*

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[31] *3D*, 60, 55.

[32] *3D,* 59.

[33] *3D*, 33, 50.

[34] *3D,* 42.

[35] *3D,* 57, 63.

[36] *3D*, 57.

[37] Noel Malcolm, *Reason of State, Propaganda, and the Thirty Years' War: An Unknown Translation by Thomas Hobbes* (Oxford: Clarendon Press, 2007), 30.

[38] Malcolm, 33.

[39] Malcolm, 34.

Secretissima attesting to his familiarity with the literature.[40] However, Hobbes appears to have rejected this conception of international politics for a *scientia civilis* based on universal precepts and general law that might avoid such 'controversies and dispute'. In the opening epistle of *Elements*, Hobbes identifies his aim to develop, from a foundation of laws of nature, an infallible doctrine of rules to be applied to both international and domestic politics: 'between sovereign and sovereign, or between sovereign and subject'.[41]

(ii) Stuart Chivalry: Charles, Augustus and the Reform of the Nobility

One response to the Tacitist cynicism of reason of state was the Stuart attempt to rejuvenate traditional conceptions of honour among the English nobility.[42] During Hobbes' lifetime the Stuart Kings James I/VI and Charles I both attempted to strengthen the authority of the monarchy through renovation of the traditional mechanisms of monarchical support. This included a patchwork of ideological and practical methods including the reassertion of divine right, appeals to the image of the *imperium* of Roman emperors Caesar and Augustus, Laudian reforms of Church ceremony and reform and policing of titles of the English honours system. Especially contentious were the Stuart attempts to reform the honours system of the nobility, that is, the system of titles, dignities and associated heraldry, privileges, and rules of precedence which governed the gentry.

The crisis of the honours system offers a possible motivation for Hobbes' specific concern with matters of ceremony, worship, status and prestige in *De Cive* and *Leviathan*. The rules of precedence governed seating arrangements at state ceremonial events which constituted one of the only visible manifestations of rank and nobility in English politics. Since the dignities and honours of the nobility flowed from the divine right of the Monarch, the 'fount of honour', the disruptions in ceremonial participation reflected on the divine right of the King.

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[40] Malcolm, chap. 3.

[41] *EL,* 'The Epistle Dedicatory', xvi.

[42] Hobbes' attention to this aspect is evident in his remarks on reputation, honour and dignity, as well as his discussion of duels. See *Lev*, 10.

To facilitate the economic exploitation of the system of nobility, via the sale of titles and honours, the Stuarts had transformed it into a formal system of legally determined titles. In previous centuries the nobility was based largely on informal systems of reputation and 'manner of life', attested by 'common renown and the reports of worthy and noble men'.[43] Its representative forms, such as heraldry, developed into a specialised field of knowledge which were 'often endowed with semi-mystical overtones'.[44] James I, who often modelled his authority on Augustus and hence implicitly on *auctoritas*, disrupted the logic of social reputation through substantial reforms, most notably the introduction of a new title the 'baronetcy'.[45] The extent of sale of offices led to public cries of 'temporal simony'.[46] However, a surprising source of disruption arose in matters of precedence, the internal ranking system between titles which governed the physical placement and presence of individuals (particularly sons and daughters) on ceremonial occasions. That is, it determined the proximity of each individual to royalty and displayed, through a finely graduated spatial system, a material representation of their eminence. It was crucial to the social significance of titles and the primary material manifestation of what had otherwise been reduced to an ephemeral legal award. The disputes prompted some to boycott public events and ceremonies entirely, due to the chance that honour might be slighted by misplacement in the ranking. Edwin Sandys's memorandum of 1614 went so far as to discourage noble families from attending public assemblies on these grounds.[47] The crisis reinforces the sense that connecting legality and legitimacy is often a sphere of public performance or participation. Hobbes' attention to the interpretation of acts of worship and ceremony attests to his recognition of their significance in bridging between the sphere of mere legality and that of effective social legitimacy.

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[43] John P. Cooper, 'Ideas of Gentility in Early Modern England', in *Land, Men and Beliefs Studies in Early-Modern History* (London: The Hambledon Press, 1983), 49; Richard Cust, *Charles I and the Aristocracy, 1625-1642* (Cambridge: Cambridge University Press, 2013), 13; John Selden, *Titles of Honor* (London: Tyler and Holt for Thomas Dring, 1672), b2–3, 'The Preface'.

[44] Cust, *Aristocracy*, 5.

[45] King James VI and I, *Stuart Royal Proclamations: Royal Proclamations of King James I, 1603-1625* (Cambridge: Clarendon Press, 1973), bk. I, no. 152, 16 July 1615; Pagden, *Lords*, 1500:13; Walter Ullmann, 'This Realm of England Is an Empire', *The Journal of Ecclesiastical History* 30, no. 2 (1979): 176–7; Jensen, *Reading the Roman Republic in Early Modern England*, 150; Smuts, 'Court Centered Politics and the Uses of Roman Historians', 13–6, 33–4; Cust, *Aristocracy*, 32–3.

[46] Cust cites Sir Edwin Sandys on use of this term in the *Proceedings of Parliament 1614*. Cust, *Aristocracy*, 33.

[47] Cust, 33.

How does Hobbes respond to these two alternatives? In form and content, Hobbes' *Elements* and *De Cive* break with the Lipsius' *sententiae*. There is a stark contrast between the latter's compilations of the *auctores* and Hobbes' attempts at a science of politics on the model of geometry. Secondly, while Hobbes was dismissive of the doctrine of divine right defended by the Stuarts, his work nonetheless aims to respond to and contain the 'noble revolt' embodied in the English Civil War.[48] In the following I trace his attempts to connect legality and materiality with a demystified and scientific account of two supplements: worship and authorisation.

2   The Artifice of the Contract

In Hobbes' political theory, a number of theoretical mechanisms combine to establish the sovereign power. An important one of these is the agreement or covenant.[49] With the aim of self-preservation and the 'preservation of peace, and security', men, though an agreement with each other, a 'covenant', establish a union to be governed by a 'sovereign power [*summa potestas*]' with various rights, including the rights to legislate and execute law, to punish crime and to declare war. They submit their wills to an individual or group and by agreement obligate themselves not to resist the sovereign.[50] However, as Hobbes admits, such agreements are 'but words' and lack the capacity to effectively produce obedience.[51] Despite the weak sense of obligation produced by an agreement, the dominant, 'contractualist', reading treats the contract alone as constitutive of an effective sovereign power.[52] However, there is an alternative tradition of commentary which rejects the sufficiency of contract and proposes a reading in which 'Hobbes' argument moves simultaneously along two lines, which intersect in his doctrine of sovereignty'.[53] While the foundations of the agreement are ostensibly 'democratic' in the sense that they

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[48] John S. A. Adamson, *The Noble Revolt: The Overthrow of Charles I* (London: Weidenfeld & Nicolson, 2007); Baumgold, *HPT*, 106–7.

[49] *DC*, ch 5; *Lev*, 17-8.

[50] *DC*, 5.3-7.

[51] For instance: *EL*, 15.6; *DC*, 5.4, 5.6; *Lev*, 14.7-8, 14.18, 14.31, 17.2, 18.2, (OL) 47.[29]. See also Quentin Skinner, 'Hobbes and the Purely Artificial Person of the State', *The Journal of Political Philosophy* 7, no. 1 (March 1999): 2–3.

[52] Collins, *The Allegiance of Thomas Hobbes*, 11–12; Straehle, 'Secularization'; Flathman, 'Hobbes: Premier Theorist of Authority'. For a recent reading see Lobban, 'Thomas Hobbes and the Common Law'.

[53] Johnston, *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation*, 45. On the difficulties see Tuck, *Hobbes*, 68; Baumgold, *HPT*, 3, 39; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 235; Martinich, *Two Gods*, 151–53; Koselleck, *Critique*, 32.

arise from the populace and are based on premises of equality and intellectual associations connecting consent, unanimity and right, the second line runs against this aspect of the agreement by appealing to justifications 'from above', a 'divine right' to mould the opinions of the multitude. As Johnston notes, 'Hobbes recognised that the sovereign must have not only the right but also the [material] power, to enforce his decisions'.[54] Contractualist readings do not deny the need for a material power of sovereignty, but its generation is not problematised. It is treated as either a pre-existent given capacity of the sovereign or something magically conjured with the contractual/legal rights of sovereignty. As I demonstrate in the following this difficulty arises from the radical dualism that structures much of Hobbes' political theory: artifice and nature, *potestas* and *potentia*, right and power.

The difficulty for a contractualist reading emerges from Hobbes' conception of law. Contrary to common law theorists such as Edward Coke, who claim the law possesses its own legitimating truth or rationality, Hobbes insists that law was an artifice determined by the command of the sovereign: '*auctoritas non veritas facit legem*' (authority not truth makes law).[55] The contractualist reading of Hobbes depicts consent and the covenant as the solution to the problem of legitimation and authority of the sovereign. The contract is assumed to provide the fundamental legitimation and imperative force to the sovereign. However, this account overlooks the very fragility of the contract. Before turning to worship, I argue that Hobbes understood the artificial power of the sovereign produced by this agreement as inherently fragile, weak and prone to disobedience.

There is no detailed account of the distinction between artifice and nature in Hobbes' works. For Hobbes, artifice and the artificial do not simply refer to man-made objects.[56] Machines and automata are described as having an 'artificial life', in which the heart is replaced by a spring, and the nerves with strings. Nonetheless, Hobbes notes with respect to machines and automata that 'art goes yet further' and describes artifice as an imitation of God, in which man's role is not only to act as artificer, but also take the role

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[54] Johnston, *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation*, 80.

[55] *Lev*, 26; *DCLE*, 2; Daniel Lee, 'Hobbes and the Civil Law: The Use of Roman Law in Hobbes's Civil Science', in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012), 213–5.

[56] Michael Oakeshott, *Hobbes on Civil Association* (Indianapolis: Liberty Fund, 2012), 28; Noel Malcolm, *Aspects of Hobbes* (Oxford: Oxford Clarendon Press, 2002), 228; Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis* (Chicago: University of Chicago Press, 1963), 7–8.

of matter.[57] In the commonwealth, 'equity and laws' embody an 'artificial reason and will'.[58] Against Oakeshott, who takes the human will as identifying the artificial, I claim it is the application of human reason and intelligence that marks the artificial from the natural.[59] In artifice, man works on himself guided by the use of reason; he works on his natural faculties, unifying and systematising, forming it into a systematic, coherent body of content. In the domain of language, ambiguous natural signs are replaced by a systematic unity centered on the sovereign. In law, contested moral rules are formed into a coherent body of written content. In the state, the natural family is systematically structured in a new artificial form: the commonwealth. As Hobbes notes, it is the unity of the 'reason of this our artificial man' which guarantees that 'there cannot easily arise any contradiction in the laws; and when there doth, the same reason is able, by interpretation and alteration, to take it away.'[60] The natural by contrast is that which is given in material reality in its contingent and unsystematic form. Although the artificial is derived from the natural, it is a work performed 'out of nothing by human wit'.[61] A fiction like the Roman law concept of a *persona*.[62] The consequence of the break with nature is that artifice exists only as an intellectual or mental entity. Whether in written or spoken form it depends wholly on reason and human intellect for its existence.[63] Hence, it lacks the solidity of nature.

The distinction between artifice and nature is correlated with that between artificial power [*potestas*] and material power [*potentia*].[64] Throughout *De Cive* and the

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[57] The connection between artifice and imitation of God was also a theme renaissance Stoicism and is present in Lipsius's work. Craig Walton, 'Hobbes on the Natural and the Artificial', in *Hobbes's 'Science of Natural Justice'* (Dordrecht: Springer, 1987), 71.

[58] *Lev*, 'The Introduction', 3.

[59] *DC*, 10.3. Hobbes references Prometheus, equating 'human artifice' with 'human intelligence'.

[60] *Lev*, 26.[11].

[61] *EL*, 2.1.[20].

[62] Skinner, 'Artificial Person', 4.

[63] *DC*, 14.4.

[64] The relationship between *potestas* and *potentia* in Hobbes writings has also been taken as a theme by Kinch Hoekstra, 'The *de Facto* Turn in Hobbes's Political Philosophy', in *Leviathan after 350 Years*, ed. Tom Sorell and Luc Foisneau (Oxford: Oxford University Press, 2004), 33–73; Altini, 'Potentia', 232; Michael Silverthorne, 'Political Terms in the Latin of Thomas Hobbes', *International Journal of the Classical Tradition* 2, no. 4 (1 March 1996): 507; Sandra Field, 'Hobbes and the Question of Power', *Journal of the History of Philosophy* 52, no. 1 (2014): 61–85; Samantha Frost, *Lessons from a Materialist Thinker: Hobbesian Reflections on Ethics and Politics* (Stanford: Stanford University Press, 2008). Generally they insist there is some confusion or ambiguity in Hobbes' use. Hoekstra's essay, which considers Hobbes as a *de facto* theorist of power/authority, disregards entirely the religious and ecclesiastical aspects of Hobbes' works with which I am interested. Field's argument hangs on a questionable interpretation of *DC* 10.16. Samantha Frost's monograph, which rightly centres on the social aspects of Hobbes' theory of *potentia*, neglects entirely the domain of law. Silverthorne offers a useful, but

Latin *Leviathan*, Hobbes systematically associates the legal rights and the contract with the term *potestas*, whereas *potentia* is associated with a broad category of natural faculties. This is an expanded conception of the natural including strength of body, beauty, riches and reputation.[65] For contractualist readings of Hobbes, the dualism of artifice and nature poses a substantial problem that is seldom dealt with robustly. Specifically, how does the contractual agreement produce an effective transfer of natural right? In Hobbes' deflationary redescription of natural rights, he renders them indistinguishable from a *capacity* to use one's faculties: '*Right* is the liberty each man has of using his natural faculties in accordance with right reason'.[66] As Feuerbach recognised in his commentary on Hobbes, such a natural right 'has the same effect as if there were no right at all.'[67] However, the *power* (in that equivocal sense of right and strength) of the sovereign is constituted by the *transfer* of this right (essentially a capacity) to one individual.

Hobbes understood that this transfer was not at all straightforward.[68] In *Elements*, he is careful to note that this transfer cannot *really* occur. He qualifies it: 'it is impossible for any man *really* to transfer his own strength to another'.[69] If the sovereign is to possess a 'real strength,' a material *potentia*, the origin of such strength must be explained. In *De Cive* there is a similar qualification. Hobbes notes that 'no one can *naturally* [*naturali modo*] transfer his power [*potentia*] to another', suggesting it is instead an 'artificial transfer'.[70] It is merely a fiction of a transfer. Was it solved in *Leviathan* by authorisation? In *Leviathan*, the equivalent passage is: 'The only way to erect such a common power [*potentiam*]... is to *confer* all their power [*potentiam*] and strength [*vim*] upon one man, or upon one assembly of men.'[71] The qualification of artificiality has been eliminated. However, it has merely been elided in the terminological shift from 'transfer'

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brief, summary of Hobbes' use of key terms. Altini's analysis is closest to my position. He describes *potestas* as a kind of *potentia* in Hobbes' expanded sense of the term.

[65] In contrast to Altini and Silverthorne, but in agreement with Foisneau I claim there is relatively coherent use of terms *potestas* and *potentia* in Hobbes' Latin texts. See Altini, 'Potentia', 232; Silverthorne, 'Political Terms in the Latin of Thomas Hobbes', 507.

[66] *EL*, 8.5; *DC*, 1.7.

[67] Ludwig Feuerbach, *Geschichte der neuern Philosophie* (Berlin: Holzinger, 2013), §32, 104; Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition* (Chicago: University of Chicago Press, 1993), 48.

[68] As Daniel Lee notes, the correct interpretation of this kind of 'transfer' of right from the people to the ruler was a major point of debate in the Medieval reception of the (largely mythical) Roman Law *lex regia*. Lee, *Popular*, 25, 33–4.

[69] *EL*, 19.10.

[70] *EL*, 19.10, *DC*, 5.11. Quote modified.

[71] *Lev*, 17.[13]. Italics added.

to 'confer'. Coles's early eighteenth-century dictionary lists transfer simply as 'to carry over' suggesting a materialist interpretation, whereas 'confer' is unmistakably connected to the domain of speech, discourse and reason.[72] In *De Cive*, Hobbes describes the process as the formation of a 'union' by which man obligates himself by agreement to submit his will to the will of the other. However, because Hobbes' understanding of the will is largely mechanistic, this act of submission is not straightforward. As Hobbes notes, 'the will itself, it is true, is not voluntary.'[73]

In his elaboration of mental activity, Hobbes describes decision-making or 'deliberation' as an 'alternate succession of appetites, aversions, hopes and fears'.[74] This oscillation, like an apparatus, merely settles on a particular appetite or aversion and this final inclination 'we call the will, the act (not the faculty) of willing.' The 'will' is simply the final dominant inclination, according to Hobbes. In addition, there is nothing specifically human about the will. Beasts also deliberate and thus also have a will.[75] In his debate with Bramhall on liberty and necessity, Hobbes' account of the will was a predominant theme. The root of Hobbes' understanding of the will appears to be his insistence that 'nothing takes beginning from itself.' The 'cause of the will is not the will itself'.[76] As Tuck notes, Hobbes' account of man and the self 'ruled out any orthodox notion of free will: there was nothing that could *be* free and alter an agent's perceptions and actions in the orthodox way.'[77] As a result, the union of individuals by agreement and the subsequent obligation to submit his will remains precariously dependent on the oscillation of appetites. One such appetite may include an inclination toward fidelity to this obligation, but in the moment of deliberation the individual cannot control the aversions, appetites, hopes and fears in oscillation nor which of the alternatives may be settled on. As a result, in a given instance the subject may settle on disobedience rather than obedience.[78]

If the transfer is based on a spoken promise or agreement, then there are two further difficulties. Firstly, Hobbes regularly denigrates such agreements, mere 'words

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[72] On the history of this 'troublesome verb', see Lee, 40–2.

[73] *DC*, 5.6-9.

[74] *Lev*, 6.[49-51]; *L&N*, §27.

[75] *Lev*, 6.[52].

[76] *L&N*, §30.

[77] Tuck, *Hobbes*, 47.

[78] Koselleck, *Critique*, 27.

and promises', as lacking the material force required to ensure fulfillment.[79] But secondly, according to Hobbes' theory of language, in the state of nature one cannot even be sure of what is promised in such agreements. Contrary to the natural theories of language popularised by Gassendi's revival of Epicurean philosophy, Hobbes' disjuncture between the state of nature and political society is correlated with a break between the unsystematic and ambiguous use of signs for communication in nature and an instituted system of 'language' in the commonwealth.[80] The former fails to constitute a 'language' free of ambiguity and hence introduces uncertainty into any promise of agreement to transfer rights.[81] Thus the agreement remains unclear, ambiguous and without significant force of obligation.

Despite this, Hobbes explicitly describes the sovereign as holder and unifier of the covenantal-legal and the sum of material power transferred from the individual subjects:

> For the power [*potentia*] of the citizens is the power [*potentia*] of the commonwealth, that is, his power [*potentia*] who holds the sovereignty [*summum . . . habet imperium*] in the commonwealth.[82]

In the English manuscript, *Elements of Law*, Hobbes takes great care to distinguish between 'power' and 'right' of the sovereign. This pair is then reformulated in the Latin *De Cive* as *potentia* and *potestas*.[83] In *De Cive*, the former category includes virtue, force, knowledge, beauty, friends, and wealth.[84] Additionally, all capacities of ambitious and disruptive individuals, who lack the legitimation of contract, and factions, armies, or external political groups distinct from the contractually recognised sovereign and its subordinate administrators are referred to as material power and never artificial power. Finally, God's powers, traditionally labelled 'omnipotence', are also described as

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[79] For instance: *EL,* 15.6; *DC*, 5.4, 5.6; *Lev*, 14.[7-8], 14.[18], 14.[31], 17.[2], 18.[2], (OL) 47.[29].

[80] Yves Charles Zarka, *Hobbes and Modern Political Thought* (Edinburgh: Edinburgh University Press, 2016), 77–84.

[81] *Lev* 3.[8]; Zarka, 80.

[82] *DC,* 12.2. see Field, 'Hobbes and the Question of Power', 67.

[83] For instance *EL*, I.8.4 explicates 'power' as a category including 'faculties of the body and mind' and 'such farther powers, as by them are acquired (vis.) riches, place of authority, friendship, or favour, and good fortune'. The correlation with *potentia* is suggested both by similarities with chapter X '*Potentia et Actu*' of *De Corpore*, published in 1655 and the consequent note that to the 'contraries of these [powers] are *impotences*, infirmities, or defects'. The antonymic use of 'impotence' determines negatively the entire set of powers as 'potencies' [*potentia*]. The shift to 'right' occurs from *EL,* I.14.6. where it is defined as the 'blameless liberty of using our own natural power and ability' establishing a clear distinction (and relation) between rights and powers.

[84] *DC,* 15.13.

material powers.[85] Instead of the tripartite structure of the Roman categories, *potentia*, *potestas*, and *auctoritas*, Hobbes insists on a duality of material power and artificial power, in which the former is connected to the realm of nature and causality and the latter to the artificial fictions of imagination.[86]

In *De Corpore* of 1655, Hobbes identifies the pair of terms *potentia* [material power] and *actu* [act] with cause and effect, emphasising their synonymity with the physical laws of nature.[87] The material power to produce some effect is equated with the possession, by an agent, of all those accidents which are necessarily requisite to produce the effect. Hobbes continues by relating distinct types of *potentia* to Aristotle's four causes. The distinction between *cause* and *potentia* is merely temporal. A cause refers solely to the past, 'effects already produced', while *potentia* refers to effects produced in the future.[88] Hobbes relates the *potentia agentis* (of the agent or active party) to the 'efficient cause', and the *potentia patientis* (of the patient or passive party) to the 'material cause'. The conjunction of *potentia agentis* and *potentia patientis* is a *potentia plena* (plenary power or full power). Turning to the scholastic problem of the relation between potentiality (as what is possible) and actuality, he denies the existence of a modal difference between the two and considers it only a matter of time, claiming that:

> Every Act therefore which is Possible shall at some time be
> produced; for if it shall never be produced, then those things shall
> never concurre which are requisite for the production of it;
> wherefore that Act is Impossible by the Definition.'[89]

If an act or event possesses *potentia plena*, then it is merely a matter of time until it will occur. Otherwise, it would not in fact have possessed *potentia plena*. Contingency is reduced to an effect of incomplete knowledge. Hobbes writes: 'we call them Contingent because we doe not yet know whether they be true or false.'[90] In his account of worship, discussed below, the necessity of the relation between *potentia* and effect provides the

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[85] *DC,* 15.2, 15.5.

[86] *EL*, I.3.4.

[87] In some cases he appears to connect it only with the weaker conception of antecedent and consequent. On Hobbes and the seventeenth century advent of the concept of 'laws of nature', see A. Bardin, 'Materialism and Right Reason in Hobbes's Political Treatises: A Troubled Foundation for Civil Science', *History of Political Thought* 40, no. 1 (2019): 96–9.

[88] *De Corpore*, 10.1.

[89] *De Corpore*, 10.4.

[90] *De Corpore*, 10.5.

metaphysical basis for Hobbes' claim that worship can generate or magnify material power.

The artificial power, *potestas*, attributed to the sovereign by the agreement, in contrast to material powers, is pure invention. It exists in the sphere of discourse alone. Hobbes writes 'that power [*Potestatem*] without arms and resources gathered in the hand of one person is only a word, of no importance, either for peace or for the defense of the citizens.'[91] Although the sovereign is accorded a series of further powers or rights, including the 'the sword of justice' (the right to police civil law), 'the sword of war' (the right to declare war and form armies) and the right to administer educational and government office, it is important to note that these are also artificial powers.[92] The 'sword of justice' is merely a promise dependent on the mysterious transfer of natural rights for its material power.[93] The civil law and the sovereign right to determine it are entirely artificial. As such, they are subject to a mutability and fragility unlike nature.

There is a peculiar literalism or meticulousness (i.e. an idealism) to the artifice established by the contract, which is captured in Hobbes' remarks on democratic sovereigns and the possibility of sovereign dissolution.[94] Hobbes notes that in order for sovereignty to remain in the hands of the people, it is imperative that the people establish a schedule of regular meetings before disbanding.[95] That is, the necessary, foundational guarantee of democratic sovereignty is a timetable. To treat the artificial sovereign as already possessing the effective power to execute law would be analogous to expecting trains to run on time merely because one has written down a timetable specifying the precise times of departure and arrival. The corollary of constitution by unanimous agreement is that, once established, explicitly in writing or through a vocal declaration of all, the artificial sovereignty exists independently of fluctuations in material support. Discussing the possibility that sovereignty could be 'abolished by simultaneous consent of all subjects', the decisive point is that Hobbes denies the possibility only on the basis of the *unlikeliness* of the event, not in principle.[96] 'By no stretch of the imagination could it ever happen that all the citizens together would unite in conspiracy against the

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[91] *Lev*, 46.[35]; (OL) 47.[29].

[92] *DC,* 6; *Leviathan*, Ch. 18.

[93] *DC*, 5.6.

[94] *DC*, 6.17-20. Daniel Lee describes Hobbes' treatment of 'popular sovereignty' as 'an intelligible and precise, if pedantic, doctrine'. Lee, *Popular*, 312.

[95] *DC*. 6.17.

[96] *DC,* 6.20.

sovereign, without one exception.'[97] That is, Hobbes admits that unanimity would void the previous agreement, dissolving the artificial power of the sovereign.[98] This reflects the idea that this artificial power is part of a timeless, coherent logical system largely divorced from materiality. As a result, artificial sovereignty remains even without effective force. This is exactly what occurs in times of sedition, in which Hobbes admits two sovereigns may co-exist while being unable to exercise effective command.[99] In these examples, Hobbes takes as a model for the legal artifice not merely the idea of a concrete text or written document, but the concept of a coherent body of precepts unified in the sovereign, like the bookkeeper of a great accounting ledger.

Still, there is a puzzle concerning sovereign *potentia*. The ineffectiveness of artificial power haunts chapter six of *De Cive*. A detailed account of the legal rights accorded to the sovereign by contract, the chapter also documents the fundamental lack of material power of the sovereign. Given Hobbes' qualifications of the artificial nature of the transfer, at this stage in Hobbes' exposition, the sovereign possesses only an artificial covenantal-legal right to power. The ambiguity of the English term power obscures this problem. However, in both *De Cive* and *Leviathan*, Hobbes spends considerable effort on the question of material power, independently from artificial power. In fact, Hobbes seems to struggle across the works to explain precisely how the material power of the sovereign, the aggregate of the material powers of the individual subjects, comes to be possessed by the sovereign.[100] Hobbes' difficulty is the obverse of the critique of power in Étienne de La Boétie's *Discourse of Voluntary Servitude*. La Boétie 'unveils' the empty material power of the sovereign.[101] Against the doctrine of divine right which presupposes the innate superior power of the sovereign, La Boétie writes that all his power [*puissance*] is derivative of the people. If the people simply cease to obey, the material power of the sovereign will evaporate.[102] The crucial point is that Hobbes agrees with La Boétie that the material *puissance* is only artificially

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[97] *DC,* 6.20.

[98] As Daniel Lee describes, Robert Filmer also employed the demand for unanimity itself as a criticism of democratic visions of popular sovereignty. Lee, 307–8.

[99] Kahn, 'Hamlet or Hecuba: Carl Schmitt's Decision', 70. I disagree with Victoria Kahn, who obscures Hobbes' distinction between *potentia* and *potestas*, when she contrasts Hobbes and Schmitt on the separability of sovereignty and legitimacy.

[100] *DC*, 13.2, 5.11.

[101] See Skinner, *Visions*, III:121. fn 214.

[102] Étienne de La Boétie, *The Politics of Obedience: The Discourse of Voluntary Servitude* (Auburn: Ludwig von Mises Institute, 2008), 40. Both *puissance* and *potentia* tend to connote a physical capacity or strength.

possessed by the sovereign and remains inherently fragile and is threatened by disobedience. But for Hobbes, *contra* La Boétie, this is precisely why obedience is so important. Here, Hobbes' account of worship and honouring is an important part of his *scientia civilis*, which provides a rational ground for unquestioned obedience.[103]

Reading chapter six of *De Cive* with La Boétie's unveiling in mind, it appears structured as a series of failures in the effective power of the artifice of the sovereign. After each failure a supplementary power is accorded to the sovereign, but it is also merely artifice and Hobbes highlights precisely when its ineffectiveness is demonstrated. In each case, the failure stems from the insufficiency of an agreement to constitute an effective material power. However, the series of supplements never reaches beyond the space of artifice and constitutes an intractable puzzle in Hobbes' account of power.

Indicating the shift to the sphere of discourse or artifice Hobbes opens the chapter with the statement that '[w]e must now see which of the many things proposed, discussed and decided in a group of men...are necessary to peace and common defence.'[104] Hobbes identifies the problem: although 'security is the end' for which the commonwealth is designed, 'security cannot be achieved merely by... making an agreement with others, verbally or in writing, *not to kill, not to steal etc*, and to observe other laws of this kind.'[105] One can establish by agreement an artifice consisting of a set of laws, a written document, for instance. Despite that, insofar as it is only an artifice, these laws, unlike the laws of nature, have no effective force. As an imaginary artifice, one can simply act against the law. Hobbes proposes to augment this artifice of law with 'penalties'.[106] These should be set sufficiently high to constitute a threat. And with penalties must come the 'right of punishment', the 'right of the Sword of justice'. But again this is produced merely by words or agreement and is thus only an artificial power, lacking any material force in itself. Hobbes is aware of this inadequacy since he notes it has one essential flaw: although men 'generally keep this kind of agreement well enough', its effective limit is reached when 'they or those close to them are to be punished'.[107]

The artifice operates only in the space of mental 'recognition' and fails to be authoritative where it conflicts with the particular interests of the subject. It is precisely at this moment that Tuck's question appears most pertinent: 'what can motivate someone in

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[103] *DC*, 14.4.
[104] *DC*, 6.3.
[105] *DC*, 6.4.
[106] *DC*, 6.4.
[107] On the limited force of laws *DC*, 14.18.

the state of nature into being the *first* person to' subject his will to the will of another.[108] There is no police force pre-existing the contract. There are only individuals in the state of nature.

Hobbes supplements this right with the right to 'arm, muster and unite' the people: the 'sword of war'.[109] Only such a right, Hobbes notes, is sufficient 'to punish anyone who disobeys', thus rectifying the inadequacy of the 'right of the sword of justice'. Hobbes implies here that disobedience — refusing to execute the sovereign's commands in accordance with the sword of justice — ejects the subject from the artifice of the commonwealth, returning them to a state of nature and war.[110] The disobedient subject faces the commonwealth as a natural enemy. Hence the sword of war is the remedy.[111] But again, the decisive point is that this right to punish disobedience is only 'recognised' to have been 'transferred' by the agreement between men.[112] It exists only as an artifice, a written or spoken promise.[113] The edifice of agreements continues to grow. Further supplements are applied: the artificial power to judge and the artificial power of execution.[114] This is followed by the right to determine civil laws, the responsibility to promulgate them and the right to appoint ministers and subordinate officials.[115] But this all exists only in discourse. It is a fantasy of proposals and discussion points. In particular, this fantastical construction faces at least one point of resistance, 'fools, madmen or children', who according to Hobbes, lack the capacity of reason.

One expects that Hobbes will introduce some material element [*potentia*]. But instead Hobbes completes the circle with the *right* 'to decide which opinions and doctrines are inimical to peace and to forbid their being taught'. However, the contact itself is an agreement hence determined by one's opinion.[116] Thus Hobbes assigns the sovereign the right to form the opinions that will inspire the multitude to agree to a covenant establishing the sovereign. But in *De Cive* the ground of this right is the covenant itself, introducing a circularity. The entire system of artificial powers [*potestas*]

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[108] Tuck, *Hobbes*, 68.

[109] *DC*, 6.7.

[110] *DC*, 14.20. Hobbes distinguishes between crime and the 'crime of lèse-majesté' in which the citizen: 'renounces the general pact of obedience'.

[111] As Hobbes notes in *Behemoth*, what can force men to obey laws? 'An Army, you'll say. But what shall force the Army?' *B*, 183.

[112] *DC*, 6.7.

[113] *B*, 142.

[114] *DC*, 6.8.

[115] *DC*, 6.9-10.

[116] *DC*, 6.11.

thus lies not on agreement, but opinion.[117] In *Leviathan*, this right to educate the opinions of people is explicitly developed under the heading of the 'supreme pastor' now a divine right. This is discussed in more detail in chapter two. But importantly, it is not just any opinion, but an opinion concerning the causal relations between actions [*doing or not doing*] and their consequences, that is, an opinion concerning material powers [*potentia*]. Thus the effectiveness of the artificial power of the sovereign is purely a matter of opinion. At this point in *De Cive*, Hobbes specifically defines a new concept 'simple obedience' and for the first time in the chapter shifts to the question of the material power [*potentia*] of the sovereign.[118] Hobbes thus recalls La Boétie, for whom the decisive guarantee of the effective material power of the sovereign is not a social contract or agreement, but 'obedience'. Hobbes clarifies this explicitly:

> The obligation to offer it [simple obedience] does not arise directly from the agreement by which we transferred every right to the commonwealth, but indirectly, i.e. from the fact that the right [*ius*] of Government [*Imperium*] would be useless [*frustra*] without obedience, and consequently no commonwealth would have been formed [*constituta*] at all.[119]

The obligation for obedience is thus distinct from the agreement and not simply derived from it. Despite this relative independence it remains decisive for the very constitution of the commonwealth.[120] Silverthorne translates *frustra* as meaningless, but the term could also mean 'without effect, to no purpose, without cause, uselessly, in vain, for nothing'.[121]

Hobbes' previous chapter on the 'causes and generation of a commonwealth' had already pointed in this direction. The chapter ostensibly describes the formation of the commonwealth as a 'union' distinct from a temporary 'association'.[122] The commonwealth is constituted when each individual of an assembly 'obligates himself, by agreement with each of the rest, not to resist the will' of the sovereign. But again the problem is that the will is not under our voluntary control.[123] In the passage, Hobbes

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[117] On the correlation of conscience and religious war, Koselleck, *Critique*, 26, 29 fn.27.
[118] *DC*, 6.13.
[119] *DC*, 6.13.
[120] *DC*, 13.12.
[121] T. Lewis and Short, *A Latin Dictionary, by Charlton T. Lewis and Charles Short*, entry 'frustrā'.
[122] *DC*, 5.7.
[123] *DC*, 5.8.

abruptly breaks with the logic of agreement and unanimity of the foregoing and remarks mid-paragraph:

> Nevertheless *a man* [singular] who subjects his *will to the will* of another transfers to that other the *Right* [*Ius*] *to his strength and resources*, so that when others have done the same, the recipient of their submissions may be able to use the fear they inspire to *bring* [possit conformare] the wills of individuals to unity and concord.[124]

A number of points within this passage merit attention. Firstly, there is no mention of obligation or agreement; the union is effected purely through the combined force of a few individuals. Secondly, Hobbes states that it is now a matter of '*bringing* the wills of individuals to unity and concord'. This is surprising, as it is usually the agreement that is accorded that capacity. Finally, only here is the aspect of fear, which mere agreements lack, added to the sovereign. But throughout, the text is haunted by its inability to answer the question 'why obey?'

In summary, the Hobbesian sovereign consists of two aspects: (i) a fantastical edifice of agreed rights and artificial powers lacking any effective material basis except that provided by opinion, and (ii) an aggregate material power produced through 'simple obedience', a term, I will show, Hobbes connect directly with worship.[125]

3   Worship and *Potentia*

In assessments of the causes of the English Civil War, it is common to cite the collapse of king Charle's 'authority'.[126] But what precisely collapsed? For Hobbes, the formal pedantry and idealism of the artifice of sovereignty suggests it should persist independently of the sovereign's actual support. Only a second unanimous decision by the population could formally dissolve the right, the *potestas*, established by agreement. Thus any breakdown of sovereignty in this period must refer to something else. That is, for Hobbes, the crisis was not a matter of 'right' but of a weakening of material support from the nobility. This was most evident in the Bishops' war but also in their non-

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[124] *DC*, 5.8, and ch. 15.

[125] In *HE*, returning to the question of the origin of the state, Hobbes shows little concern with the contract itself, but refers to the 'many small men united' such that 'with all their resources, [they could] conserve peace and maintain justice at home'. This is the source of the material power [*vires*] of the king and 'leisure for the people'. *HE*, lines 110-20.

[126] Conrad Russell, *The Causes of the English Civil War* (Oxford: Oxford Clarendon Press, 1990), 6–7.

participation in state ceremony due to the controversies of precedence. It is notable then that Hobbes is particularly concerned with questions of obedience in the latter context.[127] Further, as I demonstrate in the following, he approaches obedience through a radical formulation of the distinction between command and counsel.[128]

In *De Cive*, Hobbes defines command by radicalising unquestioned obedience. A command is an imperative obeyed entirely without reference to its particular content.[129] Although irreconcilable with the fundamental right to self-preservation, in *De Cive*, Hobbes overlooks this difficulty and insists that a command is obeyed simply because it is spoken by one who can command. Instead of the content, Hobbes identifies commands by the relations of material power [*potentia*] between the participants. The obvious precedent is God's unfathomable commands to Job. Referring to Job, Hobbes writes '[p]ower irresistible justifies all actions, really and properly in whomsoever it be found.' The God of Job is taken as a model for the sovereign's relation to law. The originary ground for the good, or right and wrong, is not beyond God, but instead is God's omnipotent power itself.[130] Counsel, by contrast, is defined by reference to the particular content, judged by the performer to be expedient. To consider the content of an instruction before participation is to reduce a command to advice or counsel. This account is specific to *De* Cive. In later works, including *Leviathan*, Hobbes eschews this criterion for one based on an analysis of 'interests' a concept developed in the reason of state doctrine.[131]

The distinction between command and counsel was not in itself unusual. Suarez, Grotius or Bodin all make a similar distinction. However, Hobbes' treatment in *De Cive* utilises a specific formalism absent from other works. Suarez's *De Legibus* emphasises moral questions of command, and the 'act of judgement' by the lawgiver, which ensures their rational and prudent nature.[132] Whereas Bodin, who comes closest to Hobbes and may have influenced *De Cive*, writes of a 'great difference between counsel and

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[127] *DC*, 15.12.

[128] In a summary review of existing literature, I note that Martinich, Warrender and Philip Pettit Focus on the account in *Leviathan*: Martinich, *Two Gods*, 128–32; Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation*, 203–4; Philip Pettit, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton: Princeton University Press, 2009), 129–30. In contrast, Lee recognises the significance of Hobbes' criteria and describes it as a polemic against Roman law and common law jurists: Lee, 'Hobbes and Civil Law', 213.

[129] See also Koselleck, *Critique*, 33.

[130] On Job see *L&N*, §12; *Lev*, 31.[6].

[131] Malcolm, *Reason*, 94.

[132] Francisco Suárez, 'A Treatise on Laws and God the Lawgiver', in *Selections from Three Works of Francisco Suárez*, ed. Thomas Pink (Oxford: Clarendon Press, 1944), bk. I. 4. 1–6.

command'.[133] He emphasises the power [*puissance*] of the sovereign, yet he does not entirely ignore the particular content blurring the distinction by connecting law and counsel. 'The prince should be guided by the advice of his council in small matters as well as great. Nothing gives more authority to the laws or to the commands of the prince, the people, or the ruling class as the case may be, than the knowledge that they proceed from good counsel.'[134]

Hobbes, by contrast, writes that 'advice is an *instruction or precept* [*praeceptum*] in which the reason for following it is drawn from the matter itself. But a command is an instruction in which the reason for following it is drawn from *the will of the instructor*….' and 'the instructions of all powerful people [*potentiam*] to those who are unable to offer resistance' are to be obeyed.[135] The relations of power between the participants and not the content, define the command. If a subject judges the content, they thereby mistake the command for advice. He returns to this criterion at various points in *De Cive*, for instance, of God's command to Adam and Eve to eschew the fruit of the tree of knowledge of good and evil, that 'God required utterly simple obedience to his precepts' since there was nothing in the 'nature' of the act by which it 'could be morally *bad*, i.e. a *sin*.'[136]

Arguably, the changes made in *Leviathan* result from Hobbes' recognition that radically unquestioned obedience conflicts with the motive of self-preservation, foundational for the constitution of the commonwealth.[137] The limit point of Hobbes' formal conception of unquestioned command is thus the command of self-destruction (suicide). As Sreedhar notes, 'Hobbes is quite clear that the right of self-defense entails the right to private judgment of deadly threats'.[138] However, such a judgement is specifically precluded in Hobbes' account of command, thus demonstrating a fundamental incoherence in his system.[139] In *De Cive*, Hobbes actually does discuss this issue with respect to contracts. Where life and death are at stake, we cannot be 'obligated

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[133] Jean Bodin, *Six Books of the Commonwealth (Abridged by M.J. Tooley)*, trans. M. J. Tooley (Oxford: Basil Blackwood, 1967), bk. VI. 4, 198.
[134] Bodin, 78.
[135] *DC*, 14.1.
[136] *DC,* 16.2.
[137] *DC*, 1.7.
[138] Susanne Sreedhar, *Hobbes on Resistance: Defying the Leviathan* (Cambridge: Cambridge University Press, 2010), 85.
[139] Similar structural conflicts occur when the subject is ordered to kill the sovereign. See *DC*, 6.13.

to the impossible'.[140] The breakdown arises from a particular content, an exception, that escapes and disrupts the formal system supposed to contain it. In fact, even in Hobbes' definition of simple obedience, he offers a weakened definition, obedience that 'may sometimes rightly be refused for various reasons'.[141] However, despite this weakened position, as demonstrated in the following, this formalist model underlies Hobbes' account of worship and ceremony. [142]

In chapter fifteen of *De Cive,* 'The Kingdom of God by Nature', Hobbes utilises the command/counsel distinction to isolate a formally determined domain of worship that 'signifies' independently from its particular content.[143] Hobbes brackets the propositional content of doctrine and focuses on the performance of religious acts.[144] To overcome the cultural variation implied by the variety of religions, he identifies a formal register of signification embodied in ritual performance. In this register the structural relations of material power [*potentia*] are signified in acts of worship. Hobbes notes that any action (or speech) can signify in two distinct registers. In a semantic register, actions signify according to the culturally mediated content of the act. For instance, in prayer, the words relay a particular content, a set of desires, concerns or wishes, according to the particular language in which they are spoken and the local customs determining the horizons of those concerns. But in a second register, actions signify independently of their particular content. By merely engaging in prayer as such, I signify in a general manner my recognition of God and of God's omnipotence. Zarka describes this second register as 'semiological' because in it the 'effects of a man's power [*puissance*]' (material power) are treated as a problem of 'signs' rather than a 'physics'. [145] However, given the connection between *potentia* and cause and effect, for Hobbes, understanding the operation of worship in terms of a *physics* or natural science of signs seems quite reasonable. The act of prayer can thus be divided into two distinct components. The first component, like counsel, relies on the specific content of prayer and operates in the semantic register, mediated by a particular culture and language. The second, like obedience to command, rests on the general act of prayer as such and operates according to a natural law of signs. It demonstrates recognition of the relations of material power

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[140] *DC*, 2.18.

[141] *DC*, 6.13.

[142] *DC*, 1.7.

[143] *DC,* 15. cf. Edward Herbert's 'natural religion' discussed in my introduction.

[144] Cicero, *On the Nature of the Gods,* bks I.VIII, 116.; Linder and Scheid, 'Quand croire c'est faire.', 47.

[145] Zarka, *Hobbes*, 72.

and natural causes. An act of unquestioned obedience, thus, signifies in the second register of 'natural signs', in a manner indifferent to the particular details of the act.

The attention to cultural variation can be partly explained by a growing confrontation with cultural difference, exemplified by Montaigne's essay on cannibals published in 1590.[146] It is likely that Hobbes became familiar with Montaigne's writings in the 1640s in Paris.[147] Hobbes is clearly aware of the broad variations in practices. He remarks that there are 'terms and actions which for some people imply honour, for others insult, for others neither'.[148] He cites examples including 'bearing the head in greeting', 'killing a personal enemy' or 'standard forms of ceremonies' as signs which, depending on the 'custom of a place' or the 'rules of the civil laws', may be held 'in honour by some and contempt' by others. Language and speech, which signify only by convention, are included in this category.[149] To produce a science of politics based on universal precepts requires bracketing particular national or cultural practices.[150] The second register of signs based in nature and modelled on laws of nature offers such a universal domain. In this register 'actions' and 'words', insofar as they signify the recognition of material power, are universal and of these '[t]he commonwealth can make no changes'.[151]

Hobbes identifies a broad set of 'actions' which are 'signs of a person's mind and signify universally' and in which the relationship to material power is decisive. Hobbes includes the following: prayers, as signs of hope, are an acknowledgement of material power [*potentia*] preceding the benefit;[152] thanksgiving, as an acknowledgement of the past benefit of material power [*potentia*]; gifts, sacrifices and offerings, which are the actions of thanks; swearing by God when taking an oath — since the oath is only necessary due to the inexistence of an omnipotent power on earth; addressing God with appropriate thoughtfulness (i.e. with a disposition of fear towards his power); worship, which must be publicly performed; and obedience to the natural laws (laws of nature), which are referred to as 'the government of God'. Hobbes refers to a 'second kind of

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[146] Michel de Montaigne, *Essays* (London: Penguin, 1958), 105–119.

[147] Skinner, *Visions*, III:121.

[148] *DC*, 15.11.

[149] *AW*, 343, Fol. 396. Hobbes suggestively notes 'that propositions are a *kind* of language by which we express our conception of the natures of things'. This suggests that Hobbes has in mind there is another kind of language that is not propositional.

[150] *DC*, 'Epistle Dedicatory'.

[151] *DC*, 15.16.

[152] *DC*, 15.15.

obligation' arising from reason and our 'awareness of one's own weakness' to offer *obedience* to all those more powerful.[153]

Utilising the command-counsel schema, Hobbes distinguishes between 'commanded' worship and 'spontaneous' worship. He notes that with respect to commanded worship 'honour is implied not by the actions *as such*', i.e. not through mediation of the content or meaning of the act that is commanded, but rather 'what they signify directly is *obedience*'.[154] The criterion distinguishing commanded worship is the relation between the subject and the object of worship, whereas in the case of spontaneous worship, worship 'gives honour by the nature of the actions alone' and is mediated by the interpretation of the actions by onlookers. This distinction allows Hobbes to classify the first as *natural worship* determined by the laws of nature and which thus 'implies honour at all times and places' insofar as it is commanded. Spontaneous worship, in contrast, since it is mediated by interpretation, 'follows local custom' and 'can be said to be *Arbitrary*'.[155] An act of commanded worship then consists of a *natural sign* (the obedience itself) which relates to the material power and a *conventional sign* (the particularity of the act) which is an artifice. Spontaneous worship on the other hand is purely *conventional*.[156] The 'infinite number of actions' not included in the register of natural worship (prayer, gift giving, magnifying, obedience and so on) are indifferent in themselves with respect to honour and insult and so can be freely adopted by convention as particular practices.

