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THE PROPER WAY OR THE LAW, AND LOOKING AFTER COUNTRY

When the decision is taken by someone, or for and on behalf of someone, to depart from one world for another—continent, Country, psyche or life force—what happens to the reflective self? This is not so much a question of fixed identity but of states of being. Where do Settlers and Indigenous people come from? This is not a question of locality, culture, or ethnicity, but of the reflective self of both peoples in particular places in time. Australia Becoming, Australia Dreaming, is a narrative of the reflective self.

The beginning of human development laid out a path for/of becoming that comprised coherence, “a general feeling of confidence that one’s environment
is predictable”³, achieved only after great efforts of understanding Place, proportionality and predictability, which is

created through the sacralization of obligation and the putting of this obligation into practice via ceremonies, social structures, organizing principles, patterning (identity imprinting), laws, repetition of narratives. In its simplest form, this means actively looking after Land and the environment, especially with regard to its vitality and energy.⁴

Proportionality conveys an idea of measure, a calibration of judgement towards understanding both the physical and social environment. Measure although often thought of as only physical, can be thought of as an understanding of a person’s character, as in the statement ‘to take the measure of a person’.

Although not necessarily in linear sequence, coherence, proportionality and predictability helped to elucidate and refine the self’s or selves’ motive(s) for action and choice, and thereby helped to structure cohesive social practice. The organising principle that underpins the social structure also organises the means to achieve a particular desired end. A great deal of thoughtful consideration and effort goes into choosing the means to an end because tens of thousands of years of collective experience have shown that measured, well thought-out processes, along with good management of difference, lead to stability.

The distinction between the reflective or unreflective motive is a matter of degree; it is not a dichotomy, as the distinction does not rely on an ‘either/or’ division, or on the laws of excluded middle and non-contradiction. Nor is it a dualism, insofar as the two are not ontologically distinct. Rather, the reflective motive emerges from the ‘relational’, but this depends on how the relational has developed and been adapted over time for the individual, group, or community. The reflective motive is the first step toward understanding and relationality.

For the purposes of this paper, I assume in the first part that the self of both peoples (Indigenous peoples and settlers) is already the reflective self on the voyage to understanding difference. Settlers, following the path of becoming, travel the road ‘through a glass darkly’⁵ to arrive at the state of living and doing things in the ‘proper’ way (Aboriginal), of right action. This leads to the ‘well-being’ of the individual or collective or a similar Western counterpart; eudaimonia, as described by Aristotle, and translated as well-being, happiness or human flourishing, to which all actions should aim. In Western philosophy the proper way is considered ethics, whereas in Aboriginal society, as far as it is known, there
is no equivalent term for ethics, this is because proper action comes from the external order internalised through collective empirical observation over tens of thousands of years, rather than abstract individualist thinking. The term ethics will be employed, but with the understanding that Aboriginal ethics encompasses more than simply applying principles of right action in order to know how to act. Similarly, as we will see, the use of the term ethics goes beyond being ‘brought up in fine habits’, so as to be a good person who takes the right course of action in a particular situation.

A reflective self is a communal self: a self that understands how communal acts affect those around them, both human and non-human, over time rather than being limited to an immediate relation of cause and effect. Reflectivity, in this sense, leads to a Custodial Ethic that orders the socio-political spheres. The reflective self, then, is not an individual self. “There is no Aboriginal equivalent to the Cartesian notion of ‘I think therefore I am’ but, if there were, it would be—‘I am located therefore I am’.” The self is not a God given soul, nor explained in reductionist materialist terms. Similarly, reflection is not a narcissist reflection of a fixed self, but rather, a part of the development of human beings arising from Place.

For Aboriginal people, Land is the source of morality and meaning. Our notions regarding the world, human beings and knowledge serve to ground a moral philosophy centred on the relationship with Land and people or caring for country and caring for kin (this has become a general saying among Aboriginal People countrywide). Our relationship with Land defines the core interest and conscience of Aboriginal society. Strictly speaking, it is difficult to talk about ethics outside of Land and one’s mob (including ancestors) because it is these two fundamental elements that underpin notions of proper conduct, proper way or right conduct, much more than any question, such as, ‘How shall one live?’, which is the way a Western individualist rationality (such as we see in Socrates) approaches the sphere of ethics.