Turning to theology, Hobbes again brackets national conventions and defines a minimal universal doctrine which eliminates, as far as possible, the effects of language. Hobbes identifies the following attributes assigned by 'natural reason' to God:[157] that God exists; that by the 'name of God is meant the *cause of the world*';[158] that God is active in the government of the world; that attributes assigned to God must signify things infinite and indeterminate rather than finite and determinate.[159] (While this would appear to relate to the content of the utterance, Hobbes specifically insists that 'when we say that something is *infinite*, we are not signifying anything in reality but an incapacity of our

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[153] *DC*, 15.7.
[154] *DC*, 15.12.
[155] *EL*, 11.12 and *DC*, 15.11.
[156] *DC*, 15.16.
[157] *DC*, 15.14.
[158] *DC*, 15.14.
[159] *Lev*, 3.[12]. 'When we say anything is infinite, we signify only...our own inability'

own minds');[160] and finally that attributes of happiness, hope, desire, and so on, when assigned to God are re-coded as signifying aspects of the material power relations between individuals and God. Similar ideas are reiterated in *Anti-White,* where Hobbes claims 'that no proposition about the nature of God can be true save this one: God exists'.[161] Our descriptions of God function as oblations rather than propositions.[162] Our utterances concerning God are not claims of 'philosophical truth' because they cannot express the nature of things since God is 'unfathomable'. Instead, these utterances reflect the 'states of mind that *govern* our wish to praise, magnify and honour God.'[163]

This line of argument is only fully developed and systematised in *De Cive*. There are suggestive passages in the earlier text, *Elements*.[164] Nonetheless, in general terms, in the earlier text, the treatment of ecclesiastical practices and the role of the Church accepts the logic of apostolic succession and the prospect of interdenominational conflict is downplayed.[165]

There are parallels between Hobbes' account of worship and the position of the Anglican conformists on the question of *adiaphora* (matters indifferent to salvation).[166] However, the argumentatives strategies offered by the orthodox conformists such as Samuel Hoad differed from Hobbes' attempt to develop a scientific and systematic explanation for the mechanics of worship based on laws of nature. While their resulting conclusions were similar (i.e. that particular rites should be determined by national Churches and that concord and uniformity were decisive), Hoard based his position on the premise that *de facto* variation in practices itself was proof of their indifference in the eyes of God and references to Biblical scripture.[167] In addition, he noted that in certain times and places 'necessity' may require the subordination of circumstantial rites to the broader Christian goal: the preservation of Christianity. Hoard hints at a form-content distinction in his reference to rituals of a 'middle nature' which are 'neither pleasing nor displeasing to God: yet *sub mandato*, as they are by lawful authority enjoined, they

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[160] *DC*, 15.14.

[161] *AW*, 434, Fol. 396-7.

[162] *AW*, 434, Fol. 396-7.

[163] *AW*, 434, Fol. 396-7.

[164] *EL*, 11.12.

[165] *EL*, 11.9.

[166] Peter Lake, 'The Laudians and the Argument from Authority', in *Court, Country, and Culture: Essays on Early Modern British History in Honor of Perez Zagorin*, ed. Bonnelyn Young Kunze and Dwight D. Brautigam (Rochester: University of Rochester press, 1992), 150.

[167] Samuel Hoard, *The Churches Authority Asserted: In a Sermon* (London: John Clark, 1637), 25–7.

become necessary, and *attingunt conscientiam*, lay an obligation of obedience on the conscience'.[168] That is, for Hoard a command can transform a rite from unnecessary to necessary. However, for Hoard, it is the artificial power of legal authority of the office that produces the transformation.[169] Whereas for Hobbes, it is the material power supporting the command that is key.

The act of worship also has the capacity to increase or magnify the material power of the one worshipped, according to Hobbes. In addition to signifying recognition, he adds that:

> Now since men believe that a man is powerful [*potente haberi*]
> when they see him honoured, i.e. regarded as powerful [*potentiam*],
> it comes about that honour is enlarged by worship [*cultu propagari*]
> and real power [*potentiam veram*] accrues from a reputation for
> power.[170]

Obedience, as a form of honouring or worship, signifies one's recognition of the material power [*potentia*] of another, but when obedience is observed by others, the effect is an increase in the estimation of the material power of the commander, making others more likely to obey. The result of this mechanism, as Hobbes notes, is 'true power'. Hobbes plays on the synonymity between *cultus* (worship) and *colendus* (cultivation), theorising worship around a model of agriculture.[171] The reference to *cultu propagari*, suggests worship is itself like the propagation of plants and crops, and emphasises that it is based on an interplay of natural laws and conscious human activity or labour. This connection is further developed in additions to *Leviathan*. Hobbes adds that '*cultus* signifieth properly and constantly that labour which a man bestows on anything with a purpose to make benefit by it.'[172]

The basis of Hobbes' analogy between honour and cultivation is the reconceptualisation of honour as a social and structural effect instead of an innate quality. Hobbes notes that '[h]onour is not in the person honoured'; since it is merely an opinion regarding the person, honour resides 'in the person who honours'.[173] The rejection of the

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[168] Hoard, 56.

[169] Hoard, 61.

[170] *DC*, 15.13.

[171] *DC*, 15.9, 15.13.

[172] *Lev*, 31.[8]. Much of the argument made in *De Cive* chapter fifteen is reiterated with only slight changes and additions in *Leviathan*.

[173] *DC*, 15.9.

innate for a social ontology is even more explicit in *Leviathan*. For instance, Hobbes defines the 'value or worth of a man' as a 'thing dependent on the need and judgement of another'.[174] Honour, dignity, value, and worth are all treated as inextricable from the esteem of others on which they are based. His treatment of material power as a strictly relative or comparative quality facilitates its determination by social consensus.[175] Hobbes notes that since 'equal powers destroy one another', the only true power is an 'excess' of power.[176] Recoding concepts such as 'worth', 'value' and 'honour' as social forms countered the mystified hypostasised forms engendered in the 'bloodline' of the nobility.[177] It was also key to Hobbes' scientific account of how honouring behaviour such as placating the powerful through service as well as commanded worship (*cultus*) could 'propagate' material power by analogy with cultivation.[178] Relativising a concept such as material power through recoding it as differential quality gives it an unusual ambiguity. In the case of power, in particular, the difference between two powers can only be registered in their actualised forms. The effectiveness of power is equivocally the effect and measure (or sign) of the power itself. If power is relative, it only exists when it is exercised, or at least appears exercised.

In *Elements*, Hobbes noted that even our knowledge of our own power is mediated by its apparent effectiveness.[179] The 'signs by which we know our power' are the same as the actions which arise from power. Similarly, with respect to social recognition, Hobbes notes that 'the signs by which other men know it, are such actions, gesture, countenance and speech, as usually such powers produce'.[180] Hobbes thus attempts to assimilate worship to a category of natural processes determined by cause and effect, suggesting that worship could be the object of scientific study. The prototype Hobbes alludes to is agriculture, which attempts to understand and utilise the natural productive capacity of plants. A key difference is that in plants the causal chain of power

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[174] *Lev*, 10.[16].

[175] *EL*, I.8.4. Hobbes remarks that 'power is simply no more, but the excess of the power of one above that of another'.

[176] *EL*, I.8.4.

[177] Cust, *Aristocracy*, 5.

[178] Zarka, *Hobbes*, 92–94. Zarka refers to this mechanism as the 'regime of inflation'. He makes a number of insightful remarks about its operation. Particularly, he notes that it operates on a 'double principle of growth': (i) an accumulation of signs honour and signs of worth, (ii) a centrifugal operation widening to greater numbers of men. Nonetheless, Zarka's claim that this 'inflationary spiral' leads to a 'collapse into war' seems incorrect. Instead, as I describe here it is integral to the function of the state.

[179] *EL*, I.8.5.

[180] *EL*, I.8.5.

is unidirectional: plants have a power to fruit or seed, and the fruiting is both the sign and effect of the power. But in the case of worship, the causal chain is circular and the fruit of power is more power.

In *De Cive,* however, the fundamental 'end and aim of worship' is the 'enjoyment' [*Gaudium*] of the one worshipped. In the recognition of his *potentia*, manifest in the performance of public ceremony, the sovereign experiences 'nothing other than Glory, or the feeling of triumph'.[181] This purpose is suggested in the earlier *Elements*, where the generative capacity of worship relies on men's unquenchable appetites. With respect to power, the delight or appetite for 'riches, honours, or other power' does 'continually groweth more and more'.[182] The frivolity of defining the direct end and aim of worship as sovereign enjoyment, appears in tension with the seriousness of the aims of the commonwealth in general (self-preservation). However, naturalising worship via anthropology as pleasure, appears key to Hobbes' attempt to universalise it. Instead Hobbes resorts to a redescription of 'obligation'. Like the 'obedience' we offer the physical laws of motion, acts based on fear and hope are due to a kind of 'obligation' imposed by natural law. *Natural* obligation is owed to the more powerful (such as God) and is distinct from the conventional obligation that arises from the 'intervention of an agreement'.[183]

Thus, in the early writings *Elements* and *De Cive*, Hobbes' account of the generative capacity of politico-religious practices of worship play a key role in generating the material power of effective sovereignty. The civil subject, merely by formal participation in commanded worship, independently from the interpretation of the particular acts commanded, communicates to others his recognition of the material power of the sovereign. This recognition, as the fundamental measure of all material power, offers a mechanism that propagates and cultivates material power independently of any agreement or contract, and, for Hobbes, utilises a wholly natural and universal political mechanism.

Juxtaposing Hobbes' account of worship against the Augustan conception of *auctoritas* a number of parallels are evident. In the *Res Gestae*, Augustus describes a series of gifts of honours given by the senate and people. He is given a title, his house is

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[181] *DC*, 15.13.
[182] *EL*, I.7.7.
[183] *DC*, 15.7.

adorned with laurels and a crown, and he is commemorated with a golden shield.[184] Such gifts are consistent with Hobbes' description of the signs of thanksgiving, honour, celebration, praise or magnification characteristic of *cultus*. Augustus continues that 'after that time,' *post id tem*, he took precedence in all *auctoritas*. The relation between the gifts and the *auctoritas* are not made explicit, but the temporal sequence suggests causation. Hobbes' account attempts to explain the productive capacity of such gifts and celebrations. The social ontology of Hobbesian worship is also consistent with the typically social and public understanding of *auctoritas*.[185] For Galinsky, Augustus' *auctoritas* is manifest in his inspirational and moral exemplarity. Heinze describes it as a 'union of social and political standing and of impressiveness in character.'[186] While Montaigne and Pascal accorded to custom a 'mystical foundation' of authority and claimed that '[w]hoever tries to trace this authority back to its origin, destroys it', Hobbes forges ahead assured that there is a general principle at work: 'Whether we want to celebrate someone by *words* or by *actions*, we shall find some things which signify honour among all men.'[187] However, in searching for the origin of worship, the early works suggest worship is dependent on an original seed of material power to be increased, cultivated or magnified.

Thus, in order to initiate the cultivation process of material power Hobbes requires a seed. There are a number of possibilities: (i) an initial local excess of power; (ii) the appearance of an excess by deceit or illusion; (iii) or perhaps even an excess by convention or agreement. As the above argument demonstrates, in *De Cive*, convention is ruled out since the material power is required specifically to meet the inadequacy of the artificial power generated by agreements.

Turning to the former pair of alternatives, if Hobbes is to avoid founding the entire structure of material power on a moment of deceit, he must presume an initial excess in some individual. In this scenario, one or more others recognising this excess, offer obedience, which in turn develops to generate an entire commonwealth structured by the cultivation of this initial recognition of excess. Such an account is consistent with the passage from *De Cive* highlighted above in which subjection of the will towards a

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[184] Augustus, *Res Gestae*, sec. 34.

[185] Galinsky, *Augustan*, 12–8; Schofield, 'Liberty, Equality, and Authority: A Political Discourse in the Later Roman Republic', 124–5.

[186] Schofield's paraphrase of Heinze: Schofield, 'Liberty, Equality, and Authority: A Political Discourse in the Later Roman Republic', 125.

[187] *DC*, 15.11 cf. Montaigne, *Essays*, 343; Pascal, *Pensées*, 23–4.

union occurs piecemeal.[188] However, this image of the initial conditions is difficult to align with Hobbes' presentation of the equality of men in the state of nature. In the state of nature, man possesses natural faculties including 'physical force, experience, reason and passion' and Hobbes admits these can vary between individuals. [189] But, he forcefully asserts a 'natural equality' of men in the state of nature:[190] 'Look at a full-grown man and see how fragile is the structure of the human body (and if it fails, all his force, strength and Wisdom fail with it); see how easy it is for even the weakest individual to kill someone stronger than himself.'[191] Hobbes belabours this point in the opening chapter of *De Cive*. There are variations in strength and mental acuity, but rather than providing a foundational seed for worship, these merely generate discord and dissent: a chaotic scene in which 'all men are equal to each other by nature' in their capacity to kill one another.[192] For Hobbes, despite local excesses of material powers, the absence of a decisive excess renders the state of nature a uniform if contested field of equality.

In itself, the logic of worship does not proscribe a founding moment of deception. Is it possible for one individual to pose as innately superior through deception? Hobbes explicitly derides such attempts, describing such an individual who, 'supposing himself superior to others, wants to be allowed everything, and demands more honour for himself' as vainglorious.[193] Again the results of such deceptions are simply further chaos and conflict. However, by the logic of natural signs, which constitute an ambiguous link between the recognition of material power and its effects, the act of deception need not lie with the sovereign himself. That is, a group can by a false show of obedience produce the *effect* of material power and hence a false recognition of one's own power in a potential sovereign. It is enough for a handful of others, to engage in deception through the duplicitous performance of obedience to initiate the cascade of material power. Regardless, Hobbes also seems to reject this option in *De Cive*. In this period of his work, he is committed to a conception of *scientia civilis* based on 'sure principles' and certain definitions.[194] In *De Cive*, in particular, he identifies as an attempt to expound the

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[188] *DC*, 5.8.
[189] *DC*, 1.1.
[190] *DC*, 1.3.
[191] *DC*, 1.3.
[192] *DC*, 1.3-7.
[193] *DC*, I.4.
[194] *AW*, 257, fol. 243v; Skinner, *Reason and Rhetoric*, 294–302.

'Natural law' which 'God has revealed to all men… by natural reason'.[195] In addition, he remarks from the beginning of *De Cive*, that 'no large or lasting society can be based upon the passion for glory.'[196] Only in *Leviathan* does Hobbes identify a way beyond this aporia of initial conditions through the model of an authorial fiction.

4   Author and Actor

From the perspective of worship developed in *De Cive*, authorisation supplies the seed required to initiate the labour of cultivation of material power.[197] The addition of authorisation to Hobbes' political theory in *Leviathan*, leaves intact the broad framework determined by the dualism of material and artificial power. The contract remains the foundation of the legal *potestas* or *imperium* of the sovereign and the generative mechanism of honouring and worship remains.[198] However, Hobbes makes substantial additions dealing explicitly with questions of persons, personation, authority and authorisation. Accompanying these changes, as Skinner has noted, is the return of some elements of rhetoric.[199]

Hobbes suggests that the addition of authorisation represents a further attempt to account for the inadequacies of the covenant to establish an effective sovereign. He notes that unlike certain social creatures such as bees and ants, for whom 'agreement [*consensio*]' is natural, for men agreement is 'by covenant only, which is artificial; and therefore, it is no wonder if there be somewhat else required (besides covenant) to make their agreement [*consensio*] constant and lasting.' Here, as the preceding sections and the Latin *consensio* indicate, agreement refers to a broad sense of correspondence in matters of judgement and interests between the particular individual and the common benefit. Thus, Hobbes suggests that because the covenant produces only an artificial and temporary agreement between men on matters of judgement and the common good, the covenant must be augmented by a common material power [*potentia communis*]. And as

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[195] *DC*, 14.4.

[196] *DC*, 1.2.

[197] *Lev*, 10.[2]. Changing metaphors, Hobbes now describes the accumulation of power by analogy with gravitational acceleration: the reputation for power like 'fame, increas[es] as it proceeds; or like the motion of heavy bodies, which, the further they go, make still the more haste.'

[198] The section on worship is rearranged with some minor changes at *Lev*, ch 31.

[199] Skinner, 327–375; Johnston, *The Rhetoric of Leviathan: Thomas Hobbes and the Politics of Cultural Transformation*, 66–70; Ioannis D. Evrigenis, *Images of Anarchy: The Rhetoric and Science in Hobbes's State of Nature* (Cambridge: Cambridge University Press, 2014), 130–2.

Hobbes notes, authorisation, that is, acknowledging oneself to be the author (and owner) of the acts of the sovereign, is the means by which such a common material power is erected.[200] The connection between authorisation and material power is unexpected, since in the introduction of *Leviathan*, Hobbes specifically indicates a synonmity between the *potestas* and *authoritas* of the artificial man, Leviathan.[201] However, as I demonstrate authorisation provides the initial seed of power augmenting the legal artifice of the agreement.

Broadly, through the new theoretical apparatus, authorisation, Hobbes assigns responsibility for the sovereign's acts to the people. Reflecting on parallels with the Roman use of *auctoritas*, the concept served to direct responsibility to two sources: the senate, but also due to the connection with augury and the auspices, *auctoritas* could be used to minimise their personal responsibility for the actions of government. Similarly, Hobbes frees the sovereign of responsibility by returning it to the individuals who constitute the multitude. Hobbes' proof of the responsibility of the people relies on identifying them as the one who *benefits*. Invoking the authority of Cicero, Hobbes asks '*cui bono?*', or 'who benefits?'[202] In cases of transgressions of the law where assigning responsibility is impossible, Cicero argues that the alternative is to ask who benefits, or in whose interests the transgression was made.[203] Hobbes explains that 'amongst presumptions there is none that so evidently declareth the author as doth the benefit of the action.'[204] Reflecting the introduction of these principles, one of the decisive changes between *De Cive* and *Leviathan* is the displacement of the benefit of worship.

As I noted above, Hobbes is explicit in *De Cive* that the end of worship is the 'enjoyment' of the sovereign: glory, the feeling of triumph, reflection on his greatness.[205] However, in *Leviathan* the reference to enjoyment is deleted. Although Hobbes admits that 'end of worship amongst men is power [*potentia*]' and that this accrues to the sovereign, nevertheless, he insists that in the end the *cultus* is for the benefit of the people, since *cultus* refers properly to the 'labour which a man bestows on anything with

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[200] *Lev*, 17.[12]-[13].
[201] *Lev*, The Introduction, 4. Hobbes describes the agreement as the origin of the *Potestas sive Authoritas* of the leviathan. See Foisneau, 'L'invention', 9.
[202] *Lev*, 47.[1], 47.[4], 47.[17].
[203] Cicero, *Pro Milone*, 32; Cicero, *Pro Roscius Amerino,* 32.3.
[204] *Lev*. 47.[1].
[205] *DC*, 15.13.

a purpose to make benefit by it.'[206] In the case of civil worship, it is the subjects, the individual worshippers, who 'labour' at worship and thus benefit from worship. However, the author is not 'the people', a collective entity like a *pouvoir constituant* of a conjoined multitude. Each individual gives 'authority [*authoritas*] from himself in particular' to the represeter. The origin of this authority is one's capacity to be an author.[207]

What is an author for Hobbes? He does not give a systematic account of the prerequisites for authorship but does indicate the need for animacy, maturity and rationality. He writes specifically that inanimate things cannot be authors, suggesting that authorship is itself a kind of action, or activity.[208] In addition, the proscription of children indicates a certain level of maturity or autonomy is required. And finally, it requires reason, since 'fools, or madmen that have no use of reason' cannot be authors unless they 'recover the use of reason'.[209] The grounds for precluding such individuals from authorship is perhaps because they cannot 'make any covenants or understand the consequences thereof'. Lacking reason, they are unable to understand the consequences, the logic of cause and effect, governing activities in general, and in particular the logic of *potentia*. In addition, he notes they lack the initiative to author: they 'never took upon them to authorize the actions of any sovereign'.[210]

Hobbes writes that reasoning about chains of consequences relies on the 'trust of authors' for those minor 'conclusions' that we inevitably must rely on in our reckoning.[211] Madmen, it seems, would lack such trust as they are driven by 'stronger and vehement passions' rather than the reasonable addition and subtraction of signs.[212] Hobbes is quite concerned with madness and devotes a number of paragraphs linking madness to religious enthusiasm and the whims of the multitude.[213] The decisive point is that authorising is an activity in which trust in an individual's word substitutes for a further chain of consequences (or 'causes'), thus avoiding the need to run back to a basic first principle. The construction of the rights and powers of the sovereign, as

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[206] *Lev*, 31.[8], [13].

[207] *Lev*, 16.[14].

[208] *Lev*, 16.[9].

[209] *Lev*, 16.[19].

[210] *Lev*, 26.[12].

[211] *Lev*, 5.[4]. The intermediate conclusions upon which further consequences are inferred, but which save one from having to regress through to the most basic assumptions.

[212] *Lev*, 8.[16].

[213] *Lev*, 8.[20].

demonstrated above, relied on a circular or hermeneutical chain of consequences (agreements, inadequacies, supplements). Authorisation offers a means of breaking into this circle through a moment of trust on an individual's word. In a polemical passage against Aristotelian scholasticism, Hobbes distinguishes the author from the cause: 'The author of a deed is he who commands [*qui fieri jubet*] that it be done; the cause is he through whose powers [*vires*] it is done.'[214] The intervention of authorisation is to break the circular chain of causation in Hobbes' theory of *cultus* as a means of generating the *potentia* of the sovereign. But what exactly is authorised (or authored) by the individuals of the multitude.

In *Leviathan*, Hobbes develops an account of the artificial 'civil person' of the state using the model of theatre. He contrasts 'natural' persons from 'feigned or artificial' persons.[215] At issue is the attribution of certain actions to some 'man, or any other thing'. That is, the attribution to a natural entity as 'owner' of the actions performed by the person. Hobbes specifically cites property relations as analogous to authorship. To be an author of actions is to possess a right comparable with 'dominion', the right of possession over goods.[216] In the case of natural persons, the actor and owner coincide in a single individual.[217] However, in the case of artificial persons there is a much more complicated arrangement involving up to three entities: the actor, the artificial person, and the author.[218] Hobbes appeals to the model of theatrical performance to describe the tripartite complex of the commonwealth. Firstly, the actor acts and thereby 'personates' the artificial person. But the artificial person itself is a fictional projection. As noted above, it can be a company or association but also the fictional projection of inanimate things such as churches, hospitals or bridges.[219] The person of the state is thus considered the fictional projection of the momentary union of the multitude as one people. The third participant is the author, the one held responsible for the words and actions performed by the actor when personating the fiction.[220] Utilising the model of theatrical performance, Hobbes argues that although the centre of action is the actor (sovereign) he merely plays

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[214] *Lev* (OL), 46.[22].

[215] *Lev*, 16.[12].

[216] *Lev*, 16.[4].

[217] *Lev*, 16.[2].

[218] On Hobbes' conception of the person of the state, see David Runciman, 'What Kind of Person Is Hobbes's State? A Reply to Skinner', *The Journal of Political Philosophy* 8, no. 2 (2000): 268–78; Skinner, 'Artificial Person'; Quentin Skinner, *From Humanism to Hobbes: Studies in Rhetoric and Politics* (Cambridge: Cambridge University Press, 2018), 358. I thank Jeronimo Rilla for the latter references.

[219] *Lev*, 16.[9].

[220] *Lev*, 16.[4].

the role of a fictional character (the artificial person of the commonwealth) and thus responsibility for the words and actions performed should be attributed to the author of the play (the individuals).[221] Thus, in the case of the commonwealth, although the actor is the natural man of the prince he merely acts as the personation of a fictional people or commonwealth and is authorised by the individuals of the multitude.

Connecting this tripartite structure with the account of worship above, the pertinent question is which of the entities does Hobbes consider the proper object of civil worship? In his remarks distinguishing commanded worship from forms of idolatry he writes:

> To be uncovered before a man of power and authority, or before the throne of a prince, or in such other places as he *ordaineth* to that purpose in his absence, is to worship that man or prince with civil worship, as being a sign, not of honouring that stool or place, but the *person*, and is not idolatry.[222]

That is the *person*, the fiction of the commonwealth, is the object of worship. In conventional forms of worship, ordained or commanded by the actor who represents the commonwealth, the real sign of honour is oriented to neither the natural individual of the sovereign, nor the natural objects to which worship is ostensibly directed, but instead to the artificial person of the commonwealth. Hobbes continues, noting that when one prays to a King, it is only civil worship (and not idolatry) as long as one is cognisant of 'no other power in him but human'.[223] That is as long as one does not mistake the individual for a divine entity.

In the act of authorisation, the individuals of the multitude author the fiction of the sovereign person. This fiction forms the initial seed, which by the 'labour' of worship, the cultivation performed as *cultus*, grows to produce the real material power of the commonwealth. Politics is transformed into a religio-theatrical endeavour, which must be made manifest in two distinct ways. Firstly, an arbitrarily selected actor takes on the role of the person of the commonwealth, instituting by command an arbitrary set of ceremonial practices. Secondly, these commands must be taken up by the individual subjects. Only the participation of subjects in ceremonial practice gives a material form and demonstrates the effectiveness of the sovereign's commands.

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[221] Skinner, 'Artificial Person', 11–18.

[222] *Lev*, 45.[21]. My italics.

[223] *Lev*, 45.[22].

There is a provocative addition to *Leviathan* in chapter thirty-one, which in other respects consists of extensive parallels and paraphrases of *De Cive*.[224] Hobbes introduces a new division of the category of *cultus* into two species. The first, which is 'properly worship', is that developed in *De Cive* and discussed above. Hobbes includes in this category both *Publicola* (worship or cultivation relating to the people or state) and *cultus Dei* (worship of God). The determining aspect is that the object of worship is not a subordinate but a superior will and the operative principle of worship is 'complaisance', that is, kindness or indulgence. However, Hobbes introduces a second type of *cultus* by which a superior will cultivates its subordinates. It is now this form that is aligned with agriculture, where humans cultivate inferior creatures, plants and animals, but also in education, since the 'education of children [is] a *culture* of their minds'.[225] In this case the laws of force and yield form the operative principle which produce a benefit according to natural causality. When performed by the sovereign, such a *cultus* engenders a civil religion. Hobbes' remarks on civil religion are scattered throughout the text and developed in subsequent works, *Behemoth* and *Historia Ecclesiastica*. These are taken up in detail in the following chapter.

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Is there a concept of authority in Hobbes' political theory? There is no unified conception of *auctoritas* analogous to that of the Roman tradition. Instead there is a complex of threads offering an immanent alternative. From King James's appeal to divine right to Pascal's mystical foundations, authority makes a claim to transcendent origin. In Lipsius' reason of state this appeal is maintained but reduced to mere appearance, the transcendent is preserved as a mask. For Lipsius, the appearance of divinity can still found *auctoritas*. Hobbes eschews both transcendence and its mere appearance, for an openly false divinity, a mortal God established by and for the benefit of the people. From the contract, political worship and authorisation, Hobbes attempts to construct a rational and scientific alternative model of authority. From the perspective maintaining the antithesis between reason and authority (Mommsen, Arendt, etc), the rationality of Hobbes' account marks recourse to persuasion and argument and hence the death of authority. But Hobbes continues to demand trust, fidelity and social reputation play a role. If there is an

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[224] cf. *DC*, ch. 15; *Lev*, ch. 31.
[225] *Lev*, 31.[8].

immanent form of authority, it must have its origin in the people. Within the framework determined by Hobbes' materialist metaphysics, the origin must rest in each individual. Consistent with this framework, Hobbes depicts each of these threads — the contract, political worship, and authorisation — emerging from the individual. Through a contractual-religio-theatrical alternative, Hobbes approximates a rationalist authority.

A secondary aim of the chapter was to demonstrate the importance of worship to Hobbes' account of the commonwealth. While the contract and the authorisation of the sovereign are important for establishing the artificial person of the commonwealth, as I demonstrated, the real source of legitimacy — social trust, belief and support — is ceremonial participation or worship.

Chapter 2: Religion, Politics and Pedagogy

From *Leviathan* to the posthumously published *Historia Ecclesiastica*, Hobbes' later works are marked by an increased emphasis on religion and, in particular, the role of religion in the political and civil education of the populus. This chapter focuses on two additional forms of authority Hobbes draws from religious models: a juridical authority of the sovereign as arbiter and a pedagogical authority of sovereign as pastor. In contrast to the civil worship of *De Cive*, these additional mechanisms, particularly the latter, introduce a direct means of ideological manipulation, anticipating Rousseau's turn to education and pedagogy. We can identify two factors motivating this shift. Firstly, as I demonstrated in the previous chapter, Hobbes recognises that the offices of the sovereign, such as the sword of justice, depend on the opinions of the populus.[1] Secondly, Hobbes requires a rational public to achieve the goal of establishing a rational commonwealth based on a *scientia civilis*.

Consigned to the latter half of *Leviathan* and subsequent works, less often read or discussed, these aspects of Hobbes' political theory are relatively neglected. However, as I argue, the pedagogical authority of the sovereign is fundamental to the agreement itself but ultimately undermines the limits Hobbes places on sovereign influence. That is, in the turn to religion as a model for political education, Hobbes largely repudiates his earlier insistence that external obedience is sufficient and that the internal beliefs of the individual cannot be manipulated by the sovereign.

In this chapter, I argue that Hobbes draws two distinct conceptions of authority from religious sources. The first, the authority of the arbitrator or judge, is derived from Hobbes' reinterpretation of Judeo-Christian history and an Erastian subordination of the Church to the state. The second, a pedagogical model of authority, is based on a general theory of religion conceptualised as a set of universal anthropological practices. These two forms are grounded on a distinction Hobbes makes between religion in general (a universal anthropological conception of 'natural religion') and particular religions. Hobbes rejects the Protestant perspective that equates religion with theology, a set of

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[1] *DC*, 5.11.

doctrinal beliefs regarding the nature of God or the trinity. Instead, consonant with the previous chapter, Hobbes treats religion as a set of practices dictated by the laws of nature and thus described by civil science. As I demonstrate in the following, one central goal of Hobbes' later writings is a systematic political re-interpretation of various phenomena, practices and events in the history of religions. Reiterating the thematic centre of the previous chapter, I show that Hobbes' attempt to harness religion is driven by the presumption that authority is derived from practices rather than ideas.

This chapter is divided into five sections. The first focuses on Hobbes' periodisation of the Judeo-Christian era which is based on his revisionist interpretation of Sacred History. I demonstrate the importance of this periodisation for Hobbes' account of authority. I argue that Hobbes correlates a series of authority structures to distinct periods of Judeo-Christian history as part of a strategic attack on the Roman Catholic and Protestant conceptions of church-state relations. The second section turns to Hobbes' account of the juridical authority of the sovereign and its capacities and limits. In the third section, I turn to Hobbes' general theory of religion or 'natural religion'. I show how, aligned with his attempt to orient worship to material power (*potentia*), Hobbes' later writings develop an anthropological and natural science of religion. Through this general theory of religion, Hobbes simultaneously naturalises religion and consecrates the state, in the latter case by taking religious practices as general models of political influence. In the fourth section, I discuss the pedagogical authority of the sovereign, derived from this naturalisation, and show that it ultimately rests on a general conception of divine right. The final section reflects on the tension in Hobbes' account of sovereign ideological influence. On the one hand Hobbes demands only the performance of outward actions for subjects and allows freedom of conscience, but on the other hand, he accords to the sovereign a rather broad divine right of political education. I conclude with remarks summarising the broader results of my investigation of Hobbes' political theory.

Hobbes' conception of civil religion is guided by the motif *cuius regio, eius religio* (In a [prince's] country, the [prince's] religion).[2] It forms a second species of *cultus* by which the sovereign cultivates the minds of subjects.[3] At times, Hobbes observes this to the letter, treating each successive kingdom of the Israelites as a distinct

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[2] Frank Leslie Cross and Elizabeth A. Livingstone, *The Oxford Dictionary of the Christian Church* (Oxford: Oxford University Press, 1997), n. '*cuius regio, eius religio*'. The formula, meaning literally 'whose land (or rule), his religion' was key to the religious peace of the Holy Roman Empire negotiated at Augsburg in 1555.
[3] *Lev*, 31.[8].

peculiar religion, despite subsumption to the category of Judaism. This treatment of particular religions is analogous with his treatment of content in the two registers of signification discussed in the previous chapter. In this field the authority of the sovereign appears primarily as one of the arbiter or judge, evoking a juridical paradigm of sovereignty and a loosely 'Erastian' subordination of the church to the state. Foreshadowing Carl Schmitt's *Political Theology*, the sovereign appears as one who must 'decide' on the particular case, whether this pertains to political or religious matters. Hobbes' general theory of religion, on the other hand, attempts to 'generalise' from the empirical content of various given religions and draws indiscriminately from Christianity, Judaism and pagan practices. Religion in general belongs to the structural or formal register of signs by which worship functions to signify or magnify relations of material power.

In the secondary literature, these two registers are often conflated.[4] For instance, Ronald Beiner depicts Hobbes' conception of civil religion as simply a 'Judaicization of Christianity' aiming to resolve the conflict between the universalist doctrines of Christianity and the particularity of the political state.[5] However, I claim this overlooks Hobbes' reinterpretation of Judaic traditions through a generalised anthropological understanding of religio-politics. Beiner's account adheres to a post-Reformation Christian concept of 'religion' discussed in my introduction. Instead, with Patricia Springborg, I emphasise Hobbes' pre-Christian influences.[6] While Springborg is focused on the Epicurean resonances traceable to his friendship with Gassendi, the influence of Cicero for whom 'religion is the science of divine worship' seems just as significant for Hobbes' writings on religion and politics.[7] Like Cicero, Hobbes equates *religio* with religious rituals and is concerned primarily with their civic and pragmatic effectiveness. These commonalities have led me to take John Scheid's re-interpretation of Roman religion as a form of *orthopraxis*, as a guide for Hobbes' discussion of religion.[8]

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[4] Pocock, 'Time, History and Eschatology in the Thought of Thomas Hobbes'; Patricia Springborg, 'Hobbes on Religion', in *The Cambridge Companion to Hobbes*, ed. Tom Sorrell (Cambridge: Cambridge University Press, 1996), 346–80; Springborg, 'Epicurean'; Collins, *The Allegiance of Thomas Hobbes*; Laurens van Apeldoorn and Robin Douglass, *Hobbes on Politics and Religion* (Oxford: Oxford University Press, 2018).

[5] Beiner, *Civil Religion: A Dialogue in the History of Political Philosophy*, chap. 5.

[6] Springborg, 'Epicurean'; Patricia Springborg, 'Hobbe's Historia Ecclesiastica: Introduction - Hobbes, History, Heresy and the Universities', in *Historia Ecclesiastica, Critical Edition*, ed. Thomas Hobbes, Patricia Springborg, Patricia Stablein, Paul Wilson (Paris: Honoré Champion, 2008), 33.

[7] Cicero, *On the Nature of the Gods*, bks I.VIII, 116.; Linder and Scheid, 'Quand croire c'est faire.', 47.

[8] Scheid, *The Gods*, chap. 1.

1 Hobbes' Sacred History

A distinctive periodisation of the Judeo-Christian era provides the foundation of Hobbes' argument for the subordination of the Church to the state. In particular, by delimiting a series of synchronic structural periods of political-religious authority, Hobbes uses periodisation as an argumentative strategy in defence of the juridical authority of the sovereign (as judge and arbitrator of matters of Christian practice and Scriptural interpretation).[9] He distinguishes three broad periods of Sacred History: the Judaic era, the Christian era and the Kingdom of God to come. In the first period, Hobbes retraces the shifts in theocratic authority manifest in the seat of sovereignty of the Israelites.[10] The covenant between Abraham and God is periodically broken and renewed, at least up to the election of Saul. Each rulership marks distinct political entities.[11] The second period, the Christian era, commences with the life of Christ and continues until the day of judgement.[12] Also known as the 'regeneration', it is a period of 'preparation' for the return of Christ and the salvation of man.[13] Authority in this period is determined by the derogation of the covenant.[14] The final period refers to salvation itself, when Christ will return and establish a worldly Kingdom of God on earth.[15] Through the disjuncture between the Judaic and Christian era God's theocratic authority of command, executed vicariously through Abraham and Moses, is diminished to the role of political advisor or counsellor during Christ's life and the subsequent regeneration. The shift provides the fundamental argumentative support for Hobbes' subordination of the Christian Church to political authority.

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[9] Pocock, 'Time, History and Eschatology in the Thought of Thomas Hobbes', 168–9. 'all these subdivisions of sacred history, including the future, are also subdivisions of the history of political authority.' Kathleen Davis, *Periodization and Sovereignty: How Ideas of Feudalism and Secularization Govern the Politics of Time* (Philadelphia: University of Pennsylvania Press, 2012), 59, 100.

[10] *DC*, 16; *Lev*, 35 & 40.

[11] *Lev*, 35.[3]-[10], 45.[4].

[12] *DC*, 17; *Lev*, 41.

[13] James R. Martel, *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat* (New York: Columbia University Press, 2007), 102. The interpretation of this period of God's 'abandonment' of the world is key to both the eschatological and non-eschatological readings of Hobbes.

[14] *DC*, 17.5; *Lev*, 42.[7]. To be precise, in *Leviathan*, Hobbes defines the 'regeneration' as the period from the 'ascension' to the eschatological resurrection of all men.

[15] *Lev*, 8.[23].

The argumentative use of periodisation figures only in the later texts *De Cive* and *Leviathan*, whereas the earlier manuscript *Elements* retrojects a logic of apostolic succession back to Moses.[16] In the latter works, Abraham is emphasised in order to substantiate a materialist or worldly interpretation of the kingdom to come and to distinguish the theocratic authority of both the Judaic era and redemption from the present.[17]

(i) The Judaic Period: Abraham and Moses

In the Judaic period Hobbes uses the theocratic authority delegated to Abraham as an example to distinguish between the general political form of religion and the particular content of a given religion. In Genesis, God promises Abraham: 'I will make of you a great nation, and I will bless you, and make your name great so that you will be a blessing. I will bless those who bless you, and the one who curses you I will curse; and in you all the families of the earth shall be blessed'.[18] The passage is explicitly political, to grant Abraham and his progeny a territory, 'the land of Canaan for an everlasting possession' and the references to blessing exhibit parallels with the logic of worship developed in *De Cive*.[19] Hobbes distinguishes the doctrinal truths revealed to Abraham from the general political meaning of the covenant itself and the particular content of the agreement. Hobbes asserts that God's revelation to Abraham is only that 'there is one God, Creator of the Universe. And from him the Kingdom of God by agreement took its origin'.[20] The covenant has a general political meaning, a grant of territory and a particular demand, a promise to practice circumcision. But, the latter is not actually part of the agreement itself. It is merely a conventional and arbitrary 'sign to preserve the memory of this agreement'.[21]

Turning to the Mosaic covenant, Hobbes again distinguishes between the particular content (i.e. determined by convention) and the general political aspects of the

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[16] *EL*, 2.26.6-9.

[17] Much secondary literature focuses on the importance of Moses, ignoring the role of Abraham: Alison McQueen, 'Mosaic Leviathan: Religion and Rhetoric in Hobbes's Political Thought', in *Hobbes on Politics and Religion*, ed. Laurens van Apeldoorn and Robin Douglass, vol. 1 (Oxford: Oxford University Press, 2018), 117–35.

[18] *NRSV*, Gen, 12:2-4.

[19] *Lev*, 35.[3]. Hobbes quotes from Genesis 17:7-8.

[20] *DC*, 16.1.

[21] *DC*, 16.3.

agreement. Hobbes notes that the 'whole body of laws given by the hand of Moses' includes three distinct types. Firstly, some are laws of nature, which are included in a redundant manner. Secondly, some are laws already given to Abraham (presumably territory and circumcision). And finally, others are new to the agreement with Moses, 'because they were given by *God specifically as King of the Israelites*'.[22] God promises Moses and his people 'ye shall be unto me a sacerdotal kingdom, and a *holy* nation.'[23] That is, in the renewal of the covenant by Moses, obedience is rewarded with sacralisation, holiness. He re-iterates the political quality of the promise by reinscribing into his citations the concept of *populis* and people, which are depoliticised in the KJV by references to 'treasure'. But he also links the idea of consent and covenant with the special or peculiar relationship of God to the Israelites.[24]

Through God's omnipotence He already 'reigned over all men *naturally* by his might'.[25] God's material power is the basis of a 'general right' over all the earth.[26] And, all the nations of the world are God's dominion by reason of his power. But the Israelites are marked out as having a 'special' or 'peculiar' relationship with God. Through an etymology of *periousios*, Hobbes explains that 'peculiar' signifies the opposite of ordinary, quotidian or daily use. The basis of this distinction from the quotidian is the act of consent to the covenant on the part of Israelites, which gives God an 'addition to his ordinary title'. Hobbes echoes the distinction between *potestas* (the title established by agreement) and *potentia* (a natural relation). Consent and covenant give the nation the title of *holy nation*, which Hobbes specifically notes 'signifies that which is God's by special, not by general right'. That which is called *holy*, is 'set apart for especial service'.[27] By establishing the importance of the covenant for the structure of authority characteristic of Judaic theocracy (at least until the Kingdom of Saul), where God is sovereign and the human representative as merely a viceroy or lieutenant, the periodisation enables Hobbes to introduce a fundamental restructuring of authority in the regeneration. The suspension of the covenant, results in the suspension of God's 'peculiar' (theocratic) relation to Christian community.

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[22] *DC*, 16.10.
[23] Exod 19:5, cf. *Lev* 35.[5].
[24] *Lev*, 35.[1].
[25] *Lev*, 35.[3].
[26] *Lev*, 35.[7].
[27] *Lev*, 35.[7].

(ii) The Regeneration as the Divine Interregnum

The second period runs from the appearance of Christ to the last judgement, and includes Hobbes' and our present. According to Hobbes, Christ's role was not to 'reign' but only to prepare, through teaching, for the 'second and glorious coming of Christ as the day of Judgement'.[28] That is, he was to preach the good word (counsel), rather than command.[29] Here, as in my previous chapter, the distinction between command and counsel is key. Hobbes' characterisation of the regeneration offers a counterpoint to two alternatives: one Roman Catholic, the other Protestant Presbyterian.

Against Roman Catholicism, Hobbes stages three specific lines of attack.[30] Firstly, he develops a genealogy of papal power that demonstrates its contingency, emphasising the errors, mistakes and deception through which it was produced.[31] Secondly, he draws attention to the worldly aspects of their methods and political goals, thereby demonstrating a general ambiguity in the distinction between religion and politics. Thirdly, he restricts priestly influence to the domain of teaching and counsel.

Of the first line of argument, the fullest account of his genealogy of papal power is given in Hobbes' posthumous publication the *Historia Ecclesiastica*. Demonstrating his indiscriminate syncretic approach to religion in general, Hobbes returns to Ethiopia, the origin of all 'pure intellectual activity', in order to find a precedent for the usurpation of kings by priests.[32] For Hobbes, the Ethiopians represent the first civilisation. They 'worshiped gods, had cities, were rulers and were outstanding in the arts'.[33] However, even in this first civilisation, Hobbes decries that 'the sophists' — astrologers, priests and false prophets — usurped the proper order of natural rule. By manipulating the fears of the people they gained control over the king, dictating even 'when the king ought to

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[28] *Lev*, 42.[7].

[29] *Lev*, 42.[5].

[30] *Lev*, 47.[19].

[31] Hobbes' genealogical account of the development of pontifical power is striking in its resemblance to the method of 'philosophical genealogy' developed by Nietzsche and Foucault. cf. Michel Foucault, 'Nietzsche, Genealogy, History', in *The Foucault Reader*, ed. Paul Rabinow (London: Penguin Books, 1991), 78.

[32] *HE*, 1120-60; Springborg notes here Hobbes' alignment with Epicurus on the original motivation of natural science. fn. 36, 317.

[33] *HE*, 160-70.

die'.[34] This was only remedied by an alliance between reason and the sword on the part of Ergamenes.[35]

The unnatural usurpation is repeated in the Christian era in the struggles between Catholic priests and the Roman emperors. In the reign of Constantine, Hobbes emphasises the contingency of the outcomes of the Council of Nicea and the misunderstanding (by priests) that it marked a subjection of the crown to the council.[36] The misunderstanding was compounded by the 'stolen' power of the Pope, (a veiled reference to the forged Donation of Constantine, exposed by Lorenzo Valla the previous century) and was 'secretly increased, until he was more powerful than the Roman Emperor'.[37] Thus, Hobbes undermines the divine ground and necessity of the authority of the papacy by showing how it was achieved through riddles and tricks, a series of mistakes, misunderstandings, outright forgeries and deception.[38] The result was the subordination of the Roman empire to the papacy, completed in the reign of Justinian.[39] However, the height of papal power was achieved through the ambiguity in the coronation of Charlemagne as Holy Roman Emperor by Pope Leo III.[40] At the moment that Charlemagne was invested with the 'Regal ornaments' the Pope, followed by the people, reportedly cried '*Deus dat*', 'by the gift of God'.[41] By the 'negligence of the Emperors' the ambiguity of the utterance led to the belief that the divine right accorded the emperor was mediated by the Pope.

In the second line of argument Hobbes highlights the worldly desires motivating the papacy. Having gained control of the Roman empire, Hobbes insists that the papacy, like members of any other political body, do not simply spend 'their lives in leisure', but employ a range of worldly means to consolidate their material power and wealth.[42] The assertion of divine right followed when the papacy invented legal pretexts for their political influence.[43] The third line of argument is made in different ways, but each relies on Hobbes' periodisation. Attacking Cardinal Bellarmine, Hobbes insists that Christ

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[34] *HE*, l190-210.

[35] Hobbes' account is based on Diodorus Siculus, 3.5.4: Springborg's notes *HE* fn. 58, 327.

[36] *HE*, 850-60.

[37] Springborg's fn. 243, 407.

[38] *HE*, lines 860-70, 1180-90.

[39] *HE*, 1229-30.

[40] *HE*, 1750-1770; *B*, 121.

[41] *HE*, 1766-9; *B*, 123.

[42] *HE*, 1470-5, 1240-80. cf. Erastus below.

[43] *HE*, 1450-60.

acted only as 'schoolmaster' to persuade men, and not a 'commander'.[44] Thus Hobbes can accept the origin of Bellarmine's authority in Christ and its transmission through history via Peter and the apostolic succession, while at the same time, insisting that Bellarmine has no authority to command. During the regeneration Christ's role was not to 'reign' but only to prepare for the 'second and glorious coming of Christ as the day of Judgement'.[45] Hobbes turns the Church's own claim that there is a distinction between the 'spiritual' and 'temporal' into a critique of their extended claims of rights.[46] He notes that the extent of the 'indirect powers' of the Catholic Church amount to 'as absolute a Souveraigntie as is possible to be' and are thus not spiritual at all but temporal and political.[47]

Against the Protestant Presbyterians, his earlier attacks focussed on 'enthusiasm' and derided it a form of madness and superstition.[48] This is expanded in *Leviathan* with a discussion of a pagan occasion of 'enthusiasm' in Abdera, supposed to have occurred during the reign of Lysimachus (306-281BC).[49] Reportedly, a heatwave and suggestive theatrical performances induced a group hallucination, resulting in 'speaking in tongues'.[50] Using the periodisation, Hobbes insists that in the regeneration miracles have now ceased and hence there are no grounds for accepting claims made on the basis of personal revelation. The true religious duties are ritual and ceremonial practice and worship.[51]

In *Behemoth*, this polemic is expanded against the Presbyterians and Independents. Hobbes' core complaint is against the multiplication of interpretations prompted by the translation of the Bible into 'vulgar languages' such as English.[52] This has led the Presbyterians to mistake 'divinity' (theology or 'church-philosophy') for 'religion'. The result is a multiplication of sects in England to the detriment of the Church

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[44] *Lev*, 42.[5]; *B*, 112. Also in *DC*, 17.6, p. 208. Hobbes refers to Christ's 'pastoral office or right to teach'. And later, in *HE*, (lines 1110-20) he writes: 'The Lord did not tell his disciples, "compel anyone", … rather he commanded them to go out and teach'. Springborg notes that a similar distinction was made by Lorenzo Valla in his own preface to his translation of Thucydides. *HE*, Springborg fn. 342, 441.

[45] *Lev*, 42.[4-7].

[46] *B*, 113.

[47] *B*, 115.

[48] *EL*, 1.10.9-10.

[49] Daniel Ogden, *Perseus* (London: Routledge, 2008).

[50] *Lev*, 8.[25].

[51] *Lev*, 32.[9].

[52] *B*, 134-5.

and Nation.[53] It is the sense of disorder and populism that most offends Hobbes. Populism or demagoguery (theatrical speeches) from the Church pulpit stir desires. Preachers act the part of a good tragedian, who 'applyed themselues wholly to the winning of the people' to their doctrines and reputation. By their 'art', they would inspire mass audiences and disrupt local dioceses as part of an 'ambitious plot' for power and 'sedition against the State'. For Hobbes, the fault of such a show is that it inspires distrust and competitive behaviour between neighbours, disrupting the peace. The rupture between the individual Churches and centralised ecclesiastical government (centred on the controversy of Common prayer book) is paralleled with the growing 'loue of Democracy' in parliament.[54] Similarly, the Presbyterian ministers in parliament took the Church presbytery as a model of government and attempted to introduce an oligarchy, replacing the monarchy.[55] But for Hobbes, this is all in the service of personal interest, such that each 'shall have the delight of sharing in the gouvernment … and help to fill their purses'[56]

(iii) The Kingdom to Come

The kingdom to come is often read as a messianic or eschatological promise. However, Hobbes' strategy is one of deflation or displacement. While I accept that Hobbes advances a claim for a worldly kingdom of God, I reject the eschatological and messianic readings developed by Pocock, Agamben and others.[57] Such readings appear to ignore entirely the strategy at work in parts three and four of *Leviathan*.[58] In agreement with Leo Strauss, I understand the later parts of *Leviathan* as a rigorous 'critique of religion'.[59] The messianic promise is a return of theocracy, but it is strictly separated from the present and largely irrelevant for present politics. Hobbes draws out the political meaning of

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[53] *B*, 290-1.

[54] *B*, 136-9.

[55] *B*, 205.

[56] *B*, 225.

[57] Pocock, 'Time, History and Eschatology in the Thought of Thomas Hobbes'; Agamben, *Omnibus*, chaps 'Leviathan and Behemoth', 265–290; Martel, *Subverting the Leviathan: Reading Thomas Hobbes as a Radical Democrat*, 102–3.

[58] Ordinarily Agamben is expressly attuned to the strategic dimension of his interlocutors. Yet this is never discussed with respect to Hobbes' discussion of Scripture or the revelatory prophecies of Christianity.

[59] Strauss, *Hobbes's Critique of Religion and Related Writings*.

Christian rituals (such as Baptism).[60] However, in each case Hobbes is careful to shift the reference of Christian practice to a future kingdom. Schematically, the regeneration is reduced to an interregnum between two eras of direct rule by God. In the Christian era God has withdrawn from direct involvement in political affairs and as a result humanity must carry along with a worldly substitute: a sovereign who is legitimated by consent and without direct divine intervention.[61]

2 Authority of the Arbiter: Christianity in the Hobbesian State

The axiom 'No man can serve two masters' serves to determine the place of Christianity in Hobbes' modern theory of the state.[62] The indivisibility of sovereignty and the need for a decision dictate the basic structure of the juridical authority of the sovereign, which extends to all aspects of worldly existence. Based on his materialist metaphysics, Hobbes rejects the division of human affairs into distinct temporal and spiritual domains.[63] As a result, there is no tenable division of authority, since all questions of conflict eventually require an arbiter and the divisions of jurisdiction themselves are determined only by convention. Insofar as Christianity offers a set of 'rules of Christian life' it is indistinguishable from the civil laws of a nation and in this juridical state paradigm, the sovereign is accorded the final judgement on law and legislation.[64] In fact for Hobbes, in a Christian commonwealth there is no essential distinction between the Church and the commonwealth, because both consist in the same set of 'Christian men united in one Christian sovereign.'[65]

There are a number of detailed analyses of the subordination of the Christian Church to the Hobbesian State in the secondary literature. Sommerville, for instance, aligns Hobbes with Marsilius of Padua, and notes that Hobbes' views on church-state relations were 'commonplace amongst Anglicans'.[66] He contextualises Hobbes' stance on

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[60] *Lev*, 42.[19].

[61] *DC*, 17.4. Christ and Moses are described as the 'Vice-Regal' of God the Father.

[62] *EL*, 2.2[21].15; *Lev,* 42.[123].

[63] *Lev*, 42.[124].

[64] *Lev*, 33.[1].

[65] *Lev*, 33.[24].

[66] Sommerville, *Thomas Hobbes: Political Ideas in Historical Context*, 107–8.

Scripture and its interpretation amongst his contemporaries.[67] He details Hobbes' rejection of the Catholic supposition of a universal Church of Christendom, the basis of Catholic claims of legitimate state interference on matters of religion.[68] In addition, he discusses the subordination of Christian clerics to commonwealth authority and the extent of the agreement between Hobbes and Erastus on excommunication.[69] In a recent monograph, Collins also offers an extended commentary of Hobbes 'uses of Christianity'.[70] For instance, Collins notes that 'Hobbes' comprehensive subordination of the Church to state control was necessitated by his absolutist theory of sovereignty' and he gives an account of the shifts in Hobbes' 'statist ecclesiology' during the civil war period.[71] In addition, recent essays from Olsthoorn, Davis and others, offer more detailed analyses of some points mentioned here.[72] Thus, in the following account of Christianity under the Hobbesian state I focus only on a few key points.

An emphasis on the breadth and limits of the juridical authority of the sovereign unify Hobbes' reflections on the place of Christianity in the Hobbesian state. These are developed predominantly in part three of *Leviathan*, where Hobbes addresses the 'nature and rights of a Christian Commonwealth'.[73] Hobbes' considerations can be loosely grouped under a number of headings tied directly to questions of authority: (i) on prophecy and revelation, (ii) on Scripture, (iii) on the limits of belief, (iv) on the Church and the commonwealth, (v) on Excommunication, and (vi) on Erastianism.

Firstly, although the Christian commonwealth depends on the 'prophetical' word of God, the content of prophecy are incomprehensible mysteries which do not 'fall under any rule of science'.[74] Moreover, in the regeneration, the prophetical word is ascribed a very limited domain of legitimacy and, despite Hobbes' involved discussion of prophecy, he ultimately places prophecy and miracles under the authority of decision accorded the sovereign. He makes a sustained case for suspicion of all prophetic claims, since men are

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[67] Sommerville, 108–13.

[68] Sommerville, 113–9.

[69] Sommerville, 120–134.

[70] Collins, *The Allegiance of Thomas Hobbes*, chap. 1. 'The Uses of Christianity'.

[71] Collins, 11.

[72] Johan Olsthoorn, 'The Theocratic Leviathan Hobbes's Arguments for the Identity', in *Hobbes on Politics and Religion*, ed. Laurens van Apeldoorn and Robin Douglass (Oxford: Oxford University Press, 2018), 10–29; Paul B. Davis, 'Devil in the Details: Hobbes's Use and Abuse of Scripture', in *Hobbes on Politics and Religion*, ed. Laurens van Apeldoorn and Robin Douglass, (Oxford: Oxford University Press, 2018), 135–49.

[73] *Lev*, 32.[2].

[74] *Lev*, 32.[2]-[3].

often motivated by personal ambition.[75] The 'magician, the astrologer, the diviner and soothsayer are all believed by the uneducated to be the prophets of God.'[76] The Christian sovereign should be taken as their only legitimate prophet.[77] Even in the Judaic period Abraham had the right by his civil sovereignty to lawfully punish 'any of his subjects [who] should pretend private vision, or spirit, or other revelation from God'.[78] Although the private man always has the 'liberty', that is the unrestrained faculty, to 'believe or not believe, in his heart,' in public confession and discourse he must submit to public reason.[79]

Secondly, in the absence of legitimate prophecy or miracles, Hobbes limits Christian doctrine to what is 'conformable to the Holy Scriptures'.[80] However, control over doctrine, insofar as it is made law, which for Hobbes is the important question, is accorded to the sovereign.[81] In addition, Hobbes problematises the determination of canonical scripture itself, based on its variations in history and the difficulties of interpretation. Hence, he requires that the sovereign possesses the responsibility to appoint a 'canonical interpreter' of scripture.[82] Despite allowing a role of expertise, only the civil sovereign has the authority to make Scripture canonical.[83]

However, thirdly, the sovereign authority is limited in its control of belief.[84] Although this limit is increasingly transgressed, Hobbes writes that, with regard to doctrine, there is no 'argument he [the sovereign] can produce to oblige me to believe it'.[85] The internal beliefs of any individual are simply beyond the capacity of another to effect and claims of revelations cannot be verified.[86] As a result, Hobbes insists that though the sovereign 'may oblige me to obedience', he cannot make me, nor oblige me to 'think any otherwise than my reason persuades me'.[87] This limit appears internal to the

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[75] *Lev*, 36.[19]-[20].

[76] *HE*, 100-10.

[77] *Lev*, 36.[20].

[78] *Lev*, 40.[3].

[79] *Lev*, 37.[13].

[80] *Lev*, 32.[9].

[81] *Lev*, 33.[22]-[24].

[82] *DC*, 17.16-8.

[83] *Lev*, 42.[37]-[39].

[84] On the break between the inner and outer world in Hobbes, see also Koselleck, who writes, for instance, that 'Hobbes introduces the State as a structure in which private mentalities are deprived of their political effect.' Koselleck, *Critique*, 35–7.

[85] *Lev*, 32.[5].

[86] *Lev*, 24.[40].

[87] *Lev*, 32.[5]-[6].

juridical model of authority on which this aspect of sovereignty is based. Throughout Hobbes' works he consistently asserts that 'no human law is intended to oblige the conscience of man, but the actions only'.[88] The juridical sovereign is to determine external facts, obedience, the canon, the evaluation of discourse, but not intentions or motives.[89] As Leo Strauss, Carl Schmitt and Reinhardt Kosselleck recognised, with respect to internal beliefs, Hobbes' limitations on authority leave a 'barely visible crack' in the armature of the *Leviathan*.[90] However, as I show in the following, Hobbes' later works attempt to seal this crack with education.

Fourthly, the later works demonstrate a blurring of the distinction between the Church and the Commonwealth. In *De Cive*, Hobbes treats the Church as a kind of civil association. Like any group or body of individuals wishing to congregate it is dependent on the permission of the sovereign, but insofar as it refers to a 'crowd' united as one *person*, it resembles other civil associations.[91] In *Leviathan*, by contrast, Hobbes notes that insofar as a Church is to have any force to guide the lives of its members it must be equivalent to the commonwealth itself.[92] Nevertheless, there remains a kind of asymmetry subordinating the Church to the commonwealth. Both historically and logically, Hobbes insists that political concerns precede any particular religious institution. In Hobbes' reading of Sacred History, Abraham is first a civil sovereign over his family, before the moment of revelation and covenant with God. Similarly, in the case of Moses, he is first determined as a political representative, before establishing the particular religion in accordance with God's commands. Although the Church is subordinate to the commonwealth, it remains at least in principle separate from the state. Unlike Roman religion and augury, Christianity does not penetrate into daily political events and divine worship is distinct from the ceremonies of the state.[93]

In particular, Hobbes grants the Christian Church autonomy in the 'mysteries of faith', which pertain to God himself and do not relate to politics, history, morals or physics.[94] The mysteries or 'declarations of revelation' are the concern of the apostles,

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[88] *EL*, 25.6.

[89] *Lev*, 27.[2].

[90] *LST,* 57. Kosselleck's early work *Critique and Crisis* largely develops and elaborates on Schmitt's thesis in *LST*. See. in particular, Kosselleck, 37.

[91] *DC*, 17.20-2.

[92] *Lev*, 33.[24].

[93] *DC*, 15.18.

[94] *DC*, 17.16.

bishops and presbyters.[95] In the reception of Hobbes' works, both the 'mysteries' and the 'magisters' are somewhat controversial.[96] Regardless, the category of mysteries is defined only to include laws of divine authority by revelation, forgiveness of sins, and revelation concerning the afterlife.[97] For Hobbes, these have little import to material existence.

Lastly, I turn to the interrelated themes of excommunication and Hobbes' Erastianism. Hobbes takes up the theme of excommunication in detail in both *De Cive* and *Leviathan*.[98] Although Hobbes grants the Church some rights of excommunication, they are strictly subordinate to the civil law, as is ecclesiastical law in general.[99] The limits Hobbes applies to excommunication also hint at the socio-economic arguments made by Erastus. Hobbes writes of the absurd consequences when a father, mother or master is excommunicated and servants or children would thus be required to cease meals and contact with their own parents.[100] In a wider socio-economic sense, Hobbes notes that even Christ did not judge on matters of law, properly or penalties.[101] With respect to heresies, the king must enforce laws and 'do away with controversy', but on other matters he should allow free speech as long as it does not 'teach bad morals'.[102]

Like Hobbes, Erastus subordinates the church to the state and limits the Church's control of excommunication.[103] Erastus notes that secular bodies should be the ones to 'police the moral lives of the faithful in a Christian State' because excommunication would have socio-economic side-effects on the individual punished.[104] As grounds, Erastus specifically cites the likelihood of abuse of this power by Church elders, who although principled may lack the integrity of the apostles.[105] A number of argumentative strategies are shared by Erastus and Hobbes. Both advocate for a minimal conception of Christian doctrine and see ceremonial conventions as an 'invention of man'.[106] However,

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[95] *DC*, 17.23.

[96] Tuck, *Philosophy and Government 1572-1651*, 318.

[97] *DC*, 17.13.

[98] *DC*, 17.26; *Lev*, 42.[17].

[99] *DC*, 17.26.

[100] *Lev*, 42.[30].

[101] *DC*, 17.6; *HE*, 1110-5, 1130-40, 1172-6.

[102] *HE*, 1172-6.

[103] Olsthoorn, 'The Theocratic Leviathan Hobbes's Arguments for the Identity', 10–2.

[104] Charles Gunnoe, *Thomas Erastus and the Palatinate: A Renaissance Physician in the Second Reformation* (Leiden: Brill, 2010), 136.

[105] Thomas Erastus, *A Treatise of Excommunication* (London: L Curtis, 1682), 64.

[106] Erastus, secs II, XXXIX.

a chasm opens between their metaphysical presumptions. Erastus embraces the Lutheran ideal of a purified spiritual realm for Christianity. In this scheme, the spiritual independence of the Church can only be maintained by rigorously limiting its access to material power. In particular, Christian morality and the true universal church belong to the Spiritual, while law, legality and the impure worldly Church belong to the temporal. In contrast, within Hobbes' radically materialist metaphysics the former is merely a phantasm.

3   Natural Religion and the Consecration of the State

For Hobbes, the universal laws of religion in general are indistinguishable from the political principles by which the artifice of the state is constructed. Thus, Hobbes demystifies authority and gives it a scientific and rational basis by naturalising it as power relations. However, the operation of these principles requires the cultivation, by the sovereign, of the minds of his subjects. Against Beiner's claim that Hobbes 'Judaicizes' Christianity, I argue that from Hobbes' perspective, Judaism does not provide a particular religio-political content to be applied to Christianity. Instead, he identifies in certain Judiac practices and equally in pagan practices, empirical demonstrations of universal natural politico-religious forms or techniques germane to all politico-religious systems. Like the natural and general register of ceremonial *cultus*, by which the subjects constitute the material power of the sovereign (discussed in the previous chapter), the second inverted form of *cultus* (practiced as pedagogy by the sovereign over subjects) operates at the level of religion in general.

Hobbes' equation of the worldly and the divine was evident to Bramhall in the seventeenth century. Bramhall writes that in *Leviathan*, 'humane and divine politiks, are but politiks'.[107] In *Leviathan*, Hobbes had only offered a cursory remark that the signs of honour men offer God and all powers invisible are nothing other than the 'expressions of reverence as they would use towards men'.[108] In *Behemoth*, this relationship is developed into a tacit hypothesis that there is a fundamental equivalence between the political practices of parliamentarians and the ecclesiastical practices of Protestant ministers. That

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[107] John Bramhall, *Castigations of Mr. Hobbes and The Catching of Leviathan* (London: E.T. for J. Crook, 1658), 466.

[108] *Lev*, 12.[9].

is, a bi-directional influence between ecclesiastical forms and political forms. The particularity of Hobbes' conception is distinguished from the doctrine of 'divine right' and Schmitt's 'political theology' by the emphasis on practice rather than theology. Hobbes argues that, in one direction, political institutions provide the inspiration for Presbyterian reforms. He notes that the Presbyterians demanded 'that the State becoming popular, the Church might be so too, and gouerned by an Assembly'.[109] In the other direction, the Presbyterian synod was used as a model for the House of Commons, giving the 'oligarchy' of parliament a basis in divine right.[110] Although Hobbes criticises the particular aims of those involved, the possible traffic between the two domains is taken as self-evident.

Similarly, Hobbes accuses both Church ministers and parliamentarians with stirring up populism and popular government. He draws a parallel between the theatrical oratory displays of preachers in the pulpit and ministers in parliament. The phenomenon is considered part of an 'ambitious plot' for power and 'sedition against the State'. This blurring of the ecclesiastical and the political appears often in *Behemoth*. The theatrical form of Church ceremony leads to a 'loue with Democracy' and 'Harangues in the Parliament' and subsequently self-interested ambition and disruption in both ecclesiastical and political matters.[111]

The basis of such parallels is the presumption that religion is not a theology but a practice determined by the laws of nature.[112] Religion is concerned with the practice of obedience, the 'keeping of the Feasts and Fasts' which 'belong to the honour of God' but are neglected by the Presbyterians.[113] Distancing himself from Herbert's Protestant anthropological category of religion Hobbes, offers alternate anthropology of religion as a civil practice.

Comparing *Leviathan* against corresponding sections of *Elements* and *De Cive*, an increased interest in the anthropology of natural religion is apparent. In *Leviathan*, religion is given its own chapter and additions with religious themes are made throughout the anthropological part one.[114] In chapter twelve, Hobbes introduces the concept of the

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[109] *B*, 323.

[110] *B*, 205.

[111] *B*, 136-8.

[112] *B*, 181.

[113] *B*, 170.

[114] I focus on the changes between *Elements* and *Leviathan*. Due to the structure of the Latin trilogy, the corresponding sections occur in *De Homine* which was published after *Leviathan*.

'seed of religion', a 'peculiar quality' of man which is largely absent in other living creatures.[115] It is linked to three qualities: (i) a curiosity 'in the search of causes', (ii) a tendency to treat observed beginnings as causes and (iii) to experience felicity, unlike beasts, in a domain beyond the 'quotidian food, ease and lusts', a domain relating to foresight, imagination and the supposition of causes.[116] In additions to chapter two, the origin of Greek religion is identified in the products of imagination (apparitions and dreams).[117] Hobbes blames man's *ignorance* for the advent of pagan religion, pointing towards a pedagogical theme common to other additions. In chapter three, defining terms such as foresight and prudence, Hobbes now includes a brief discussion of the religious categories of providence and prophecy. These are equated with the distinctively human powers of foresight and guessing. The former based on one's own activities and the latter based on an extensive study of signs (the observation of the 'antecedents' and 'consequents' of events).[118] In chapter six, he adds a distinction between religion and superstition, but also connects both to fears of material power [*potentia*].[119] In chapter eight, Hobbes expands on an early discussion of hallucinations induced by a heatwave in Abdera under the heading of madness.[120] Through these insertions, religion is treated as a wholly natural human response to worldly encounters, inspired subjectively by curiosity, but connected with foresight of consequences and anthropologically universal.

In chapter twelve, the ritualistic aspects of religion, worship and honour, are also subsumed under general anthropological categories. As mentioned previously, Hobbes writes that the origins of worship are political and it was only subsequently applied to relations between men and God or gods.[121] From this naturalisation, Christianity is characterised as one instance, one particular form, of worship adhering to general principles determined in accordance with the laws of nature. In the Latin, Hobbes notes specifically that such worship, *cultus,* between men is *dictante solâ Naturâ*, dictated by nature alone.[122] The only difference between divine worship and civil worship is the

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[115] *Lev*, 12.[1]-[2] and 11.[25]-[27].

[116] *Lev*, 12.[2-4]. On the Epicurean aspects, see Springborg, 'Epicurean'.

[117] *Lev*, 2.[7-8]. cf. *EL*, 1.3.8-10

[118] *Lev*, 3.[7]. cf. *EL*, 4.6, 4.7, 4.10.

[119] *Lev*, 6.[36], 31. There is no corresponding definition in *Elements*.

[120] *EL*, I.10.10; *Lev*, 8.[25].

[121] *Lev*, 12.[9]. See my previous chapter.

[122] *Lev* (Tomson 1679 Latin ed) ch 12. In the Hackett edition, Curley claims that 'neither the Latin nor the English characterises worship as a *dictate* of reason, but only as a suggestion.' But the 1676 Tomson edition unmistakably describes 'gifts, petitions, thanks etc' as a '*dictante solâ Naturâ*'.

object of worship.[123] It is not the 'movement, place, dress or gesture of body' that distinguishes them but only that in one case it manifests a sign of our recognition of God's material power and in the other our recognition of another man's material power.[124]

Of course, these seeds of religion, Hobbes notes, have been cultivated by 'two sorts of men'. One through their own inventions resulting in 'human politics'. The other at the prompting and advice of God resulting in 'divine politics'. Pointing towards the significance for authority, both types aim to make men 'more apt to obedience, laws, peace, charity, and civil society'. With the latter, Hobbes includes only those 'subjects in the kingdom of God' established under Abraham, Moses and our blessed Saviour.[125] Given the periodisation of Sacred (political) History and Hobbes' remarks on the 'kingdom of God', the implication is that in the divine interregnum all politics are 'human' and must be based on natural law, rather than supernatural revelation. Hobbes derogates the use of 'supernatural things' (ideas, concepts) in politics and suggests that remaining within a science of 'natural things men will require only natural signs and arguments' for judgement.[126]

The chapter 'On Religion' forms one loci of the debate on Hobbes' atheism.[127] Curley, amongst others, uses the chapter to argue that Hobbes saw not only pagan religion but also Judaism and Christianity as 'suspect'.[128] And although some scholars, such as Martinich, maintain that Hobbes was an orthodox theist, it is difficult to read 'On Religion' without detecting a sense of scepticism toward all religious belief.[129] Despite Hobbes' occasional references to 'true religion' it is quite an elusive category in his works. There is no explicit, positive account of the category even in chapter twelve. In *De Cive*, Hobbes does offer a positive example: the religion established by God through Abraham.[130] 'Abraham is the source of true religion' and through him mankind is brought to 'true worship' of God. However, as discussed above, the doctrine given to Abraham is

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[123] *Lev*, 12.[12].
[124] *DC*, 15.18.
[125] *Lev*, 12.[12].
[126] *Lev*, 12.[28]-[29].
[127] Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis*, 77.
[128] Curley, '"I Durst Not Write So Boldly" Or, How to Read Hobbes"s Theological-Political Treatise', 19–22; George Wright, 'Curley and Martinich in Dubious Battle', *Journal of the History of Philosophy* 40, no. 4 (2002): 461–76.
[129] Martinich, *Two Gods*, 339–53, 'Appendix A: Curley on Hobbes'.
[130] *DC*, 16.1.

minimal: a monotheistic creator god.[131] There are a handful of references to 'true religion' in *Leviathan*. It first appears in a section on the passions, where 'true religion' relates to a true fear of an imagined power and a real object.[132] Nevertheless, in the remaining references throughout *Leviathan*, it is unclear if the category is ever populated. Of the few uses of 'true religion' and 'true doctrine' none provide evidence that there is, in fact, any 'true religion' beyond 'natural law'.[133] The one substantiating instance in *De Cive*, connecting it to Abraham's revelation, is also reworked and expanded to remove any explicit use of 'true'. The new formulation refers instead to the command by God to obey both the 'moral laws, known by the light of nature' and any additional commands conveyed through a 'dream or vision'.[134] Given Hobbes' periodisation of the present as a divine interregnum, it would seem there is only 'true religion' to the extent that it is allowed by the sovereign, since the rights of the sovereign over religion extend to the evaluation of revelation and scripture.

This difficulty in identifying a 'true religion' in Hobbes' works is perhaps due to the categorical mismatch between religion and truth. That is, if religion is not a set of propositions or doctrines, but is instead a set of formal practices, then clearly the ascription of 'truth' is nonsensical. In *Behemoth*, as part of his polemic against the clergy, he blamed their 'seditious doctrine' (theology) with obscuring religion, which consists only in the practice of obedience according to the laws of nature. They neglect the duty of religion.[135] This is echoed in the *Historia Ecclesiastica* where theology is derided as an 'impossible system' which has displaced 'piety' [*pietas*] as the central concern of religion.[136] That *pietas*, in the Roman tradition, refers specifically to a concept of dutifulness associated with family as well as the gods is clearly significant in this

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[131] *DC*, 16.1.

[132] *Lev*, 6.[36]. See also Jianhong Chen, 'On the Definition of "Religion" in Hobbes' Leviathan', *Bijdragen Tijdschrift voor Filosofie en Theologie* 67, no. 2 (1 January 2006): 185–88.

[133] 'True religion' is used only three times in *Leviathan*: 6.[36] (Hobbes gives a definition discussed in detail in Chen, 'On the Definition of "Religion" in Hobbes' Leviathan'.); 33.[2] ('true religion', along with justice and peace, Hobbes notes, is 'something to be sought out through the use of our senses, experience, and natural reason.'); and 46.[42] (In a clear reference to Galileo, Hobbes that any truths found by science by definition can not contradict 'true religion').'True doctrine' is used three times: 25.[40] (Hobbes equates the true doctrine of natural law with a science of virtue and vice); 32.[8] (merely preaching 'true doctrine' is described as inadequate without the support of miracles); 42.[42] (Hobbes states that Paul's letters were undoubtedly received as 'true Christian doctrine').

[134] *Lev*, 40.[1].

[135] *B*, 170.

[136] *HE*, xxxi, 10-20.

context.[137] Hobbes notes that the commands of God, first handed down to Moses, are ignored and instead 'pastors teach empty dogmas about the nature of God that are not intended to be understood by uneducated people.'[138]

Hobbes' anthropological generalisation of religious categories extends to the distinction between the sacred and profane. Based on his analysis of Scripture, Hobbes offers the definition: 'to *consecrate* is, in Scripture, to offer, give, or dedicate, in pious and decent language and gesture, a man or any other thing to God, by *separating it from common use.*'[139] Hobbes insists there is no 'conjuration or enchantment' (such as transubstantiation of the sacrament). Consecration is merely the designation of an object for a particular, separate, type of use. Hobbes discusses the particular, 'special' or 'peculiar' relationship between the Israelites and God. This is distinguished from the general relationship by which all the nations of the world are God's dominion by reason of his power.[140] The Israelites are determined as a *holy* nation, 'set apart for especial service'.[141] The holy in the most general sense is simply something set aside, by consent, or agreement, from ordinary and quotidian use for something special.[142]

Hobbes' materialist conception of the holy is consistent with his broader project to provide a rational and scientific account of religion and politics. The programme of disenchantment is particularly evident in Part IV of *Leviathan*. He opens by denouncing a 'confederacy of deceivers', the papacy, for introducing into religion phantasms, spirits of illusion and demons and for distorting ceremonies from simple symbolic acts of representation and memorialisation into rites of conjuration and magical incantations.[143] He objects to such superstition and argues instead that such ceremonies require only 'decent and rational speech'.[144] This rationalist re-reading of ceremony is evident throughout *Leviathan*. The ceremonies by which Moses consecrated objects are exemplary for Hobbes, since they involve only adding garments and anointing with oil,

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[137] D. P. Simpson, ed., *Cassell's Latin-English, English-Latin Dictionary* (Bloomsbury Publishing, 1968), entry '*pietas*'.

[138] *HE*, xxxi, 15-42.

[139] *Lev*, 44.[11]. italics added.

[140] *Lev*, 35.[5].

[141] *Lev*, 35.[7].

[142] *Lev*, 35.[1]. [5]. Exod 19:5, As Curley notes in his edition of *Leviathan*, Hobbes, at *Lev* 35.[5], modifies the KJV and RSV to exclude the reference to 'sacerdotal kingdom, a kingdom of priests'.

[143] *Lev*, 44.[1].

[144] *Lev*, 44.[21].

'which was a simple and decent cleansing and adorning them'.[145] The naturalisation of religion and the materialist conception of consecration place it and religion wholly within the field of the laws of nature, knowable by the dictates of natural reason as well as revelation from God. But the decisive point is that in this way both become epistemological problems or at least problems which admit pedagogical solutions and thus require a consonant form of authority.

4   Pedagogical Authority: The Divine Right of Sovereign Pastor

Hobbes' demystification of authority transforms it into an epistemological problem, such that authority is derived from correct knowledge or understanding.[146] In recounting the political history of the Israelites, Hobbes' primary aim is to identify throughout history a point of unity of rule with respect to both 'policy and religion'.[147] For the most part, this is not difficult. Abraham, Moses, Aaron, Eleazar the high priest and Samuel all typify such a unity, without the need of a forced interpretation. They each acted as both civil sovereign and high priest. Only the period of Joshua is more difficult. As Curley notes, citing Aquinas and Spinoza, it is more readily characterised as a 'mixed form of government, in which authority is divided.'[148] However, Hobbes glosses over this difficulty. Instead, he points to another problem, he remarks that despite the actual unity of temporal and spiritual power over the Israelites, 'the people *understood* it not.'[149] What precisely did the people fail to understand? They did not understand the principles of indivisible sovereignty. As a consequence of their lack of understanding, the people demand miracles, great ability or felicity.[150] The result was disobedience under 'pretext' of 'justice or religion'.[151] This led to 'the civil troubles, division and calamities of the

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[145] *Lev*, 44. [21].
[146] In certain respects, Hobbes offers a theory that foreshadows the utilitarian calculus of Bentham and Mill.
[147] *DC*, ch 16; *Lev*, ch 40.
[148] *Lev*, Curley's note 4, 322.
[149] *Lev*, 40.[12].
[150] *Lev*, 40.[12].
[151] *Lev*, 40.[13].

nation.'[152] Thus civil disturbance and difficulties in government are due not to failures of rule but failures in pedagogy. The basis of effective authority is understanding and hence education. The introduction of 'authorisation' in *Leviathan* may have shifted Hobbes' attention to education, since, to recall from the previous chapter, the one prerequisite for authorising the sovereign is rationality. Neither fools, madmen, nor children are able to authorise the sovereign in Hobbes' account.

Revising his earlier account of the causes of the civil war, in *Behemoth*, written around 1667-1669, Hobbes describes the seed of conflict as 'certaine opinions in Diuinity and Politiks' propagated by the universities and spread through the pulpit.[153] These produce the 'corrupt[ion] of the people generally'.[154] All ideological and educational influences are smeared as 'seducers'. Catholic remnants, who remain loyal to the papacy, spread the idea that the pope is their sovereign. Independents, who demand private interpretation of Scripture, induce division and sects. Democrats, infected with classical philosophy, have been miseducated and undermine the present form of government. The growing bourgeoisie are tempted by the example of the Netherlands and so break the first Mosaic commandment or at least Hobbes' politicised recoding of it as: not to love the forms of government of one's neighbours. The miseducation of the people has the result that they know not their political duty and its necessity against unrest. Instead some subjects even seek financial advantage from the disruption produced.[155]

Hobbes' diagnosis of the present civic disruption has two aspects. Firstly, he criticises the particular claims made by Protestants and the papacy, but he also notes that the problem is that the Church dominates all pedagogical roles by monopolising the few opportunities for teaching the people. The lack of leisure of the common man, whose mind is always occupied by 'private business or pleasures', requires that a time be set aside and separated from quotidian concerns in order for civic education to be effective. In this way common man can be 'taught their duty'.[156]

However, in a sense, pedagogical authority appears an unavoidable obverse of juridical authority, because the people must *know* the laws. In the *Dialogue on the Common Laws of England*, Hobbes specifically defines a law as a command 'declaring

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[152] *Lev*, 40.[12].

[153] *B,*106. For dating of the text see Seaward's 'General Introduction' to *Behemoth*, 6. See also, *DC*, 5.5, 7.4. and *Corresp*, 120, letter 37.

[154] *B*, 108.

[155] *B,* 106-7.

[156] *B*, 158.

Publickly, and plainly what every of them may do, and what they must forbear to do.'[157] Hobbes insists that a law must be *made known*, to be a law as such. This requirement has two consequences, firstly law must be given a material form as a 'declaration or manifestation' of the sovereign's will by 'voice, writing, or some other sufficient argument of the same'.[158] But secondly, for those incapable of 'knowing,' law does not exist. 'Over natural fools, children, or madmen there is no law, no more than over brute beasts'.[159] This aspect of Hobbes' political theory is often overlooked and particularly by Schmitt. It points directly towards the kind of rationalist political solution embodied in Fichte's 'naive schoolmasterly "educational dictatorship."'[160]

Among the duties of the office of the sovereign representative, Hobbes includes the duty to inform the people of the 'grounds and reasons' of the rights of sovereignty itself.[161] He writes that the 'grounds of these rights' must be 'truly taught, because they cannot be maintained by any civil law or terror of punishment'.[162] Thus Hobbes introduces a further legitimating supplement: education. It is not enough to establish an artificial power and law by contract, a material power (for execution) by ceremony and popular responsibility by authorisation. To maintain a commonwealth one also needs a robust system of education. The duty in question is that of 'supreme pastor' to the commonwealth.[163] Contrary to the forms of legitimation derived from the contract, ceremony or authorisation, which flow from the populus, the origin of the pastoral authority is 'divine right'. It is one of the few positive remarks and uses made of divine right in the text. While all subordinate pastors possess authority *jure civili*, Hobbes insists that the sovereign has such authority *jure divino*.[164] In general, the pastoral role is modelled on the Apostles and their domain of authority which includes teaching, prophecy and evangelical tasks.[165] In *Behemoth*, the role of the Christian king is extended further, to the role of both bishop and shepherd of a diocese composed of the entire commonwealth (his dominion).[166] As supreme pastor, the sovereign's primary duty is to

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[157] *DCLE*, 70, (*Ph.* (32)).
[158] *Lev*, 26.[12].
[159] *Lev*, 26.[12].
[160] *Crisis*, 64.
[161] *Lev*, 30.[4].
[162] *Lev*, 30.[4].
[163] *Lev*, 42.[71].
[164] *Lev*, 42.[72].
[165] *DC*, 17.23; *Lev*, 42.[17].
[166] *B*, 124.

ensure that the multitude understands the grounds and structure of the commonwealth and importantly are motivated to participate in other forms of legitimation. But the operation of pedagogical authority is by 'general providence' rather than attention to particulars.[167] Hobbes' recourse to divine right is distinctive, differing from the arguments advanced by King James I or Mainwaring which relied on Aristotelian theology and grounded the entire political structure of the monarch. However, as the ultimate support of authority the divine right of supreme pastor is just as foundational as the divine right theories of his contemporaries.

The dangers arising from neglect of education has a mythical precedent cited by Hobbes: the daughters of Pelias, who are tricked by a sorceress into killing their father the king. According to Pindar, Pelias ruled lawlessly after installing himself by force as king of the city of Iolcus, thereby usurping the hereditary dynastic rule of Aeson and Jason.[168] Hobbes' reference to Pelias's fate in a section on the pedagogical duty of the sovereign points to the importance of religious and ideological rule over sheer force: for it was Pelias' dereliction of state cult that led to his gruesome regicide by his own daughters and at his own command.

Diodorus writes that Medea the sorceress, aiding Jason in the restoration of his kingdom against Pelias, offered him an alternative to armed conflict. She promises 'to slay Pelias all alone by means of cunning and to deliver him to the chieftains of the royal palace without their running any risk.'[169] She enters the city, disguised as an old woman, carrying an idol of the goddess Artemis. Feigning divine inspiration and revelatory messages she excites the 'superstitious populace' and gains access to the palace.[170] Accounts of revelation and miraculous demonstrations enabled her to gain the trust of king Pelias and his daughters, thereby convincing the aged ruler that she could restore his youth. Pelias commands his daughters to obey Medea. And after demonstrating the procedure on an old ram, Medea convinces the daughters to kill and dismember Pelias in order to boil him in a cauldron, purportedly to restore his youth. Instead, after Medea signals the death of Pelias, Jason and his men take the city. Thus Pelias, who ruled lawlessly and by force alone, is undone through religious subterfuge and manipulation. The example clearly resonates with two of Hobbes' regular assertions: firstly, that forms

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[167] *Lev*, 30.[2].

[168] Pindar, *Pythian*, 4.110.

[169] Diodorus Siculus, *The Library of History: Volume I* (Cambridge: Harvard University Press, 1933), bk. 4.50, 503.

[170] Diodorus Siculus, bk. 4.51, 503.

of worship independent of the state are a source of danger to any ruler; and secondly that all claims of revelation and personal 'enthusiasm' should be treated with scepticism, as they can easily be feigned and provide a front for other motives.

Hobbes also uses the myth of Pelias to introduce another line of argument: that the Biblical ten commandments are not specific to Judeo-Christian religion, but instantiate a set of general political principles which form the 'natural and fundamental laws' of sovereignty.[171] Here, the fact that Medea entered Ioclus with an idol of the goddess Artemis demonstrates the terrible consequences of breaking the commandment to monotheism: thou shalt have no other gods. In effect, Hobbes re-interprets the Judeo-Christian tradition as embodying a particular example of a general set of political principles. The task he sets himself is thus to identify a set of principles of reason, 'found out by industrious meditation' which generalise the commandments given to Moses by revelation.[172] These reasoned political principles can then be taught to the people in lieu of the commandments, which, in the regeneration, lack the support of miracles and revelation.

Hobbes begins with the first commandment, the call for monotheism: thou shalt have no other gods, *Non habeis Deos alienos*.[173] This commandment is reinterpreted as the principle that the common people 'ought not to be in love with any form of government they see in their neighbour nations, more than with their own, not (…) to desire change.' Hobbes notes that this principle is crucial to the obedience and concord of a people, independent of the particular political form adopted (i.e. aristocracy or democracy). The precondition for the effective flourishing of a commonwealth is obedience, connecting the commandments with his account of public worship discussed in my previous chapter.

Turning to the second commandment, Hobbes equates the sovereign with a 'jealous god'.[174] He warns that subjects should be wary of showing love, in the form of obedience, to his competitors. The commandment is equated with the lesson that popular rivals to the sovereign represent a threat to the stability of the commonwealth. The third commandment (not to take God's name in vain), is equated with speaking

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[171] *Lev*, 30.[6]. cf. *DC*, 16.10. In *De Cive*, Hobbes suggests elliptically that such an interpretation is possible, but only develops it in *Lev*, 30.

[172] *Lev*, 30.[5].

[173] Jan Assmann, *Of God and Gods: Egypt, Israel, and the Rise of Monotheism* (Madison: University of Wisconsin Press, 2008).

[174] *Lev*, 30.[7]-[8].

contemptuously of the sovereign. The political effects are to 'slacken obedience', which undermines the 'safety of the commonwealth'.[175] Hobbes continues by producing a generalised political principle corresponding to each of the remaining commandments: one should honour one's parents, because the family is the originary model of the commonwealth; one should avoid violence, respect the property of others and avoid corruption because these undermine justice; and of the tenth commandment, Hobbes argues that it offers a formal reiteration of the second table as a general principle of reciprocity.[176]

The fourth commandment, 'remember the sabbath day, to keep it holy', is taken as a general principle for political education and hence, the basis for the pedagogical activity of sovereign authority.[177] He returns to the pedagogical problems of the reproduction of a political form. He writes that 'after one generation [has] past' the people cannot be taught, nor remember these general political principles, nor even know 'in whom sovereign power is placed'. As an aid to memory, they must be read the laws and principles of the commonwealth at 'some certain times' that are set 'apart from their ordinary labour'. The sabbath is taken as a general pedagogical strategy which functions through consecration, that is, by setting apart one day from the quotidian toil of ordinary life. The day of rest offers the opportunity to 'take joy also in themselves by lawful recreation'.[178] Thus, Hobbes proposes that a policy of state consecration through the apparatus of the 'sabbath' is the condition of possibility of the reproduction of the commonwealth. But importantly, this is thematised as a problem of memory or memorialisation, a theme also taken up in the discussion of Abraham and the role of circumcision in the covenant. He generalises the assemblies of the Jewish synagogue as a 'school of the Jews' where the 'Laws of the nation' are taught.[179] They 'differed not in nature, but in name only, from public schools'.[180] The sabbath was originally a civil or political endeavour motivated only towards the 'acquainting of the people with the Commandments which they were to obey'.[181]

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[175] *Lev*, 30.[9].

[176] *Lev*, 30.[11]-[13].

[177] Exodus 20:1-17; *Lev*, 30.[10].

[178] *Lev*, 30.[10].

[179] *Lev*, 46.[10]; *B*, 127.

[180] *Lev*, 46.[10].

[181] *Lev*, 46.[12].

In *Behemoth*, Hobbes asserts the utility of regularly reading the Laws of England in congregations in order that the people would 'know what to doe, for they already know what to beleeue'.[182] This would address the present politico-religious error of Christendom, through which individuals independent of the state (Church pastors) are allowed to 'Harangue all the people of a nation at one time, while the State is ignorant of what they will say'.[183] Returning to the metaphor of agriculture, Hobbes notes, that instead of cultivating obedience through 'diligent instruction', the current independence of Church preaching spreads 'fruitless and dangerous doctrines' that only terrify and amaze the common people. Singling out Christendom, Hobbes notes that for as long as its educational faults remain, Christendom 'will be subiect to these fits of Rebellion', such as those suffered in the 1640s against Charles I.[184]

In his later writings, Hobbes identifies the origin of these errors in the universities, the 'means and conduits by which the people may receive this instruction' in their political duties.[185] Because the clergy in the pulpit are the sole conduit by which the opinions of the general population are formed and the clergy are educated in the universities, then the 'instruction of the people dependeth wholly on the right teaching of youth in the universities'.[186] In earlier centuries, emperors and Christian kings had mistakenly allowed the pope and Roman clergy to gain control of education.[187] Hobbes' disdain for the universities is generally directed at their Aristotelian tendencies and the resulting mess of theological discourse. But, in *Behemoth*, he also blames the classical works of Cicero and Aristotle for acquainting the people with 'democracy'.[188]

Against the Roman Catholics, Hobbes describes the universities as the slow and gradual means by which the papacy was able to steal entire kingdoms.[189] He notes that Charlemagne, prompted by Pope Leo III, established a university in Paris (now the Sorbonne), dedicated to theology.[190] This set an example for other rulers, who followed with further 'walled' institutions dedicated to the arts and administered by the papacy.

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[182] *B*, 128.

[183] *B*, 189.

[184] *B*, 199.

[185] *Lev*, 30.[14].

[186] *Lev*, 30.[1].

[187] *Lev*, 47.[17]-[19].

[188] *B*, 164. Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008), 140–1. Skinner notes that 'democraticall gentlemen' referred to 'republicans' who depict the 'people' as non-dependent on a magistrate.

[189] *HE*, 1930-40.

[190] *HE*, 1840-50; *B*, 128, 159-60.

Through the universities, if he desired, the pope 'could have impressed any attitudes on the minds of generations to come.'[191] Through control of education, the papacy was able to usurp political rule and make citizens 'hostile to their own kings'.[192] By invoking fear in the people, they terrified them into an obedience of the pope's canons.[193] And they made use of the obscurity of Aristotelian methods of philosophy 'to puzzle and entangle men with words'.[194] The result was 'contempt for kings' and 'the common people, freed from civil law, went wild'.[195] The real aim of the universities was purely political: the 'maintenance of the Popes Doctrine, and of his Authority over Kings'.[196] Hobbes notes that through Aristotle's doctrine of contingency the men of the universities 'make God stand idle, and to be a meer spectator of the games of Fortune'.[197]

5   The Aporia of Juridical and Pedagogical Authority

The breadth of the pedagogical authority of the sovereign, however, stands in tension with the limits Hobbes usually ascribes to the sovereign's influence. From the juridical standpoint Hobbes insists that the sovereign is unable to act on the internal conscience of the subjects.[198] The sovereign can legislate and obligate the subject to perform acts but is simply unable to have such an effect on inward beliefs and opinions. Nevertheless, this is precisely what is demanded of pedagogical authority and what the universities demonstrated was possible, evident in Hobbes' own criticisms. In *De Cive*, since the natural law was 'innate' in individuals, Hobbes presents his role, somewhat naively, as a rational and scientific uncovering of the natural law of politics: a 'law which God has revealed to all men through his eternal word which is innate in them, namely by natural reason.'[199] Reflecting a transformation in perspective, in the 1660s the current education system is described as a 'trojan horse' of sedition. In earlier works Hobbes implicitly depicts politics as a problem of reason admitting correct solutions. In *De Cive*, this

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[191] *HE*, 1850-65.
[192] *HE*, 1895-8.
[193] *B*, 161.
[194] *B*, 162.
[195] *HE*, 1912-5.
[196] *B*, 129.
[197] *B*, 163.
[198] For instance: *EL*, 25.6; *Lev*, 26.[41], 46.[37].
[199] *DC*, 14.4.

demands unquestioned 'simple obedience'. But, in the later texts this is relinquished for a much weaker 'will to obey'. Hobbes forsakes the demand for outward ritual performance and advocates charity, love and an inward intention toward obedience. Failures to obey are unavoidable, but can be remitted through faith in Christ.[200] In an ambiguous passage Hobbes inverts his usual statement that the sovereign cannot control belief and appears to demand precisely that.

> [T]he examination of doctrines belonging to the supreme pastor, the person which all they that have no special revelation *are to believe* is (in every commonwealth) the supreme pastor, that is to say, the civil sovereign.[201]

The doctrines that subjects 'are to believe' are to be judged and decided by the sovereign. The authority of pastor is coincident with the authority of the arbiter or judge of doctrine. Hobbes uses a peculiar phrase 'are to believe'. The subjects of the commonwealth 'are to believe' doctrines determined by the sovereign. Is this an imperative, an obligation, or a statement of fact? The status of this competence 'belonging' to the sovereign is also ambiguous. Is it a right or legal power, like the sword of justice? In *De Cive*, the final right accorded the sovereign as a result of the contract, was the right 'to decide which opinions and doctrines are inimical to peace and to forbid their being taught.'[202] However, the pastoral role in *Leviathan* is not legitimated by the contract, but *jure divino*. The passage also implies that subjects are *obliged* to believe the doctrines judged to be divine by the sovereign. That is, the sovereign is required to legislate with respect to articles of belief. But Hobbes insists that belief is an 'inward thought' or 'internal faith'.[203] These are 'exempted from all human jurisdiction' since they are unknowable, and more importantly not under our voluntary control.[204] Hobbes is aware of the aporia produced here, but unable to find a suitable solution.

In the anthropology of part one of *Leviathan*, Hobbes describes the interrelations between knowledge, faith, belief and opinion through a discussion of discourse.[205] He notes there are two types of discourse: one begins with definitions and produces

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[200] *Lev*, 43.[3-4].
[201] *Lev*, 43.[6]. My italics.
[202] *DC*, 5.11.
[203] *Lev*, 40.[2], 42.[43].
[204] *Lev*, 32.[5], 40.[2], 42.[43].
[205] *Lev*, ch 7.

knowledge and science.[206] The other, which begins with contemplation or incomplete chains of presumptions, is called 'opinion'. In belief, one holds two opinions, one regarding the content of the discourse, and another regarding the person from whom the discourse is received. For Hobbes, our belief relies on the faith we hold in the person who relays a discourse, where this discourse is traced to either some contemplation of the individual or words of some other individual. This entails that to have a belief based on faith we must know personally the individual from whom the discourse originates. In the case of Christian doctrine and the words of Christ captured in Scripture, this is clearly impossible. After Christ's ascension we have no grounds for belief based on Christ's words or his scribes alone. There are two alternatives: reputation and authority. In the immediate centuries after the ascension, the Christians relied on the 'reputation of their pastors' as guarantors of articles of faith. However, after the unification of Christianity with civil sovereignty by Constantine, reputation is superseded by delegated authority, implying the legal determination of belief.[207]

Hobbes attempts to avoid this difficulty by requiring only 'the captivity of our understanding' rather than complete 'submission of the intellectual faculty.' To captivate the understanding, which demonstrates a 'will to obedience', is simply to accept a proposition without scrutiny and to forbear contradiction. Even so, the understanding itself is one part of the intellectual faculty and these, 'are not in our power to change'.[208] The latter implies that one cannot actively captivate the understanding and hence cannot simply will to believe doctrines based on legal authority. Unable to offer a solution, Hobbes simply shifts tack and instead notes that the 'causes why men believe any Christian doctrine are various'. He rejects the papal claims of infallibility and protestant claims of the 'testimony of private spirit' as mistaking belief for knowledge.[209] Offering an alternative, Hobbes cites education and suggests that it is only by indoctrination that 'we believe the Bible to be the word of God'.[210] In Christian commonwealths the ground of belief in Scripture is that subjects 'are taught it from their infancy'.[211] However, as he notes education is not always successful. Hobbes concludes with a second aporia that the

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[206] *Lev*, 7.[4].