Traditional Aboriginal Law/Lore is an imposing multi-dimensional world where ethics, although very important, forms only one dimension. This paper will not address this topic except to say that Aboriginal Law does not directly deal with the actions of humans or the events which befall them, but with what makes it possible for people to act purposively, and experience ‘events’. The more complex aspect of Aboriginal Law is that which explains phenomena or as Westerners would call it metaphysics; how the world came into being, the patterning of people
into the Land and, above all, the maintenance of balance in the world, because
this is what keeps the whole of creation going. While the Law, in this broad sense,
is about an Aboriginal understanding of the fundamental nature of reality, both
physical and spiritual, including what constitutes order in both realms, the moral
philosophy of Aboriginal culture lays the foundations for the organising principle
that governs the social and political structure, decision-making and conflict
management systems that support the maintenance of balance. As a consequence,
an elaborate and sublime system has developed over an immense period of time.
Western positivism reduces complex ordering, away from the merits of morality,
creating a punitive order divorced from ethics.

A CRITIQUE OF WESTERN ETHICS

For the West, traditional ethics are standards of behaviour that guide how human
beings ought to act in any situation in which they may find themselves. Western
applied ethics prescribes how a person or people should live and behave, what they
should believe and how they should determine what the ‘good’ is. For philosophers
and theologians, authority is derived from a range of sources, for example, Plato’s
Realm of the Forms (according to which knowledge is beyond space and time,
unchanging), the Realm of the senses (changing or becoming), individual virtue
(Aristotle), reason, and, of course, religion with its God or gods. All of which are
abstract and divorced from the Land and relationships with it.

In the pre-Socratic days of philosophy, Parmenides (539-469 BCE) dreamt of
a visit to a goddess who described to him the nature of the universe: a nature
fundamentally fixed, finished and static. Around the same time, Heraclitus (540-
475 BCE) expounded his understanding of the universe as one of constant flux,
change and becoming. From humble beginnings great things grow, and the division
between the ideas of Heraclitus and Parmenides spread like wildfire throughout
the Western philosophical canon. Although the Greeks themselves disagreed about
the ontological opposites of Becoming (Heraclitus) and Being (Parmenides), they
may have started to appreciate some form of resolution between the two notions,
if they had known about the Dreaming and Aboriginal ideas concerning the Law.

In Aboriginal Ethics, one has to start, as with everything else, from the perspective
of the Land, and the relationship that Aboriginal societies have established and
maintained with the Land, which informs Aboriginal ways of caring for country.
The Land invented or created us with the help of Creator Ancestors of particular
localities across this country. Place becomes of vital importance at the moment
of becoming, when humans become more than their purely physical self, which is a survivalist self. Narcissus in Greek mythology recognises himself when he first gazes into the water and sees his own reflection, but as the story goes, he becomes so mesmerised by his reflection he becomes completely alone in the world, cut off from all relationalist connect, he becomes pure ego—the absence of reflectivity. Recognition of self is the first step towards reflectivity, but in order to become fully and completely human we must also recognise our spiritual identity. Reflectivity is the moment of seeking completion of the self beyond a purely physical self, concerned only with survival. It is a process of understanding not only the self, but the self in relation to earth and others. The process of becoming is facilitated by reflectivity which allows humans to become fully and completely physical and spiritual Beings via a myriad of ways. Once a human becomes fully and completely human, an obligation to care for that which creates us arises. An important part of this relationalist obligation is autonomous regard. Autonomous regard (AR) is a major aspect of human interaction. Every person has physicality and spirituality, personhood and agency and is therefore an autonomous being. To maintain and protect ones’ own autonomy we demonstrate regard (full respect) for each other or others. AR counters and/or disrupts the inclination towards survivalist tendencies—to see the other as a ‘means to an end’. AR, forms an important part of the relationalist ethos, as it provides stability and security in human relations. The Land then becomes a template for political, social and ethical ordering, which taken together becomes culture.

As a consequence, Aboriginal people see Land as a moral entity with both physical and spiritual attributes that manifest in a myriad of life forms. The great and venerable age of Aboriginal people also manifests itself in human beings patterning themselves into the Land via the Law. The result is that well-known phrase which is both a form of protest and a philosophical worldview: The Land is the law. This ethic, which grew out of the Land/Human relationship, can be thought of as a Custodial Ethic. This involves an obligation to look after the Land that nurtures us, the ancient reciprocal relationship with nature, an ethic of looking after, stewardship, caring for, rather than a survivalist ethos with its rivalry and competition over resources and structural conflicts enveloped in hierarchies of power.