[207] *Lev*, 43.[6]. As an aside, it is notable that here Hobbes specifically contrasts the reputation of a text (Scripture) equivalent in some sense to the medieval concept of *auctoritates*, against the legal authority given by the sovereign.

[208] *Lev*, 32.[4].

[209] *Lev*, 43.[7].

[210] *Lev*, 40.[7].

[211] *Lev*, 40.[8].

ground of faith is either teaching or the gift of God, but neither is sufficiently effective. Teaching fails for lack of a good master and Hobbes denies that God intervenes through special providence to each and every individual, which limits the reach of immediate gifts.[212] Ultimately, Hobbes forsakes providing a decisive answer and simply moves on to other things. As the critique of the universities demonstrates, in the later works Hobbes had come to recognise that it was possible and necessary to influence belief. Nonetheless, it broke with his materialist anthropology and ontology, in which the deliberation of the will is merely a mechanism of addition and subtraction, and thus it could not be integrated into his systematic philosophy.

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In this chapter, I demonstrated the significance of Hobbes' theory of religion for his articulation of a rational theory of authority. This is structured by a distinction between the particular history and cultural specificity of Christianity and the general laws of religio-politics that pertain to all political forms and find expression in Christianity and other particular religions. I showed that Hobbes reinterprets Christian Sacred history in order to reject the Catholic claims of authority and to support a model of civil religion in which Christianity is subordinate to the juridical authority of the sovereign. In addition, I argued that Hobbes appeals to a conception of divine right rationalised through a religio-political *scientia civilis*, in order to support the pedagogical authority of the sovereign as 'supreme pastor'. The increasing importance of the pedagogical authority in later works, marks a growing tension in Hobbes' attempt to limit sovereign influence to the sphere of outward performance and in the 1660s Hobbes acknowledges explicitly that ideological influence is an unavoidable facet of political rule. Hobbes' trajectory points towards the theories of nationalist politics in the eighteenth and nineteenth centuries discussed in the following chapters. For instance, Fichte's nationalist politics, despite its organicist basis, share certain traits with Hobbes' later political theory.

In the broader survey of Hobbes' oeuvre, constituting part one, I drew out the multi-faceted structure of legitimacy and authority developed progressively in Hobbes' political theory. We can identify five distinct themes associated with forms of authority and their mechanisms of legitimation. (i) While Hobbes' attempt to theorise a robust

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[212] *Lev*, 43.[9].

logical conception of the contract remains primary for his legacy, the artificial power thereby produced (a quasi-transcendent arbitrary ruler) remains inadequate to the tasks of government. (ii) Hobbes supplements this with a theory of political worship operative according to a natural science of power based on a broad reconceptualisation of power as a sphere of influence (whether by force, strength, reputation, riches, beauty or rhetoric). According to a logic of signification, the concrete display or performance of power relations magnifies or cultivates material power. (iii) However, lacking an initial 'seed' for cultivation, this process is augmented with a 'democratic' theory of authorisation modelled on theatrical fictions. The individuals of the populace author a fictive person or *dramatis personae* to be played by the natural individual of the sovereign. The mechanism *legitimates* the acts of the sovereign by displacing responsibility to the individuals of the populace. (iv) Hobbes reads Scripture and Sacred history through the lens of the contract and authorisation engendering the juridical authority of the sovereign: the judge, interpreter and arbiter of conflicts and contests. (v) However, the fictive and hence ideological basis of authorisation combined with his recognition of the intellectual influence wielded by the Catholic Church, drives Hobbes towards education and pedagogy and the divine right of 'supreme pastor'.

Although Hobbes attempts to eliminate the mystical basis of authority and the irrationality of *auctoritas*, its defining traits reappear within Hobbes' political structure. The dignity, reputation and prestige Cicero links to *auctoritas* Hobbes displaces to the worship of power. The religious sanction of culturally specific practices, whether augury and divination or circumcision and coronation are re-interpreted as particular instances of general laws of religio-politics. Ultimately it is the 'divine right' to form the opinions of the populus (in a general sense of the divine) that legitimates the entire political edifice, including the contract.

The multiple forms, mechanisms and modes of operation of Hobbes' conception of authority stand in stark contrast to the presupposed unity and indivisibility of the sovereign. The multiplicity is given form in the array for formulas used by Hobbes to describe the *Leviathan*. As Schmitt recounts, the leviathan, the 'civitas or *respublica* is a huge man, a huge animal, an artificial being, an *animale artificiale*, an *automaton*, or a *machina*'.[213] One difficulty faced by Hobbes is the need to unify these occasionally antithetical theorisations of authority in the body of the sovereign. For instance, from the

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[213] *LST*, 19; see also Balibar, 'The Mortal God and His Faithful Subjects: Hobbes, Schmitt and the Antinomies of Secularism'.

perspective of the contract, the individual of the sovereign is arbitrary, since, foreshadowing Schmitt, the decision is more important than who decides. Nonetheless, in the later works the fundamental role of the pedagogical authority given by divine right logically precedes the contract. Thus the arbitrary decision on the individual who must act as sovereign is always already made.

In any case, Hobbes' programme for political education through civil religion is echoed in the eighteenth and nineteenth century in organic theories of the nation (or *Volk*) and again in the nationalist movements of the twentieth century. The legacy of this logic for democratic forms remains contentious. While Voegelin and Gentile attempt to distinguish the religio-nationalist legitimation of fascism from its liberal counterparts, others such as Michael Billig insist that there is a broad use of such techniques across all political regimes of the twentieth century.[214] In part two, I turn to Carl Schmitt's writings and show how, in the twentieth century context, he develops different approaches to the problem of the relation between ideas and external performance emphasising the concrete particular, in contrast to the formalist tendencies in Hobbes' works.

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[214] Eric Voegelin, 'The Political Religions', in *Modernity without Restraint: The Collected Works of Eric Voegelin*, ed. Manfred Henningsen, vol. 5 (Columbia: University of Missouri Press, 2000), 19–74; Emilio Gentile, *Politics as Religion* (Princeton: Princeton University Press, 2006); Michael Billig, *Banal Nationalism* (Newbury Park: SAGE, 1995).

Part II : Carl Schmitt

Chapter 3: Commissary Authority

> The terrestrial human tames and
> domesticates animals: elephants, camels,
> hores, hounds, cats, oxen, donkeys and all
> that is his. Fish, on the contrary, are not
> tamed but only consumed.[1]

The 250 years between the composition of Hobbes' political writings and Schmitt's first forays into political theory were witness to various political, religious, social, economic and technological changes. An important development was the establishment of a centralised bureaucratic civil service. This chapter focuses on Schmitt's attempts to elaborate a specific form of bureaucratic authority distinct from Max Weber's depiction of the bureaucrat as a rationalised apolitical instrument. According to Schmitt, the legitimacy of the civil service rests on the legacy of hierarchical privilege.[2] Its authority and dignity is derived from a politics of 'representation' based on the monarchical principle, rather than scientific rationality as Weber claimed.

Although Schmitt asserts that there exists an analogy between the monarchical principle and the democratic principle, he insists that the political structures engendered by each are not simply transposable.[3] Especially where questions of authority and legitimacy are concerned, no simple substitution of democratic concepts for monarchical alternatives is possible. Instead, any transition from one to the other also requires a change in 'structure and content'.[4] That is, the systemic structure of political forms, institutions, beliefs and activities does not remain intact with a hegemonic shift from the monarchical principle, associated with concepts such as honour, privilege and hierarchy, to the democratic principle, where the latter demands the equality of all citizens and the abolition of privilege.

While we could question how strongly this structural dualism is actually operative in Schmitt's works, I accept that, to a certain extent, it is efficacious. As a result, I posit

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[1] *DPS*, 74.
[2] *L&L*, 3.
[3] *Crisis*, 30.
[4] *Crisis*, 30.

that Schmitt oeuvre can be periodised, at least loosely, as follows: (i) the early writings of 1917-1923; (ii) the 'democratic writings' of 1923-1932; (iii) the Nazi writings of 1933-1939; and (iv) the late writings after 1939. Works concerned with the monarchical principle bookend his oeuvre, including both the early and late writings. This periodisation is reflected in my division of part two of the dissertation into two chapters. This chapter focuses on the monarchical structure and chapter four on the structures arising from the democratic and *Führer* principles. For multiple reasons the Nazi writings are difficult to classify and their relation to Schmitt's other work is contested. However, since Schmitt explicitly asserts that the *Fuhrerprinzip* represents an alternative paradigm of rule, I have treated these separately in the final section of chapter four.

In the present chapter, I focus on Schmitt's attempts to articulate a distinct conception of bureaucratic authority within the theoretical framework defined by the monarchical principle, but in the context defined by the rise of mass politics in the late nineteenth and early twentieth century. These attempts can be interpreted in two ways: either as (i) an attempt to buttress and strengthen traditional, conservative forms of authority or as (ii) an alternative conservative form, which is no longer strictly 'traditional'. Despite Schmitt's affinities with the counter-revolutionary ideas of Maistre or Bonald, he was quite critical of the traditionalism of the Restoration.[5] He complained that the attempt to fight the 'activist spirit of the French Revolution with ideas such as tradition and custom and with the belief that history progresses slowly' produced a 'complete negation of natural reason' and left one in a state of 'moral passivity'.[6] Moreover, Schmitt often depicted traditionalism as 'an irrational rejection of every intellectually conscious decision'.[7] Hence, while Schmitt's alternative remains faithful to the foundations of privilege and honour central to monarchical politics and it revives argumentative strategies used in the divine right doctrine of the Middle Ages, it also manifests, in other respects, a break with 'traditionalism' and an attempt to theorise a rationalist conception of hierarchical authority.

My contention in this chapter is that Schmitt's monarchical writings are unified by his attempts to elaborate a distinctive concept of authority based on the 'personal office' of the Roman dictator and Jean Bodin's commissar. For clarity, I refer to this nominally as 'commissary authority'. For Schmitt, it represents an alternative *rationalist*

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[5] *PT*, 54. Given the context Schmitt clearly refers to the Bourbon Restoration of the nineteenth century.
[6] *PT*, 54.
[7] *PT*, 54.

'traditional' authority and I claim that this model can be identified in multiple works and contexts: in *Dictatorship* (1921) it provides a model for the civil servant of the state; in *Roman Catholicism and Political Form* (1923) it defines the relations between the Church and state; and in *Nomos of the Earth* (1950) it is key to the historical and theoretical role of the *katechon*. I argue that this authority is composed of two distinct elements: a concrete task and an independent hierarchy of privilege. Through their articulation, Schmitt attempts to constitute a limited, finite form of authority, attuned to the particular, and which is capable of preserving the 'humanity' of the bureaucracy and overcoming the reduction of the state to an impersonal and mechanical apparatus. Further, I suggest that while this model is constructed from a broad variety of precedents, including Christian, pagan, monarchical and imperial, an important source is the Medieval doctrine of divine right. For Schmitt, the foundation of authority is divinely guaranteed custom (*Sittlichkeit, Ethos*, *nomos*), the origin of all right and justice (*Recht* and *Gerechtichkeit*).

The chapter is divided into five sections. In the first, I provide a context for Schmitt's account of commissary authority through a brief sketch of Max Weber's canonical tripartite taxonomy of legitimate *Herrschaft*, his conception of bureaucracy and his depiction of the routinisation of authority. In the second section, I extract from *Dictatorship* and related texts Schmitt's initial theorisation of 'commissary authority' based on the Roman dictator and Jean Bodin's commissar. I demonstrate that with this concept he aimed to save the civil service from the threat of instrumentalisation. I show that the specificity of this authority is derived from two elements: the commission or specific task to be completed and the presupposed hierarchy. In the third section, I show how these are fleshed out in a Catholic-theological and juridical context in the subsequent works: *Political Theology* and *Roman Catholicism and Political Form*. I demonstrate that these continue to develop themes from *Dictatorship* and incorporate an ambiguous notion of human dignity [*Würde*]. In the fourth section, I turn to the 1950s works including *Nomos of the Earth* and Schmitt's references to the concept of the *katechon*. I demonstrate that for Schmitt, the *katechon* embodies a commissary authority that avoids assimilation to Dosteovsky's Grand Inquisitor, a common foil for Schmitt.[8] In the final

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[8] Schmitt's evaluation of Dostoevsky's figure is one point of debate in the secondary literature. In the following I demonstrate that Schmitt specifically attempts to distance his position from the Grand Inquisitor.

section, I argue that Schmitt's work exhibits unmistakable resonances with divine right doctrine, in particular, that described by John Neville Figgis.

Across Hobbes' works we witnessed a development from the concrete presentation of authority in ceremony to the need for explicit educational (ideological) intervention in the form of a civil religion. While Schmitt remains in the sphere of ideology, he rejects the pedagogic despotism advocated by Hobbes (and later by Rousseau, Fichte and others).[9] Instead of imposing a rationalist political education like August Comte's religion of humanity, Schmitt reasserts the existing political dimensions of Christian religion, in particular Catholicism, and resurrects aspects of divine right doctrine. Although both Hobbes and Schmitt ultimately rely on divine right, Schmitt's revival of traditional precursors contrasts with Hobbes' attempt to integrate it with his scientific and geometric vision of politics. Similarly, in Schmitt's democratic writings (discussed in the next chapter), the participatory aspect of acclamation recalls Hobbes' use of ceremony, while rejecting the formalist vision of rationality on which it is based.

1   Max Weber and the Bureaucratic Apparatus

Like many of his contemporaries, Schmitt was significantly influenced by the works of Max Weber. In particular, the legacy of Weber's taxonomy of *Herrschaft*, suggests it was a likely reference point (if polemically) for Schmitt. A brief account of Weber's tripartite ideal types: charismatic, traditional and legal-rational authority, thus promises to contextualise Schmitt's account of commissary authority.[10] On a number of issues Schmitt and Weber were largely aligned.[11] In contrast to figures such as Otto von Gierke who depicted *Genossenschaft* (cooperation, fellowship) as a primary mode of human interaction, both Schmitt and Weber describe some type of *Herrschaft* (domination, rule

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[9] *PT*, 56.

[10] Roberto Esposito, *Two: The Machine of Political Theology and the Place of Thought* (New York: Fordham University Press, 2015), 35–7. Esposito, for instance, depicts Schmitt's conception of the personal office as a rejection of Weber's tripartite taxonomy.

[11] On the question of theoretical continuity, see Reinhard Mehring, *Carl Schmitt: A Biography* (Cambridge: Polity, 2014), 101–2; Pedro T. Magalhães, 'A Contingent Affinity: Max Weber, Carl Schmitt, and the Challenge of Modern Politics', *Journal of the History of Ideas* 77, no. 2 (2016): 283–304; G. L. Ulmen, 'The Sociology of the State: Carl Schmitt and Max Weber', *State, Culture, and Society* 1, no. 2 (1985): 3–57; Duncan Kelly, *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt, and Franz Neumann* (Oxford: Oxford University Press, 2003), 19–20; Wolfgang J. Mommsen, *Max Weber and German Politics, 1890-1920* (Chicago: University of Chicago Press, 1990).

or authority) as unavoidable.[12] In addition, many of Schmitt criticisms of Weimar politics are foreshadowed in Weber's 1919 lecture 'Politics as a Vocation' and article 'The President of the Reich'. Weber decries the lack of unity at the federal level and the reduction of politics and politicians to 'horse-trading' and 'political shopkeepers' respectively.[13] Schmitt's critique of *Political Romanticism*, took up similar themes, derogating liberal politicians as 'servile functionaries' that could be 'used by any political system'.[14] Schmitt and Weber were largely in agreement that the spread of ideas typical of liberal-rationalist enlightenment would result in a mechanisation of politics.[15]

Nevertheless, there are key points of divergence between them.[16] Weber depicts the transformation of politics and the state as a largely unavoidable result of 'rationalisation', denying the possibility of identifying a 'Catholic rationality' in contrast to 'scientific rationality' as Schmitt does. Weber's diagnosis of the 'disenchantment [*Entzauberung*] of modernity' implicitly presupposes the veracity of the equation of rationality with 'instrumental reason'.[17] The development and rationalisation of administration is motivated by broadly economic factors: the division of labour and efficiency. The result is a system of impersonal administrative offices distributed on the basis of merit and remunerated by fixed salary, yielding the modern 'civil servant'. A figure whose 'moral discipline and self-denial' maintain the existence of the 'whole apparatus' of modern administrative government.[18] European history thus represents the progressive transition from an age of magic, personalism, religion and superstition, to the modern age of sterile, disenchanted science, bureaucracy, impersonal office and economism.[19] It was the inevitability of this progressive instrumentalisation that Schmitt rejected. Contrary to the progressivist philosophy of history on which Weber's account is

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[12] Peter Lassman, 'The Rule of Man Over Man: Politics, Power and Legitimation', in *The Cambridge Companion to Weber*, ed. Stephen Turner and Stephen Turner (Cambridge: Cambridge University Press, 2000), 87. On the relation between *Herrschaft* and *Autorität*, see the entry by Marc de Launay for '*Herrschaft*' in Cassin et al., *Untranslatables*, 433.

[13] Max Weber, *Weber: Political Writings*, ed. Peter Lassman and Ronald Speirs, Cambridge Texts in the History of Political Thought (Cambridge: Cambridge University Press, 1994), 304–8.

[14] *PR*, 106.

[15] Max Weber, *From Max Weber: Essays in Sociology*, ed. H. H. Gerth and C. Wright Mills (London: Routledge & Kegan, 1974), 103.

[16] See Cerella on the distinct 'images of history' and 'value' that separate Weber and Schmitt. Antonio Cerella, 'Encounters at the End of the World: Max Weber, Carl Schmitt and the Tyranny of Values', *Journal for Cultural Research* 20, no. 3 (2016): 4–5.

[17] Max Horkheimer and Theodor W. Adorno, *Dialectic of Enlightenment*, trans. John Cumming (London: Verso/NLB, 2002).

[18] Weber, *From Max Weber*, 95.

[19] Weber, 92–4.

based and its concomitant vision of rationality, Schmitt claimed that there was an alternative alive in both juristic and Catholic thought. Against Weber, Schmitt attempts to save the civil servant (or at least some of them) from the fate of instrumentalisation by defending a concrete conception of reason.

One lasting legacy of Weber's work is his tripartite account of the ideal types of legitimate *Herrschaft* (authority): charismatic, traditional and legal-rational. Charismatic authority, Weber generally depicts as the original source of all authority and is exemplified in the magician, the religious prophet, the demagogue and the hero. The charismatic individual is an exceptional figure and is often attributed special powers or qualities. The source of charisma is an inherent quality of the individual, assumed to be given by grace of God or divine intervention, but typically, by unknowable mechanisms.[20] The magical charismatics of pre-history are the source of all authority. Inheriting an antithesis between charisma and law from Rudolf Sohm's *Kirchenrecht*, Weber accords charismatic authority an anarchic essence, one opposed to all order or patriarchal domination and independent of all routine occupation or family obligation.[21] It is antithetical to doctrine and dogma and dispenses salvation only by personal mechanisms.[22] It is governed only by the personal call of the prophet, embodied in a mission and known through revelation.[23] However, there is an essential instability and precariousness to charismatic authority, due to its connection with an individual and lack of formalisation and thus it tends to be routinised into one of the other two types of authority.

Traditional authority, Weber associates specifically with the 'irrational' and legitimation through duration, repetition and habituation.[24] Its primary model is the family, a supposedly 'organic' or naturally developed, ordered hierarchy oriented by the patriarchal head. The lord and vassal, the feudal estates of the Middle Ages and the princedom are the primary examples cited by Weber. There are two distinct components to traditional authority, a domain of specific norms and rules and a relatively open personal will or prerogative of the patriarch.[25] Both the specific rules and the position of

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[20] See Max Weber, *The Sociology of Religion*, ed. Talcott Parsons, trans. Ephraim Fischoff (Boston: Beacon Press, 1967), 2.

[21] Weber, *From Max Weber*, 248.

[22] Weber, *Of Religion*, 29.

[23] Weber, 46–47.

[24] Weber, *From Max Weber*, 296.

[25] Weber, *The Theory Of Social And Economic Organization*, 341–2.

each individual in the hierarchy are legitimated by appeal to the existence of the order itself, which is legitimated by a 'common process of education'. Repetition, habituation and education are key to establishing traditional authority as 'an inviolable norm of conduct'. The rules are legitimated by 'piety for what actually, allegedly or presumably has always existed' and infractions result in 'magical or religious evils'.[26] The hierarchy is transmitted by tradition and the specific content of norms by appeal to 'time immemorial'. Weber emphasises that this mechanism is 'irrational' (in contrast to the scientific claims of legal-rational forms) and points to the impossibility of any open innovation. Instead, new rules must be introduced under the guise of forgotten, rediscovered or now correctly understood existing rules. But in addition, Weber writes that alongside the 'norms of conduct' given by tradition, there is a personal 'realm of free arbitrariness and favour of the lord'. He suggests that this dualism itself constitutes the specific 'irrationalism' of traditional authority. One aim of Schmitt's *Dictatorship* is to recast this secondary sphere of authority as concretely rational.

Weber's depiction of tradition and traditional authority is largely consistent with the conservative accounts found in the counter-revolutionary thought of Edmund Burke or Joseph de Maistre: education through the arts, theatre and poetry, inculcate the moral sentiment required to maintain a structured hierarchy.[27] Authority is based on habituation, a 'gentle persuasion', which instils the 'vital prejudices' that are required for any durable political institution.[28] In this tradition, the social structure is ultimately irrational, a 'mysterious incorporation' across space and time, that must mould together a 'permanent body composed of transitory parts'.[29] The guiding force is irrational or at least unknowable by man. For Maistre, divine Providence acts as a 'a secret power that carries each individual to his place; otherwise the state could not continue.'[30] Thus science and rational thought has no place in the domain of morality and politics. In this domain, individual reason produces only a 'clash of opinions' and leads to 'skepticism which is destructive of everything.'[31]

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[26] Weber, *From Max Weber*, 296.
[27] Edmund Burke, *Reflections on the Revolution in France*, ed. L. G. Mitchell, Oxford World Classics (Oxford University Press, 1993), 83–4; Maistre, *Works Maistre*, 110.
[28] Maistre, *Works Maistre*, 150.
[29] Burke, *Reflections*, 34.
[30] Maistre, *Works Maistre*, 124.
[31] Maistre, 110.

The final form of *Herrschaft*, Weber identifies with 'legality' and 'rationality' and depicts as a particularly modern form of legitimation, although with precursors in pre-modern epochs. It is typified by a reliance on abstract rules and norms, formalisation of offices with delimited and specific spheres of operation, impersonal notions of duty to office, obedience towards the law itself (rather than any person), a hierarchical structure of offices of control and supervision and meritocratic appointment based on competence. The operative principles of legitimation include: (i) a drive towards logical generalisation and universalisation on a Kantian model such that 'every body of law consists essentially in a *consistent system* of abstract rules which have normally been intentionally established'; and (ii) an 'economic' impulse that relies on a claim of expediency, exigency or efficiency. Economic factors, such as the division of labour, motivate the determination of various aspects including: separate spheres of competence; selection by suitability and appointment (rather than election); separation of office and person; security of continuous operation by written rules and regulation; specialised training and knowledge. The instrumentalised nature of this legitimation is presupposed by the need for a charismatic leader at the apex of the hierarchy. The limit of justification by efficiency and exigency occurs 'at the top of the bureaucratic organisation, [where] there is necessarily an element which is at least not purely bureaucratic.' Weber gives as examples both the capitalist entrepreneur and government ministers and a president, who possess no 'technical qualifications'.[32]

While Schmitt's conception of commissary authority shares aspects of both Weber's traditional and charismatic ideal types, it resists subsumption into his typology, possessing qualities that, for Weber, appear antithetical. Commissary authority is not charismatic or anarchical but establishes order on the basis of a given hierarchy. It is not traditional but the vector of bureaucratic development itself. It is not irrational, but derived from a specific rationality of the particular, the singular concrete situation and thus resists the generality of legal-rational authority. In *Roman Catholicism*, Schmitt claims that there exists a distinct form of rationality associated with Roman Catholicism and jurisprudence which stands in contrast with the economic and technical sense of rationality Weber generally relies on.[33] There are hints of such an alternative in Weber's marginal and undeveloped remarks on 'Kadi-justice' and 'empirical justice'. Regardless, Weber considers these 'non-bureaucratic' forms of authority and depicts them as

[32] Max Weber, *The Theory of Social and Economic Organization*, 335.
[33] *RCPF*, 14.

ultimately 'irrational'. For Weber, the bureaucracy developed through the routinisation of other forms of authority. He depicts charismatic authority as the originary or primary form of all authority. Although due to its instability, it is inherently short-lived unless transformed by routinisation into another form.

Firstly, it can be transformed by 'objectification' into a patrimonial right, possessed by a privileged group.[34] This is depicted as an often necessary acquiescence to the needs of the laity, for whom daily exigencies require consideration and concessions. For example, in the struggles between the developing priesthood and the laity, one primary force operative on the congregation is described as the inherent 'traditionalism of the laity'. Foreshadowing Schmitt's turn in the 1950s to the concept of *nomos*, Weber correlates traditionalism and agrarian social patterns such that: '[t]he more agrarian the essential social pattern of a culture [...] the more likely it is that the agrarian elements of the population will fall into a pattern of traditionalism.'[35] The implication is that the daily routines of agrarian production are unsuited to the anarchistic tendencies of purely charismatic organisations. As I demonstrate in this chapter, Schmitt's account contests the originary role of charisma and argues instead that social hierarchy itself plays a primary role. But in addition, Schmitt rejects Weber's Protestant-inspired narrative in which routinisation is correlated with degradation; where an originary inner-worldly or affective mode of sanctification is degraded in (Catholic) formal ritual or the ecstatic orgy is transformed into a merely ritualistic 'permanent habitus'.[36]

Secondly, charismatic authority can be *rationalised*, motivated by similar factors, in particular, the need to acquiesce to more general needs. Although in this case, it is transformed into an impersonal rational bureaucracy. It is defined against emotionality or sentimentality and develops on the basis of law (principles, rules and norms) that delimit and specify the requirements of administrative office.[37] Authority develops into a form strictly delimited by rules on the model of the coherent and rational legal system of the later Roman Empire.[38]

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[34] Gerth and Wills use this term in their 1948 introduction to Weber, *From Max Weber*, 54. See also: Andreas Kalyvas, 'Charismatic Politics and the Symbolic Foundations of Power in Max Weber', *New German Critique*, no. 85 (2002): 67–103.

[35] Weber, *Of Religion*, 81.

[36] Weber, 158.

[37] Max Weber, *Max Weber: Selections in Translation*, ed. W. G. Runciman, trans. Eric Matthews (Cambridge: Cambridge University Press, 1978), 351–3.

[38] Weber, *From Max Weber*, 196.

Schmitt rejects these models for the development of the bureaucracy, offering an alternative based on an authority exhibiting similarities to Weber's 'Kadi-justice' and 'empirical justice'. The former Weber defines as 'informal decisions based on concrete ethical or otherwise practical value-judgements', which is not based on any rational basis. The latter is *formal* but based on 'analogies' with reference to historical precedents. Weber designates England's legal system as a 'less rational and less bureaucratic system of justice' based on the continued influence of these alternative decision making methods. From this perspective, Schmitt's account of commissary authority appears as an attempt to demonstrate the rationality of precisely the empirical, ethical sense of justice and bureaucracy dismissed by Weber.

2 The Commissary Dictator

Schmitt's alternate history of bureaucratic development forms one theme of his monograph *Dictatorship* (1921), a 'systematic contextualisation of dictatorship'.[39] He traces a chronological theoretical-history of the office of the dictator, focusing on its transformation from an original 'commissarial' model to the 'sovereign dictator' of the 'dictatorship of the proletariat'. The work intervenes in the debate over the legitimate capacities of *Reichspräsident* under the Weimar constitution, but also offers a counter-narrative to Weber's progressivist account of the development, nature and fate of the civil service itself.[40] Focussing on the concrete *commissio* or task, Schmitt defends an alternative image of the authority of the bureaucrat. It is neither the absolute and perpetual authority of the sovereign, nor the authority of the regular office, a legally circumscribed *potestas*. Schmitt's alternative attempted both (i) to overcome the threat of 'instrumental reason', the separation of 'is' and 'ought', that led towards the instrumentalisation of the state apparatus, and (ii) imagine a limited form of authority that would preserve the 'inexhaustible creative capacity of man'.[41] This alternative is

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[39] *D*, xxxvii. Kelly describes it as 'one of the outstanding, yet ultimately puzzling, works by Schmitt' and gives a useful summary of the most prominent readings. See Duncan Kelly, 'Carl Schmitt's Political Theory of Dictatorship', in *The Oxford Handbook of Carl Schmitt*, ed. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2017), 227.

[40] John P. McCormick, 'The Dilemmas of Dictatorship: Carl Schmitt and Constitutional Emergency Powers', *Can. JL & Jurisprudence* 10 (1997): 175–181.

[41] *T1921-4*, 392. See also Peter C. Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory & Practice of Weimar Constitutionalism* (Durham: Duke University Press, 1997), 52.

constructed from two models: the dictator of the Roman republic and the commissar in Jean Bodin's *Six Books of the Republic*.

Schmitt's aim to save the bureaucracy from instrumentalisation is announced explicitly in an earlier essay, '*Diktatur und Belagerungszustand*' ('Dictator and State of Siege') (1916). Schmitt makes an emphatic defence of the administrative functions of the state, assigning it a primary and primordial role. He asserts that separation of the legislative and executive functions transforms the administration into an 'obedient' and 'subaltern' figure, merely the 'arm' or the tool of the legislature:

> The administration is more than just the execution of positive legal provisions, the law is only the framework within which the creative activity of the administration takes place. The historical development was not simply that first the law as consummate will was spoken and then it would be executed. The beginning of all state activity is administration: legislation and jurisdiction are only separated from it later.[42]

Schmitt criticises the asymmetry produced by the separation of the legislative and executive. The division itself derogates administration to the role of a tool or instrument of the superior organ of the body, the legislature. In contrast, the commissar embodies an alternative form of authority rationally attuned to the concrete situation. Schmitt suggests that only such an alternative can counter the technical-economic vision of rationality which renders the civil service a 'compliant administrative apparatus'.[43]

The structure of Schmitt's argument is revealed in his attempt to recode the dynamic of commissary authority into the schema of an Hegelian *Aufhebung*. Schmitt depicts the dictator as the necessary moment of Hegelian completion, the result of a process of immanent conceptual development beginning with the military commander.[44] In the first moment, the military commander is posited as the immediate 'undifferentiated unity of administration' that responds unreflectively to the factual situation, the actual state of siege. In the first negation, the immediacy of command during the state of siege is put in question demanding the division into legislation and executive. However, in the reassertion of the concrete 'power of the facts' in an actual state of siege, the logic demands either a reversion to the military commander or second a negation embodied in

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[42] *SGN*, 17.

[43] *D*, 143.

[44] *SGN*, 19.

the dictator.[45] Schmitt claims that in dictatorship the division of powers is itself sublated [*aufhebt*]. That is, overcome but at the same time presupposed. The dictator does not return to a sphere of immediate administration annihilating the separation, but admits the existence of law and acts only because 'the means provided by law are …. no longer sufficient.'[46] As I demonstrate in the following, for Schmitt, the condition of possibility of the commissary dictator is the recognition of two parallel spheres of legitimate state activity. The first is general and formal activity via 'law,' but the second is neither general nor formal, but attuned to the particular concrete object or need. In Bodin these parallel spheres are engendered in the distinction between *droit*, law in the proper sense and the *ordonnance*, the particular decree or ordinance of the prince. Only in the latter sphere can a 'person' respond to the particularity of the concrete situation that escapes the generality of the law.[47]

The need for the dictator emerges from the reassertion of the priority of objective reality over the idealism of legality. Schmitt insists there is something of the factual that exceeds general legislation: 'the power [*Macht*] of the facts'.[48] This demand originates in the particular, the place, the time or the occasion. Schmitt's position has certain affinities with those of counter-revolutionaries such as Burke or Maistre who also asserted the inadequacy of liberal-rational science to moral and political reality.[49] Schmitt counterposes commissary authority against Locke's bias for the law. He claims that for Locke, sheer force [*Gewalt*] or power [*Macht*] and the factual [*Tatsachen*] are meaningless for authority and law. They correspond to the 'way of beasts', only the law gives authority.[50] Countering Locke, Schmitt argues that there are certain occasions when objective reality reasserts itself and only the decision of a particular individual, possessing the 'creative capacity' of man can address its demands. This requires that the will of the particular individual must be distinguished from the will of the law. As I discuss in more detail below, the occlusion of this distinction, manifest in both the *plenitudo potestatis* of Pope Innocent III and the 'general will' of Rousseau's *The Social*

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[45] *D*, 32. 'Die Macht der Tatsachen ist für ihn sinnlos.'

[46] *SGN*, 19.

[47] In *Dictatorship* Schmitt does not yet problematise the application of general laws to an individual case as he will in the following texts such as *Political Theology*.

[48] *D*, 32.

[49] Maistre, *Works Maistre*, 110.

[50] *D*, 32. Schmitt paraphrases Locke in English in the original: '*nicht die commission, sondern das Gesetz verleiht staatliche Autorität*, the law gives authority.' he cites Locke, *Of Civil Government*, bk. II, chap. XVIII, 'Of Tyranny'.

Contract, is one factor driving the transition from the commissarial dictatorship to the sovereign dictator.

The significance of the commissar is evident in Schmitt's remarks on the degraded form of the 'people's commissars during the French Revolution'. Schmitt contrasts the civil servants of the Middle Ages with the centralised bureaucracy which developed after the establishment of the *Comité de salut public*. He implies the former acted in the manner of true commissars. The latter, however, are reduced to mere instruments of the central body. Through the expansion of monitoring and supervision, foreshadowing Schmitt's criticisms of 'oversight' in later works, '[a]ll agencies and civil servants were subjected to the direct control of the *Comité de salut public'*. The authority of the commissar was replaced through centralisation with a logic of control and surveillance, in which the 'public authorities… become, without exception, unconditional instruments.' The 'independent decisions' demanded of the commissar were replaced by a logic of centralisation, in which the commissars must 'report back to the *Comité* regularly'. For Schmitt, the revolution constructed a great 'machine of government' that could simply be taken over whole by the new regime, as it was when Napoleon came to power.[51]

In Schmitt's *Political Romanticism* published two years earlier, he detects the same 'relative indifference' to the substantive content in the aesthetic realm. Like the machine of government, the 'romantic quasi argument can justify every state of affairs'.[52] In charting the political career of Adam Mueller, Schmitt's exemplary romantic politician, it is Mueller's flexibility and amenability to whoever happens to be in power, that he criticises. Of course, Schmitt himself is often accused of a similar indifference.[53] Nevertheless, in *Political Romanticism*, Schmitt depicts romantic opportunism as the aesthetic complement to liberal political thought. Both are dominated by an infinite deferral, the 'state of eternal becoming and possibilities that are never consummated'. The liberal bureaucrat, like the romantic, 'does not commit himself and his subjective personality'.[54]

In Weimar era Germany, Locke's position was occupied by Hans Kelsen with his attempts to circumscribe all authority by legal norms, rules and procedural limits,

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[51] *D*, 141-55.

[52] *PR*, 144-5.

[53] cf. *Ex*, 60. Schmitt's identification with Melville's character Benito Cereno.

[54] *PR*, 64, 66.

instrumentalising the state as a 'machine of government'. Against Kelsen, Schmitt's revival of the dictator reasserts that 'the authority of the state cannot be separated from its value'.[55] But what is specific to commissary authority that avoids this instrumentalisation? Schmitt relies on two distinct elements: the idea of a concrete task and the presupposition of a social hierarchy. Schematically, these determine both 'what must be done' and 'who must do it' and are given various articulations: in *Dictatorship*, the commission and normal situation; in *Roman Catholicism*, the papal mandate and a Christian conception of dignity; in *Nomos of the Earth*, the task of the *katechon* (defending against the antichrist) and the order of the *nomos*. In each case, Schmitt emphasises the *personal* nature of the relation between the commissioner and commissar. Multiple terms are used to characterise this relation. But the result is ambiguous and in *Dictatorship* the specificity of the relation remains unclear. The commissar is the 'prince's deputy [*Stellvertreter des Fürsten*],' or '*Untertanen*' with an 'entrusted power [*Macht*]'.[56] He cites Hobbes, who describes the dictator as a 'servant' or 'minister' who merely 'exercises' [*Ausubt*] the power [*Macht*] of the Sovereign.[57] Referring to the legate of the pope, the relation of *Stellvertretung* is treated synonymously with representation [*Repräsentation*].[58] Foreshadowing a formulation found in *Roman Catholicism*, the commissar is the personal representative of the commissioner.[59] As a 'personal representative' the commissar must 'act vicariously' on behalf of the commissioner. [60]

The emphasis on the individual person marks a break with counter-revolutionaries such as Maistre, Bonald or Burke. For these traditionalists, whether it was common law, Providence, or the nation, the final source of reason was a supra-individual entity. But for Schmitt, the individual person constitutes a point of singularity, an excess beyond mechanistic science. The person is accorded a unique capacity to intervene in the sphere of causality.[61] Schmitt distinguishes his conception of the individual person by juxtaposing two models of the relation between the individual and the state. In the rationalist model he associates with Hobbes, Spinoza and Rousseau, the individual is

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[55] *D*, xlv.

[56] *D*, 20, 146.

[57] *D*, 23.

[58] *D*, 39, 51.

[59] *D*, 44.

[60] *D*, 44, 46, 39, 42.

[61] *D*, 37-8.

something *finite* and limited and hence can be subsumed by the state.[62] For example, the state is given form in the unlimited mortal God of Hobbes' leviathan and the collective will of Rousseau. However, in Schmitt's alternative, adopted from Christian natural law, the individual is unlimited and independent of the finite and limited state and society. According to Christian natural law,

> [the] individual is superior to any limitation and ascription; superior to any allocation of his/her value, the individual is the bearer of an immortal soul, created and redeemed by God alone. State and society [in contrast] admit of rationalisation.[63]

This line of thought is further developed in *Political Theology*, in a surprisingly Kantian fashion through the concept of the 'legal form' and the human capacity for decision or judgement. This is discussed in the following section. The specificity of commissary authority is determined by two aspects: the task and the hierarchy.

(i) The Task

Schmitt draws on Livy's *History of Rome* for a model of the dictator.[64] Demonstrating both aspects (hierarchy and task), Livy notes that only 'men of consular dignity' could be selected for the dictator, one who was 'installed for some specific purpose' whether that was 'the task of dissolving [a] dangerous situation', 'organising a people's assembly,' or some other task.[65] Schmitt passes quickly over the abuses of the office of dictator by Sulla and Caesar and centers his account on Jean Bodin's *Six Books*. Bodin distinguishes the commissary dictator from both (i) the absolute sovereignty of the prince, an absolutely unlimited and potentially arbitrary form of authority constantly at risk of degenerating into tyranny and (ii) the *potestas* of a determinate office, an authority attached to a specific set of regulated competencies. Instead the commissary dictator 'has an extraordinary duty, defined by a specific mandate'.[66]

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[62] *D*, 99.
[63] *D*, 98-9.
[64] Livy, *The History of Rome, Books 1-5*, ed. Valerie M. Warrior (Indianapolis: Hackett Publishing, 1926), bk. 2.2–9.
[65] *D*, 1-2.
[66] *D*, 5, 22, 25.

Through the concrete task, which could be various and often far-reaching, Schmitt claims the power of the commissary dictator remains limited.[67] As examples of this limited authority, he cites the commissar of service, the commissar of business, commissars of reformation and commissars of action. In the papacy of the thirteenth century commissars were commissioned by Pope Innocent III with major 'restructurings of the ecclesial organism' including reforms and interference into the ecclesial functional hierarchies.[68] In the sixteenth century, commissary functionaries 'implemented the central power of the state and eliminated local self-government'.[69] Against Weber's thesis of systematic rationalisation, Schmitt claims *ad hoc* intervention by commissars is the primary vector of bureaucratic development. In 'all states, at the origin of their development, they do not use regular officials, rather only commissars are used.'[70] Thus in reforming the state, one must rely on 'extraordinary commissars [*Beauftragter*]'.[71] Only the existence of the sovereign is presupposed, not a state organisation (ie. the constitution). However, the distinguishing criteria is the *particularity* of the goal.

The sovereign, in contrast, has only a *general* aim. Dictatorship and sovereignty are juxtaposed in Schmitt's discussion of Cromwell. He attempts to distinguish the initial commissary role assigned by the Long Parliament from the later 'sovereign' role adopted by Cromwell. According to Schmitt the latter lacked the specific interventionist character required for a dictatorship.[72] Similarly, he distinguishes the legal [*rechtliche*] nature of dictatorship from the police state on the basis of the latter's 'general task of administration' which relies only on legal office and lacks 'the idea of a situation that ought to be created'.[73] However, as I demonstrate in section four, the concept of the *katechon* functions to transform the otherwise general aim of administration into a concrete task to restrain the antichrist.[74]

The commissar's attunement to the 'occasion' appears to align Schmitt's position with that of the opportunism of romanticism and technical rationality he criticised in

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[67] *D*, 47.

[68] *D*, 35.

[69] *D*, 62.

[70] *D*, 31. The English translation is in error. Stoelz translates '*daß alle Staaten am Anfang ihrer Entwicklung nicht ordentliche Beamte, sondern nur Kommissare verwenden*' with the clause 'that all states in the origin of their development are employing not just regular officials but also commissars.' Schmitt clearly suggests that in the beginning there are 'only commissars' and no regular officials.

[71] *D*, 39.

[72] *D*, 115-7.

[73] *D*, 117, 121.

[74] *D*, 121.

Political Romanticism.[75] Schmitt's focus on the task or goal threatens to prioritise precisely the instrumentalism captured in the 'three elements of rationalism, technicality and the executive' through which Machiavelli understood the dictator.[76] Schmitt attempts to distance his position from this technical understanding by demanding publicity over an *arcana imperii*.[77] He claims Machiavelli's technical thought inevitably leads to *arcana*.[78] In this tradition, politics is turned into a 'secret teaching' or mystified science.[79] Against Arnold Clapmar, Justus Lipsius and the *arcana imperii*, Schmitt cites the publicity of Bodin's commissar. The commissar is a 'public person [*öffentliche Person*] who is empowered externally'.[80] The public 'representative' character of the commissar prevents Machiavelli's reduction of the commissary authority to an *arcana*.[81]

To distinguish the commissar from another public figure, the 'regular official', Schmitt focusses on their legal bases. The basis of the commissar is the *personal ordinance* or decree of the sovereign rather than general law.[82] The commissar is a personal representative of the sovereign, whereas the regular officer has a remit circumscribed by general rules and procedures specified by law. The regular office inherits a permanent character from the objective nature of law and tends to be treated as an abstract right, possessed or owned by the officer. In contrast, the concrete singularity of the commission lacks this 'permanent character'.[83] The mandate of the commissar is not a 'subjective right'.[84] It is a *precarium* and can be revoked at any time. The regular official has an abstract, legally circumscribed remit on the content of their actions. The limits take the form of general procedural requirements. Their duty is determined on the model of the subsumption of a particular under a *general* law or principle. Schmitt

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[75] *D*, 29.

[76] *D*, 9. See also McLoughlin's recent essay and the 'antinomy between the juridical form of politics and the technical form of instrumental reason' in Schmitt's work. Daniel McLoughlin, 'Crisis, Modernity, Authority: Carl Schmitt on Order and the State', *Australian Feminist Law Journal* 31, no. 1 (1 December 2009): 134.

[77] *D*, 28.

[78] *D*, 11-15, 29.

[79] *D*. 10.

[80] *D*, 29.

[81] *D*, 11-15, 29.

[82] *D*, 62.

[83] *D*, 26.

[84] *D*, 21; *SGN*, 18.

describes the decision of the regular official as 'just a concretisation of a decision already entailed by the law.'[85]

The limits on commissary authority, however, operate instead as 'concrete' temporal or spatial restrictions. The authority of the dictator has a specific duration and is attuned to a particular problem. Schmitt insists that the law is not annihilated by the dictator, but merely put aside temporarily in order to be protected.[86] Schmitt admits that the commissar, based on an arbitrary ordinance of the commissioner, 'remains nevertheless a direct tool of the concrete and alien will of someone else'. Despite this, since he is not given abstract laws, but simply a task, a 'concrete result' that must be achieved, Schmitt claims that the dictator is left with a greater degree of freedom in producing that result.[87] Like the military commander, the commissar 'is given freedom in the choice of means'.[88] This provides 'certain legal possibilities [*bestimmte rechtliche Möglichkeiten*]' and opens up a space for personal creativity. The dictator can deliberate and 'take all measures without having to consult any advisory or executive body'.[89] However, in order to achieve this task, the dictator is clearly dependent on an existing apparatus of the state. To facilitate the freedom of the dictator, the 'organs of execution' must offer unconditional obedience.[90] Schmitt's point seems to be that while the state can persist in a state of stasis through regular offices, in order to intervene via reform or in the face of concrete difficulties another personal authority, like the *Reichspräsident*, irreducible to Weber's legal-rational authority, is required.

If the regular official can be measured against norms of procedure or legal standards, the only possible judgement of the acts of the commissary dictator is whether 'they have achieved their goal'. As Schmitt writes 'only the goal [*Zweck*] governs'.[91] Schmitt pushes to its radical endpoint the realist political formula that the end justifies the means.[92] It is not a question of legally determined rights or competencies. The only measure is the 'appropriate': '[e]verything that is appropriate in the actual

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[85] *D*, 29. In later works, such as *Political Theology*, Schmitt disavows this simplified vision of the application of law.

[86] *D*, 4. The common reading that distinguishes the commissar and sovereign dictator, by reference to protecting an existing or instituting a new constitution respectively, seems a gross simplification of Schmitt's presentation in *Dictatorship*.

[87] *D*, 29.

[88] *SGN*, 19.

[89] *D*, 4.

[90] *D*, 8.

[91] *D*, 8.

[92] *D*, 14.

circumstances'. Whatever is deemed necessary to produce the 'concrete result in a concrete case'.[93] For Schmitt, the dictator cannot be measured against any other standard of action.

However, Schmitt is faced with an aporia of obedience and autonomy. Despite the autonomy of decision on means, the dictator must remain indifferent to the goal itself.[94] Their obedience to the goal resembles the ambivalence of the technical engineer, who fulfills equally demands for 'a silk blouse or poison gas'.[95] As a 'meat inspector', commissar of the police, envoy or dictator, the specific task given by order from the sovereign is not to be rationally questioned.[96] In order to preserve the autonomy of the commissar, the crisis must be immediately actual, but the mediation of the commissioner precludes this necessary presumption. Schmitt struggles to deal with this difficulty in his forced reading of Bodin on the issue. Schmitt admits that Bodin 'portrays the [regular] official as being free and the commissar as being dependent'.[97] Bodin presumes that the more abstract remit of law leaves the officer a greater degree of independence, compared with the immediate demands of the sovereign, for whom the commissar is 'like a privately hired executive'. To preserve the creative 'humanity' of the commissar, Schmitt weakly counters this with the claim that 'the commissar is *apparently* [*anscheinend*] less bound, and therefore freer than the regular official, who must not go beyond the framework of legally standardised activity [*gesetzlich normierten Tätigkeit*].'[98] Schmitt's defence of a non-instrumental bureaucracy relies precisely on the actual freedom of the commissar. Failing to substantiate this re-reading of Bodin, Schmitt quickly moves on. However, this difficulty remains in the later works, discussed below, insofar as the Last Judgement and tasks assigned the *katechon* are unquestionable, but mediated by the pope.

(ii) The Hierarchy

Throughout *Dictatorship*, a condition of possibility of commissary authority is a pre-existing hierarchy. The commissar inherits a certain independent authority from the existing order, which is supplemented by the commission in the concrete case. The

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[93] *D*, 8.
[94] *D*, 42.
[95] *RCPF*, 14-5.
[96] *D*, 30.
[97] *D*, 29.
[98] *D*, E29/D36. Translation modified.

commissary authority is parasitic on traditional authority, in the Roman context it was understood that only the senate could act as commissioner (so to speak) and only one of the two consuls could be appointed as commissar (dictator).[99] Thus the preexistence of both the senate and the consulship is prerequisite for the dictator. Although the dictator is an actor of the extraordinary or exceptional concrete situation, Schmitt claims they remain dependent in a fundamental manner on the hierarchy of this 'normal situation' and a transcendent authority who can function as the source of a commission. In the 1950s works, the turn to *nomos* attempts to provide a non-arbitrary ground for the hierarchy on the basis of agriculture.

In the ecclesiastical sphere the papal *plenitudo potestatis* plays this role. The ecclesiastical commissar relies on the 'normal situation', the existence of 'the churches's dignity, justice, public tranquility and the common good'.[100] While an extensive hierarchy of privileges could exist, all that was strictly necessary was the predetermination of the sovereign. For instance, the authority of the legate was derived from the person of the pope, such that the 'legate acts vicariously in the name of our master, the pope'. Authority flowed from the papal sovereign into his personal representatives and again into their subordinates.[101] However, as his own examples indicate (Cromwell, Caesar, Sulla) and despite his claims that the commissary authority is finite, Schmitt is haunted by the ineffectivity of these limits. Through the task, the commissar can also break free of the hierarchy and institute major reforms of the structure itself.[102]

Schmitt avoids this issue, in order to maintain a marked distinction between the commissary dictator and the sovereign dictator, a strategic move in his attempt to construct an elaborate critique of the abilities of the collective subject. In this respect, *Dictatorship* can be read as a historico-theoretical proof of the incapacity or debility of the *pouvoir constituant* to actually act or decide. For Schmitt, the blurring (or 'transition') between the commissary dictator and the sovereign dictator demonstrates that the democratic collective subject is unable to issue a *commission* in the immediacy of the concrete situation. This transition, he claims, accompanied the shift to a broadly 'democratic' political model after the French Revolution. The transition to the sovereign

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[99] Livy, *The History of Rome, Books 1-5*, bk. 2.2–9.

[100] *D*, 42.

[101] *D*, 36-7. Translation modified.

[102] *D*, 35.

dictator is demanded by the distinct character, nature and capacities of the democratic equivalent of the sovereign, the *pouvoir constituant*. Further emphasising the 'structural and conceptual' differences between monarchical and democratic political forms, Schmitt writes that 'the direct commissar of the people, unlike the commissar of the absolutist prince, no longer has a stable reference point for his dependence'.[103]

The real strategy of Schmitt's historical-theoretical contextualisation of the dictator is here apparent. *Dictatorship* is not an 'attempt juridically to legitimate the [revolutionary sovereign dictator] by means of the notion of constituent power' as Renato Cristi claims.[104] Instead, it demonstrates that the ontological shift to an abstract subjectivity of the 'general will' eliminates both the capacity of the sovereign to act and as a result the possibility of the commissary dictator. The key causes behind this transition are (i) the elimination of the distinction between the ordinance and general law, which results in the equation of the sovereign will (now in general form) with the law; and (ii) the transformation of the political-legal structure, by Sieyès, which introduces a caesura between the foundation of authority, the *pouvoir constituant* and the 'organs invested with state authority'.[105] As a result the *pouvoir constituant*, in its absolute generality, is radically separate from all particularity and cannot address or intervene in any particular sense. For Schmitt, Hobbes avoids this difficulty because he does not ontologise the collective entity of the people. Hobbes' *populus* is not a *pouvoir constituant* but an actual physical assembly. In Hobbes' materialist ontology, the commissary dictator remains a possibility only if 'the *populus*, … that is, all the citizens, acting together as a constitutional subject' can assemble during the dictatorship.[106] The true object of Schmitt's critique is regularly overlooked in the secondary literature. But in *Volksentscheid und Volksbegehren*, Schmitt returns to this very question: what *can* a 'collective subject' actually do? Is a collective entity actually a 'subject'? Schmitt is critical of Marxist and socialist literature which simply '*define* the proletariat as a collective entity — that is, as a genuine agent' or that presume that dialectical logic alone shows that 'humanity will become conscious of itself'.[107] The problem is to demonstrate what abilities or capacities (rather than rights) such a collective entity does possess.

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[103] *D*, 121.

[104] Cristi, *Schmitt Authoritarian*, 12.

[105] *D*, 122.

[106] *D*, 23. translation modified.

[107] *D*, xxxix; *Crisis*, 55; *V&V*, 48. My italics.

In the next section, however, I turn to Schmitt's subsequent works of the 1920s where the threat of a Caesarist commissar reappears in the figure of the Grand Inquisitor. In addition, in these works Schmitt elaborates on his conception of representation and personhood, two themes neglected in *Dictatorship*.

3   The Dignity of the Representative

Political Theology and Authority

To develop a more robust theory of representation and commissary authority, Schmitt turns to the Catholic Church. He rejects the secularisation thesis of Protestant liberals such as Weber. Influenced by his Catholic upbringing and counter-revolutionary thinkers such as Louis de Bonald, Schmitt insists that the Church and the papacy must continue to play a role in politics. In his essays of the early nineteenth century, Bonald asserts that there exists a fluidity between religion and political concerns.[108] He connects agricultural practices to pagan rituals and the worship of God in order to suggest that in Christianity man achieves a 'profound politics' which prevents the rupture of society by conflicting interests.[109] Similarly, in *Dictatorship*, Schmitt implicitly presupposes a continuity and fluidity of institutional forms between Church practices and political equivalents (for instance, the legates of Pope Innocent III are treated as exemplary of the 'political' commissary dictator).[110] In *Political Theology*, Schmitt explicitly develops an account of this interrelation.[111]

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[108] Louis de Bonald, *The True & Only Wealth of Nations: Essays on Family, Economy & Society*, trans. Christopher O. Blum (Naples, FL: Sapientia Press of Ave Maria University, 2006), 46.

[109] Bonald, 45–6.

[110] *D*, 34-40.

[111] There is broad literature on the concept of political theology. Some of the most useful are the following: Miguel Vatter, 'The Political Theology of Carl Schmitt', in *The Oxford Handbook of Carl Schmitt*, ed. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2014), 247–50; Sandrine Baume, 'On Political Theology: A Controversy between Hans Kelsen and Carl Schmitt', *History of European Ideas* 35, no. 3 (September 2009): 373–8; Jacob Taubes, *The Political Theology of Paul*, ed. Aleida Assmann (Stanford: Stanford University Press, 2004); Jacob Taubes, *To Carl Schmitt: Letters and Reflections* (New York: Columbia University Press, 2013); Massimo Cacciari, *The Withholding Power: An Essay on Political Theology*, trans. Edi Pucci (London: Bloomsbury Publishing, 2018); Saul Newman, *Political Theology: A Critical Introduction* (Hoboken: John Wiley & Sons, 2018); Graham Hammill and Julia Reinhard Lupton, eds., *Political Theology and Early Modernity* (Chicago: University of Chicago Press, 2012).

Schmitt's consummate statement on the relation between institutional forms and conceptual structures opens the third chapter of *Political Theology* and serves as a definition of the term 'political theology':

> All significant concepts of the modern theory of the state are secularized theological concepts, not only because of their historical development … but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts.[112]

The core of Schmitt's postulate is that there exists a structure preserving homology between the system of concepts of an age and its system of social institutions, but in addition, it asserts that modern state institutions, despite their claims of secularity, are based on theological precursors. Thus, the historical development traced in *Dictatorship* is extended to a more general claim that there exists 'fundamentally systematic and methodological analogies' between politics and religion. The postulate is important for Schmitt's account of authority since it enables him to oscillate indiscriminately between religious concepts and institutions and their political equivalents, including structures of hierarchy and authority. There are strong (restricted) readings as well as weaker, more general, readings of this postulate.[113] The former, against the 'secularisation thesis', implies a largely one-way influence of ideas from theology to politics. This 'strong' thesis faced a number of attacks, notably from Erik Peterson in 'Monotheism as a Political Problem'(1935), and Jan Assman in texts such as 'Monotheism.'[114] However, Schmitt often relies only on a weaker sense in which 'centres of intellectual life' come to effect 'all moral, political, social and economic situations'.[115] Here the strategic

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[112] *PT*, 36.

[113] For instance, Kotsko writes that 'the "theology" in political theology could be taken as embracing a whole range of metaphysical systems with no particular relationship to faith or historical revelation.' See Adam Kotsko, *Neoliberalism's Demons: On the Political Theology of Late Capital* (Stanford: Stanford University Press, 2018), 16–9, 25-32. Bradley and Cerella also refer to 'Schmitt's political theologies (in the plural)' to describe the shifts in Schmitt's use of the term. Arthur Bradley and Antonio Cerella, 'The Future of Political Theology and the Legacy of Carl Schmitt', *Journal for Cultural Research* 20, no. 3 (2 July 2016): 208–9.

[114] Erik Peterson, 'Monotheism as a Political Problem: A Contribution to the History of Political Theology in the Roman Empire', in *Theological Tractates*, ed. and trans. Michael J. Hollerich (Stanford: Stanford University Press, 2011), 68–105; Jan Assmann, 'Monotheism', in *Genealogies of the Secular: The Making of Modern German Thought*, ed. Willem Styfhals and Stéphane Symons (Albany: SUNY Press, 2019), 231–42; Hans Blumenberg, *The Legitimacy of the Modern Age* (Cambridge, MA: MIT Press, 1999), 89–102.

[115] *CP*, 82-4.

importance of the homology is to enable an indiscriminate traffic of ideas between politics and theology.

In the background of this theme lies the debate between Edwin Hatch, Adolf Harnack, and Rudolf Sohm on the organisational structure of the early Christian Church.[116] Sohm's side in the debate is the most pertinent for understanding Schmitt. Against the secularist-institutionalist theories of Hatch and Harnack, Sohm claimed that there was a fundamental antithesis between the true *ecclesia* and formal systems of organisation.[117] The foundation of the Church was charisma, 'the gift of grace'. But in contradistinction to Max Weber, Sohm's sense of 'charisma' referred largely to the rhetorical force of the true word of God. The government of the Church was that of prophets and teachers: 'purely spiritual' and 'without legal authority'.[118] Sohm's Protestant model presumed a radical dichotomy between authority based on law and the charismatic persuasiveness of the content of the Christian Gospel.[119] Schmitt's essays on Church-State relations respond to this debate with a 'Catholic' alternative identifying the papacy as a special office invested with commissary authority as a personal representative of Christ.[120]

Representation

In *Roman Catholicism and Political Form*, Schmit celebrates the success of the 'rationalism' of the Roman Church of the Middle Ages in establishing the priesthood with a distinct form of authority. It rejected the enthusiasm of paganism, Dionysian cults and ecstasies for the office.

> Roman rationalism lives on in the Roman Church…this rationalism resides in institutions and is essentially juridical [*juristisch*]; its greatest achievement is having made the priesthood into an office [*Amte*] — a very distinctive type of office. The pope is not the

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[116] Schmitt was aware of this debate and refers occasionally to Sohm and Harnack. See, for instance, *RCPF*, 29, 32, 41.

[117] Hatch, *Organization*, 43; James Tunstead Burtchaell, *From Synagogue to Church: Public Services and Offices in the Earliest Christian Communities* (Cambridge: Cambridge University Press, 2004), 76.

[118] Sohm, *Outlines*, 33.

[119] Max Weber's indebtedness to and modification of Sohm's notion of charisma is discussed in detail by Peter Haley, 'Rudolph Sohm on Charisma', *The Journal of Religion* 60, no. 2 (1980): 185–97.; David Norman Smith, 'Faith, Reason, and Charisma: Rudolf Sohm, Max Weber, and the Theology of Grace', *Sociological Inquiry* 68, no. 1 (1 January 1998): 32–60; Esposito, *Two*, 36–8.

[120] *RCPF* and 'The Visibility of the Church' (1917). See also Esposito, *Two*, 37.

> Prophet but the vicar [*Stellvertreter*] of Christ. Such a function
> [*Formierung*] precludes all the fanatical excesses of unbridled
> prophetism. The fact that the office is made independent of charisma
> signifies that the priest upholds a position [*Würde*] that appears to be
> completely apart from his concrete personality. Nevertheless, he is
> not the functionary and commissar of republican thinking. In
> contradistinction to the Modern official, his position [*Würde*] is not
> impersonal because his office is part of an unbroken chain linked
> with the personal mandate [*Auftrag*] and concrete person of
> Christ.[121]

The passage returns to central themes of *Dictatorship*.[122] Schmitt distances the authority of the papal office from Rudolf Sohm's and Max Weber's charismatic prophet and the degraded commissar of French revolution.[123] The pope is instead the commissar of Christ, the personal representative of the individual concrete person of Christ. The particular will of Christ inaugurates the Petrine office of the Church. However, it is curious that Schmit does not explicitly cite Matthew 16:18 'I tell you, you are Peter, and on this rock, I will build my church, and the Gates of Hades will not prevail against it,' a key passage for divine right doctrine under Pope Leo I.[124] Although Ulmen translates *Würde* as 'position', 'dignity' may be more appropriate and in the following I draw out the significance of dignity and honour for Schmitt's conception of representation and commissary authority.

What precisely does Schmitt mean by 'representation'? In a later text, Schmitt writes that '[t]o represent means to make an invisible being visible and present through a publicly present one.'[125] Schmitt distinguishes this from imagistic representation as *Darstellung*, typical of nineteenth-century English debates on parliament and the 'mirror of the nation'.[126] Instead, Schmitt insists it is *existential* and writes that representation 'presupposes a special type of being.' Representation presupposes a living 'enhanced

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[121] *RCPF*, 14.

[122] cf. *D*, 34.

[123] Rudolf Sohm, *Kirchenrecht, erster Band: Die geschichtlichen Grundlagen*, vol. 1 (München und Leipzig: Duncker & Humblot, 1923 [1892]), 28, 29. *D*, 143-5.

[124] *NRSV*, Matt 16:18. Walter Ullmann, 'Leo I and the Theme of Papal Primacy', *The Journal of Theological Studies* 11, no. 1 (1960): 25–51.

[125] *CT*, 243. Hannah Pitkin uses a very similar phrase: 'Representation means the making present of something that is nevertheless not literally present.' Hanna F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), 144; Duncan Kelly, 'Carl Schmitt's Political Theory of Representation', *Journal of the History of Ideas* 65, no. 1 (2004): 113.

[126] Gregory Conti, *Parliament the Mirror of the Nation: Representation, Deliberation, and Democracy in Victorian Britain* (Cambridge: Cambridge University Press, 2019), chap. 1.

type of being'. A type he associates with 'fame, dignity, and honor'.[127] In *Dictatorship*, Schmitt remained focussed on the task, but in these subsequent works he elaborates the role of social hierarchy and attempts to synthesise a conception representation from two distinct models: (i) a metaphysical concept of 'mediation' modelled on Christ's incarnation, and (ii) the *Stellvertreter* or personal agent embodied in the dictator.

(i) Mediation

Representation as mediation is first developed in Schmitt's essay 'The Visibility of the Church' (1917). Based on a metaphysical dualism between a material and an ideological sphere, the Church acts as a 'mediator' by making the invisible (ideological) sphere of the divine logos visible in concrete mundane material reality.[128] Representing the invisible (aesthetic, political, social or theological ideas) in the visible consists of giving 'form' to the idea in the material world. Schmitt distinguishes between three types of representative form: (i) the aesthetic form, which pertains to art, (ii) the legal (*rechtliche*) form, which pertains to the application of law (*Rechtsverwirklichung*) and (iii) the 'world-historical form of power', the political (*staatliche*) form.[129] To clarify the concept of 'form', Schmitt contrasts these representational ideas of 'form' against two alternatives: the Kantian transcendental form (space and time); and the technical form of scientific-rationalism, governed by demands for predictability and regularity and utility.[130] In the Schmittian *representative* form, a third figure is required, a mediator who makes the ideal effective in reality. In the incarnation, 'Christ is the mediator' of God because in Christ 'God becomes man' and in addition through Christ's incarnation the 'idea of representation' itself is represented.[131]

Mediation, representation and the legal form lie in the space Schmitt describes as a 'sociology of concepts', which extends to all social and political institutions and organisations: the state, educational institutions, the Church and the arts.[132] In *Roman Catholicism*, social experience via community is essential to the 'visibility' exemplified

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[127] *CT*, 243.
[128] *RCPF*, 51.
[129] *RCPF*, 21-2.
[130] *PT*, 28.
[131] *RCPF*, 50, 52.
[132] *PT*, 45

in the Catholic Church.[133] He contrasts the 'subjective experience' of Protestantism, a merely psychic phenomenon, with the social experience of a 'community of men'.[134] Through communal experience Schmitt introduces a role for tradition, since 'mediation remains a task that must be regenerated constantly'.[135] According to Schmitt, this capacity for representation survives only in the Catholic Church.[136] The primary example of such a tradition is language. In contrast, 'technical thinking is foreign to all social traditions; [since] the machine has no tradition' and 'even the most-advanced machine technology', lacks something specifically 'human, namely, a language.'[137] While this resonates with nationalist emphasis on language in the doctrine of the *Volksgeist*, Schmitt turns instead to the domain of rhetoric and the art of oratory.[138] It is not language as such, but speech, in which the 'idea obtains its visibility in the Word' of God.[139]

As mediation, representation requires a third entity to amalgamate concrete materiality and ideality. For instance, Christ's exemplary act of mediation relies on his dual nature as divine and human. Similarly, the Church is both an actual physical congregation and an ideological entity in which the holy spirit is present.[140] Applying this model, Schmit notes that the 'legal form' relies on a distinctive conception of human 'personality' as a point of infinitude or singularity wherein the 'legal decision' creates an 'aggregate condition' conjoining the legal idea with the concrete circumstances.[141] This is specifically identified as an act of 'legal perception'.[142] Schmitt asserts that this act of legal perception (or decision/judgement) is 'human in the deepest sense'. Through the specifically human capacity for decision, 'the *complexio* of life in all its contradictions is molded into a unity of personal representation'.[143] Similarly the Church, the religious form, is a *complexio oppositorum* that can 'contain antitheses'. Returning to the themes of *Dictatorship*, in the legal form the act of legal perception/decision manifests the fundamental creative capacity of humanity, distinguishing the civil service from a mechanical apparatus.

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[133] 'The Visibility of the Church' (1917) included in *RCPF*, 52.
[134] *RCPF*, 49.
[135] *RCPF*, 53.
[136] *RCPF*, 19.
[137] *RCPF*, 22, 27. The subsequent advent of computer programming and languages complicates this claim.
[138] *RCPF*, 24.
[139] *RCPF*, 57.
[140] *RCPF*, 52.
[141] *PT*, 30.
[142] *PT*, 30.
[143] *RCPF*, 33.

Precisely what Schmitt means by humanity is elusive. He equivocates between two conceptions of personal dignity attempting to join a Kantian conception of the radical autonomy of the individual with a more traditional Christian conception of dignity tied to the hierarchy of divine right. On the one hand, the references to humanity, perception, creativity and the application of abstract ideas to the concrete appeal to the Kantian understanding of perception in *The Critique of Pure Reason*.[144] Schmitt does not explicitly reference Kant. Nevertheless, there are clear resonances with Kant's account of the 'imagination [*Einbildungskraft*]' as an 'indispensable function of the soul', which plays the central role in unifying and subsuming sensation (the 'manifold of intuition') under the categories, 'the pure concepts of the understanding'.[145] Schmitt depicts the capacity for decision, which is one source of the 'humanity' of the civil service, as a common and universal, unconditional trait of the human 'person'.[146] This evokes the Kantian sense of dignity, a universal quality derived from the creative autonomy of the human individual.

On the other hand, Schmitt refers to a hierarchical dignity of office drawn from divine right doctrine. He singles out particular individuals (dignities) (or at least the holder of a particular office) through the prerequisite of an *auctoritas interpositio* (authority of application) for the decision. This requires a 'distinctive determination of which individual person or which concrete body can assume such an authority.'[147] Thus mediation relies on a pre-existing authority. In fact, Schmitt writes that:

> the idea of representation is so completely governed by conceptions
> of personal authority [*Autorität*] that the representative as well as the
> person represented must assert [*behaupten*] a personal dignity
> [*Würde*]— it is not a materialist concept. To represent in an eminent
> sense can only be done by a person, that is, not simply a 'deputy'
> [*Stellvertreter*] but an *authoritative person* or an idea which, if
> represented, also becomes *personified*.[148]

Mediation (or representation) now appears almost derived from a pre-existing authority or dignity. It presupposes the dignity [*Würde*] of all those involved.

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[144] Similar themes are addressed in Ragnar Bergem, 'The Trial of Reason: Political Theology as the Investigation of Judgement', ed. Rowan Williams and Catherine Pickstock ((PhD)University of Cambridge, 2019), chap. 3.

[145] Immanuel Kant, *Critique of Pure Reason* (Cambridge: Cambridge University Press, 1998), A78–80/B103–8.

[146] *D*, 98-9.

[147] *PT*, 31.

[148] *RCPF*, 21. Translation modified.

However, it is unclear if this dignity is derived from the 'person' or the 'office'. Schmitt attempts to intertwine these two elements: the infinite creative capacity of the individual (the person) and the office. Kantorowicz takes up this issue in *The King's Two Bodies*. He discusses the 'sometimes troubled' distinction between the *officium* and the *dignitas*.[149] In contrast to Schmitt, Kantorowicz argues that the dignity was attached to the office rather than the individual person: 'Dignity does not die'. He cites a gloss on Pope Alexander III's decretal dated to 1215: 'The Dignity never perishes, although individuals die every day.'[150] Kantorowicz, like Hobbes, depicts the person as a legal artifice to manage succession. The 'jurists constructed a fictitious person' in order that successors could be vested with that particular dignity. More recently, in Agamben's archaeology of the office, he demonstrates the importance of the split between the *opus operans* (the action carried out by an agent) and the *opus operantis* (the act in its effective reality) for the Catholic sense of the office.[151] According to Agamben, through this distinction, 'the ethical connection between the subject and his action is broken.'[152] Schmitt seems to avoid this concept of the person (associated with their ethical or moral particularity) by equating the personalist element with the act of legal *perception* and the innate human capacity for judgement.

The personalist element of commissary authority thus requires the confrontation with the particular, necessitating an act of judgement, to distinguish it from traditional authority. While commissary authority is clearly parasitic on a pre-existing social order already structured by concepts of 'authority' or 'dignity', the particular mandate or commission appears to be the source of the 'personal' element. However, even here Schmitt's remarks are often vague or obscure. In some instances dignity appears to be 'given' by the mandate, in others it is presupposed, or in the citation above it must be asserted and thus appears co-constituted in the act itself.

One source of difficulty appears to be Schmitt's attempt to combine two incompatible models of representation. The model of mediation presumes a framework structured as two ontologically distinct fields possessing the same structure. According to Schmitt's 'sociology of concepts' the mediation between ideas and material reality requires that each realm possess a similar hierarchical structure. That is, the condition of

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[149] Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 2016), 384–6.

[150] Damasus, on c.14. X 1.29, cited in Kantorowicz, 385. I thank Luís Carneiro for this reference.

[151] Agamben, *Omnibus*, 668–74.

[152] Agamben, 671.

possibility of mediation is that both the space of ideas and material reality are 'ordered' hierarchically. Since mediation operates according to analogy, it requires resemblance between the two spaces.

Schmitt plays rhetorically with the concept of 'noble ideas' to suggest that they constitute a kind of 'nobility' within the realm of ideas itself. He suggests that noble ideas have a higher rank within the hierarchy of ideas. That is the 'hierarchy of values' is depicted as an actual ranked hierarchy of concepts within a realm of.[153] Since some ideas are 'better' than others then the space of ideas is ranked hierarchically and moreover to give these ideas reality, the space of reality must provide a similarly structured medium for their expression or representation. This appears to be the rhetorical 'logic' behind Schmitt's claim that the 'representative of a noble value cannot be without value'. Thus as a mediation between ideas and material reality, representation takes the form of structure preserving mapping between two distinct ontological (hierarchically structured) realms.

(ii) Commission (*Stellvertretung*)

The second model is the commission between two persons, the commissioner and commissar, who remain within the same ontological hierarchy. Why a specifically 'personalist' hierarchy is here necessary remains unclear.[154]

One source of difficulty is the elusiveness of Schmitt's conception of the person and personification. An illustrative counterexample is given by Hobbes' conception of the person.[155] In contrast to Schmitt's hierarchical presuppositions, Hobbes depicts 'personation' as a more egalitarian process. For Hobbes, 'to personate is to act, or represent' another. That is, to 'bear his person, or act in his name'.[156] To personate another is largely a legal fiction, in which one represents another entity and 'few things [...] are incapable of being represented by fiction.' Hobbes cites various examples, animate and inanimate things, people, 'children, fools, and madmen', an 'idol, or mere figment of the brain', all such entities 'may be personated', that is, represented. The only restriction applies to the author. The author, the owner or guardian who authorises the

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153 *RCPF*, 21.

154 *RCPF*, 21.

155 On this issue see also Kahn, 'Hamlet or Hecuba: Carl Schmitt's Decision', 78–9.

156 *Lev*, 16.[3].

personation, must have the 'use of reason'.[157] In fact, the strategic role of personation for Hobbes was to make the populus authors and hence ultimately the owners of and responsible for the acts of the monarch.

For Schmitt, however, it was important to locate the person in a sphere prior to law. The person is the point of infinite singularity (associated with a concrete rationality of the particular) that exceeds legal-rational circumscription. Schmitt's person is thus not a mere 'legal fiction', a mask, the 'disguise or outward appearance of a man, counterfeited on stage.'[158] It precedes the formal system of law itself. In order to unveil the inadequacy of the liberal-rationalist political science, in its attempts to subsume the political and social sphere of human activity as well as the natural world under general and universal laws, Schmitt insists on the exemplary sublimity of the person. In opposition to the Enlightenment's mechanistic visions of humanity, Schmitt argued that the capacity to bridge between ideality and the concrete through the act of decision manifested the unlimited creativity of the human individual. Reenacting, but displacing the strategies of counter-revolutionaries such as Joseph de Maistre, the human capacity to decide escapes liberal-rational explanation and marks the divinely-rational singularity of human existence.

These two models of representation (mediation and commission) are to be unified in the person of the orator. In the speech of the great orator the 'idea obtains its visibility in the Word'.[159] Great rhetoric, as 'representative discourse', has the capacity to inspire the productive capacity of social groups.[160] In contrast, the romantic bourgeois developments in the arts lead towards the individualist 'art for art's sake'.[161] Schmitt claims that there is a specific 'rational form of speech' manifest in great rhetoric and the representation embodied by the orator which is not merely decorative.[162] It does not consist in the 'vestments of cardinals or the trappings of a magnificent procession'.[163] Again Schmitt reverses Hobbes' evaluations. Hobbes derogated rhetoric as an inspiration to ambition and instead celebrated formally determined ceremonial participation. Schmitt rejects

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[157] *Lev*, 16.[10].

[158] *Lev*, 16.[3].

[159] *RCPF*, 57.

[160] *RCPF*, 23.

[161] *PR*, 15; *RCPF*, 23.

[162] *RCPF*, 24. See also: Türk, 'At the Limits of Rhetoric', 754.

[163] *RCPF*, 22.

ceremony, but also where politics and the Church are concerned he puts aside the aesthetic form of 'great architecture, ecclesiastical painting and music, or significant poetic works'.[164] With parallels to the legal form, the authority of great rhetoric is relatively indifferent to the specific content spoken. Schmitt's position is determined against two alternatives. Firstly, against scientific and technical thought, rhetoric is not a form of rational persuasion by argument. It is not a 'discussion and debate' but 'moves in antitheses' like the *complexio oppositorum* of the Church.[165] The great orator resembles the commissarial dictator whose only measure is the goal which must be fulfilled. The normal laws of syllogism are suspended and any effective means can be taken up in pursuit of achieving the goal. But secondly, against Rudolf Sohm's conception of prophetic charisma, the force of rhetoric is not derived from content (of the Gospels). This would lead to a Protestant Christianity of individual experience. Instead, Schmitt bases the competence and the capacity of the orator on 'dignity' [*Würde*]. It is the position, place or office of the orator itself, their *dignity*, like that of the 'soldier and the statesman', that now provides authority.[166]

Schmitt's recourse to dignity as a basis for the commissary authority of the office is not entirely surprising. It is a paradoxical concept that oscillates between universality and particularity. For Donoso Cortés, this ambiguity marked the specific uniqueness of Catholic dignity, which is accorded divine origin and lies in God's capacity to 'raise so harmoniously and evenly the level of all things'.[167] Donoso claims that divine 'dignity' is shared equally despite the hierarchical structure, because in Catholic solidarity both the individual man and the human species are elevated simultaneously: they are 'conjointly elevated to the divine grandeur and its sublime heights'.[168] The dignity of the species also 'reaches individuals', such that human nature gains 'grandeur' and at the same time man gains in 'nobility'. In contrast, when man alone, rather than God, 'wishes to raise anything, he can never do so without depressing what he does not raise'.[169]

Schmitt implicitly positions Christian dignity as an alternative 'humanism', in his criticisms of the humanism of 'self-assured aristocrats' of the eighteenth-century Enlightenment. They proposed a new 'idea of humanity' that formed the basis of their

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[164] *RCPF*, 22.
[165] *RCPF*, 23.
[166] *RCPF*, 14, 24.
[167] Donoso Cortés, *Essays*, 244.
[168] Donoso Cortés, 244.
[169] Donoso Cortés, 245.

'authority and secret societies'.[170] But, in the name of humanity, these 'masonic priests' demonstrated a 'diabolical… contempt from the common man.' The result was a 'new and uncontrolled power [*Macht*]'.[171] Citing Bakunin's criticism of Marx and Engels, Schmitt asserts that even Marxism produces an intellectualism that makes a 'claim to authority, discipline and hierarchy', which stigmatises a 'lumpenproletariat'.[172] However, there is a curious continuity between the moral imperatives Donoso Cortés derives from this sense of dignity and Marx's doctrine of social justice: 'from each according to his ability, to each according to his needs.'[173]

While Schmitt agreed with Donoso Cortes on dignity, he rejected the *theatrical* aspect of the latter's call for 'bloody sacrifice'.[174] In fact in earlier texts, Schmitt detects a certain danger in the theatrical sense of representation deployed by Hobbes and Donoso Cortés. If applied to the authority of the Church, Schmitt understood that the theatrical model could result in a situation resembling Fyodor Dostoevsky's 'Grand Inquisitor'. In *The Brothers Karamazov*, Dostoevsky depicts the Grand Inquisitor as a Catholic priest who, through an alliance with the Antichrist, has established a 'universal state' to meet the immediate needs of the people (peace, bread and happiness) at the expense of their freedom. Confronted by the return of Christ the Grand Inquisitor has him arrested and subsequently sends him away. Recalling Hobbes' quasi-transcendent sovereign, the Grand Inquisitor prefers the system he has established to the promised Kingdom of God. In an entry from February 1923, alluding to this model, Schmitt writes that 'representation through artistic performance [*Darstellen*] [would be] very dangerous'.[175] Schmitt elaborates that if the Church was to represent Christ like a theatre actor represents a hero then the return of the actual hero, whether it was Wallenstein or Christ, would appear as an inconvenient disturbance of the performance of an historical drama.[176] Theatrical representation can only function as imaginary substitute for the actuality of Christian politics.

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[170] *RCPF*, 33.

[171] *RCPF*, 34-5.

[172] *RCPF*, 37.

[173] Donoso Cortés, 106–7. cf. Marx and Engels, *The Critique of the Gotha Program* (1875) MECW vol. 24.

[174] Donoso Cortés, 291–5.

[175] *T1921-4*, 446.

[176] *T1921-4*, 446.

Dostoevsky and the Grand Inquisitor are regular points of reference in Schmitt's works and there remains open debate on his evaluation of the latter figure.[177] Nonetheless, Schmitt explicitly derogates Dostoevsky's portrait as an anarchistic and atheistic projection, a grossly distorted vision of the Church.[178] He suggests that only from the point of view of the anarchist and non-believer does the Priest appear to have 'consciously succumbed to the wiles of Satan'.[179] Schmitt recites his distinction between the anthropological presuppositions of anarchism and properly 'political ideas'.[180] If man is 'by nature evil' or at least 'dangerous', 'ignorant and rough' then one must admit the need for institutions of government and thus the unavoidablity of questions of justice and power [*Macht*]. Against Dostoevsky's anarchistic optimism Schmitt notes that simply 'rejecting every earthly power [*Macht*] would lead to the worst inhumanity'.[181]

However, Schmitt acknowledges his theoretical proximity to the Grand Inquisitor. Like Weber, Schmitt insists that all government requires power and in order 'to bring peace to the world' even the Church cannot forgo questions of its own survival.[182] Schmitt's problem is to define the particular task of the Church and distinguish it from a general administrative task of policing. He fails to do this in *Roman Catholicism* and instead refers broadly to the Church's general work in the 'normative guidance of human social life' and celebrates its 'proud history', ignoring the multiple instances of internal corruption and controversies, divisions, splits, abuse, simony etc.[183] In *Roman Catholicism*, he is more concerned to counter the 'warped' rationality of progressivist technical-economic thought with Catholic rationality which maintains the 'rationality of the purpose [*Zweck*]' (the Last Judgement). However, against the Grand Inquisitor this is inadequate. In the name of fulfilling the Church's goal to 'to bring peace to the world,' the Inquisitor admits the Last Judgement, while accepting his fate as a martyr for peace

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[177] See for instance, Prozorov, 'The *katechon*'; Palaver, 'Hobbes', 69.

[178] References to Dostoevski and the Grand Inquisitor litter Schmitt's Tagebücher from 1912 and onwards. Against Palaver's claim that Schmitt was 'an admirer of the Grand Inquisitor throughout his life', I argue that Schmitt saw in the figure a danger to be avoided. Palaver, 'Hobbes', 69.

[179] *RCPF*, 31-2.

[180] *PT*, 57.

[181] *RCPF*, 32.

[182] *RCPF*, 32.

[183] *RCPF*, 32. See also John P. McCormick, 'Post-Enlightenment Sources of Political Authority: Biblical Atheism, Political Theology and the Schmitt–Strauss Exchange', *History of European Ideas* 37, no. 2 (2011/6): 176.

against Christ himself.[184] Only in the 1940s does Schmitt finally overcome this difficulty with the concept of the *katechon*.

While the dictator offered a model for a limited authority distinct from formal law, the Christian concept of dignity elaborated a more general sense of the social hierarchy on which the commissary authority of the office rests. However, if the authority of the papacy is understood through the commissary authority of the dictator, then the former now appears unlimited and general and its authority has lost any attachment to the concrete rationality of the particular. The Church appears precisely as a police state. To restore the particular rationality of a concrete demand Schmitt turns to the concept of the *katechon*.

4   The *Katechon* and *Nomos*

Schmitt's *Tagebücher* include a fragment, dated 1928, summarising the problematic captured in the figure of the Grand Inquisitor. Under a heading 'History of Humanism' Schmitt sketches the paradoxical experience of eschatological existence:

> A multitude stands and waits for a miraculous king. Zealous and mysterious people assure with great certainty that he will come. But days and years pass without him coming. The eager and efficient people are now building huts and shelters for the wild crowd, taking care of their food, building homely and comfortable houses, and transforming the expectant into a workforce. Officially, however, they all still live in the expectation of the Lord. How strange.[185]

Allusions to the Grand Inquisitor are evident in the setting, expectation and resulting activity. The supply of shelter, food and comfort, and transformation into a workforce are all themes mentioned by Dostoevsky. In a later essay 'Three Possibilities for a Christian Conception of History' (1950), Schmitt returns to this theme; how can Christian believers understand their worldly activity while they await the inevitable return of Christ. As Schmitt writes, the 'vivid expectation of an imminent end seems to take away the meaning from all history and it causes an eschatological paralysis.'[186] Of three possible

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[184] *RCPF*, 32.

[185] *T1925-9*, 438, 34r.

[186] *3P*, 169. The text was originally intended as a review of Karl Löwith, *Meaning in History: The Theological Implications of the Philosophy of History* (Chicago: University of Chicago Press, 1949).

solutions to eschatological paralysis Schmitt focuses on the *katechon*, a figure described in a 'mysterious passage of Paul's second letter to the Thessalonians'.[187] In this section, I demonstrate that with the concept of the *katechon*, Schmitt attempts to concretise the political task of religious institutions and return a sense of finitude and limitation to their authority, supposedly preventing their transformation into the Grand Inquisitor.

St Paul describes the *katechon* as an entity that restrains or withholds the Antichrist, delaying the final battle between God and Satan, the last judgement and thus the salvation of mankind.[188] In the theological tradition, the *katechon* is generally identified with either the Roman Empire or the Church.[189] Schmitt largely follows the former tradition and generally associates it with temporal or secular political entities in their role in deferring conflict.[190] For instance, Schmitt questions whether England or the United States will play the role of 'great retarder [or accelerator] of world history'.[191]

The *katechon* has two distinct but intertwined sides resulting in an aporetic valuation. On the positive side, the *katechon* restrains the 'man of lawlessness [*anomos*]' and thereby prevents suffering.[192] The man of lawlessness, the 'antichrist', can be understood as either an agent of Satan, a false prophet, false-God or, more politically, an absolute ruler, who 'exalts himself above every so-called god, … declaring himself to be God.'[193] By restraining the man of lawlessness, the *katechon* guards and preserves the law (*nomos*) and also prevents the political and religious conflict between factions and sects, suggesting a certain continuity with the Catholic inquisition. This extends to the role of ensuring peace by preventing civil war and providing sustenance, bread and shelter. On the negative side, by restraining the antichrist, the *katechon* defers or delays the apocalypse, the unveiling of the Antichrist and his followers and the final confrontation between God and Satan which must precede the Last Judgement. Hence as

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[187] *3P*, 170.

[188] 2 Thess 2:4 (NRSV); Cacciari, *The Withholding Power*, 2–4.

[189] Giorgio Agamben, *The Mystery of Evil: Benedict XVI and the End of Days*, trans. Adam Kotsko (Stanford: Stanford University Press, 2017), 9–11. Agamben places Schmitt with Jerome and Augustine, who opt for the Roman Empire, in contrast to Tyconiums and Ivan Illich, who identify the Church as the *katechon*.

[190] Schmitt, 'Beschleuniger wider Willen oder: Problematik der westlichen Hemisphäre', *SGN*. See Michele Nicoletti, 'Religion and Empire Carl Schmitt's Katechon between International Relations and the Philosophy of History', in *International Law and Religion: Historical and Contemporary Perspectives*, ed. Martti Koskenniemi, Mónica García-Salmones Rovira, Paolo Amorosa (Oxford: Oxford University Press, 2017), 369.

[191] *SGN*, 435-6.

[192] Cacciari, *The Withholding Power*, 4.

[193] *NRSV*, 2 Thess 1:4.

a result, the *katechon* delays the salvation of man. However, unlike the Grand Inquisitor, the *katechon* does not actively or purposefully reject Christ. To paraphrase Massimo Cacciari, the Grand Inquisitor is the disenchanted *katechon*, who has lost all hope of redemption and is reduced to a 'radical despair for humanity'.[194] The *katechon* is a conservative force in history, which restrains evil, limits human suffering, but also propagates the message of the Gospels, increasing the number to be saved. But as a side-effect it prevents or delays the realisation of the eternal kingdom of God and salvation of mankind.

In Schmitt's texts of the early 1940s, the *katechon* lacks the conscious engagement or purposiveness of the commissary authority. According to the title of '*Beschleuniger wider Willen*' the United States is inadvertently an 'accelerator against its will'.[195] Similarly, in *Land and Sea* Schmitt implies that Byzantium's role in 'hindering the Arabs from conquering all of Italy' has an accidental quality.[196] The delayer merely slows world-history, with no reference to the eschatological. In identifying the *katechon* with nineteenth century England or Rudolf II, Schmitt accords a certain passivity to the role.[197] Rudolf II 'was not an active hero.'[198] Schmitt seems guided by a progressivist sense of history. However, by 1947 passivity has been replaced by conscious vocation. Schmit writes that '[e]very great medieval Christian emperor fully believed himself to be the *katechon*, and so indeed he was.' Marking a thematic alignment with Löwith's *Meaning and History*, Schmitt writes that the *katechon* is the 'only way in which to understand history as a Christian and to make sense of it.'[199] The doctrine of the *katechon* legitimates active and conscious participation in history.[200]

The idea that the doctrine of the *katechon* could avoid the trap of the Grand Inquisitor is implied in Schmitt's various remarks on Donoso Cortés. Schmitt describes Donoso Cortés as the 'spiritual descendent of the Grand Inquisitors' who 'failed theologically because this concept [the *katechon*] remained alien to him.' Like the Grand Inquisitor, Donoso Cortés radicalised the doctrine of original sin 'into a doctrine of

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[194] Cacciari, 96–8. In contrast, Agamben implies that Dostoevsky's Grand Inquisitor is essentially the same as the *katechon*, although admitting it is its 'most extreme expression'. Agamben, *The Mystery of Evil: Benedict XVI and the End of Days*, 11.

[195] *SGN*, 435.

[196] *L&L*, 17-8.

[197] *SGN*, 435-6.

[198] *L&L*, 68.

[199] *Gloss*, 63, cited in translation in Nicoletti, 'Religion and Empire', 371. *3T*, 170.

[200] *3T*, 170.

absolute sinfulness and depravity of human nature' justifying an absolute, authoritarian rule.[201] The *katechon* could avoid this fate through its alternative philosophy of history and its limited commissary authority. Lacking a third *katechontic* alternative, Donoso Cortés could only choose between a progressive or regressive philosophy of history. Choosing the latter he describes progressivist European society as the 'greatest catastrophe' leading to the 'barbarization of Europe and before long its depopulation.'[202] Schmitt paraphrases letters to Count Raczynski expressing Donoso Cortés' philosophy of history: 'Humanity reels blindly through a labyrinth that we call history, whose entrance, exit and shape nobody knows'.[203] In contrast, the 'eschatological faith' entailed by the *katechon* provides the Christian with a historical orientation that is neither progressive nor regressive but suspended in a kind of industrious expectation of salvation.[204]

On the authority of the *katechon*, Schmitt returns to the Medieval *Respublica Christiana* to mirror the political-juridical framework of the Roman dictator.[205] We can identify a series of parallels between the dictator and the *katechon*: if in Rome necessity demanded the temporary elevation of one of the consuls to the role of dictator, through a personal mandate from the senate, then in the Christian Middle ages, necessity demands, for the unknowable but finite and limited period of the eschaton, the elevation of a monarch to the role of emperor, through a personal mandate from the papacy.[206] Despite the contextual shift from the Roman Republic to the Medieval bureaucracy of the Holy Roman Empire there is a continuity in the structure of authority.[207] According to Schmitt, the legitimacy provided to the Christian empire as *katechon* is finite, limited and does not strive for 'world unity', but to overthrow such a universalist imperial crown.[208] Thus it is important for Schmitt to distinguish the universal or totalised empire of Caesarism from the supposedly limited Christian Empire of the middle ages.[209] Like the Roman dictator, the Christian emperor possesses only a limited authority given for the completion of a specific task.

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[201] *PT*, 55-7; *Gloss*, 63, cited in translation in Nicoletti, 371.

[202] Donoso Cortés, Letter of 24 August, 1849, to Monnsignor Gaume, B.A.C., II, 228, cited in Thomas P. Neill, 'Juan Donoso Cortés: History and "Prophecy"', *The Catholic Historical Review* 40, no. 4 (1955): 401.

[203] *PT*, 59.

[204] *3P*, 169; *Gloss*, 70, cited in Nicoletti, 'Religion and Empire', 371.

[205] *N*, ch 3.

[206] *N*, 61.

[207] Nicoletti, 380.

[208] *Gloss*, 16.6.48, 165.

[209] *Gloss*, 23.5.48, 135.

The Christian 'emperor's office was inseparable from the work of the *katechon*, with concrete tasks and missions'.[210] These tasks, assigned by the pope, could include missions and crusades as 'the peacemaker, the settler of disputes, and the fighter of tyrants'.[211] Thus the office of emperor was itself a 'commission'. However, it relied indirectly on the independent authority of the monarch, determined by the claims of local royalty. The concept of the *katechon* thus unified the two hierarchies, '*diversi ordines* [diverse orders]' of temporal and divine power by turning the emperor into an office, a commissar.[212] There was no specific dynasty of the emperor, instead, on occasion a monarch took the title of *imperator* 'for missions and crusades… from the pope' and thereby, according to Schmitt, 'confirmed the orientations and orders grounding the unity of the *respublica Christiana*'.[213] The commission 'stemmed from a completely different sphere than did the dignity of the monarchy', since each arose out of a distinct spatial order: the former out of *Christendom*, and the latter out of the autarchic local political entity.

Reviving the categories of dictatorship, Schmitt attempts to base the authority of the *katechon* on a 'concrete' or 'objective' demand for peace embodied in a specific order.

> *Peace*, in particular, was not a free-floating, normative, general concept, but rather, one oriented concretely to the peace of the empire, the territorial ruler, of the church, of the city, of the castle, of the marketplace, of the local judicial assembly.[214]

Schmitt recodes 'abstract' demands into 'spatial concepts' in order to return to the task of the *katechon* a connection with objective reality and the 'power of the facts'.[215] Recalling the temporal and spatial limits on the dictator, Schmitt asserts that the Christian empire was based on a 'concrete sense of history' and a 'monarchy grounded in a country and its people'. The threat to such concreteness emerges in abstract notions of right, as well as 'great philosophical systems' and 'neutral generalisations': an allusion to the heritage of systematic philosophy embodied in the work of legal positivists such as Hans Kelsen and

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[210] *N*, 62.
[211] *N*, 66.
[212] *N*, 61.
[213] *N*, 62.
[214] *N*, 59.
[215] *N*, 64.

their systematic and purely legalistic conceptions of political forms.[216] Instead, like the commissary dictator, the precondition of the *katechon* is the specific ordinance, the personal mandate, in contradistinction to general law and dynastic rights. At the end of the thirteenth century, however, with the rise of the Luxembourg and Habsburg empires, this concrete basis was lost. The meaning of the Christian empire 'was robbed of its substance' by the transformation of monarchical crowns into mere 'rights of ownership'.[217]

The antithesis to legal office accords to the *katechon* a 'fundamental' political force grounded in an '*ethos* of conviction' that precedes law.[218] Schmitt writes that for the Germanic monks of the medieval Christian Empire, the doctrine of the *katechon* enabled a 'lucid Christian faith in potent historical power [*stärkster, geschichtlicher Kraft*]'. In fact, like the Church in *Roman Catholicism*, as long as it was supported by pious belief, the idea of the *katechon* could support various historically determinate 'political and juridical structures'.[219] It could align with different political entities and even act as the vector through which these structures are subject to 'transposition, successions, consecrations, or renovations of all types'. Like the *auctoritas* of the senate in Rome, the *katechon* is not a legal institution or right.[220]

Schmitt claimed that this conceptual apparatus grounded and limited the activities of the emperor, by providing a flexible but strictly finite and limited jurisdiction, attuned to the concrete through the papal mandate.[221] With 'humility and modesty', at the completion of its task, the *katechon*, like the dictator, would voluntarily abdicate.[222] The eschatological framework provided a further limit defining the 'present eon' as a finite interregnum before Christ's return. This ideological framework would supposedly forestall the development of an 'absorbing and consuming power' based on the desire for simply the 'prolongation of the monarch's power'.[223] Schmitt insists that the 'Christian

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[216] Baume, 'On Political Theology', 370–3.