This relationship with Land has led Aboriginal people to the formulation of proper behaviour and, subsequently, into ethical principles and values for engaging with one another. Examples include such behaviours as seeing the human spirit within, respecting the autonomy of the other, being non-judgmental, walking and talking
with the other as equals, being mindful of their safety, avoiding the shaming of others, and adoption of the reflective motive.

The reflective motive is a group process of meditating upon our collective actions and experiential learning; it is not a matter of individuals reflecting in a random way but of the collectivity reflecting on why and how we as a group act and experience events. This process is encouraged, via acts of sharing and communal living, in as natural a way as possible i.e., not solely as an intellectual exercise. The result is that the process becomes habitual and, at the same time, non-egocentric.13

Together, these behaviours embody the positive approach of Aboriginal partnership and relations.

Ethics, therefore, becomes habituated, not idealised as it is for many other cultures. “From an Aboriginal perspective, spirit or the sacred has been reified by Westerners as ‘money’: Western behaviour, as we have observed it over the last two hundred years, is consistent with that of a community for whom money is sacred”.14 For Westerners, ownership (which emerged from within the unreflective motive—a shallow reasoning guiding paths chosen or behaviour displayed, found in the cult of individualism) is what makes modern Western economic activity possible and money valuable. It is also what makes inquiry possible; science and technology are seen as valuable because of the exploratory impulse, the urge to discovery and victory, and the accelerated trajectory towards goal seeking, which together, gradually diminish the importance of ethical considerations regarding actions and intent. There is an acknowledgement that moral/deontic principles are important but, more often than not, not so important that they prevent achieving the preferred End(s); this is especially so, in the case of Utilitarian ethics. As Richard Routley puts it, “utilitarianism, and consequentialist approaches more generally, have made it seem as if no deontic principle were firm, but all are provisional. This is entirely mistaken.”15 Therefore, ethics, in the context of Western cultural praxis, remains simply an ideal to strive towards, to discuss and to be occasionally concerned with. Given this, double standards (in both national and international contexts) have become the norm throughout the Western world.
EUDAIMONIA WITH ABORIGINAL CHARACTERISTICS

Aboriginal culture itself is highly ethical, insofar as it relies on an ethic of looking after, of stewardship, firstly towards the Land and then throughout society, giving rise to a unique civilisational culture, which has its own logic, philosophy, values and notions of social development. A summarised view of Aboriginal ethics encompasses not only appropriate social conduct, social and political structure of society, all knowledge (sacred and otherwise), spiritual obligations, but also includes systems of logic, time and space. Following is a list (by no means exhaustive) of collective values or Terms of Reference:

- The Obligation and Custodial Ethic—looking after country, looking after kin;
- Primacy of family—especially children and young people;
- Encourage the maintenance of harmonious relations and positive conflict management with Autonomous Regard;
- Careful management of ego to encourage non-egotism, i.e. no ‘big noting’;
- Knowledgeable people, including Elders, represent the Authority of the collective, and Power is diffused among the people, i.e. power and authority are not conflated together as in many other cultures;
- Maintaining organisational principles such as non-hierarchical structures with Men and Women in balance;
- Formal gender balance, recognition and respect—Men’s Business/Law and Women’s Business/Law;
- Being supportive of and upholding positive group dynamics and attending consensus decision making;
- Viewing and encouraging cultural knowledge and principles, such as Land, as moral entity and foundation of Aboriginal spiritual integrity;
- Accepting the primacy of Place, identity and autonomy as an organising principle;
- Aboriginal society is a civilisational culture (not civilisational state), i.e. a socially and politically ordered system with a self-regulated ecological, sacralised, stewardship Law of Obligations.

These terms/qualities underpin Aboriginal social praxis and form the ontological and epistemological basis of existence. In this sense, Aboriginal Law/Aboriginal civilisation could be said to be both an action guide to living and a guide to understanding reality itself, especially in relation to Land as the basis for all
meaning. This results in a highly complex but ordered, elegant understanding of existence, far removed from the chaotic and dangerous world of the short-term survivalist ethos.

LOOKING AFTER KIN—PEOPLE

By having Land-based principles, Aboriginal people avoid performative, hubristic moralising. This was achieved through reciprocal behaviour, protocols and attitudes imbedded in social praxis, with the result that the inclination to selfish, performative, or hubristic behaviour was strongly tempered by more thoughtful and considered conduct; so much so that ethical behaviour becomes simply a part of everyday actions without this behaviour being explicitly labelled as ethical.