[217] *N*, 64-5.

[218] In the democratic works, the *ethos* of conviction remains a key term. Nonetheless, as I demonstrate in the next chapter, Schmitt there links the ethos to a different model of political practice.

[219] *N*, 60.

[220] *N*, 65. Although Schmitt rejects the correlation between Rome, there seem clear parallels as mentioned above.

[221] *N*, 62.

[222] *N*, 60-2.

[223] *N*, 62.

empire was not eternal. It always had its own end and that of the present eon in view.'[224] However, with the loss of the concept of the *katechon* in the late Middle Ages, the Christian emperor forgets the finitude of his role and strives to become a 'super-king', thereby introducing the unlimited and unrestrained ambitions of Caesarism typical of both the Roman and Napoleonic empires. But according to Schmitt, this 'Caesarism is a typically non-Christian form of power'.[225] Only through the concept of the *katechon*, could the Christian empire admit its inadequacy to the eternal kingdom of God, but still be capable of acting as a historical power.[226]

But can such an idea actually limit the desire for power? Cacciari is right to be sceptical of Schmitt's claims. Although sympathetic to the need for a *katechon*, he rejects Schmitt's assertion that a *katechontic* Christian empire can remain a limited imperial power. He argues that the goals of empire and *katechon* are antithetical and any attempt at accommodation will produce either political impotency or a Caesarist (and hence non-Christian) absolutism.[227] He describes the *katechontic* energy as 'essentially executive-administrative, producing security' and thus in conflict with the 'unrestrained expanding' demand of all empires. Thus, he denies the validity of Schmitt's distinction between the Caesaristic and Christian conceptions of empire.[228] Cacciari's position seems more accurate historically. Walter Ulmann for instance, describes the period as 'a struggle fought within the precincts of the empire itself and therefore on Roman terms'.[229] Thus, Schmitt's scarce historical substantiation appears rather egregious. He refers only to 'German monks of the Frankish and Ottonian ages,' explicitly naming Haimo of Halberstad, Adso of Montier-en-Der, and Otto of Freising.[230] In particular, Charlemagne is not mentioned, nor any actual events or controversies of the *respublica Christiana*. Even in Ados's letter to Queen Gerberga cited by Schmitt, Adso speaks of an expansive imperative that 'our religious order become greater and greater' that appears to contradict the limited restraint supposed to characterise the *katechon*.[231]

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[224] *N*, 59.

[225] *N*, 63.

[226] *N*, E59, D29.

[227] Cacciari, *The Withholding Power*, 19–20.

[228] Cacciari, 29–30.

[229] Walter Ullmann, *A Short History of the Papacy in the Middle Ages* (London: Routledge, 2003), 17.

[230] *N*, 60.

[231] Adso of Montier- en-Der, France, 'Letter of Adso to Queen Gerberga Concerning the Origin and Life of Antichrist, 1291', in *Mediaeval Sources in Translation VII*, ed. John Wright (Toronto: Pontifical Institute of Mediaeval Studies, 1967), 100–1.

Schmitt's strategy resembles Benjamin Constant's conception of the monarch as a *pouvoir neutre*. Although displaced from the nation to the *respublica Christiana,* the pope takes on aspects of the neutral monarch, a kind of personalist representative of natural law. In fact, in the *Der Hüter der Verfassung* (1931), Schmitt specifically identified the *Reichspräsident* with the *auctoritas* of the *pouvoir neutre* assigning him qualities of influence, prestige, and trust.[232] The dual offices of *imperium* and *sacerdotium*, with visible bearers the emperor and pope, are given form in the *Reichstag* and *Reichspräsident*, respectively.[233] Instead of subordinating one to the other or constructing a 'balance of powers', Schmitt attempts to intertwine them by distinguishing between their jurisdictions.

The structural continuity between the commissary authority and the *katechon* is also evident in the presupposition of an existing hierarchy. The emperor as *katechon* is parasitic on the existing princely hierarchies. Only a monarch could be 'elevated' to the role of *katechon* (emperor). The legitimacy of the emperor was separate from, but ultimately dependent on the 'dignity of the monarchy' which 'stemmed from a completely different sphere'. Thus the idea of the *katechon* was a means of mediating between two independent structures of power. The commission from the pope did not create a king of kings who ruled Europe. Instead, the commission achieved an act of 'elevation of a crown, not a vertical intensification'. This obscure image evokes something like Donoso Cortés' elaboration of 'dignity': the regional monarch is elevated without degrading others. The foundation of monarchical power is independent of the Christian empire. The papal mandate, like the ordinance of Bodin's sovereign, is independent of law and the 'indigenous formations' of the monarchy.[234] Thus, Schmitt assigns the *katechon* and dictator the status of an exceptional authority. Neither, the charisma of the prophet, nor the legal office of regular monarch, the *katechon* represents a commissary authority. Through the interplay of these two modes of legitimation, a tyrant could be recognised as the 'enemy of humanity' against whom an emperor could be dispatched by papal commission. However, this relies on the concrete spatial unity of the *respublica Christiana*.[235]

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[232] Lars Vinx, Carl Schmitt, and Hans Kelsen, *The Guardian of the Constitution: Hans Kelsen and Carl Schmittt on the Limits of Constitutional Law*, trans. Lars Vinx (Cambridge: Cambridge University press, 2015), 157.
[233] *N*, 59.
[234] *N*, 62.
[235] *N*, 64.

5   The Divine Right of the *Katechon*

One aim of this chapter has been to uncover the theoretical structure underlying Schmitt's attempts to rearticulate a theory of authority based on the 'monarchical principle'. Tracing the development of his conception of commissary authority across various works, I have pointed to his persistent attempts to give a rationalist gloss to this theorisation of authority. However, from another perspective, this can be read as an attempt to recode various strategies and ideas of the classical doctrine of divine right. Schmitt was familiar with John Neville Figgis's *The Divine Right of Kings* and references it in *Crisis* precisely with respect to the distinction between law and commission.[236] In addition in *Nomos*, Schmitt refers to Figgis approvingly as a 'real historian' and cites both *From Gerson to Grotius* and *Churches in the Modern State* before directing the reader to Figgis's lecture 'Respublica Christiana' of 1911.[237] And as I demonstrate in this section, despite the use of ostensibly pagan concepts (such as the dictator or *nomos*) and the reference to the concrete necessity, Schmitt's conception of commissary authority is ultimately based on a divine foundation.[238] Although Schmitt eschews any explicit reference to the phrase 'divine right' which was used primarily by its detractors, his later works can be read as an attempt to restore an original Catholic sense to the doctrine, against its Protestant form used to defend the monarch against the papacy.[239]

Before it was taken up by Protestant monarchs, the idea of a divine commission was central to the authority of the papacy. Schmitt avoids discussing the origin of the papal office.[240] But, Walter Ulmann locates it with the fifth-century pope Leo I, as the first to utilise 'to the full the potentialities inherent in the Petrine commission'.[241] However, for Ullmann, the decisive invention of Leo I was to link the pope to St Peter using the Roman law concept of the heir [*haeres, successor*]. The basis of 'the continuity of the Petrine office in the pope, [was] not because the latter occupied the same chair or

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[236] *Crisis*, 42, fn. 29.

[237] *N*, 31.

[238] Figgis also connects 'real needs' with 'divine right'. See Figgis, *Divine Right*, 16. The influence of Figgis's work on Schmitt's concept of 'political theology' is also suggested by Rasch. See William Rasch, 'Political Theology and Political Form: Power, Contingency, Authority, Belief', *Journal for Cultural Research* 20, no. 3 (2 July 2016): 219–22.

[239] Figgis, *Divine Right*, 177.

[240] *RCPF*, 14.

[241] Ullmann, 'Leo I', 25.

because Peter's tomb was in Rome, but because he was the heir of St Peter'. Ullmann, like Schmitt, emphasises the personal office of the pope. The Church received its importance through the personal relation to the position of St Peter himself.[242] However, contrary to Schmitt's attempt to identify the commission as a pre-legal form, Ullmann writes that Leo is forced to take this strategy by the context of Roman law. The concept of the heir [*haeres*] is the only means of establishing the continuity of jurisdiction 'because, juristically speaking, the objective and depersonalised theme of the Roman Church was virtually incapable of being pressed into the legal framework of the Roman Law'.[243] For Ullmann, the novelty of pope Leo I was his transformation of the Petrine Commission into an unusual form of inheritance. Through Leo, the papacy is given a juridical basis as an *indignus haeres* (an unworthy heir).[244] That is, the familial relation of father and son is taken as the model for the transfer of jurisdiction to the successor.

Although Schmitt rejects the dependency on law (in the sense of positive law [*Gesetz*] suggested in Ullmann's commentary), he does develop the *katechon* in a familial context (household, economic, *oikos*) on the basis of the framework suggested by the concept *nomos*. Despite the importance of the *katechon* to *Nomos of the Earth* and the texts of this period, it is only an instance of a more general theory of the *nomos*: '*Recht* as a unity of order and orientation [*Recht als Einheit von Ordnung und Ortung*].'[245] The *respublica Christiana* and the *katechon* arose as a particular historical instance of the *nomos*: the result of 'land-appropriations by the Germanic tribes' in the sixth century.[246] As a substitute for divine and natural right/law, Schmitt attempts to construct a concrete basis for *Recht* out of the 'measurement and distribution of usable soil'.[247] The act of land appropriation is a 'legal-historical fact [*rechtsgeschichtliche Tatsache*]' or a 'great historical event' not merely an 'intellectual construction' like the Hobbesian legal fiction of the social contract.[248] From the act of land-appropriation and the 'inner measure' contained within the earth itself there emerges a new form of justice [*Gerechtigkeit*]. However, this is a justice derived from agriculture: 'human toil and trouble, human planting and cultivation of the fruitful earth is rewarded justly by her growth and

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[242] Ullmann, 33.
[243] Ullmann, 33.
[244] Ullmann, 33–5.
[245] *N*, 42.
[246] *N*, 57.
[247] *N*, 4.
[248] *N*, 46.

harvest'.[249] Thus the farmer or the household is identified as the source of the social order, politics and authority. Referring to the Aristotelian distinction between the *oikos* (household/economic sphere) and *polis* (political sphere), Schmitt derogates the *polis* as a mere 'philosophical generalisation' and clearly identifies the *oikos*, the family, as the originary model of political power.[250] Instead of Aristotle, Schmitt cites Hegel's *Philosophy of Right*: 'The principle of family life is dependence on the soil, on firm land, on *terra firma*.'[251]

Like the agricultural models that gave imperative force to the 'Great Chain of Being' and the hierarchies of divine right, the authority of the *katechon* is derived from the *nomos*, the 'inner measure of sowing and reaping', the economic sphere.[252] A similar sense of the economic context is clear in Lovejoy's account of the hierarchy of being, the *scala natura*. Between each level of the hierarchy — God, angels, man, beasts and plants — obedience is required and a 'breach of obedience and breaking in of rebellion' alone is enough to result in 'vices and miseries' as well as poverty, diseases, sickness and death.[253] While the threat of disorder could also characterise Hobbes' state of nature, the proximity of themes of agriculture and jurisdiction marks a closer affinity between Schmitt's *nomos* and the doctrine of divine right.

There are a number of argumentative commonalities between *Nomos of the Earth* and the doctrine of divine right. The references to Figgis suggest Schmitt was aware of these and specifically sought to reinvigorate the doctrine. Schmitt's depiction of the intertwined *auctoritas* and *potestas* of the emperor and pope, largely agrees with *Figgis*'s statement that the 'ideal of the Empire, with Christ as its King and His two vicegerents upon earth, was that of a theocracy.'[254] The 'Pope and Emperor are both conceived rather as executives armed from above with administrative powers.'[255] Figgis depicts the kings as possessing a somewhat limited authority, determined by a fundamental sphere of Christian 'law' resembling Schmitt's *Recht*. Like Schmitt's commission, in the divine right tradition, the office of monarch is based on a personal relationship rather than legal

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[249] *N*, 42.

[250] See Hannah Arendt, *The Human Condition: Second Edition* (Chicago: University of Chicago Press, 2013), 28.

[251] *N*, 49. Schmitt cites Hegel §247. G. W. F. Hegel, *Hegel: Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 1991), sec. 247.

[252] *N*, 42.

[253] David Wootton, ed., *Divine Right and Democracy: An Anthology of Political Writing in Stuart England* (Harmondsworth: Penguin Classics, 1986), 94.

[254] Figgis, *Divine Right*, 39.

[255] Figgis, 39–40.

contract. In his *Trew Law*, King James, like Schmitt, depicts the divine order as a sequence of jurisdictions: based on dominion and sovereignty.[256] James rejects the contractualist interpretations of the coronation as a 'mutuall paction and stipulation (as they call it) betwixt the king and his people.' Instead, he insists the king only 'willingly promiseth to his people to discharge honourably and trewly the office giuen him by God ouer them.'[257] If it is a kind of 'contract' James insists that it can only be an oath and as such can only be judged by God.[258] In contrast to Hobbes, Figgis and Schmitt show little concern for the ceremonial markers of authority, the annointment or unction of the king is ignored, and emphasis is placed on the hereditary status of those accorded authority. The shift from divine right to the measure of the soil, although it appears to mark a displacement or break from the divine to the natural, actually repeats a theme developed by Figgis of the shift from divine right to natural rights.[259]

On the origin of a *nomos*, Schmitt offers little explanation for the derivation of an order and orientation from an 'inner measure' of the earth. He merely cites the Book of Daniel: '[b]efore what has been appropriated through conquest, discovery, expropriation, or some other way can be distributed, it must be numbered and weighed, as in the ancient sequence: numbered/weighed/divided.'[260] The emphasis throughout is on an act of measuring, 'numbering and weighing,' by which one is ranked.[261] Schmitt also refers to the scientific measurement of the earth itself as the ground of a new *nomos*.[262] But he equivocates between this sense of measuring, weighing something and the legal sense of 'statutes, acts, measures, and decrees of all sorts.'[263] Such measures may respond to a situation.[264] But this sense is extended to 'financial, economic, and military measures'.[265] What is the relationship between the order (ranking, hierarchy, ordering) and the basic measure of a weight or number? Is there a necessary or non-arbitrary order derivable from a measure? In order to preserve the concreteness of the hierarchy, this would seem necessary. Only if we presume that 'more is better' can a ranking be elaborated from a

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[256] King James VI and I, *King James VI and I: Political Writings* (Cambridge: Cambridge University Press, 1994), 75.

[257] King James VI and I, *King James VI and I: Political Writings*, 81.

[258] King James VI and I, 81–2.

[259] Figgis, *Divine Right*, 152.

[260] *N*, 329.

[261] See Daniel 5:2-28.

[262] *N*, 49, 52, 53, 172.

[263] *N*, 67, 68.

[264] *N*, 207, 209.

[265] *N*, 270.

simple measure. The higher levels have *more* weight or number. In fact, Aristotle's hierarchy based on the 'powers of the soul' relies on such a ranking, the higher levels have *more* powers: the humans are above the plants and animals because they have nutrition *and* perception *and* intellect.[266] However, as a result the hierarchy seems to be reduced to something purely quantifiable: countable or weighed in a technical or economic sense. The distinctiveness of 'Catholic rationality' asserted by Schmitt is lost and it resembles the liberal-rationalist science of Protestant industrialism. In fact, in a certain sense the idea of the '*nomos* of the earth' aptly describes the eighteenth and nineteenth-century attempts to define a length (the metre) based on a physical geodesic arc on the earth.[267] This proximity may explain why Schmitt remains so elusive on the relationship between measure and order.

One precedent unmentioned by Schmitt is Augustine's discussion of measure and order in *The Literal Meaning of Genesis*.[268] Augustine's concern is God's relation to the quantifiers: measure, number and weight.[269] While these measures are external to God, or at least beyond his command, in order to give priority to God, he notes that the realisation and maintenance of the order derived from such measures requires God's active engagement. Although on the sixth day He rested from creating new things, He continued 'to operate the management of the things that were then set in place,' since 'the world will not be able to go on standing for a single moment, if God withdraws from it his controlling hand.'[270] Thus, for Augustine, the order or *nomos* is a result of God's active participation. However, for Schmitt the hierarchy was supposed to have some independence from the vicarious commission from God. The local monarchy was to be independent of the Christian Empire that bestows the commission of *katechon*. However, both now appear to arise directly from God's activity. Thus the commission of *katechon* is a mandate from God, allocated according to a hierarchical order previously established and maintained by God. Authority based on the monarchical principle is ultimately derived from a divine source.

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[266] Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (Cambridge: Harvard University Press, 2001), 58. Lovejoy quotes Aristotle's *De Anima*.

[267] H. Arthur Klein, *The World of Measurements: Masterpieces, Mysteries and Muddles of Metrology* (New York: Simon and Schuster, 1974), 114.

[268] I am indebted to Agamben's discussion of this passage with regard to order, *taxis, ordo*. Agamben, *Omnibus*, 449–51.

[269] Saint Augustine, *Augustine: On Genesis*, ed. John Rotelle, trans. Edmund Hill (New York: New City Press, 2002), 246.

[270] Augustine, 253.

* * *

The chapter has traced Schmitt's attempts to elaborate a distinctive sense of commissary authority and in the process argued for a theoretical continuity between the dictator and the katechon. I have demonstrated that Schmitt attempts to articulate a personalist authority dependent on (i) a particular concrete task, supposedly utilising a specifically human capacity for creative thought and (ii) a presupposed social hierarchy supported by a *nomos* derived from economic (agricultural) models and anthropological necessity. However, as I have demonstrated, both these elements are ultimately guaranteed by reference to divine intervention. This specific authority, elaborated across a series of models — the Roman dictator, the military general, the pope, the judge, the Catholic Priest, the great orator and the katechon — is supposed to overcome the instrumentalised form of the state. However, it does so only by reviving strategies of traditional 'divine right' under the guise of political 'realism' and by according specific cultural goals, such as the Last Judgement, an unquestionable status.[271] In addition, my account has drawn attention to the extent that Schmitt relies on certain conceptual equivocations, rhetorical effects and 'paradoxical' concepts or *complexio oppositorum* such as dignity, representation and person. While the personalist model of authority dominates much of Schmitt's work, in the next chapter I turn to the democratic works 1923-32, followed by the Nazi works of 1933-39. In *The Crisis of Parliamentary Democracy* (1923), Schmitt's focus shifts to the democratic politics of Weimar era Germany and he begins to develop a distinctive conception of authority based on democratic principles.

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[271] Schmitt's 'political realism' is evident in the way his tripartite schema *nehmen-teilen-weiden* (appropriation-distribution-production) substitutes violent appropriation for the gradualist and peaceful formulation given by Tönnies' *bewohnt-bebaut-besessen* (inhabited-cultivated-possessed). Ferdinand Tönnies, *Tönnies: Community and Civil Society*, ed. Jose Harris, trans. Jose Harris and Margaret Hollis (Cambridge: Cambridge University Press, 2001 [1887]), 223–4. On violent appropriation, see also Figgis, *Divine Right*, 23.

Chapter 4: The Energy of Democratic Authority

> Every age finds its own redeeming word. ...
> and the true purport of these words becomes
> for them merely the means, if not the
> pretext, for rendering visible that ultimate
> depth of things.[1]
>
> Democracy leads to oligarchy and
> necessarily contains an oligarchical
> nucleus.[2]

This chapter investigates Schmitt's elaboration of two distinct forms of authority: a 'democratic' form between 1923 and 1932 and a 'Nazi' alternative based on the *Führer-prinzip* from 1932 to 1939. In the former period, Schmitt relinquished the basic premise of monarchical politics, a hierarchically structured society, in order to elaborate a 'democratic' theory of politics commensurate with contemporary public opinion. In the democratic writings he broadly accepts Max Weber's 1917 diagnosis of the political situation in Germany:

> Democratisation can certainly be obstructed — for the moment —
> because powerful interests, prejudices and cowardice are allied in
> opposing it. But it would soon emerge that the price to be paid for
> this would be the entire future of Germany. All the energies of the
> masses would then be engaged in a struggle *against* a state in which
> they are mere objects and in which they have no share.[3]

Accepting that 'monarchy's hour has tolled', Schmitt turned his attention to the political institutions of Weimar era Germany and the nature of democratic legitimation.[4] In his

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[1] Helmuth Plessner, *Levels of Organic Life and the Human: An Introduction to Philosophical Anthropology* (New York: Fordham University Press, 2019), 1.

[2] Michels, *Political Parties*, viii.

[3] Weber, *Political Writings*, 129.

[4] *Crisis*, 8; Carlo Galli, 'Carl Schmitt's Antiliberalism: Its Theoretical and Historical Sources and Its Philosophical and Political Meaning', *Cardozo Law Review* 21, no. 5–6 (1999): 1597.

'democratic writings' Schmitt develops an account of politics in which the fundamental source of political authority is popular acclamation.

> The most proper or actual activity, capability and function of the people, the core of every expression of the people, the originary democratic phenomenon, what Rousseau had in mind as actual democracy, is the acclamation, the call of approval or rejection from the assembled crowd.[5]

Among the difficulties posed by Schmitt's 'democratic writings' are two with a particular relevance to the problem of authority. The first is a puzzle concerning how the act of acclamation relates to authority. What theoretical model describes the mechanism by which an act of assembly affirms, constitutes or generates authority. If Hobbes relied on a constructive model of *cultus* as the cultivation of *potentia*, then we can ask of Schmitt's work is there a similar explanatory framework elaborating the political logic of an assembled crowd? How does acclamation work, according to Schmitt? At the centre of this puzzle is the collective entity 'the people' (*das Volk*) and reflecting his critique of the collective subject in *Dictatorship* a major stake in these works is precisely what *can* such a political entity do. The second difficulty concerns the relationship between the democratic authority derived from acclamation and the *Führerprinzip* of the Nazi writings from 1933. Is the authority of the *Führer* consistent with Schmitt's earlier political structure?

In this chapter, I argue that acclamation is central to Schmitt's articulation of a democratic form of authority. I demonstrate how this is dependent on a revisionist conception of democracy and an understanding of the people as a concrete assembly with limited but specifically 'active' capacities. I show that among the various influences, sources and references, that of Georges Sorel's energetic and enthusiastic vision of political activity is central, but often overlooked in the secondary literature. Consequently, I demonstrate that Schmitt understands acclamation as a mode of *assent* (in a particular sense distinct from voting, legal or contractual consent). Finally, I turn to Schmitt's *Führerprinzip* and the Nazi writings and argue that these demonstrate a proximity to the *Volksgeist* models but that the *Führerprinzip* remains a relatively incoherent or incomplete conception of authority, no longer reliant on acclamation. I

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[5] *V&V*, 51-2. *'die eigentlichste Tätigkeit, Fähigkeit und Funktion des Volkes...'*

offer a nuanced account of relation between the two periods, suggesting there are aspects of continuity and discontinuity.

The chapter is divided into four sections. In the first I reconstruct Schmitt's anti-liberal conception of 'democracy' tracing its sources and antitheses. I argue that Schmitt adopts Sieyès' conception of the *pouvoir constituant*, but the demise of its legitimating ideas — natural right and the autarchy of the nation— deprives it of justification.[6] In section two, I turn to Schmitt's conception of the people. I argue that Schmitt draws on the romantic doctrine of the *Volksgeist*. However, its passive conception of the political entity (based on divine or quasi-divine legitimation under the guise of history) is ill-suited to the political and intellectual situation of twentieth-century Europe. Though Schmitt preserves the Hegelian 'ethical substance' from this doctrine, he transforms it using: (i) a Hegelian-Marxist logic of negation, abstracting and relativising the traditional model and eliminating its totalised systematic form; and (ii) an energetic and enthusiastic understanding 'opposition' (scission/division) drawn from Georges Sorel, with which Schmitt reformulates 'the political' as the 'utmost degree of intensity of a union or separation'.[7] Recalling the role of public participation in Hobbes' account of worship, Schmitt displaces Hobbes' ritual ceremonial performance for an acclamatory demonstration of faith. The third section reconstructs Schmitt's conception of acclamation. I argue that Schmitt understands the operation of acclamation on a model of 'assent' and I distinguish this from voting, legalisation and contractual consent. Precursors are given by Sorel's enthusiastic support of myth, but Schmitt attenuates the mythical dimension for an assertoric religious exclamation indicating a blurring of the distinction between 'is' and 'ought'. Finally, in the fourth section on the Nazi writings, I show that the introduction of the *Führerprinzip* marks Schmitt's abandonment of the model of acclamatory authority. I argue that in this period Schmitt returns to a problematic resembling an immanent revision of the personal authority of the monarchical writings. In this period Schmitt struggles to produce a concrete model for leadership and ultimately relies again on a structure analogous to Christian concepts of dignity.

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[6] Schwab, for instance, describes Schmitt's writings as 'immune to the essentially non-historical natural law concept', the 'cornerstone of scholastic thought'. George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin: Duncker & Humblot, 1970), 21.
[7] *CP*, 26.

1   'Democracy' in Weimar

In the 1920s, Schmitt develops an alternative model of democratic politics, based on acts of acclamation, opposed to the prevailing liberal-parliamentary alternative. Although it is assembled from a variety of disparate sources, Schmitt's fundamental premise is the assertion that 'state power [*Gewalt*] derives from the people', a presumption typical of Modern democratic constitutions and exemplified in the first article of the Weimar Republic.[8] In order to situate the detailed discussion, I offer the following preliminary outline of Schmitt's theory of democratic politics. This is intended only as a loose guide establishing the general structure of Schmitt's framework.

In agreement with much twentieth-century political theory, Schmitt identifies the foundation of democratic politics as the people, *das Volk*, an entity/union [*Einheit*] of individuals.[9] However, precisely how this entity is constituted or determined is the key problem and this is addressed in detail in the following section of the chapter. Broadly, Schmitt tends to depict the people as a kind of amoebic mass, unified as an entity but elastic and unstructured. He describes it as an unorganised 'formless formative capacity'.[10] It emerges as a *political* entity out of a field that may be marked by various non-political divisions and groupings (ethical, cultural, religious, biological, economic and so on). But to exist politically as a people, a group must decide to distinguish itself from an enemy.[11] With the decision on the friend and enemy a group is given political existence and Schmitt explicitly defines 'the political' by associating it with a sphere of conflict and the 'real possibility' of life and death combat.[12]

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[8] *CT*, 409 (Appendix), 'Artikel 1 '*Die Staatsgewalt geht vom Volke aus.*'

[9] Schmitt uses the singular '*das Volk*' largely as an equivalent for any group with a political potential, thus blurring together traditional distinctions between the *Volk*, nation and people and obscuring any distinctions between a group organised along strictly political, ethnic, or geographic criteria. While for Sieyès' and the French thinkers of the eighteenth and nineteenth centuries the distinction between nation and *peuple* was important for articulating the revolutionary demand to end the system of privileges of the *ancien regime*, in the twentieth century this sense of the distinction has largely faded from use. As a result, the most appropriate substitute for *das Volk* seems to be the somewhat artificial use of 'the people' in the singular. On the longer history of terms such as 'people', 'nation', *Reich* and *Volk*, see: See Joachim Whaley, '"Reich, Nation, Volk": Early Modern Perspectives', *The Modern Language Review* 101, no. 2 (April 2006): 448; Emmanuel Sieyès, *Sieyès: Political Writings: Including the Debate Between Sieyes and Tom Paine in 1791* (Indianapolis: Hackett Publishing, 2003), 5; Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-76*, trans. David Macey (London: Penguin, 2004), 217–20; Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 2016), 67–70; Pierre Rosanvallon, *Democracy Past and Future* (New York City: Columbia University Press, 2006), 86–7.

[10] *CT*, 129.

[11] *CP*, 25-6, D3-4 [1927].

[12] *CP*, 33.

Relying loosely on Sieyès' distinction between the *pouvoir constituant* and the *pouvoir constitué*, Schmitt distinguishes the formless and unorganised people from the organised political form established and described by a constitution.[13] One of the specific capacities of the people is its power [*Gewalt*] to give itself a 'political form', an organised counterpart defined by a legal constitution.[14] Unlike Hobbes' people and multitude, after giving itself a constitution, the people is not dissolved or destroyed, but remains intact, alongside the political form. It can continue to act, however, only by acts of acclamation or expressions of public opinion.

In his account of democratic politics, Schmitt emphasises the principle of equality/sameness [*Gleichheit*] between all those who belong to the political entity and largely ignores the liberal claims for a second principle of freedom or liberty. His model of democracy is constructed in opposition to the prevailing liberal parliamentarism. In particular, Schmitt aims to displace questions of constitutional legitimacy from the sphere of legality to one of 'actual activity, capability and function'.[15] This is carried out through an excavation of the 'principles' and thus explanatory framework (metaphysics, theology or physics) of politics in general. Schmitt traces the crisis of Weimar to an incoherence in the 'intellectual foundations' of the institutions of 'parliamentary government', such that the cause precipitating the imminent failure of the republic is the liberal confusion of legality for legitimacy. This was exacerbated by the transition from an *Honoratiorenpolitik* (a politics of notables) typical of the early- to mid-nineteenth century to the party-based 'mass politics' characteristic of Schmitt's era. According to Schmitt, liberal theorists failed to recognise that the legitimacy of modern bureaucracy remained dependent on traditional concepts of honour.[16] The two foci of contestation are (i) the correct understanding of 'democracy' and (ii) the nature of 'the people' and its capacities in politics.

For liberals in the 1920s, 'democracy' referred generally to parliamentary, representative forms of government and the people was understood as an aggregate of

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[13] *V&V*, 49; *CT*, 64. Schmitt specifically describes the people as a *pouvoir constituant*, a 'constitution-making capacity [*Verfassunggebenden Gewalt*]'. cf. Sieyès, *Sieyès: Political Writings: Including the Debate Between Sieyes and Tom Paine in 1791*, 136.

[14] On the nature of this relationship, Schmitt describes the people as the bearer [*Träger*] of the constitution-making power, but also describes this power as ready-to-hand [*vorhanden*] to the people. See *V&V*, 49; *CT*, 64.

[15] *V&V*, 51-2.

[16] Brett Fairbairn, *Democracy in the Undemocratic State: The German Reichstag Elections of 1898 and 1903*; *L&L*, 3-4.

individuals, often based on national identification. Its 'capacities' are conceived as legal rights or competencies which are limited and strictly circumscribed by the constitution.[17] For the intellectual sources of this vision of democracy, Schmitt cites a range of figures, including John Locke, Edmund Burke, John Stuart Mill, Benjamin Constant, François Guizot, Montesquieu, and Jeremy Bentham. This supposedly false democracy, Schmitt counters with an alternative constructed from a disparate set of sources including Emmanuel Sieyès, Jean-Jacques Rousseau, Pierre-Joseph Proudhon, Alexis de Tocqueville, and Hippolyte Taine, a set that includes both proponents and opponents of 'democracy'.[18]

The liberal tradition aims to limit 'politics' to a strictly delimited arena of contestation contained by an ostensibly apolitical transcendent horizon. This could be through a personalist model, such as Benjamin Constant's 'neutral power' where the constitutional monarch stands above the 'sphere of political agitations'.[19] The charismatic leader in Max Weber's political theory arguably continues this tradition. Alternatively, impersonal models were developed by Guizot and Mill where the limit is 'justice, truth and reason'.[20] In both cases, however, the horizon has a privileged relation to truth.[21] Contestation focused on the nature of the 'sovereignty of the people'. Constant treated it explicitly as a 'jurisdiction' legally granted to the people, while Guizot rejected the concept entirely.[22] Schmitt eschews both these positions. Against Constant he accords absolute sovereignty to the people refusing its delimitation and against Guizot he accepts the ultimately decisionist and despotic potential of democracy as unavoidable and perhaps a positive source of vitality. Despite the pretensions of liberalism, which claimed rationality itself carried authority (manifest in legal proceduralism), for Schmitt, the true source of parliamentary legitimacy is the historically determined dignity [*Würde*] of

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[17] *Crisis*, 2.

[18] On the distinction between 'liberal' and 'democratic', see Pierre Rosanvallon, 'The History of the Word "Democracy" in France', *Journal of Democracy* 6, no. 4 (1995): 140–54.

[19] Benjamin Constant, *Benjamin Constant: Political Writings*, ed. and trans. Biancamaria Fontana (Cambridge: Cambridge University Press, 2007), 183–5, 274.

[20] Constant, 183–5; François Guizot, *The History of the Origins of Representative Government in Europe*, trans. Andrew R. Scoble (Indianapolis: Liberty Fund, 2002 [1861]), 54–8. The commonalities are not surprising given that Mill was familiar with and influenced by Guizot. See Georgios Varouxakis, 'Mill on Democracy Revisited', in *A Companion to Mill*, ed. Christopher Macleod and Dale E. Miller (Chichester: Wiley Blackwell, 2017), 456.

[21] Constant, *Benjamin Constant: Political Writings*, 193.

[22] Constant, 171, 177; Guizot, *History*, 52, 57.

parliament itself and an implicit '*sacralisation* [*Weihe*] of legality' on which the parliamentary legislative state is based.[23]

Schmitt's alternative *true* democracy draws various ideas from the works of Rousseau, Proudhon, Tocqueville and Sieyès. Ignoring the complex history and revaluation of the term, Schmitt amalgamates these various sources forming a vision of direct democracy based on the fundamental and authoritative capacity of an assembly to 'acclaim'.[24] From Tocqueville, Schmitt takes the idea that 'democracy' is an *état social*, expressed in the 'principle of equality'. While Tocqueville was critical of the democratic demand for equality, he understood democratic equality as a 'hatred of privilege' demanding the similarity of individuals all 'forced through the same sieve.'[25] The demand for 'democracy' is thus manifest as a demand for an 'egalitarian society' and the destruction of the privilege state of the *ancien régime*.[26] In addition, the distinction between a social demand for democracy (equality) and a political form, evident in Tocqueville and Guizot, enables Schmitt to assert that there was nothing contradictory in a 'democratic monarchy'.[27] In German history this was exemplified in the Wilhelmine era, which the historian Margaret Anderson describes as a 'monarchical democracy' in the period following Bismark's extension of the suffrage in 1871.[28]

Against parliamentary models, Schmitt defines democracy via a 'series of identities', likely taken directly from Proudhon, who writes:

> The democratic ideal is that the masses who are governed should at the same time govern, and that society should be the same thing as

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[23] *L&L*, 3, 10. Translation modified. Jeffrey Seitzer translates *Weihe* as 'dignity' but this seems to obscure the specifically religious connotations of *Weihe*.

[24] Schmitt's obscuration of terminological distinctions is evident in juxtaposition with Pierre Rosanvallon's recent work on the history of 'democracy' in France. Of the theorists cited by Scmitt, it is notable that only two explicitly identified with 'democracy,' Mill and Proudhon, who lie on opposite sides of Schmitt's structuring opposition. see Rosanvallon, 'The History of the Word "Democracy" in France'.

[25] Alexis de Tocqueville, *Democracy in America*, trans. George Lawrence (New York: Perennial Classics, 2000), 630.

[26] cf. Schmitt's remark that Hippolyte Taine's *History of English Literature* includes the 'most impressive description of this development', that is, of democracy as the destruction of the privileges and social hierarchy of the past eras. *Crisis*, 23; Hippolyte Taine, *History of English Literature*, vol. II (Piccadilly, UK: Chatto and Windus, 1878), 224. Rosanvallon, 'The History of the Word "Democracy" in France', 150.

[27] *CT*, 59-61.

[28] Margaret Lavinia Anderson, *Practicing Democracy: Elections and Political Culture in Imperial Germany* (Princeton: Princeton University Press, 2000), 401, 434.

> the state, and the people the same thing as the government, just as in political economy, producers and consumers are the same thing.[29]

In *Constitutional Theory*, Schmitt appends to these formulations Sieyès' distinction between the *pouvoir constituant* (constitution-making power) and the *pouvoir constitué* (constituted powers).[30] This dualist schema provides the core structure for Schmitt's articulation of democratic authority.[31] Against Benjamin Constant, Sieyès insisted the originary political power was not something 'granted' or legally circumscribed. Schmitt, ignoring Sieyès' distinction between the 'nation organized as a political body' and a scattered 'immense flock of people', assigns the *pouvoir constituant* to the people [*das Volk*].[32] The key premise adopted by Schmitt is Sieyès' claim that there is no 'antecedent authority' to make a grant of power and the only law that precedes the nation is natural law/right [*droit naturel*].[33] Although Sieyès locates the original power with the nation, his account is far from Schmitt's version of a direct democracy. Instead, for Sieyès, the task of legislation is delegated to a representative government, who must 'truly *belong* to the Third Estate', where the latter is defined as a relatively homogenous 'nation' and equated with the organised portion of the *peuple/multitude*, rather than the privileged orders or the masses.[34]

The foundational legitimation of the *power* of the nation, which in Sieyès is conceived as ambiguously as both a right and a capacity, is based on (i) a presumption of natural law (*droit naturel*) and (ii) an argument for the economic self-sufficiency (*autarchy*) of the nation. In the first case, on the model of a social contract, the consent of individuals, by an act of free will produces a 'legitimate association' and an obligation. The guarantee of this relation between consent, obligation and legitimacy is, however,

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[29] Of course, Aristotle gives a similar formulation, but Proudhon's series of examples is almost mirrored by Schmitt. Pierre-Joseph Proudhon, *Selected Writings of Pierre-Joseph Proudhon*, ed. Stewart Edwards (New York: Anchor Books, 1969), 117. cf. *Crisis*, 26.

[30] Lucia Rubinelli, *Constituent Power: A History*, Ideas in Context (Cambridge: Cambridge University Press, 2020), 109–39. Rubinelli provides a detailed account of Schmitt's adoption of political form and structure given by Sieyès. Still, she seems relatively uninterested on the conceptual grounds on which they are based. Schmitt's reliance on Sieyès is also touched upon by Kalyvas, *Extraordinary*, 96, 116, 155.

[31] In relation to the intellectual history of terms such as 'democracy' and 'sovereignty,' it is clear that Schmitt's identification of 'constituent power' with the 'sovereignty of the people' is contrary or at least anachronistic with respect to Sieyès' own writings. *CT*, 300; Rubinelli, *Constituent Power: A History*, 33, 48; Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2016), 176.

[32] Sieyès, *Sieyès: Political Writings: Including the Debate Between Sieyes and Tom Paine in 1791*, 5, 134.

[33] Sieyès, 137.

[34] Sieyès, 105.

natural law [*droit naturel*].[35] For Sieyès, a 'nation is formed solely by natural law [*droit naturel*].' It is prior to and above the nation and the source of all the rights of the nation.[36] Natural law is further equated with morality and 'just and natural means.'[37] Thus, 'legitimate association' stands in opposition to the 'gift of the strongest'. However, Sieyès offers a second mode of legitimation with organic and economic bases. In order to 'survive and prosper' a nation requires a certain amount of work and as Sieyès points out: in public services, 'nineteen out of twenty of those employed… are members of the Third Estate.' Rather than the autonomy, or self-legislating capacity of the nation, it is the self-sufficiency that marks the Third Estate as the nation. The Third Estate, 'within itself, contain[s] everything needed to form a complete nation.'[38] The privileged order is merely a 'burden' on the 'strong, robust man' of the third estate. It is 'a frightful disease devouring the living flesh of the body of its unhappy victim' or a 'malignant tumor.'[39]

Schmitt takes up the dualist architecture of Sieyès' political field, but disregards the foundational presumptions of economic self-sufficiency (*autarchy*) and natural law (*droit naturel*). This leaves him with a foundational void, an absence of legitimation or authority. Even consent alone, as Hobbes was aware, requires some additional source of legitimation for effectivity. Schmitt develops Sieyès' model of the political entity and its capacities in order to fill this void with the idea of a 'political decision' firstly on the friend/enemy distinction, and secondly as the act of acclamation.

2   The People and the Enemy

The foundation of democratic politics is the political capacity, power or right of the people. Before turning to the practice of acclamation, I trace Schmitt's attempts to reconceive the people as an active entity constituted by the political decision on the enemy. I argue that while Schmitt draws on the romantic doctrine of the *Volksgeist* (especially Hegel's modifications of it), he abstracts from it on the basis of a Hegelian-Marxist logic of negation and transform it into a politics of 'intensity' influenced by George Sorel's energetic understanding of political 'opposition' (scission/division).

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[35] Sieyès, 119–20.
[36] Sieyès, 136.
[37] Sieyès, 133–4.
[38] Sieyès, 96.
[39] Sieyès, 157, 162.

(i) The Doctrine of the *Volksgeist*

There is an intrinsic passivity to the nationalism of the *Volksgeist* doctrine due to its polemical orientation against the interventionist politics of the French revolutionaries.[40] The foundational models for the doctrine are taken from Herder's texts of the eighteenth century. A people is unified by a common language, out of which emerges 'naturally' (meaning passively) a specific culture [*Bildung*] uniquely attuned to the concrete time, place and age of human development.[41] Each people or nation is a closed entity with a specific internal system of practices, institutions, laws, religion, morals, virtues and social forms.[42] In particular, each specific *Volksgeist* includes a political constitution. It is a living organic 'creature' that has its own stages and cycles of life, but importantly can grow autonomously without human intervention.[43] Conservative German Romantics argue that the folk traditions of traditional communities possess a 'greater wisdom' than interventionary rationalist projects. They emphasise the religious elements depicting the 'concrete historical tradition' as the only possible source of 'salvation'.[44] Schmitt's 1919 critique of the German romantics identifies their deification of history as a defining trait.[45] He is critical of their 'new ontology' which imagined 'history' as a new power [*Macht*] of legitimation.[46] Although Schmitt is more sympathetic to the French counter-revolutionaries such as Maistre and Bonald, Maistre's depiction of providence acting

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[40] Hans Kohn, 'Romanticism and the Rise of German Nationalism', *The Review of Politics* 12, no. 4 (October 1950): 454. This tradition can be traced from Johann Gottfried Herder through the German romantics such as Friedrich Schlegel, Novalis, Adam Müller and on to more rationalist interpretations in Hegel, Savigny, Fichte, Tönnies and in Schmitt's era the nationalist of the *Alldeutscher Verein*. *CP*, 49.

[41] Johann Gottfried Herder, *Another Philosophy of History and Selected Political Writings*, ed. and trans. Ioannis D. Evrigenis and Daniel Pellerin (Indianapolis: Hackett, 2004), 9–15; Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, 69.

[42] Herder, *Another Philosophy*, 29, [38/39].

[43] A motif common to Polybius as well as Oswald Spengler.

[44] Kohn, 'Romanticism and the Rise of German Nationalism', 454.

[45] *PR*, 62. Incidentally, *Political Romanticism* appears to be the only published text in which Schmitt explicitly uses the term *Volksgeist*. See 62-64.

[46] Schmitt refers to 'the imagination of a new power/capacity which as such can legitimate'; 'die Vorstellung der neuen Macht, die als solche etwas rechtfertigen kann.' *PR*, E63/D56. In an essay of 1902, 'Rosher und Knies,' Weber makes similar objections to the 'metaphysical character' attributed to the *Volksgeist*. Foreshadowing Schmitt's reference to 'conscious willing' of a particular communal life, discussed below, Weber identified the importance of the recognition of 'mutual orientation of their behaviour to each other'. Max Weber, 'Basic Sociological Terms', *Economy and Society* 1 (1978): 43.

behind the back of humanity had little relevance to the situation in 1920s Germany when the situation demanded action, not passivity.[47]

Fichte's *Addresses to the German Nation* demonstrates a paradoxical attempt to re-orient the *Volksgeist* for political action against Napoleon's occupation of parts of 'Germany'. He demands a return to the original source of character and superiority of German nation, its 'original language' and hence ancient Teutonic greatness.[48] However, this is to be achieved through a progressivist project of national education, projecting a salvific eternal German nation and humanity itself.[49] In Fichte's programme for a national *Bildung*, there are clear echoes of Hobbes' religiously inspired educational project: references to cultivation and the educational use of the sabbath. It is precisely this pedagogical programme that Schmitt rejects.[50] He shared Fichte's anthropological assumption that man is by nature dangerous rather than good. But he regularly denounces as 'apolitical' attempts to eradicate conflict through education.[51] Schmitt derogates Fichte's political thought as a 'naive schoolmasterly "educational dictatorship"'.[52] Despite this rejection there are echoes of Fichte in Schmitt's work, notably his account of the enemy.[53]

Aspects of Hegel's rationalisation of the *Volksgeist* as an 'ethical substance [*sittliche Substanz*]' are adopted by Schmitt.[54] Recalling Herder, Hegel writes that each *Volk* 'has the constitution appropriate and proper to it' in the sense that it is attuned to its particular geographical conditions and moment in history, 'it is the work of centuries.'[55] Schmitt rejects Hegel's progressivist philosophy of history, which ultimately legitimates his modern state form. But there are parallels between Schmitt's insistence on a substantial equality and the foundational role, for Hegel, of a shared *Gesinnung*, disposition or attitude, or 'ethical life [*Sittlichkeit*].' That is, a custom and habit as a

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[47] On the continuities between Schmitt and Maistre, Bonald and Donoso Cortés, see Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936*, 20–3.

[48] Johann Gottlieb Fichte, *Fichte: Addresses to the German Nation*, ed. Gregory Moore (Cambridge: Cambridge University Press, 2008), 60.

[49] Fichte, 136.

[50] *Crisis*, 57-8; *PT*, 56; *CT*, 281.

[51] *CP*, 61; *PT*, 56.

[52] *Crisis*, 64.

[53] Fichte, 109.

[54] Hegel, *Hegel: Elements of the Philosophy of Right*, sec. 274, p. 312; G. W. F. Hegel, *Hegel: Philosophy of Mind*, ed. and trans. Michael Inwood (Oxford: Clarendon Press, 2007), secs 552, p 249–50.

[55] Hegel, *Hegel: Elements of the Philosophy of Right*, secs 274, p. 312–3.

'second nature' supporting the state form.[56] This Fichtean-Hegelian conceptualisation was directly translated to a juridical context in the writings of Friedrich Carl von Savigny.

With parallels to Schmitt's opposition to Kelsen's legal positivism, Savigny takes up the *Volksgeist* against the proposals to systematise Prussian and Austrian law on the model of the French Civil Code.[57] Instead the law must be left to develop organically and naturally over the course of history.[58] Although there are further parallels with Schmitt's dualist vision of the constitution, in Savigny's account there is no moment of decision. Between the *Volksgeist* and its bodily existence in a constitution there is merely a passage of 'appearance' [*Erscheinung*] or 'natural manifestation'.[59] For Savigny, the people only has the capacity to act *after* it has been given a body and real personality in the existence of the state.[60] Schmitt on the other hand demands an act, if in the limited form of the acclaim: yes or no.

Schmitt largely avoids the terminology associated with the *Volksgeist*, except for 'Substanz' and 'substanzielle'. These terms evoke Hegel's ethical substance, the '*sittliche Substanz,*' which as a 'necessity of nature' provides an external determination of the *Volksgeist*.[61] In defining this substance Schmitt resorts to a series of examples that recall the ethical sphere of Hegel's *Sittlichkeit*.

> [Democratic equality] is about the substance of equality [*Substanz der Gleichheit*]. It can be found in certain physical and moral qualities, for example, in civic virtue, in *arete*, the classical democracy of *vertus* (*vertu*). In the democracy of the English sects during the seventeenth century equality was based on a consensus of religious convictions [*Überzeugungen*]. Since the nineteenth century it has existed above all in membership in a particular nation in national homogeneity.[62]

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[56] Hegel, sec. 151, p. 195.

[57] Andreas Rahmatian, 'Friedrich Carl von Savigny's *Beruf* and *Volksgeistlehre*', *The Journal of Legal History* 28, no. 1 (1 April 2007): 4; Kohn, 'Romanticism and the Rise of German Nationalism', 455.

[58] Friedrich Carl von Savigny, *Of the Vocation of Our Age for Legislation and Jurisprudence*, trans. Abraham Hayward (London: Littlewood and Co., 1831), 32–5.

[59] Friedrich Carl von Savigny, *System of the Modern Roman Law, Trans*, trans. William Holloway, vol. 1 (Connecticut, USA: J. Higginbotham, reprinted by Hyperion Press, 1867), 18.

[60] Savigny, 1:19.

[61] *CT*, 257, 259-65, 281; *CP*, 39; Hegel, *Hegel: Philosophy of Mind*, sec. 552.

[62] *Crisis*, 9; Schmitt expands on this account in *CT*. Despite this, the examples provided are also essentially ethical in nature. See: *CT*, E259-63.

Schmitt's examples suggest that any ethic, virtue or conviction can form the substance of the people or in *The Concept of the Political*, the 'status' or 'situation' of a people [*Status or Zustand*]. In later editions (1932) this is described as the authoritative or literally '*standard-giving* situation [*maßgebende Zustand*]' of a people.[63] The variety of examples suggest an indifference to the particular content constituting the ethical substance and equality of the people. The only stipulation is that the ethic is not universally affirmed by all humanity. In order to constitute a *political* grouping there must be the 'possibility of a *distinction*' between the equal and unequal.[64] Membership of the political entity rests on equality and those unequal are excluded as the enemy. The particular content is entirely contingent, the 'substance of equality can vary among different democracies and historical periods.'[65] For religious communities, the profession of a specific doctrine or beliefs and performance of specific requirements, insofar as they demonstrate a 'religious feeling,' can become the 'foundation of a new community'.[66]

In the English reception of Schmitt's works, a false sense of continuity with the *Volksgeist* tradition is projected by the recurrent use of the term 'way of life' in translations of *The Concept of the Political*. However, Schmitt never actually uses Fichte's term *Weise von Leben*. Instead, he utilises an array of formulations such as *Art Existenz, Existenzform*, *politischen Existenz*, *seinsmäßige Art von leben*, *Art Leben* and so on. For the adherents of the *Volksgeist*, the determining demand was the rejection of conscious intervention, thus the 'way of life' is depicted as a complete system of life, perfectly calibrated to the situation by transcendent, external mechanisms such as history, or divine providence. Schmitt's account of the political entity and the friend-enemy distinction breaks with this image in two significant ways.

Firstly, his account of the substance of equality does not require a complete system of culture. In Schmitt's democratic writings the demand for homogeneity is, at least ostensibly, attenuated and presented as only the demand for adherence to one important but not necessarily totalising 'standard' of existence, (i.e *seinsmäßige Art von Leben*). Secondly, Schmitt breaks with the *Volksgeist* doctrine by inserting a moment of a decision in which 'actual participants' must 'recognise, understand and judge the

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[63] cf. *CP* [1927], 1; *CP* [1932], 20.
[64] *CT*, 258.
[65] *CT*, 259.
[66] *CT*, 261.

concrete situation and settle the extreme case of conflict.'[67] The demand for a decision marks the uncertainty in cases of confrontation with another entity. If the political demands a 'genuine decision' then the political entity cannot already be determined as a complete order [*Gesamtordnung*]. The introduction of this latter term to Schmitt's lexicon in 1934 thus marks a disjuncture with the earlier democratic writings.[68] Further, although Schmitt often implies the friend-enemy distinction applies only to relations between state actors, in 1932 he clearly identifies the 'enemies' of Weimar as the 'National-Socialists, Communists, [and] the godless.'[69] Internal actors who reject the substantial content of the Weimar constitution must also be *recognised* and *understood* as enemies of the 'substance of equality' of the present system.

(ii) The Enemy

Instead of positing a metaphysical creature, the *Volksgeist*, Schmitt, inspired by Lukács and Sorel, develops a general account of the political entity expanding on the antagonistic visions of politics in Fichte, Hegel and Weber. One of Schmitt's few references to a 'way of life [*Art Leben*]', occurs in the *1923* edition of *Crisis*. Schmitt refers to the bourgeois as a threat to the 'way of life' of Russians and proletarians.[70] Foreshadowing the 1927 conception of the enemy, Schmitt notes that in Marxism the 'Hegelian dialectic has served to create an image of the enemy [*Gegner*] that was capable of intensifying all the emotions of hatred and contempt.'[71] In the *Tagebücher* in 1926, Schmitt returns to this problem in a passage suggesting that the friend-enemy distinction is imagined as a generalisation of a Hegelian-Marxist conception of 'negation.' Schmitt offers an unexpected pairing of Karl Marx and Erik Peterson.

> The proletariat in Marx is <u>negatively</u> determined; the poor
> (according to Peterson) also only negatively determined; the <u>people</u>

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[67] *CP*, 27.

[68] This is discussed in more detail in section four on the 1933-34 texts below.

[69] *L&L*, 48.

[70] *Crisis*, 74. Translation modified. The original text refers to a threat to '*ihre Art Leben*,' which seems more likely to refer to 'way of life' than 'life's art' as Kennedy translates it.

[71] *Crisis*, 73-4.

as well negatively determined; the negative (hence the equality [*Gleichheit*]!).[72]

Although Schmitt refers often to a 'substance' of homogeneity and a type of life, the particular content is only determined abstractly, or negatively, in a Hegelian sense through an external relation to another content. The Hegelian-Marxist aspects are most pronounced in his remarks on the people in the 1923 edition. Influenced by Lukács *History and Class, Consciousness*, Schmitt treats the people as a problem of recognition.[73] Schmitt writes that a 'distance always remains' between the 'palpable reality' and the results of identification. It 'is not a matter of something actually equal legally, politically or sociologically, but rather of identifications.' The collective entity exists only in an ideological sense, as the product of 'techniques of propaganda and the manipulation of public opinion' or a Sorelian myth.[74] In the concrete sense, the 'masses are sociologically and psychologically *heterogenous*.'[75]

Although Schmitt's democratic writings (1923-32) never openly advocate a mythical politics, there are clear resonances with and allusions to Sorel's theory.[76] For instance, *vertu*, key for Sorel's politics, is taken as exemplary of the 'ethical substance' required for the 'minimal homogeneity' of a political people and Schmitt explicitly adopts much of Sorel's Bergsonian lexicon of 'energy', 'life instinct' and 'enthusiasm'.[77] Although ostensibly descriptive there is something suggestive in his remarks that Mussolini's national myth has inspired 'another authority… based on the new feeling for order, discipline and hierarchy'.[78] However, Schmitt resists totalising this minimal ethical substance as a *Gesamtordnung* as he will in the Nazi writings, and as the proponents of the *Volksgeist* had.[79] Instead his account is pulled in two directions. One requires a substantial ethical imperative as a foundation for a political union, but another aims at an abstract and general logic, through which the political is reduced to a 'degree of intensity' that can be applied to any opposition. The first reconnects Schmitt with conservative

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[72] *T1925-9*, 347, 16r. Underlined in the original. The notes in the 'Parallel Tagebuch' are not dated, but from the surrounding notes, this fragment may have been written in early 1926.

[73] According to Mehring, the original publication of The *Crisis of Parliamentary Democracy* (1923) in November 1923 included an explicit reference to Lukács' *History and Class Consciousness* that was later removed. Mehring, *CS: Biography*, 138, 573 n29.

[74] *Crisis*, 26-7.

[75] *Crisis*, 25. My italics.

[76] *Crisis*, 65-76.

[77] *Crisis*, 71.

[78] *Crisis*, 76.

[79] *3T*, 46.

visions of the nation. But the second takes inspiration from Lukács and Sorel and inspires Schmitt to transform antagonism itself into a kind of energy or vital force supporting authority.

(iii) Enthusiasm and Energy

Fin-de-siècle Europe expressed a curious political and social interest in the concept of energy. It appears in nationalist rhetoric such as Maurice Barrès' trilogy *Roman de l'énergie nationale*. Futurists such as Marinetti link energy, the human body and politics.[80] Utopian visions of reform appear under the name 'Social Energeticism.'[81] And in Schmitt's works we find occasional references to 'political energy.'[82] He often uses the term 'living force' [*lebendige Kraft*] in a political context.[83] The nationalist adoption of this term grew naturally out of the *Volksgeist* tradition given the connection between the concept of energy and the 'living force' which was supposed to provide the motor of action to the living community, in contradistinction to the 'mechanical view of society.'[84] Mechanical accounts of the state were often based on an analogy with a clockwork mechanism, powered by the force of a 'mainspring' [*Triebfeder*]. As Fichte explains, since it is impossible for the mainspring to act on itself, the mechanical political state is haunted by its impotence or subordination to a unified and more powerful external force. The creaturely nature of the *Volksgeist* offered an alternative solution, since it was presumed to be driven by an internal 'living force'.[85]

Despite Schmitt's rejection of the *Volksgeist* his work is often informed by this structural opposition between the (i) mechanical and calculable and the (ii) vital and living. In *Roman Catholicism*, this dichotomy is mapped onto the antagonism between Protestantism and Catholicism. In the democratic writings the decisive question for Schmitt is often to identify the 'living idea' behind a political form or the 'living force'

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[80] F. T. Marinetti, 'Multiplied Man and the Reign of the Machine (1911)', in *Futurism: An Anthology*, ed. Lawrence Rainey, Christine Poggi, and Laura Wittman (New Haven: Yale University Press, 2009), 90, 103.
[81] Anson Rabinbach, *The Eclipse of the Utopias of Labor* (New York: Fordham Univ Press, 2018), chaps 2, 'Social Energeticism in *Fin–de–Siècle* Europe', p. 28–52.
[82] *CT*, 61; *CP,* 69 fn36; *L&L*, 32-3; *D*, 6; Schmitt writes that '*die Art politischer Energie, die sich in der virtù äußert.' T1925-29*, 423.
[83] *CT*, 282; V&V, 50, 75, 77; *CP*, 25.
[84] Fichte, *Fichte: Addresses to the German Nation*, 88–9.
[85] Fichte, 89–90.

possessed by particular doctrine.[86] In *Volksentscheid* the dichotomy of mechanical/living is given form in the threat that an 'organised/formalised people loses its living matter and force'[87] Recalling the 'creative energy' of Bergson and Sorel's vitalism Schmitt refers to the people as bearer of the *pouvoir constituant*:

> As an entity that is not organised, they also cannot be dissolved. So long as they exist at all and intend to endure, their life force and energy is inexhaustible and always capable of finding new forms of political existence.[88]

Drawing on Sorel, life and the living are defined by their opposition to the formalised, organised and calculable. Living political energy stands in opposition to the systemised legal system that for Hans Kelsen simply is the state.

Sorel's energetic conception of class conflict also foreshadows the dynamic sense of antagonism as an 'intensity' on which Schmitt's friend/enemy distinction rests. In Sorel's *Reflections on Violence*, class division [*scission*] is identified as a source of energy for both parties involved. Class conflict and the violence of the proletariat will also 'restore to the bourgeoisie something of its energy'.[89] The 'line of cleavage [*scission*]' between classes generates the energy and excitation, without which 'socialism cannot fulfil its historic role'.[90] Foreshadowing the function of acclamation for Schmitt (as the regular conscious practice of a political entity), Sorel writes that 'if a capitalist class is energetic, it is constantly *affirming* its determination to defend itself'.[91] For Schmitt's political group, the friend/enemy antithesis 'still remains actual/effective [*wirklich*] today.' It 'is an ever present possibility [*reale Möglichkeit*] for every people existing in the political sphere.'[92] Both Sorel and Schmitt depict the possibility of conflict as a source of energy and enthusiasm. In Sorel this is explicitly linked with authority through mythical 'images of battle.'

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[86] *RCPF*, 10-11.

[87] *V&V*, 75.

[88] *CT*, 131.

[89] Georges Sorel, *Sorel: Reflections on Violence* (Cambridge: Cambridge University Press, 1999), 85.

[90] Sorel, 125, 182.

[91] Sorel, 178.

[92] *CP*, 28. Jacques Derrida, *Politics of Friendship* (London: Verso, 2005), chap. 5. Derrida's commentary on Schmitt focuses on this modality of *reale Möglichkeit* as a problem.

The energies of the mind can be directed and shaped by an ethic or images to produce an effective authority.[93] The efficacy of images is depicted as a reserve of energy to be put to use in politics. 'Images of battle', when recalled, can be a source of energy or enthusiasm for 'men who are participating in great social movements'.[94] Collections of such images constitute the myths, which form part of a mental 'reserve' and the preparations for struggle.[95] Unlike 'a doctrine expressed entirely in words', images (or myths) have an intuitive and direct efficacy that cannot be deflected.[96] Sorel depicts such myths as a replacement source of energy for religion, since 'religion is daily losing its efficacy with the people' and is being replaced with mere 'probabilism, mechanical rites and proceedings more or less related to magic.'[97] Throughout *Reflections*, Sorel depicts myths and images as a reserve of energy that when added or applied to an ethic becomes a source of force and efficacy in politics.

Similar themes are central to Schmitt's *The Concept of the Political*. The political distinction 'denotes the utmost degree of *intensity* of a union or separation'.[98] This fluid intensity is mutable and convertible, it is not tied to a particular sphere of human life, but can flow into or draw upon the various 'autonomous' regions of life such as the moral, aesthetic, or economic. Unlike the totalised 'way of life' typical of *Volksgeist* doctrine, Schmitt depicts the political distinction as a convertible intensity that can, but also need not, draw on the moral, the aesthetic or the economic. In Derrida's reading of Schmitt, this aspect manifests a puzzle in which 'the political' appears as both (i) 'particular and grounded', a concrete antagonism, but also (ii) as a general 'determination cutting through all other regions of the human world'.[99] Rather than treating the political as a spectre or ghost, as Derrida does, I suggest it could be interpreted according to a model of 'energy'.

In the nineteenth century, a new conception of energy developed in the physical sciences. Energy was the source of all movement, force, and work. It designated a general universal 'substance' that could be converted and transformed into different types of

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[93] Sorel, *Reflections*, 249–51.

[94] Sorel, 20.

[95] Sorel, 5, 28. Sorel notes that a 'reserve of ideas stirred up by recent reading' can be 'exhausted', recalling the logic of the fuel for the 'motor [*moteur*] of the mind.'

[96] Sorel, 24.

[97] Sorel, 58, 238.

[98] *CP*, 26. My italics.

[99] Derrida, *Friendship*, 125.

activity. But it existed in the world only in concrete and particular quanta.[100] Historically, the term 'energy' referred to 'efficacy' or 'force.' Often it simply referred to an entity in-effect, or in-act.[101] For example, its etymological ancestor, *enérgeia*, Agamben renders as 'being-at-work.'[102] Derrida focusses on Schmitt's use of the term '*reale Möglichkeit*'. His problem is that this term refers to a modality which breaks with the Aristotelian dichotomy of potentiality and act (*dúnamis* and *enérgeia*, virtuality and actuality).[103] However, would this problem also apply to the contemporary (post-thermodynamic) sense of potential energy? Is the latent energy stored in an electrical battery actual or virtual? The potential energy of a raised mass or quanta of fuel seems to be more than a virtual 'possibility'. It manifests a modality of raw capacity, a 'real possibility'. It is indeterminate but real, a reserve that can be put to work. In a later text Schmitt describes such a 'real political energy', a 'war-potential [*Kriegspotenzial*]' as a 'reservoir of historical force [*Kraft*]'.[104]

Nonetheless, in Schmitt's work the energetic framework of the political remains undeveloped. If it underlies his conceptual transformation of the sphere of politics into a 'degree of intensity' it is never acknowledged. In contrast, Sorel specifically takes up the ideological relation between political forms and the physical sciences.[105] One of the

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[100] Peter M. Harman and Peter Michael Harman, *Energy, Force and Matter: The Conceptual Development of Nineteenth-Century Physics* (Cambridge: Cambridge University Press, 1982), 58.

[101] For instance, Elisha Coles 1707 *English Dictionary* defines 'Energetical, belonging to Energy, g. force, efficacy, powerful working.'

[102] In Agamben's recently completed *Homo Sacer* project, he discusses in detail the Aristotlean-theological distinctions between terms such as *dynamis, energeia, ergon, hormé*, and *conatus*. This is connected with Heidegger's work in the early twentieth century, but curiously, there is no mention of the 'energy' of the physical sciences of the nineteenth century. Agamben, *Omnibus*, 599,683–702, 1038–40, etc.

[103] Derrida, *Friendship*, 230.

[104] *N*, IV.5, 291. [D266-7].

[105] Schmitt's relation to Sorel was of particular interest in the 1990s. On the mythology of the nation, see Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy, Expanded Edition*, xvii, 17, 111. On the 'structural similarities' between Sorel and Schmitt, see Stathis Gourgouris, 'The Concept of the Mythical (Schmitt with Sorel)', *Cardozo Law Review* 21, no. 5–6 (1999): 1487–1514. On Schmitt's use of 'diremption' as a method, see Jeffrey Seitzer, 'Carl Schmitt's Internal Critique of Liberal Constitutionalism: *Verfassungslehre* as a Response to the Weimar State Crisis', in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. David Dyzenhaus (London: Duke University Press, 1998), 282–3. On the 'danger of polytheism' that Schmitt recognised in Sorel's mythical politics, see William E. Scheuerman, *Carl Schmitt: The End of Law* (Lanham: Rowman & Littlefield, 1999), 55; John P. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology* (Cambridge: Cambridge University Press, 1997), 103–4, 192. Yet, in more recent commentary, there is surprisingly little reference to Georges Sorel at all despite the thematic proximity. See Tralau, *Thomas Hobbes and Carl Schmitt: The Politics of Order and Myth*; Montserrat Herrero López, *The Political Discourse of Carl Schmitt: A Mystic of Order* (Lanham: Rowman & Littlefield International, 2015); William Rasch, *Sovereignty and Its Discontents: On the Primacy of Conflict and the Structure of the Political* (London: Birkbeck Law Press, 2012), 37. Rasch even notes that Schmitt's later work is 'quite the

general presumptions of Sorel's political theory is that there exists a structural analogy between the physical sciences and political institutions.[106] There are clear parallels between this and Schmitt's formulation of 'political theology' as a structural homology between theology and the modern theory of the state.[107] Similarly, Sorel claims there is a transhistorical traffic of ideas and concepts between physics and politics.[108] He constructs analogies between gravity, monarchical power and the logic of progress and argues that experimental physics provides structural models for political institutions.[109] Sorel even cites the advent of new sense of energy for the disruption of the *Volksgeist* doctrine. The distinction between 'mechanical force' and the 'living force' of creaturely beings (including the political being) was undermined by the universal conception of energy.[110] Both rely on 'storehouses of solar energy' or 'explosives' manufactured by life. Inspired by theories of Brownian motion, he argues that its spontaneous motion attests to an unknown form of energy with repercussions for popular political movements.[111]

Schmitt avoids following Sorel into the natural sciences. Instead, he attempts to combine (i) the ethical substance of the *Volksgeist*, (ii) the determinate negation of Lukács' Hegelian-Marxism and (iii) the enthusiastic antagonism of Sorel's creative violence. Reminiscent of Hobbes' relativised account of power in his theory of worship, Schmitt relativises ethical substance. However, he displaces the outward performance of ceremonial ritual to one of a visible performance of faith. The ethical content of a particular people is determined only negatively in confrontation with an alternative. An ethical substance is only consciously taken up, after it has been thrown into question by confrontation with another content. Since the political is defined by a moment of 'conscious willing', the ethical substance must first be recognised in its particularity as something to be defended. Only subsequently, is it transformed into a political distinction

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opposite of a Sorelian glorification of violence.' Further, none of the literature discusses the parallels between Schmitt's concept of 'political theology' and Sorel's 'political physics'.

[106] Given his extensive engagement with Sorel's writings between 1919-1932, Schmitt's lacuna on the relation between the physical sciences and political forms is unexpected. (See *T1919-24*, 7, 97, 115, 117, 483, 224; *T1925-29*, 116, 310, 359, 471; *T1930-34*, 25, 377, 412).

[107] *PT*, 36.

[108] Sorel, *Reflections*, 12–13. In the case of France, Sorel likely thought this even more pronounced since: 'Our minds [the French] are constructed in such a way that we reason much more by analogy than by syllogisms.'

[109] Georges Sorel, *The Illusions of Progress*, trans. John And Charlotte Stanley (Berkeley: University of California Press, 1969), 158–9.

[110] Sorel, 153–4.

[111] Michel Charzat, '*Georges Sorel et le fascisme. Eléments d'explication d'une légende tenace*', *Mil neuf cent. revue d'histoire intellectuelle (Cahiers Georges Sorel)* 1, no. 1 (1983): 45–6; Sorel, *Reflections*, 78.

by an increase in intensity and enthusiasm provoked by antagonistic opposition. However, just as Hobbes requires a supplemental 'sign' of material power, *potentia*, Schmitt requires a visible *enthusiastic* demonstration of faith, via acclamation, thereby offering a 'sign' of its energy.

(iv) Participation

In *Constitutional Theory*, Schmitt enumerates a series of examples of the 'substance of equality' across 'different democracies and historical periods'. [112] Beginning in Greece, Schmitt cites living according to *arete* as the 'relevant mark of distinction … rendering citizens equivalent.'[113] For Machiavelli, Montesquieu and the Jacobins possession of *virtus* or *vertu* is decisive for a citizen. For the Levellers, and the Puritans of Massachusetts, religious confession determines equality among the people. For the Bolsheviks, 'class-based homogeneity' is essential. And for the dominant post-revolutionary conception of democracy, national belonging, 'the conscious willing of … the commonality of historical life' is key. Although Schmitt notes that in the twentieth century a 'nationally homogeneous state appears … as something normal', he treats it as a contingent result of history.[114] For Schmitt, the particular content of the ethical substance is only relatively determined and, unlike adherents of the *Volksgeist*, he does not presuppose that a political grouping is defined by systemic cultural totality. In the democratic writings, Schmitt is sceptical of the tendency of the 'nationality principle' to maximise homogeneity. There is a risk that such a radicalised total homogeneity would lead to a sub-political existence for the people. [115] All that is required of the 'substance of equality' is the possibility of inequality. Since 'every genuine political concept includes the possibility of a *distinction*' between those included and those excluded from the political group.[116]

Instead, Schmitt displaces the point of emphasis to one of participation. In the enumerated examples, it is the visible performance of commitment to the particular ethical substance that is emphasised. Recalling Hobbes' insistence that the truth of

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[112] *CT*, 259-263.
[113] *CT*, 259.
[114] *CT*, 262.
[115] *CT*, 248.
[116] *CT*, 258.

religion lies in rites and ceremony, Schmitt centres on the demand made by the Puritans of Massachusetts that one 'participate in the public religious service'. It is only '[b]ecause all state citizens *participate* in this substantive component, [that] they can be treated as equals.'[117] Inverting the logic of Hobbes' demand for worship, where participation in ceremony cultivates *inequalities* in power, for Schmitt participation is the means of ensuring substantial *equality* (gleichheit). Participation creates a 'new religious feeling [which] becomes the foundation of a new community'.[118] In the democratic writings, the mode of participation required is 'acclamation', 'most proper or actual activity, capability and function of the people… the approving or rejecting call of the assembled crowd.'[119]

In Hobbes' political theory the demand for worship arises as a result of an ostensibly scientific understanding of relations of material power [*potentia*] between individuals. According to the laws of nature, the material power of the sovereign is dependent on the public demonstration of its effectiveness. However, for Schmitt, the relation between subject and sovereign is displaced to one between subject and the substance of equality. Since the foundation of authority is the people, which are in turn defined only by equality, there is similar demand for public manifestation in acclamation.

3   Acclamation: The People Can Only Cry 'Yes' or 'No'

Although the importance of acclamation for Schmittian democracy is widely accepted, how it functions and how it is supposed to produce political authority or legitimation remains unclear.[120] Schmitt himself does not provide a detailed or systematic account of

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[117] *CT*, 259. My italics.

[118] *CT*, 261.

[119] *V&V*, 51.

[120] The role of acclamation in Schmitt's political theory has drawn less attention than other aspects. McCormick, for instance, mentions it only in passing John P. McCormick, 'Teaching in Vain', in *The Oxford Handbook of Carl Schmitt*, ed. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2017), 281, accessed 14 April 2017. This has changed more recently. Agamben treats it in detail, but claims it is merely a pretense: 'he assumes the habits of a theorist of pure or direct democracy' against Weimar. Agamben, *Omnibus*, 527. Kalyvas also derogates Schmitt's use of acclamation as a 'dubious argument'. Kalyvas, *Extraordinary*, 124.. For more recent supportive commentary, see Agamben, *Omnibus*, 526–8; Dean, 'Three Forms of Democratic Political Acclamation'; Mitchell Dean, *The Signature of Power: Sovereignty, Governmentality and Biopolitics* (London: Sage Publications, 2013), 203; Herrero López, 'Acclamations: A Theological-Political Topic in the Crossed Dialogue between Erik Peterson, Ernst H. Kantorowicz and Carl Schmitt'. Schmitt's suggestion that acclamation represents the *Ürphenomena* of democracy is partly defended in Schwartzberg's recent works on the origins of the political use of acclamation and vote-taking in Ancient Greece. Melissa Schwartzberg, 'Shouts, Murmurs and Votes: Acclamation and Aggregation in Ancient Greece', *The Journal of Political Philosophy* 18, no. 4 (2010):

the practice. In the following, I reconstruct a more systematic account by piecing together aspects mentioned in various publications. The primary difficulty is in characterising the specific relationship between acclamation, right [*Recht*] and legality [*Gesetz*]. I argue that Schmitt depicts acclamation as a form of *assent*, distinct from voting procedures and both legalisation (modelled on positive law) and consent (modelled on a contract), but exhibiting an affinity to the Roman *auctoritas*.

Schmitt's explicit references to acclamation span only a brief period from 1926-1933. There are suggestive remarks but no explicit use of the term in *Dictatorship*.[121] In *Political Theology*, *Roman Catholicism* and the first edition (1923) of *Crisis of Parliamentary Democracy*, it is not mentioned. Schmitt's first use of the term in publication is the reference to *acclamatio* in the 1926 preface for the second edition of *Crisis*.[122] Schmitt's interest in the practice can be traced to his friendship with Erik Peterson, who completed a dissertation on ecclesial use of the practice.[123] Schmitt, following suggestions already present in Peterson's work, transfers the ecclesial practice to the political sphere. There are a few references to 'acclamation' in the *Tagebücher* of this period,[124] but the most detailed discussion is found in the texts of 1927-33 such as *Volksentscheid und Volksbegehren* (1927) and *Constitutional Theory* (1928).[125] The term is absent from *The Concept of the Political* (1927 & 1932). Additional brief remarks can be found in later essays: 'Der bürgerliche Rechtsstaat' (1928);[126] 'Wesen und Werden des Faschistischen Staates' (1929);[127] 'Das Problem der innerpolitischen Neutralität des

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448–68; Melissa Schwartzberg, 'Prelude: Acclamation and Aggregation in the Ancient World', in *Counting the Many: The Origins and Limits of Supermajority Rule* (Cambridge: Cambridge University Press, 2013), 19–48. In addition, Larsen, for instance, writes that in the Homeric era descriptions of political procedure 'leave no room for the formal taking of votes,' and instead relied on acclamation, 'the old method of shouting to indicate agreement with a speaker'. Jakob A. O. Larsen, 'The Origin and Significance of the Counting of Votes', *Classical Philology* 44, no. 3 (1949): 164–8; Schwartzberg, 'Prelude: Acclamation and Aggregation in the Ancient World', 21.

[121] See *D*, 240-1, fn24. Schmitt describes a practice of the Balìa of Florence that resembles acclamation: a limited people's assembly (of representatives) is convened, addressed and asked to nominate twelve men 'who, together, would be given as much authority and responsibility as the entire people of Florence. The question was repeated three times and the people answered three times "Yes".' The English translation uses the word 'acclamation' in one instance, but it translates *Huldigung* (homage). E54, D63.

[122] *Crisis*, 16-7. The preface, with slight modifications, was also published independently in 1926 under the title 'Der Gegensatz von Parlamentarismus und moderner Massendemokratie.' *P&B*, 52-66.

[123] Schmitt's *Tagebücher* attest to their weekly meetings in this period. See also Mehring, *CS: Biography*, 160.

[124] *T1925-9*, 15.11.25: 22, Schmitt refers to Handel as 'Akklamationsmusic'; 7.10.27: 168, Schmitt writes of discussing acclamation with Eugene Rosenstock, 347; Schmitt writes that 'acclamation has now disappeared from the Church', 347.

[125] *V&V*, 52-4, 56, 70, 75, 86; *CT*, 131, 143, 272, 275, 278, 287, 302-3, 306, 348, 370.

[126] *SGN*, 48-9.

[127] *P&B*, 111.

Staates' (1930);[128] 'Machtpositionen des Modernen Staates' (1933);[129] And in the 1930s, although the term 'acclamation' is not invoked, it clearly underlies his discussion of 'plebiscitary legitimation' in *Legality and Legitimacy*.[130]

From 1933 Schmitt ceased to speak of acclamation. In the texts of the Nazi period, such as *State, Movement, People* (1933) and *On the Three types of Juristic Thought* (1934) the act of acclamation is displaced by an emphasis on the oath of loyalty or allegiance.[131] In the earlier texts there are occasional references to the oath [*Eid*], allegiance [*Treue*] or loyalty [*Loyalität*], terms which are central to questions of authority in the Nazi texts.[132] However, where the oath is mentioned it tends to be denigrated as a 'formality' that merely 'supplements' the existing political unity.[133] For instance, in *Constitutional Theory* Schmitt discusses the 'oath to the constitution'. Although this is an 'existential' bond, the 'oath is to the constitution in the actual and positive sense.'[134] That is, the oath binds the individual to the written constitution (the constituted power), which is merely a secondary phenomenon derived from the 'substantial' political unity supported by acclamation. Thus, acts of acclamation and oath-taking pertain to different levels of political existence. Only the acclamation relates to the primordial substance of equality. It is an expression of the collective political will. The oath, which is primarily of use within the formal state structure, binds an individual to the secondary form of the political union, the constituted powers. Schmitt associates the oath with the logic of the contract, citing as examples the 'oath of fealty' typical of feudal political forms and the Swiss confederation of cantons, the oath-fellowship, *Eidgenossenschaft* formed through a series of treaties between the individual cantons.[135] Although it rests on the substance of equality of Swiss nationals, the oath or treaty pertains to the subsequent formal level of

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[128] *VA*, 57-8.

[129] *VA*, 369-70.

[130] *L&L,* 89-91.

[131] Although in *SMP*, 27, Schmitt refers to the 'daily plebiscite' of an 'ideal democracy' this is juxtaposed to his speculated triadic system of the Nazi regime. *SMP*, 41, 48, Schmitt refers to 'allegiance' [*Treuepflichten*] and 'mutual loyalty' [*gegenseitige Treue*] to characterise the relation between the leader and follower.

[132] In the texts from 1920-33, there is little use of these terms. Schmitt refers to Catholicism as exhibiting a 'loyalty to the earth' (*RCPF*,18). In the German edition of *CP*, there is a cursory reference to a text on the political oath, E. Friesenhahn, *Der Poltiische Eid* (1928). In the 1930s questions of 'loyalty' and '*Treue*' become more central. Schmitt writes critically of the pluralistic concept of the state, in particular against Laski and Cole's idea of a 'plurality of loyalties' as endangering the possibility of a clear loyalty to the state itself. (see *P&B*, 134, 140, 156). There are a number of references in *CT*, 69, 89, 97, 99, 118.

[133] *CT*, 69.

[134] *CT*, 89

[135] *CT*, 99, 118, 149, 152, 159.

the political union.[136] Dyzenhaus's remark that the 'act of acclamation, [is] an informal *equivalent* of an oath of allegiance' thus seems to overlook this significant difference.[137]

(i) Acclamation and Democracy

What then is the specific nature of acclamation, according to Schmitt? He extols in a hyperbolic fashion the originary significance of acclamation for democracy. It is the 'primordial democratic phenomena [*demokratische Urphänomen*]'.[138] It is the original expression of the will of the people.[139] Schmitt presents acclamation as an original and trans-historical requirement: 'The acclamation is an eternal phenomenon of every political community. No state without a people, no people without acclamation.'[140] While it is based on the 'democratic principle' it can support non-democratic political forms (*pouvoir constitué*), like the Wilhelmine 'democratic monarchy'.[141] Presidential elections and Caesaristic government forms must be legitimised by 'acclamation'.[142] Schmitt's remarks recall Robert Michels' assertion that 'Caesarism is still democracy.'[143] The practice of 'popular approval and acclamation' creates a 'stronger and more intensive' type of government.[144]

These claims are supported by various strategies. Schmitt suggests it is foundational since it is 'simple and elementary'.[145] It is naturalised as a right: 'the most natural and most inalienable right [*Recht*] of every people.'[146] But it is also naturalised as an inherent 'political instinct', capacity or ability of any political union and as the 'natural form of the direct expression of a people's will'.[147] It is the 'most proper or actual activity, capability and function of the people, the core of every expression of the

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[136] *CT*, 159.

[137] Dyzenhaus, *Legality and Legitimacy: Carl Schmitt, Hans Kelsen, and Hermann Heller in Weimar*, 89–90. My italics.

[138] *V&V*, 51-2.

[139] *Crisis*, 16.

[140] See also *CT*, 131.

[141] *CT*, 272; Anderson, *Practicing Democracy: Elections and Political Culture in Imperial Germany*, 5–7.

[142] *CT*, 370.

[143] Michels, *Political Parties*, 10, 15.

[144] *VA*, 57-8.

[145] *CT*, 275.

[146] *V&V*, 75; *CT*, 131.

[147] *CT*, 131.

people,' a 'creative capacity'.[148] Schmitt's strategy recalls Hobbes' ambiguous reference to the rights of man in a state of nature as both physical capacities and moral rights. Schmitt's third strategy is a reference to the self-evident, the intuitive or 'feeling' rather than rational deliberation.[149] In a similar manner, in *Political Parties*, Michels notes that in political contexts, carrying motions through 'acclamation' or 'general assent' is 'a fact of everyday experience'.[150] Underlying Schmitt's assertions is a model of the political entity based on a nostalgic image of the small community. The 'self-evidence' of Schmitt's assertions presupposes an historico-logical trajectory, in which contemporary societies developed out of small communities. Referring to the acclamation as an immediate direct expression of the people presupposes the historical connection with an originary assembly in which the community could literally be made 'visible and present' that is 'public'.[151]

The developmental logic and demand for immediate presence of the assembled community is also evident in Schmitt's examples. He cites street demonstrations, public festivals, the audiences of theatres and sporting events, church services, crowds at racing tracks, and military events.[152] These assemblies possess a political potential, but it is the act of acclamation which transforms the latent potential of a gathering into a political entity. Schmitt notes that 'every popular assembly, even one that initially appears nonpolitical, intrinsically contains unexpected political possibilities'. For Schmitt, when a 'people engaged in acclamation is present [*vorhanden*]', then it is 'at least potentially a political entity'.[153] Like the role of *cultus* for Hobbes, which generates the *potentia* of the commonwealth, Schmitt's assembly must be actualised in a concrete form. It must be

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[148] *Crisis*, 16-7; *V&V*, 51-2, 75.

[149] *Crisis*, 16.

[150] Michels, 25.

[151] *CT*, 272.

[152] *CT*, 272; *V&V*, 52. Schmitt's examples recall the nationalist spectacles organised since the early nineteenth century. In the early twentieth century Edwin Redslob, head of the Weimar era *Reichkunstwart* staged parades, marches, assemblies, mass mass choirs, mass gymnastic exercises, and sporting events at a scale in which the visibility itself was to satisfy the democratic 'feeling of the citizen who wants to be an active part of the state.' BArch Berlin, R32/426, E Redslob, '*Die Verfassungsfeier als Ausdruck deutscher Festkultur*' in Nadine Rossol, *Performing the Nation in Interwar Germany: Sport, Spectacle and Political Symbolism, 1926–36* (Basingstoke: Palgrave Macmillan, 2010), 630.; Wolfgang J. Mommsen, 'German Liberalism in the Nineteenth Century', in *The Cambridge History of Nineteenth-Century Political Thought*, ed. Gareth Stedman Jones and Gregory Claeys (Cambridge: Cambridge University Press, 2011), 414; Christian Jansen, 'The Formation of German Nationalism, 1740-1850', in *The Oxford Handbook of Modern German History*, ed. Helmut Walser Smith (Oxford: Oxford University Press, 2011), 244; Helmut Walser Smith, *German Nationalism and Religious Conflict: Culture, Ideology, Politics, 1870-1914* (Princeton University Press, 2014), 20–1.

[153] *CT*, 272.

made present, engaged in an act of acclamation in order to be transformed into a 'political entity'.

(ii) Acclamation *contra* Voting

Schmitt insists that the political potential of an assembly exists only when it is not an 'organised interest group'.[154] Whether it is the 'organised' form or the principle of private 'interests' that proscribes political potential is unclear. Both factors play a role in the distinction between acclamation and the vote. Firstly, Schmitt objects to the priority of procedure and mechanism in contemporary vote counting. From his first references to the practice, Schmitt juxtaposes acclamation against the 'meticulous statistical apparatus' of the procedure of voting.[155] He largely ignores the distinction between public and secret-ballot voting.[156] Except that when defining acclamation he always contrasts it with secret-ballot systems, in order to strategically emphasise the publicity of acclamation against the private nature of the secret-ballot. However, he also appears to reject voting in general (whether public or secret) insofar as it equates democracy with an 'arithmetical majority' calculated through 'normatively regulated processes'.[157] Since the people is 'bound to no particular process', the primordiality of acclamation would also distinguish it from calculated majorities in public voting.[158]

For Schmitt, the reduction of democratic participation to a technical problem of calculation leads inexorably towards depoliticisation, the very destruction of 'the political' and its replacement with the technocracy of 'scientific-technical experts.'[159] This line of thought can be traced back to the Sorelian vitalism that equates organisation with mechanism and death. The 'formless formative capacity' of the people is their living force.[160] The 'completely formalized people lose their living being and power... the acclamation would have been organized away.'[161] Liberal politics, as a politics of

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[154] *CT*, 272. Schmitt writes of '*organisierte Interessentengruppe*'.
[155] *Crisis*, 16.
[156] Cataloging Schmitt's references to voting, he refers specifically to secret-ballot voting at: *Crisis*, 16, 19; *V&V*, 51-2, 54, 75; *CT*, 131, 240; *P&B*, 125, 99. But in other instances he refers indeterminately of voting procedures and majoritarian voting: *CT*, 132,133, 134-5, 250-7, 268-70.
[157] *Crisis*, 16; *CT*, 131.
[158] *CT* 138.
[159] *V&V*, 54.
[160] *CT*, 129; *V&V*, 75.
[161] *V&V*, 75.

procedure and secret-ballot voting, relies on 'artificial machinery' and demands a 'scientific-technical expert'.[162] It isolates the individual and merely calculates a majority via formal methods. As we have seen, drawing explicitly on the vitalism of Bergson and Sorel, but implicitly also the German romantic philosophical tradition, Schmitt counters the mechanical with appeals to the 'living mass and power' of a people, the vital 'creative capacity' of the people expressed immediately and naturally through acclamation.[163]

Secondly, he notes that 'the individual vote transforms the distinctly democratic, or *political*, figure, the state citizen or *citoyen*, into a private man who, from the sphere of the *private*, … expresses a private opinion and casts his vote.'[164] Schmitt insists that political participation marks the suspension of private individual interests and their substitution with group interests. In democracy, which is otherwise dominated by the principle of identity, this remains the one sphere of representation. In acclamation, the 'individual state citizen…. is present not in his "natural" condition as an individual person…. He is present as a state citizen, as "citoyen"'.[165] In acclamation, the individual must *represent*, make present, the citizen.[166] In Schmitt's writings after 1933 this division between the natural individual and the political citizen is erased, apparently in response to the biological conception of the citizen propagated by the Nazi Regime.[167]

For Schmitt, the problem with the procedural aggregation of private interests is the evasion of the 'political decision' which he suggests applies in both secret and public voting.[168] That is, the evasion of 'responsibility' [*Verantwortlichkeit*]. There are two components. Firstly, liberal procedure leads inexorably towards 'oversight'. A process in which a quasi-objective standard of judgement is simply *applied* in place of a decision.[169] Responsibility is denied by the appeal to objective standards. But secondly, the 'result of such a vote will always be the preponderance of the politically uninterested over the bearers of conscious political responsibility'.[170] The general apathy of the people and

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[162] *V&V*, 54.

[163] *Crisis*, 16-7; *V&V*, 75.

[164] *CT*, 273, 305.

[165] *CT*, 240.

[166] Rosanvallon's recent commentary on the introduction of universal suffrage in France has a certain affinity with Schmitt's account. He describes this performative aspect of voting as a 'sacrament of social unity'. He cites Lamartine's *Déclaration* of 19 March 1848 to suggest that the act of voting represented a 'rite of passage, a ceremony of inclusion.' Rosanvallon, *Democracy Past and Future*, 106.

[167] This is discussed in more detail in section four below.

[168] *SGN* 48-9. '*Der bürgerliche Rechtsstaat*'.

[169] *SMP*, E45, D39.

[170] SGN, 48-9. cf. Michels, *Political Parties*, 25.

their disinterest in politics ensure that the majority vote tends to the 'minimum of political decision'.[171] Schmitt suggests that even a public majority vote would lead to a minimum of 'accountability' [*Verantwortlichkeit*] by displacing the sense of participation with procedural standards. In voting, the uninterested majority determines the outcome, despite their general disinterest in political issues.

There are parallels between acclamation and Hobbes' account of the 'authorisation' of the sovereign.[172] Both offer means of attributing responsibility to the people and appear partly modelled on theatrical performance.[173] Schmitt's examples of assemblies with political potential often distinguish between the actor and the audience. For Schmitt also, the publicity and visibility of acclamation (and its subsequent form public opinion) is grasped as a capacity to ensure responsibility or accountability for one's political position.[174] While Hobbes attempted to supplement the contract, with the logic of authorisation, Schmitt's aim appears to be pure authorisation freed of the contract, since, as I argue in the following section (iv), Schmitt rejects the interpretation of acclamation as consent to a contract.

(iii) The People Can Only Answer

Schmitt plays on the etymological relation between *Verantwortlichkeit* (responsibility) and the verb *antworten* (to answer). The responsibility, or literally the *answer-ability* of the people for a given political decision, arises from giving an 'answer' to a question. Hence, the act of acclamation is limited to giving an answer to a particular question. Schmitt is adamant that the people, as a collective entity, has only the capacity to answer yes or no to a given question.[175] The people cannot pose its own question, but only respond with approval or rejection [*zustimmen* oder *ablehnen*].[176] Like contemporaries such as Walter Lippmam, William James, Robert Michels and others, Schmitt depicted

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[171] *SGN*, 48-9.

[172] See earlier chapters on Hobbes. A theme emphasised by Schmitt is also the responsibility [*Verantwortlichkeit*] that is supposed to be guaranteed by the publicity and visibility [*Öffentlichkeit und Sichtbarkeit*] demanded by acclamation and its subsequent form 'public opinion'.

[173] *Lev*, 1.16.

[174] For Schmitt, the key term is *Verantwortlichkeit*, which is strongly associated with visibility and publicity, *Sichtbarkeit* and *Öffentlichkeit*. See *CT*, E275; *T1925-9*. 393.

[175] *L&L*, 89.

[176] *CT*, 269-70, 302; *V&V*, 55, 57.

this limit as one of the capacities or abilities of the collective entity, rather than rights.[177] In the later works Schmitt does not offer any grounds for this claim, instead, he treats the counter-claim as requiring proof. It is not enough to simply provide a 'terminological argument' and 'to *define…* a collective entity' as a 'genuine agent', that is define it as a 'subject'.[178] As my reading of *Dictatorship* in chapter three argues, for Schmitt, the impossibility of recognising the 'commissary dictator' in democratic regimes, itself suggests that the people lacks the capacity for deliberation and interventionary action. In *Volksentschied*, Schmitt continues along this line of thought and asks the question: 'what above all the "people" *can* do'?[179] Even so, his answers are ambiguous. At times he suggests hypothetically that *if* the people can formulate and initiate questions it would cease when the majority vote was taken.'[180] Moreover, since the text is primarily concerned with the constitutionally determined plebiscites and initiatives it does not discuss in detail the originary capacities of the *pouvoir constituant*.

What are the conditions of possibility pertaining to the people's ability to deliberate or discuss? The shift from questions of the *rights* to the *capabilities* of the people implicitly requires an explanation of how this epiphenomena, 'the people,' a collective being, can possess such capacities. What must be presupposed for this capacity? In Schmitt's account of acclamation it appears as both an originary act marking the existence of the people and as ongoing activity through which the strength of the political entity is increased. In the latter case, the political decision is merely one of acclaiming 'yes' or 'no' to a specific question. The assembly acclaims (makes a political decision) by negating or affirming the predetermined question posed. Similarly, Schmitt often frames the originary political decision as one of negation or affirmation: the other is an enemy or a friend. The symmetry between the two examples of 'political decision' suggests a structural correspondence between the decision on 'political existence' as a simple yes or no answer (friend or enemy) and decision of acclamation as a yes or no to a

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[177] In Walter Lippmann's *Public Opinion*, with which Schmitt was familiar he expressed much the same idea that the 'limit of direct action is for all practical purposes the power to say Yes or No on an issue presented to the mass.' Walter Lippmann, *Public Opinion* (New York: The Macmillan Company, 1929 [1922]), 230. Lippmann himself though, cites William James's remarks that 'But for most of our emergencies, fractional solutions are impossible. Seldom can we act fractionally' which also resonates clearly with Schmitt's insistence on political Einheit (unity, union). William James, *Some Problems of Philosophy: A Beginning of an Introduction to Philosophy* (Lincoln: University of Nebraska Press, 1996), 227. Similar remarks can be found in Weber, *Political Writings*, 126. as well as Michels, *Political Parties*, 27.

[178] *D*, xxxix.

[179] *V&V*, 48. My italics: '*was denn das "Volk" überhaupt kann.*'

[180] *V&V*, 57.

question. Both these acts lie in the same capacity of the *pouvoir constituant*. This correlation is also suggested in Schmitt's obsession with Theodor Daubler's line: 'The enemy is our own question as form'.[181] The people can only acclaim yes or no, because the original political decision, by which their existence and capacities are actualised, is the affirmation or negation of the other: friend or enemy.

Nonetheless, in the twentieth century the secret-ballot vote had largely become synonymous with (representative) democracy. Schmitt was not oblivious to this development. Rather than advocating a return to acclamatory democracy, he simply notes that it has been displaced to the space of public opinion or 'publicity' [*Öffentlichkeit*]: 'public opinion is the modern type of acclamation.'[182] According to Schmitt, the formlessness, visibility and responsibility characteristic of acclamation had found a new mode of expression in unregulated public opinion.

(iv) Acclamation as Assent

But how does acclamation produce legitimacy? A common reading of Schmitt on acclamation treats it as form legalisation or consent.[183] However, I claim Schmitt rejects these interpretations and instead understands acclamation as *assent*. Readings of acclamation as a form of legalisation are encouraged by Schmitt's references to Eric Peterson's *Heis Theos*. The ecclesiological accounts of Peterson and Kantorowicz often understand acclamation as a form of legalisation.[184] Although Schmitt's depiction of acclamation shared many traits with Peterson's account, I claim he rejected the latter's interpretation of it as legalisation.

Recalling the spectacles of Schmitt's account Peterson characterises acclamation as an effect evoked by the astonishment or awe before some event or figure of wonder.[185]

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[181] *Ex*, 71, '*Der Feind ist unsere eigne Frage als Gestalt*' from Theodor Däubler, *Hymne an Italien* (Munich: Georg Müller 1916).