Humans are not seen as being intrinsically either good or bad, and perfectibility in life is not the aim. Neither is salvation in the afterlife. The Aboriginal view of human nature or of being human is that ethics and proper behaviour are like any other skill to be learned. As with the basic skills of walking and talking, one is socialised into both seeing and experiencing the Land as a sacred entity, and into forming the accompanying reciprocal relationship with Land. This involves a physical, active, emotional and spiritual caring for and about the life force in all its variations (e.g., flora, fauna, insects, Landscape and the elements), all of which are accompanied by their own stories. Maintaining reciprocal relations with others is learned at the same time so that society becomes, in a natural way, a non-ego based civilisational culture. A civilisation culture contrasts with a civilisation state which is the system of governance of many other cultures including the West. The savage/civilised narrative as a vehicle for colonisation has historically been one of dehumanisation and continues to play its role in othering those deemed savage or close to nature. A reimagining of the term civilisation is needed. ‘Civilisation’ hence in this paper means a stage in social development marked by coherence, proportionality, and stability. ‘Civilisational’ means tending to produce or lead to such a stage of civilisation now reimagined. According to this definition, the West has a significant way to go.

The effect of the management of the ego, combined with the ethical obligations of learning and developing skills, is to inculcate a sense of communal, rather than individual identity, and, most importantly, to encourage reflective engagement in all activities. Such a reflective effort, which in Western culture culminates in science, results in Aboriginal culture having a deep understanding of human nature, action and intent. In changing circumstances and conditions, such a reflective
effort also results in what the potential, spirit, disposition and character of that human nature could be.

Ethics from this view is far more than conscience, and more than a cognitive activity that emphasises and evaluates the different aspects of a person’s position or actions, and more than the generalised obligations people have in any situation. When faced with a new situation, context, perspective, or problem, instead of proceeding in the manner of a purely physical individual, i.e. concerning myself with only what I need (the unreflective motive), the Aboriginal reflective motive is closer to: How should I proceed with what is needed or what needs to be done in relation to the Custodial Ethic?

This approach encompasses four basic assumptions:

1. We are not alone in the world: even if other humans are absent, there may be other sentient beings present and these have meaning for Aboriginal people. Aboriginal people are not discrete entities living in a hostile environment, neither are they conscious isolates searching for meaning.

2. The babe in arms requires more than simply its physical needs; it requires in addition tenderness, affection and speech—in short, it requires a relational world.

3. For Aboriginal people, standards of behaviour are preceded and shaped by the deep reflective motive, which is akin to long-term strategic thinking, that in turn leads one to stewardship thinking which guides and influences people not only to act positively but to do so willingly. This is preferred to short-term tactical thinking that can lead to instability and disregard for others.

4. Rejection of the survivalist ethos: a form of self-orientation where the self is placed at a distance from others because all environments—natural, human, and social—are seen as potentially hostile, with the consequence that the self has to arm itself psychically and physically to keep ‘safe’. Social and technological developments ensue, and then praxis follows, which includes the normalisation of competitiveness.

In Aboriginal culture, the survivalist ethos has been countered by the deep reflective motive, which comes from the sharing of resources, fulfilling one’s social obligations, the maintenance of good relations and diplomatic traditions.
The first outcome of this reflection—the importance of reciprocity—arises from relating to Land/Nature. This is the great life force that we can touch and feel, but which also looks after all our physical, emotional and spiritual needs. From this, the following understandings emerge:

- that reciprocity is a vital, creative element in all relationships including those between humans;
- that such an approach is both sustainable and moral and creates a moral environment in which to live;
- that significant meaning and power resides in the notion of Place through the continual enactment of protocols, ritual and ceremony;
- that such a respectful relationship with both Land and Place becomes the template for human relationship and social structure; and finally
- that a non-ego based social and political system is one that encourages people to respect each other's autonomy, helps people realise their full potential, while at the same time looking after Land and Place.

Traditional Western approaches to science and anthropology assume many Indigenous peoples can be summed up in statements such as: ‘Aboriginal peoples are primitive hunter-gatherer societies struggling to survive in a harsh, cruel world’. Such statements, however, say more about the people who hold such a view, one that is firmly based on the values of the survivalist ethos. The result of this ethos is a society where human relations are operating in a permanent state of uncertainty and anxiety, and where the environment is to be conquered or brought under control for reasons of security. But this view of security results in the opposite, as security is obtained through the creation and maintenance of a stable society, not through control.