[182] *CT*, 126-7, 275.

[183] See, for instance, Herrero López, 'Acclamations: A Theological-Political Topic in the Crossed Dialogue between Erik Peterson, Ernst H. Kantorowicz and Carl Schmitt', 1047.

[184] Ernst H. Kantorowicz, *Laudes Regiae: A Study in Liturgical Acclamations and Medieval Ruler Worship* (Berkeley: University of California Press, 1946), 76–77. My italics.

[185] Erik Peterson, *Eis Theos: Epigraphische, formgeschichtliche und religionsgeschichtliche Untersuchungen* (Göttingen: Vandenhoeck & Ruprecht, 1926), 213. Of particular note here, is the distinction Peterson makes between Hellenistic and Christian astonishment [*staunen*]. While for both a visible spectacle [*wunder*] is astonishing, in Christianity alone, he notes, recalling Rudolf Sohm's sense of charisma, that the teaching or theory [*Lehre*] itself becomes a source of astonishment.

Acclamation is elicited by a *visible* spectacle in the theatre or the city. Acclamations are the 'passionate expressions of the popular will attributable to divine inspiration', thus linking acclamation with enthusiasm. Regardless, Peterson, citing the substitutability of acclamation for the vote, specifically connects it to law [*Recht*].[186] Kantorowicz makes a similar connection in *Laudes Regiae*: 'The mere fact of being acclaimed by senate and army, at times by the army alone, had *legalized* the accession of Roman emperors.'[187] On occasion Peterson even subordinates acclamation to positive law [*Gesetz*]. In a footnote, Peterson writes that 'most remarkable is the meaning of the acclamation in antique court processes.' Through a number of examples, he shows that acclamation could influence an acquittal. Nonetheless, its use (demonstrated in the case of freeing slaves) was circumscribed by law. Here Peterson specifically uses the term *Gesetz*, marking positive law from *Recht*. Readers such as Uwe Hebekus, relying on Peterson's account thus describe acclamation as a *short-circuit* between enthusiasm and law [*Recht*].[188] However, this vision of a short-circuit seems inadequate to Schmitt's account.

Although Schmitt does include ecclesial practice as an example, he refers to Peterson's work as merely a 'starting point' for a scientific study of the phenomena.[189] As the details of Schmitt's account demonstrate, he rejected an equivalence between the vote and acclamation. In addition, while Schmitt occasionally associates acclamation with a right [*Recht*], he rejects subsuming it to positive law [*Gesetze*].[190] Despite the use of '*Gewalt*' or '*Befügnis*', which imply an association with an office, the contention that legality lacks authority and the association between acclamation and Sieyès' *pouvoir constituant*, proscribe the subordination of acclamation to positive law, *Gesetz*.[191] Schmitt's objective in the debate against liberal-parliamentary democrats like Hans Kelsen and Richard Thoma was specifically to reject the circumscription of politics by 'mere legality.'[192] Moreover, Schmitt insists on such a radical distinction between legality and legitimacy as to make such an interpretation impossible or at least wholly inconsistent with his claims that acclamation is *demokratische Urphänomen*. While

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[186] Peterson, 145.

[187] Kantorowicz, *Laudes Regiae: A Study in Liturgical Acclamations and Medieval Ruler Worship*, 76–77. My italics.

[188] Uwe Hebekus, '"Enthusiasmus und Recht": Figurationen der Akklamation bei Ernst H. Kantorowicz, Erik Peterson und Carl Schmitt', in *Politische Theologie: Formen und Funktionen im 20, Jahrhundert*, ed. Jürgen Fohrmann, Jürgen Brokoff (Paderborn: Ferdinand Schöningh, 2003), 100.

[189] *V&V*, 53.

[190] *V&V*, p. 75. '*natürlichste und unveräußerlichste Recht*'.

[191] *CT*, the constitution-making power, is referred to throughout as a *verfassunggebende Gewalt*.

[192] *L&L*, 9, 31.

Schmitt treats acclamation as conscious reaffirmation of an ethical substance (and consequently possibly a reaffirmation of a given sense of *Recht* or justice), 'legalisation' is a misinterpretation.

What is the cry of yes or no, that characterises Schmitt's acclamation? In his descriptions of acclaim Schmitt predominantly uses the two verbs '*zustimmen*' and '*ablehnen*' to characterise 'yes' and 'no'.[193] These terms can refer to the consent to a contract, but my thesis is that Schmitt aims at something like a confirmation of an assertoric statement: a 'yes, I agree this is true.' He attempts to sever the act of agreement from any notion of contract or promise, for a purified 'I agree,' or in German '*ich stimme zu.*' In *Volksentscheid und Volksbegehren*, Schmitt's takes as a model for acclamation the utterance of 'Amen' to a prayer in Church.[194] While the meaning of this utterance is a point of controversy, one traditional interpretation is that it signifies the recognition of the truth or certainty of the previous statement.

The social contract tradition relies on an act resembling acclamation. In Hobbes' political theory, the artifice of the commonwealth is constituted by a mutual act of declaration or a promise: a 'signification, by some voluntary and sufficient signs' marking a transfer of right often understood to occur in the context of an assembly or gathering of the people.[195] Nonetheless, for Hobbes, it is a largely imaginary act modelled as an approximation of unanimous consent or a unanimous promise. The importance of unanimity distinguishes the rational-legal quality of Hobbes' construction. Only another unanimous decision could nullify what has been previously agreed and dissolve the rights of the sovereign.[196] However, the rational-legal artifice of Hobbes' sovereign lacks efficacy, as I demonstrated in part one. It must be supplemented with worship and education, or, for Rousseau, 'civil religion'. Schmitt's illusions to Rousseau appear largely rhetorical, given that Rousseau specifically derogates 'acclamation' on Schmitt's model.[197] Rousseau's majoritarian general assembly utilises instead a kind of procedural

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[193] *V&V*, 51-2; *H*, 124; *CT*, D83-4, D243.

[194] *V&V*, 52. The English translation of Agamben's *Homo Sacer* cites this passage, but the reference to 'Amen' is removed and replaced explicitly with 'consent' obscuring this distinction. Agamben, *Omnibus*, 527.

[195] *Lev*, 1.14.[7].

[196] Kahn, 'Hamlet or Hecuba: Carl Schmitt's Decision', 70. I disagree with Victoria Kahn, who obscures Hobbes' distinction between *potentia* and *potestas*, when she contrasts Hobbes and Schmitt on the separability of sovereignty and legitimacy.

[197] Jean-Jacques Rousseau, *Rousseau: The Social Contract and Other Later Political Writings* (Cambridge: Cambridge University Press, 2018), bks IV.2.[3], 123. Rousseau explicitly conjures the religious aspect

pseudo-acclamation, in which 'everyone states his opinion' in order to determine by a kind of calculation what is the general will.[198] An earlier consent to be governed by the general will is presupposed, all that occurs in the assembly is an 'open-ballot' rather than a 'secret-ballot'.

In contrast, Schmitt dismisses unanimity as a model for acclamation. In *Constitutional Theory*, he describes the 'ideal of unanimity' as a 'misunderstanding' of democracy. He clarifies that 'even the unanimity of all decisions is useless if the substance of democracy … is lost.'[199] Acclamation is not an approximation of the majority vote, where the latter is in turn an approximation of unanimity. Schmitt rejects the interpretation of democracy as a series of approximations, in which acclamation is reduced to merely a pragmatic solution to the problem of approximating unanimity. Instead, Schmitt emphasises the need to preserve the 'substance of democracy.' That is, the substantial equality on which the homogeneity of the people is based. The significance of acclamation is its capacity to reaffirm this substance, in its 'truth' or certainty.

For Schmitt, acclamation is an assent to exist politically. It confirms the 'truth' or substance on which the political entity is based. In its mode of operation, acclamation resembles the assent demanded by the *Universal Declaration of Human Rights*, where political participation is premised on assent to an assertion or declaration: '[a]ll human beings are born free and equal in dignity and rights'.[200] Although Schmitt rejects such universalism as 'non-political', it is precisely this mode of assertion that characterises the form of democratic constitutions since the French Revolution. The French *Déclaration des droits de l'homme et du citoyen de 1789* drafted by Sieyès and Lafayette begins with a similar assertion: 'Men are born and remain free and equal in rights.'[201] The chants of protestors, like the ecclesiological *Heis Theos*, confirms or assents to an assertion or statement of fact. The logic of the protest chant or slogan, cheered in unison by the crowd exhibits precisely the assent of a claim to self-evident truth on which Schmitt's model of acclamation is based. The acclamation is thus not a legalisation or consent to a contract

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developed by Peterson: 'Then fear and flattery turn voting into acclamations; they no longer deliberate, they worship or they curse.'
[198] Rousseau, bk. IV.2.[8].
[199] *CT*, 280. Translation modified. Seitzer translates *entfällt* as displaced, but *entfallen* is usually taken to mean 'to fall out of' or 'to escape'. Harold T. Betteridge, ed., *Cassell's German and English Dictionary: Completely Rev. and Re-Ed* (London: Cassell, 1960).
[200] *Universal Declaration of Human Rights* (1948), art. 1.
[201] *Déclaration des droits de l'homme et du citoyen de 1789*, art. 1.

but a demonstration of recognition of a certain self-evident truth. In the act of acclamation an assembly 'calls high or low, cheers or grunts, strikes the shield with its weapons, raises its shield, says in a resolution with some word "Amen" or rejects this acclamation by silence.'[202] This interpretation also reflects Schmitt scepticism of the active capacities of the collective entity, the people. To interpret acclamation as a promise or contractual consent implies the possession of a certain deliberative capacity, which Schmitt denies the people. Confronted with an assertoric statement (a declaration) one can only agree with it or reject it. The acclamation simultaneously assents to a particular statement of fact, but consummates this through active participation and commitment to action.

Political legitimation is based on visible enthusiasm that overcomes the division between is and ought. Schmitt's gloss of Sorel in the 1923 *Crisis* points directly towards this interpretation: Schmitt describes belief in *vertu* as the source of 'great enthusiasm,' a 'true life-instinct'. He continues, in 'immediate intuition the enthusiastic mass creates a mythical image that pushes its energy forward and gives it the force [*Kraft*] for martyrdom as well as the courage to use force [*Gewalt*].'[203] In these texts of 1920s Schmitt attenuates the mythical aspect, ostensibly disavowing the irrational mythical element of Sorel's work, but replaces it with a politico-religious assertion — '*Christus vincit! Christus regnat! Christus imperat!*' — resembling in form, the declaration 'Men are born and remain free and equal in rights'.

Democratic authority is thus derived directly from the ability to decide on and assent to a distinction between the friend and the enemy. Since this decision gives political life and existence to the collective entity, the people, it is the only ability (or capacity [*Fähigkeit*]) that one can be sure that the people possesses. In contrast to the multiple modes of support developed by Hobbes, in Schmitt all authority is unified in a single ability. This foundational capacity can be channelled into formally defined offices and legal delimitations, but ultimately it resists all artifices of containment. The people is simply this ability to respond or answer with assent or rejection. One simply assents to a statement, such as '*Alle Gewalt geht vom das Volk aus*', 'all power/authority emerges from the people.'

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[202] *V&V*, 52.

[203] *Crisis*, 68. Translation modified.

4   State, Movement, People

The democratic authority, developed between 1923 and 1932, seems to disappear with Schmitt's turn to the *Führerprinzip*. After Hitler's success in the federal elections of March 1933, Schmitt quickly published a series of texts which claimed to offer a 'concrete theory of the state.'[204] Eschewing a 'general [*Allgemein*] theory of the state' as a typical affectation of the nineteenth-century demand for the general or universal, his concrete alternative promised a structural account of a triadic state form that Schmitt predicted would typify twentieth-century politics and was already manifest in the Italian Fascist state and the Bolshevik state of the Soviet Union.[205] Schmitt offers a speculative description of a National-Socialist political form based on the concepts of *Artgleichheit* and the *Führerprinzip*, respectively, the absolutisation of the identity principle as equality of type, and the principle of leadership. Is there a distinctive concept of authority captured in these works and what is its relationship with the 'democratic authority' produced by acclamation?

     In the triadic political form developed in the Nazi writings acclamation no longer plays a role. This is replaced with an emphasis on the oath [*Eid*], allegiance [*Treue*] and loyalty [*Loyalität*], terms which were peripheral in writings of the democratic period.[206] The relation between the democratic texts and those of the Nazi era remains contested. A common reading of these works claims a continuity or even necessity linking the two periods.[207] The difficulty of interpretation arises because Schmitt's democratic works

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[204] *SMP*, 14. The primary texts that I take as exemplary of Schmitt's Nazi writings are *State, Movement, People* (1933), and *On the Three Types of Juristic Thought*.

[205] *SMP*, 13.

[206] In the texts from 1920-33, there is little use of these terms. Schmitt refers to Catholicism as exhibiting a 'loyalty to the earth' (*RCPF*,18). In the German edition of *CP*, there is a cursory reference to a text on the political oath, E. Friesenhahn, *Der Politische Eid* (1928). In the 1930s questions of 'loyalty' and '*Treue*' become more central. Schmitt writes critically of the pluralistic concept of the state, in particular against Laski and Cole's idea of a 'plurality of loyalties' as endangering the possibility of a clear loyalty to the state itself. (see *P&B*, 134, 140, 156). There are a number of references in *CT*, 69, 89, 97, 99, 118.

[207] Schmitt's retrospective claim that the texts were purely descriptive (1958) has been questioned at least since Maus. Ingeborg Maus, 'The 1933 "Break" in Carl Schmitt's Theory [1969]', trans. Anke Großkopf and William E. Scheuerman, *Canadian Journal of Law & Jurisprudence* X, no. 1 (1997): 127–8. Maus challenges that assumption of a break in 1955, arguing that Schmitt's 'early decisionistic thinking continues to underlie his "theory of concrete order."' Maus, 134. McCormick for instance, writes that the logic of *Verfassungslehre* 'compels Schmitt' toward the authoritarian-state form. McCormick, *Carl Schmitt's Critique of Liberalism: Against Politics as Technology*, 248. Hebekus agrees, if for a different reason. Hebekus, '"Enthusiasmus und Recht": Figurationen der Akklamation bei Ernst H. Kantorowicz, Erik Peterson und Carl Schmitt', 104. While Ulmen argues for a break in 1933, Gary Ulmen, 'Between the Weimar Republic and the Third Reich: Continuity in Carl Schmitt's Thought', *Telos* 2001, no. 119 (20 March 2001): 18–31. I argue there are aspects of discontinuity, precisely because Schmit's interest is

clearly predict an essentially totalitarian outcome if homogeneity is misperceived and maximised. That is, Schmitt forecasts that a 'maximum degree of identity' will reduce the people to a 'subpolitical… merely cultural, economic of vegetative form of existence.' Hence, at issue in the interpretation of the Nazi writings is whether Schmitt's earlier account of democracy could find a state of balance between the poles of a minimum and maximum of homogeneity without falling into absolutisation.[208] I suggest that between the two periods, a nuanced relation exists with both aspects of continuity and discontinuity.

After briefly setting out the structure of Schmitt's alternative 'concrete,' triadic political form, I turn to his discussion of leadership, the *Führerprinzip*. I argue that Schmitt struggles to articulate a new concept of authority in the Nazi writings. He attempts to replace acclamation with a generalisation of the personal oath of allegiance or loyalty. I demonstrate that the central difficulty for Schmitt is tension between (i) the demand for equality and homogeneity entailed by *Artgleichheit* and (ii) the hierarchical power relations presupposed by the *Führerprinzip*. That is, Schmitt attempts to satisfy the contradictory demand for equality with hierarchy. This reproduces in an immanent sphere the problem of dignity, central to my discussion of *Roman Catholicism and Political Form* in chapter three.

(i) The 'Concrete' State Form of the Twentieth Century

The transitional events of 1933, Schmitt interprets using the framework established in the democratic writings.[209] He implies that the change in regime was demanded by the will of the *pouvoir constituant*. According to Schmitt, in one final act of acclamation, the German people discarded the liberal system of the Weimar republic and assented to the substantial content proposed by the NSDAP. He writes that the elections of March 1933 were not functionally 'elections' because 'in the Weimar system, the so-called elections had long lost their true elective character.'[210] Instead, these elections had a plebiscitary

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determined by the present political-legal situation. Like the shift of interest in 1923 to democracy, in 1933 Schmitt's interest adjusted according to the demands of the moment.

[208] *CT*, 248.

[209] Although Schmitt's interpretation of the 5 March and 12 March 1933 elections as a 'popular referendum' is dubious, the broad strokes are largely consistent with his general account of the political developed around 1927-1929 in texts such as *Constitutional Theory*.

[210] *SMP*, 6-10.

and acclamatory character. But what was the question? Schmitt implies that the conflict between the substantial political policies advocated by the NSDAP and those of the existing Weimar Constitution, entails that the March elections can only be understood 'politically' as a plebiscite on the new substantial content. The people were thus presented with precisely a 'yes' or 'no' question; assent to or rejection of the political proposition advocated by the NSDAP. For Schmitt, the ostensibly legal transfer of power arises solely from practical concerns. It was merely the 'abdication and the death statement' of the old political form.[211] Hence, Schmitt asserts that the legitimacy of the new regime is not based on the Weimar constitution, 'a system that has become impotent [*Machtlosigkeit*],' but on its own foundation. As Schmitt writes, '[w]hat is alive cannot be legitimated by means of what is dead, and power has no need to legitimize itself by means of powerlessness.'[212]

While Schmitt's interpretation of the transition is determined by the political structure of the democratic writings, the triadic political form (composed of three elements the state, the movement and the people) elaborated in 1933/34 appears to have little precedent in the core democratic writings. If it is hinted at in *Constitutional Theory*, it is only as a possible 'danger'. Even so, a clear-cut periodisation of Schmitt's works correlated to the assent of Nazi regime is complicated by Schmitt's lecture of 1932, *Starker Staat und Gesunde Wirtschaft*.[213] As George Schwab notes, even before the installation of the Nazi regime Schmitt had begun sketching out an alternative, triadic political form.[214]

Schmitt's new triadic political form is based on the presumption of a maximal substantial equality, '*Artgleichheit*' of the people. This 'radical implementation of the principle of identity' is described as a danger and misperception of equality in *Constitutional Theory*. In the earlier account the consequence of this presumption is 'that a people regresses from the condition of political existence into one that is subpolitical, thereby leading a 'merely cultural, economic, or vegetative form of existence'.[215] Consistent with this degenerate possibility, in *State Movement People*, Schmitt describes

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[211] *SMP*, 6-7.
[212] *SMP*, 7.
[213] *SGN*, 79-80. '*Starker Staat und Gesunde Wirtschaf*t'.
[214] *LST*, xxxiv-v. 'Introduction' by George Schwab.
[215] *CT*, 248.

the people as the '*apolitical* side, growing under the protections and in the shade of the political decisions' made by the two political elements, the state and the movement.[216]

Partly modelled on the existing Italian fascist state and the Bolshevik state of the Soviet Union, Schmitt proposes that the new German National-Socialist form will have a triadic structure composed of (i) the state, a static part which includes the civil service and military bodies, (ii) the movement, a dynamic part, and (iii) the people, the apolitical sphere of social and economic concerns.[217] Within the movement, Schmitt distinguishes between the organised hierarchy of the party and the general mass of politically engaged participants. The pluralist party system of the liberal state is eliminated and replaced by the *Führungskörper*, the leading-body of the political entity. The result is a 'one-party-state' in which opposition parties are banned and all organs of the state are enthused with an concrete ethical substance (supposedly derived from their *Artgleichheit*). There is thus no longer a mere 'state-apparatus'.[218]

Given the empirical historical reality of the Nazi regime, which relied heavily on mass spectacles, the absence of acclamation from Schmitt's triadic political form appears paradoxical. In particular, Schmitt's forecast regime varies considerably from the accounts of fascism as a 'political religion' developed subsequently by Eric Voegelin or Emilio Gentile.[219] Was the continued role of mass gatherings and participation so obvious that it need not be mentioned? There is at least one reason why Schmitt may have expected it would be unnecessary in the new state form. In *Constitutional Theory*, Schmitt insists on a gap or space of representation between the private individual and the citizen. In the democratic writings, this is the last remaining sphere in which the 'principle of representation' plays a role.[220] The function of acclamation is to provide a setting in which this gap is bridged. By participating in public ritual the otherwise private individual 'represents' the citizen and makes present and visible the otherwise invisible substance of equality on which the political union is based. '[T]he *presentation* of the political unity is an intrinsic part of the form.'[221] In the democratic texts, acclamation

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[216] *SMP*, 12. My italics.

[217] *SMP*, 11-2. National Socialists such as Reinhard Höhn, Otto Koellreuter ou Gottfried Neese, criticised Schmitt precisely on this reduction of the people to an apolitical element. See Carl Schmitt, Mira Köller, and Dominique Séglard, 'Les trois types de pensée juridique', *Revue philosophique de la France et de l'etranger* 187, no. 2 (1997): 39. I thank Luis Carneiro for pointing out this reference.

[218] *SMP*, 21.

[219] Gentile, *Politics as Religion*, 56.

[220] *CT*, 239.

[221] *CT*, 240-1.

entails the possibility of either a yes or no. In contrast to the totalised systemic *Volksgeist* of Fichte, a democratic people can still decide against certain proposals. But Schmitt insists the national-socialist *Führung* does not rely on 'recurrent legitimations (plebiscites, Papal crowning, marriage to a Hapsburg princess) and institutionalisations (a new nobility)'.[222]

In the Nazi writings the possibility of saying no is eliminated, marking a partial break with the democratic writings. In the latter, the people only exist as a will, which must presume a real possibility of saying no to a particular proposal. Evoking the totalised image of a culture/*Bildung* of the *Volksgeist* doctrine, the Nazi writings refer to a '*Volksubstanz*' that must simply be secured and cultivated. With traces of Fichte the task of the state is now to cultivate what is already present, the substance that is 'encountered in country, hereditary lineage or estate.'[223] If the democratic writings accepted a certain 'abstract' thinking in the negative determination of the people via the enemy, this is eliminated by National-Socialism, which 'does not think abstractly and stereotypically'.[224] Instead of an acclamatory *decision*, there is the *Volksubstanz*, a '*Gesamtordnung*' (total order) which 'expresses itself' immediately in the 'presumptions and imagination' [*Voraussetzungen und Vorstellungen*] of a people.[225] Although he avoids the term *Volkgeist*, Schmitt explicitly references Savigny, Fichte and Hegel as precursors.[226] In addition, the *Gesamtordnung* exhibits many of its characteristic aspects. Like the *Volkgeist*, the concrete-order is a total organic whole, a *Rechts-life* attuned to a 'specific age' and 'specific people.'[227] The exemplarity of the 'Aristotelian-Thomistic natural law of the middle ages' recalls the fascination with the Middle Ages typical of the romantic thinkers responsible for the concept.[228] There are references to customary institutional practices; marriage, agriculture, *Stände*.[229] In addition, like Herder and Fichte, Schmitt allocates a central role to language. In 1928, perhaps influenced by Weber, Schmitt had denigrated the role of language.[230] But in 1934 it is central to his critique of Pindar's *Nomos basileus* (i.e. 'law as king'), which is taken to exemplify the

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[222] *SMP*, 47.

[223] *SMP*, 36. Translation modified.

[224] *SMP*, 36.

[225] *3T*, 46.

[226] *3T*, 77.

[227] *3T*, 45.

[228] *PR*, 67.

[229] *3T*, 77-8.

[230] *CT*, 262.

logic of the nineteenth-century liberal *Rechtstaat*. Schmitt claims that the reliance on 'concepts like king, master, overseer, or governor, as well as judge and court, shift us immediately into concrete institutional orders that are no longer mere rules.' The historical use of concepts in a particular language, already determines the 'concrete power and dignity or office [*konkrete Macht und Würde*].'[231]

Is there a break or continuity between Schmitt's democratic writings and the Nazi writings? To demand an explicit either-or response seems particularly Schmittian, recalling his analogy with the decision on Christ or Barabbas.[232] I offer instead a nuanced response. There are elements of continuity, the framework and the threat of degenerate understanding of equality are consistent with *Constitutional Theory*. But there are also aspects of a break in the replacement of acclamation with the personal oath and the elimination of the representational role of the 'citoyen'. Is the logical-theoretical consummation of Schmitt's 'democratic' politics a fascist regime? If it is, then we must ask if the same *telos* characterises today's participatory models of politics insofar as they are based on shared 'ethical' convictions, such as human rights or equality.[233] Allusions to a community of shared understanding as a political ideal remain commonplace in both left-wing progressivist politics and right-wing alternatives. Popular participation also carries certain risks, as Dylan Riley's recent work on the rise of fascism in Europe indicates.[234] On the other hand, proposing a clear 'break' in Schmitt's oeuvre resembles the *Sonderweg* thesis.[235] This thesis, which identifies certain exceptional qualities or circumstances in order to explain the rise of National Socialism, implicitly conceals the political-ethical continuities across early twentieth century Europe and the continued proximity of the threat of fascism. Thus, neither a break nor continuity adequately describes the shift in Schmitt's account.

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[231] *3T*, 50.

[232] *PT*, 62.

[233] For instance, Graeber, recalling Schmitt's account of acclamation, emphasises the role of the assembly and the distance between democracy and voting procedures. David Graeber, *The Democracy Project: A History, a Crisis, a Movement* (London: Allen Lane, 2013), 184. Agamben's thesis proposes the continued proximity between our current political forms and fascism. Agamben, *Omnibus*, 99–154.

[234] Riley, *The Civic Foundations of Fascism in Europe: Italy, Spain and Romania 1870-1945*, 11–2.

[235] See, for instance, Blackbourn David and Eley Geoff, *The Peculiarities of German History* (Oxford: Oxford University Press, 1984), 2–22.

(ii) The *Führerprinzip* and Homogeneity

I turn to the specific authority of the *Führer*. The *Führerprinzip* is supposed to be based in a 'real presence' in contrast to the representative moment of acclamation. There is no longer a need to make present and immediate the existence of an invisible political entity/union. The political entity is 'immediately present' in the 'absolute ethnic identity' of the 'idea of race.'[236] Nonetheless, Schmitt struggles to articulate an immanent (non-transcendent) concept of authority under this absolute identity, which, despite the claim of immediacy, remains haunted by mediation through the 'idea' of race. In 1933, Schmitt juxtaposes the leader against a series of classical models of authority: the military commander, Plato's physician, the shepherd or steersman (gubernator), Taine's horseman.[237] He writes that 'none of these images capture the essential meaning of political leadership in the essentially German sense of the word.'[238] Regardless, failing to find a suitable alternative, he reverses his position and in the following year specifically takes up military command as the model for the hierarchy of the *Führerprinzip*, enforced by 'concepts of discipline and honour'.[239]

The source of difficulty appears to be his rejection of transcendence itself. Motivated by adherence to the principle of equality/identity. The model of shepherd and flock [*Hirten und Herde*] is rejected because '[e]ssential to this image is that the shepherd remains absolutely transcendent to the flock'. Instead, the specifically German relation of *Führung* 'is a concept of the immediate present age [*Gegenwart*] and real presence [*Präsenz*].' It is a purely immanent concept of authority in which the basis and positive demand for this relation is an 'unconditional equality of kind [*Artgleichheit*].' By contrast, Max Weber's charismatic authority and Bataille's fascist 'sovereign' rely specifically on a sense of transcendent sacralisation.[240] Schmitt appears to realise that he has deprived the *Führer* of any capacity to actually lead and in later works distinguishes the leader from others based on a certain personal capacities. He writes that the 'moral outrage in the collapse of the German government during the war, *accumulated (angesammelt)* in Adolf Hitler and in him became the driving force [*triebenden Kraft*] of

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[236] *SMP*, 48.

[237] *SMP*, 47.

[238] *SMP*, 47.

[239] *3T*, 81-2. In 1934 Schmitt explicitly equates leadership with *Kommandogewalt*, a term used as a counterpoint in *SMP*, 46.

[240] Georges Bataille, 'The Psychological Structure of Fascism', trans. Carl R. Lovitt, *New German Critique*, no. 16 (1979): 68.

a political act.'[241] The origin of Hitlers 'right [*Recht*] and force [*Kraft*] to found a new state and a new order' is his capacity to transform the lessons of history into *Ernst*, a measure of seriousness. The task of the Führer is one 'in which all danger of the political *accumulates*.'[242] For Schmitt, the *auctoritas* of the leader rests solely on the *de facto* capacity of '[w]hoever establishes peace, security, and order,' (ie. the normal situation).[243]

In the end, the *Führer* is depicted as both special and the same as everyone else. He is distinguished by his very exemplarity. The leader must embody a *particular* sense of right [*Recht*], that is a concrete ethical [*sittliche*] imperative, in contrast to the liberal supervisory overseer who relies on supposedly absolute or objective standards of calculation or measures.[244]

Instead of acclamation, this system is supposed to rest on a series of oaths of loyalty or allegiance, recalling the personal authority of the commissary dictator. Schmitt notes that leadership requires a 'power of command [*Kommandogewalt*]', a 'concrete kingly or leadership order' antithetical to positivist law [*Gesetz*].[245] The ground of authority is provided by an 'oath… to the leader [*Führer*].' Personal loyalty and the '*rechtliche* axiom that truth, discipline and honour cannot be separated from leadership' provide the foundation for the authority of the leader. The emphasis on honour revives themes central to Schmitt's concept of personal representation. Like the commissar, the movement demands absolute submission in order to maintain protection and security, denying the people a political will.[246]

Schmitt attempts to construct an immanent equivalent to the office of the priesthood central to *Roman Catholicism*. There are customary aspects and demands for loyalty reminiscent of tradition, but a resistance to fixed privileges and anti-proceduralism reminiscent of charisma. Affinities to both of Weber's traditional and charismatic forms of authority are evident.[247] Schmitt's solution is indoctrination. The prerequisite of an oath is a 'normal situation'. This now entails not only legal order, but the establishment of a broad field of common terms such as *Recht*, justice, honour and

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[241] *P&B*, 199.

[242] *P&B*, 202, cites *SMP*, 23.

[243] *3T*, 61.

[244] *SMP*, 40-1.

[245] *3T*, 50.

[246] *SMP,* 18.

[247] Max Weber, 'The Three Types of Legitimate Rule', *Berkeley Publications in Society and Institutions* 4, no. 1 (1958): 136–40.

loyalty and managing their interpretation through securing 'personality' itself.[248] Despite the biological-racial interpretation of the identity principle, there is now a need for complete mental assimilation of the individual to the language-collective. Schmitt proposes to expand the sphere of personal relations and interpretation in law itself. Instead of more precision in legislation, he argues for the expansion of the space of interpretation. He claims that 'a new juristic way of thinking can be brought about through these general clauses'.[249] According to Schmitt, the expansion of general concepts would produce a more flexible type of legality and when combined with a firmly established 'normal situation' might be able to eliminate the need for a distinction between the state-of-exception and legality.[250]

But what is *Leadership*? Schmitt does not provide a clear determination. It relies on a paradoxical hierarchical absolutisation of the principle of equality, a rearticulation of Donoso Cortés' Christian dignity, in which a divine hierarchical authority, 'dignity', is shared equally.[251] Instead of precisely determining concepts, Schmitt proposes an expansion of general terms. The paradoxical authority of the *Führer*, based on his embodiment of equality, is not to be resolved, but managed by flexible and general concepts. Concepts that can be stretched as appropriate and contain antithetical tensions like the *complexio oppositorum* of the Roman Catholic Church. The *Führer* is the leader 'as-well-as' no-one special.[252]

<p style="text-align:center">* * *</p>

In the Nazi writings, Schmitt embraced and then defended the mythical ethno-nationalist particularity of the 'German people' espoused by the Nazi Party. According to Schmitt, the pretense of liberal-parliamentarism was that it could manifest a truly universal political order and that this could be given explicit form in a written constitution. Schmitt demonstrates in *Legality and Legitimacy*, that despite its claims to embody universal principles of truth, justice and freedom, the liberal *Rechtsstaat* was merely a particular political possibility, a *Gesetzesstaat*. Instead of preserving some aporetic form of universalist goals, Schmitt takes up the radical alternative: the intractable particularity of

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[248] *SMP*, 50.

[249] *3T*, 90-1.

[250] *3T*, 98.

[251] Donoso Cortés, *Essays*, 244.

[252] *RCPF*, 7.

every political body. He asserts that here could be no concrete universal constitution, all constitutions manifested a particular substantial political stance. Instead of working through this failure, Schmitt demanded the assent to particularity and openly declares: 'that all justice is the justice of a determinate people.'[253] With little concern for the consequences, Schmitt assented to the xenophobic ethno-nationalist myths of the NSDAP in all their horrors.

However, in the period between 1923-1932, Schmitt's democratic works suggest a performative alternative. Mass assemblies and spectacles like those organised by liberal advocates for German unity in the nineteenth century, could continue to be used to develop a 'democratic' national disposition [*Gesinnung*] providing political and social stability. He suggests that the power of the people can be massaged, through public opinion. A politically motivated part of the people can present the largely disinterested mass with particular well-crafted questions and, with its capacity to respond with 'yes' or 'no', the people can provide assent and thereby legitimate a particular course of action. Regardless, by 1932, even before the Nazi's gain power, Schmitt renounces this possibility, reverting to personalist rule. Authority is returned to a single individual, the *Führer*, and delegated on a model of personal representation.

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[253] *SMP*, 51, D45; Schmitt writes '*daß alles Recht das Recht eines bestimmten Volkes ist.*'

Conclusion

> There is a war between the ones who say
> there is a war; And the ones who say that
> there isn't.[1]

In this dissertation, I aimed to provide a new analysis of the theoretical structures of authority elaborated in the political theories of Thomas Hobbes and Carl Schmitt. In particular, I argued that concrete religious practices are centrally important to Hobbes' and Schmitt's attempts to reinforce political authority. While Hobbes relies on religious practices of worship and pedagogy, Schmitt models authority on the vicarious commission of the papacy and the ecclesial practice of acclamation. What is added to our understanding of their works through this close analysis of their respective attempts to reinforce authority?

In part one, my analysis of Hobbes' political writings revealed the often overlooked complex of theoretical mechanisms Hobbes deploys to support the fictional covenantal artifice of the sovereign. Tracing the chronological development of Hobbes' political theory, I sought to demonstrate the logical and theoretical relations between these different apparatuses supplementing the covenantal *potestas* of the sovereign.

In chapter one, I showed that Hobbes eschews the Tacitean image of politics presented by Justus Lipsius and the Stuart attempts to reinvigorate traditional chivalric authority and attempts to elaborate a rational alternative. I sought to demonstrate that worship is centrally important to Hobbes' account of the material power of the commonwealth. Hobbes rejects the ideological independence of the category of 'authority' as such, traditionally associated with the Roman concept of *auctoritas*. Nonetheless, I argued that in his account of worship he develops a social theory of 'power' that assimilates the reputational and social aspects of authority to an expanded sense of material power (including wealth, prestige, honour, and worth).[2] This is subsequently subsumed under a logic of universal natural laws and forces. Utilising a

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[1] Leonard Cohen, 'There is a War', *New Skin for the Old Ceremony* (Columbia, 1974).
[2] *Lev*, 10.

radical distinction between command and council, Hobbes isolates a register of universal signification embodied in the performance of commanded worship and linked to power relations. Demystifying the social aspects of authority, he argues that these signs operate according to the laws of nature. Through an analogy with agriculture, he claims that this relational social power can be cultivated through worship (*cultus*) causing it to grow. The 'magnifying' capacity of political worship, however, depends on Hobbes' understanding of *potentia* within his natural science. The correlation between Hobbes' understanding of physical forces and the operation of political forces foreshadows aspects of Georges Sorel's hypothesis (i.e. that there exists a fundamental relation between the theories of physics and politics), as well as Schmitt's generalised version of 'political theology' concerning the relations between 'central domains of thought' and political institutions.[3] These commonalities point to the importance of analogy for political institutions and the forces it relies on.

To address shortcomings in his account of worship and to provide a 'seed' for the cultivation of power, in *Leviathan*, Hobbes turns to another analogy, this time between theatre and politics. The seed of authority emerges from the people like a character in the theatre created by an author.[4] This fictitious *persona* of the sovereign must be played by an actor. This rationalist vision of political power, which operates according to analogies with physics and theatre, is dependent on a rational population.

In chapter two, I turned to Hobbes' treatment of religion as a model for political education. The interpretation of Hobbes' account of religion and use of religion in politics remains a relatively neglected part of his work. Focussing on the later half of *Leviathan* and the later texts *Behemoth* and *Historia Ecclesiastica*, I elaborated a bifurcated reading of Hobbes' theory of religion distinguishing between his treatment of Christianity and that of natural religion. Utilising the formalism underlying the distinction between command and council (as presented in *De Cive*), I showed that Hobbes distinguishes between a juridical model of authority derived from Judeo-Christian history and a pedagogical authority based on natural religion. As a corollary of his rationalist vision of politics, the latter is important in providing the motivation for political obedience. Such a motivation comes with a proper education in the *scientia civilis* and knowledge of the operation of political forms and forces. To achieve this end the population requires a supreme pastor, a shepherd, to watch over and guide them to

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[3] Sorel, *Progress*, 158–9; Sorel, *Reflections*, 12–13. cf. *CP*, 86. 'The Age of Neutralisations'.
[4] *Lev*, 16.

obedience *as if* they were sheep. Despite Hobbes' attempt to demystify authority, his political artifice remains dependent, in the last moment, on a transcendent entity, a shepherd guaranteed by divine right.

The central finding of my investigation of Hobbes' account of political authority concerns the significance of religious practices (both worship and education) for his 'constitutive' account of the effective material power of the sovereign.[5] In contrast to one-sided contractualist readings of Hobbes' political theory, I demonstrated that worship is key to the effectiveness of the Hobbesian commonwealth and that the covenant itself relies on a more fundamental religio-political pedagogical 'divine right' granted to the sovereign. Hobbes' models of worship and pedagogy both utilise a formalist method to bracket the particular culturally dependent content of acts, signs or practices in order to identify a universal logic of religio-politics. With the emphasis on education in *Leviathan* and later texts, Hobbes eliminates the internal sphere of intellectual autonomy, the 'crack' of conscience identified by Carl Schmitt (and others), and demands a complete indoctrination of the population. In a sense, this shift foreshadows Schmitt's own account of democratic authority, insofar as acts of acclamation manifest a public performance of inner faith, unifying the external and internal.

In my analysis of Schmitt's work in part two, I sought to distinguish between this democratic form of authority and the monarchical and fascist alternatives he develops. In this respect, my investigations substantiated Schmitt's adherence to the proposition that distinct political principles engender distinct theoretical structures and concepts. In particular, despite certain parallels between them, the concepts of authority corresponding to each political framework are not equivalent nor transposable.

In chapter three, I argued that the monarchical works take the Roman dictator as an originary model for the authority of the 'personal office'. I traced the development and elaboration of the concept of 'commissary authority' attached to an office through Schmitt's apparently disparate series of examples: the Roman dictator, Bodin's commissar, Schmitt's reflections on the authority of legal decision, the political influence of the papal office and his revival of the *katechon*. In each case I demonstrated the structural composition of commissary authority from two elements and argued that both are ultimately derived from divine sources. The two elements include (i) a specific task,

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[5] I rely here on Daniel Lee's distinction between constitutive and regulative accounts of public authority. In other words, it is not a matter of limiting but actually *creating* the power or authority of the state. See Lee, *Popular*, 9–11.

rooted in objective necessity and (ii) a given (presupposed) social hierarchy or order. These two elements are combined in the *personal office* of commissary authority. Through this complex of the person and office, Schmitt attempts to preserve a 'human' or personalist element by insisting on the moment of decision. In contrast to Hobbes' theatrical *persona*, Schmitt invokes a Christian conception of the person as a divine singularity, which exceeds scientific rationality. As I argued, commissary authority is ultimately derived from models of authority embodied in the parent/patriarch/father pertaining to an economic/household (*oikos*) model of politics. I also showed how Schmitt's development is indebted to the traditional doctrine of divine right and takes up strategies and concepts elaborated in Neville Figgis's canonical account of the doctrine.

While Schmitt's aim is to prevent the civil servant from being reduced to a technical apparatus or instrument, in the last instance, he merely replaces technically determined goals with the doctrine of the Last Judgement as the ultimate ground of responsibility for the human individual. For Schmitt, only a government under the commission of divine will can prevent the instrumentalisation of political institutions, which would occur with its subsumption under universalist rules and procedures. As I argued, Schmitt eschews the logic of general laws, exemplified in Hobbes' assimilation of politics to natural science and instead naturalises authority through various appeals to the singularity of the concrete. Whether manifest through a concrete object, event or individual, for Schmitt, authority exists only as an excess that cannot be subsumed to general laws or universalist visions of science.

In chapter four, I demonstrated that in the democratic writings this conception of authority as an excess beyond general laws is retained. However, the structural model of a task and hierarchy is replaced with the acclamatory assent of the assembly. I showed that Schmitt constructs a revisionist conception of democracy antithetical to liberal-parliamentarism, and that he emphasises the demands for social equality and the dismantling of all privileges. Although Schmitt's developed account of democracy takes up elements of the nationalist interpretation of the *Volksgeist*, I argued that he is also drawn towards a more general formulation of the political entity, the *pouvoir constituant*, influenced by Lukács' Hegelian-Marxism and Sorel's theories of political action. While the democratic authority that emerges from the *pouvoir constituant* is again antithetical to the universalist dimension of procedure and legality, it now emerges from the concrete actual presence of an assembly or the uncontainable dynamism of public opinion. In both

cases, authority is manifest as the capacity to respond to the concrete singularity given as a question.

The key result of my research on Schmitt's democratic political theory arises from my focus on the problem of the abilities and capacities of the democratic sovereign. Tracing this thread from *Dictatorship* to *Volksentscheid und Volksbegehren* and *The Concept of the Political*, democratic authority emerges as a result of the 'yes' or 'no' (assent or rejection) of the people to a specific question (whether one regarding policy or concerning the 'other/enemy' in the sense of Theodor Daubler's line 'The enemy is our own question as form').[6] I sought to show that for Schmitt, the democratic authority that emerges from the people is a kind of energy or enthusiasm embodied in the assent confirming an assertoric statement answering such a question. Influenced by the 'life-energy' that underlies Sorel's mytho-politics, Schmitt's acclamation is not a 'legalisation' or 'consent' but a participatory confirmation of a particular truth.

In the final section of chapter four, I discussed Schmitt's Nazi writings. While Schmitt's works of this period retain the broad structural framework of 'politics' typical of his earlier works, the institutional forms and conception of authority elaborated are distinct from those of the democratic works. I suggested there is neither a 'break' nor a straightforward continuity between the democratic and Nazi writings. Instead, I argued that in the Nazi works Schmitt replaces acts of acclamation with oaths of allegiance and the structure of authority in works of this period returns to the commissary authority of the monarchical works, if in an immanent form. In particular, I showed how Schmitt struggles to articulate a coherent conception of this *Führer*-authority and ultimately relies on a paradoxical structuring of equality and hierarchy with parallels to Donoso Cortés' conception of Christian dignity.

In addition to the above, distinctive contributions of my research on Schmitt include a novel interpretation of *Dictatorship* and the 'transition to sovereign dictatorship' as a strategy of critique of the abilities and capacities of the collective subject. This in turn supports a periodisation of Schmitt's works based on the particular political principles on which they are based. My research highlighted the revival of themes from the early works (1917-1922) in the post-World War II texts, connecting the Roman dictator to the *katechon* and further clarified the specific operative principles of acclamation in Schmitt's account of democratic authority.

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[6] *Ex*, 71.

I did not aim to produce a general theory of authority like that announced by Hannah Arendt's essay 'What is Authority?' Instead my analysis centred on two specific, broadly comparable and influential moments in the history of European political thought and the respective struggles they engendered to re-articulate a concept of political authority in specific periods of crisis. In spite of this narrow focus, I find that Hobbes and Schmitt do capture something important about authority in general. They seem correct to regard it as a kind of power or capacity that resists subsumption to a narrowly 'political' sphere. Even if it emerges from a paternal domain authority can spread indiscriminately into others, intertwining with educational concerns, drawing on theatrical or energetic metaphors, shifting with the dominant intellectual interests. Authority has an infectious character and resists confinement to a specifically 'political' sphere distinct from economics, religion or culture. Despite attempts to segregate political authority by constitutional means, neither 'politics' nor 'authority' can be permanently contained. These borders can only ever be *politically* determined and recent history shows they are easily transgressed. For example, media personalities can be rapidly transformed into political figures. Schmitt and Hobbes appear correct that education, religion, family, civil societies, gatherings of people all carry a political potential. They can form a source of authority precisely insofar as they can influence group behaviour.

The infectious quality of authority recalls the nomenclature of contagion, suggestion, imitation, and hypnosis, popular among the crowd theorists of the nineteenth century (Gustave le Bon, Gabriel Tarde and others).[7] Schmitt's conception of the intensity of 'the political' has a similar quality. Can we deny that energy, power and enthusiasm possess their own kind of persuasiveness. While Hobbes sought to contain and limit this energy, Schmitt occasionally embraced its possibilities. In the democratic works, he appears tempted by the controlled chaos embodied in the acclamation of the crowd. Controlling the public through propaganda and mass-media influence (television, radio, etc) and by the presentation of specific questions appears to make possible an anti-

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[7] Christian Borch, *The Politics of Crowds: An Alternative History of Sociology* (Cambridge: Cambridge University Press, 2012), 158; Gustave Le Bon, *The Crowd: A Study of the Popular Mind* (T. Fisher Unwin, 1897), 187, 228; Gabriel Tarde, *The Laws of Imitation*, trans. Elsie Clews Parsons (New York: Henry Holt and Company, 1903), xxvi; Gabriel Tarde, *Gabriel Tarde On Communication and Social Influence*, ed. Terry N. Clark, Morris Janowitz, and Terry N. Clark (Chicago: University of Chicago Press, 2010), 94–7; Ernesto Laclau, *On Populist Reason* (London: Verso, 2005), chap. 2.

liberal democratic political form. However, in Nazi writings and again with the turn to the *katechon* in the works of the 1940s this possibility is surrendered and Schmitt returns to the antithesis between war and order. He insists that traditional authority is the only way to contain conflict. For both Hobbes and Schmitt the social and reputational aspects of power, its authoritativeness, are inseparable from its effectiveness. It possesses a capacity to manifest itself in the world like a force or energy, but must be consummated to be put to work.

While the monarchical, elitist or authoritarian political forms advocated by Hobbes and Schmitt are unacceptable today, their accounts remind us of the fragile and arbitrary nature of formal written constitutions. Whether determined by a truly representative body or an oligarchical one, our obligation to a past 'social contract' remains tenuous and depends on some other form of legitimation. In a democratic system, why ought we maintain a commitment to a particular formal system we had no part in drafting? Liberal theorists such as Mill and Guizot, relied on the presupposition that a constitution could actually embody the truth and justice championed by Enlightenment universalism. But today, even the universalism of human rights remains plagued by its basis in the particular political visions and customs associated with liberalism. Despite their elaborate structures of authority, both Hobbes and Schmitt ultimately rely on custom: ceremonial, educational, hierarchical or familial/economic. They return to Pascal's 'mystical' basis of authority in the justice or equity of accepted custom.[8] In the twenty-first century, a more rationalist politics remains elusive and traditional conceptions of authority continue to dominate politics. Attempts to address this by reconceiving universalism or embracing an almost Schmittian populism, remain largely theoretical.[9] By retracing the accounts given by Hobbes and Schmitt, I sought to reveal more clearly the obstacles such attempts must avoid.

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[8] Pascal, *Pensées*, 24.

[9] I refer here to attempts by Balibar and others to reconceptualise universalism and Mouffe and Laclau to modify an largely Schmittian vision of democratic politics. See Étienne Balibar, *On Universals: Constructing and Deconstructing Community* (New York: Fordham University Press, 2020); Laclau, *On Populist Reason*; Chantal Mouffe, *For a Left Populism* (London: Verso, 2018).

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