The great understanding that comes from a non-survivalist, non-ego based Aboriginal society is the understanding that an individual's needs do not take precedence over the needs of others. This is not to say that the group is more important than the individual, nor is it a competition for resources between the group/others and the individual, but rather that the group is the facilitator of Being via Land; Being comes from and is shared by and with others (including the spirit of others), which first comes from the Land.

LOOKING AFTER KIN—LOOKING AFTER OTHERS
Aboriginal Australia is a unique civilisational culture which has its own logic, philosophy, values and notions of social development that have been in existence for many tens of thousands of years. Aboriginal peoples take the view that you cannot force individuals to be ethical beings, but by taking others’ security into account, you are engaged in looking after your own, this creates a self-regulating social system based on doing. Practiced self-regulation is based on social responsibility, not on an isolated individual’s obedience, belief, faith, or fear of a higher power. The perspective of collective responsibility and obligation to look after Land, family and community is vital in transcending any inclination to gain advantage at the expense of others.

This relationalist practice became concentrated through the intrinsic meaning of Place, that is, a particular locality (or localities) of Land within a particular region. Here ‘Land’ includes the Landscape and all living things within it, humans, spirits, animals, air, sea, rivers, moon, stars, birds, insects, the wind, language, dreams, etc. Place, then, comes to occupy the core interest, conscience and spirit of Aboriginal Culture. Collective values become the template for looking after the whole of Aboriginal society; in fact, they become part of the organising principle of Aboriginal society.

According to Aboriginal principles, each Place or Region is autonomous. No one group dominates another; there is no hierarchy of Places or Regions or of the people within the localities. It is a system of balance between the Regions, with no centralising power to enforce decisions or agreements—nothing akin to police or armies. In terms of respecting values, the aim of this organising principle is to respect and protect the integrity of Regional, Clan/group and individual values and obligations. Aboriginal people have a holistic tradition that could be referred to as a Custodial Ethic in contrast to the individualistic one that dominates much of the European West. The holistic tradition of Aboriginal peoples arguably produces better results in promoting the wellbeing, security and safety of society.

Consensus decision-making is practised throughout Aboriginal culture, it is an attempt to maintain respectful relations. Aboriginal peoples have found that consensus decision making avoids the ideologising of conflict, domination, and coercive agreement making. This means no individual can prevail if he or she deviates too much from the group consensus. Indeed, ‘leader’ is an inappropriate term because, historically, the social and political structure in place in Aboriginal societies is not hierarchical but lateral, where men and women have their own social, political, spiritual and psychological place. Elders constitute a soft hierarchy.
wherein they are an authority, but they do not rule in the manner of monarchies or other Western leaders. There is no command obedience system.

There is a difference between Aboriginal ways and Western ways of organising social systems. The organising principle that underpins Aboriginal social systems includes a different approach to achieving an outcome, i.e. the means to achieve a particular desired end. The collective experience of tens of thousands of years of Aboriginal existence and understanding of Place goes into choosing the means to an end. Such wealth of experience has shown that proportional, well thought-out responses and processes, along with proper management of difference, leads to social and environmental stability. Looking at the Aboriginal relationship with Land combined with the way Aboriginal society is organised, one can identify a sound ethical strategy and how it works towards the long-term aim of stability in social praxis in relation to environmental regard and safeguards.

Instead of the short-term tactical approach of competitiveness, warring over resources and territorial power and control, Aboriginal people essentially take the long view of looking after the interests of the young and future generations, rather than the short-term end of seeking advantage for the few at the expense of the many. The aim is always to achieve stability, efficiency and harmony rather than advantage over others. This is accomplished through the combination of two Principles:

1. the ethical principle of maintaining a respectful, nurturing relationship with Land, Place and community, and
2. the organising governance principle based on autonomy and identity of Place.

Both principles together form the Custodial Ethic. If the first principle stands alone, hard as it is to make such assumptions, the outcome might be a kind of nature worshipping religion with competitive elements. The second principle on its own, despite its non-judgmental quality, could nonetheless lead to a multi-polar world of suspicion and rivalry. Either of the two principles on their own would not lead to a non-ego-based society; it is in combining and melding together the two principles that the Custodial Ethic emerges. Each is a counter to the other, so that together they hold each other in balance.

The meaning of the narrative underlying the first principle is that *we are not alone*
In the world. Land created humans; whether we understand this in maternal terms or not, it looks after us, and we are obliged to look after it. From this, spiritual significance and meaning arises, and more obligations develop with particularised responsibilities according to locality. In addition to this, the deepening of feeling coalesces with practices of stewardship, and ethics starts to grow in a natural, organic way. The meaning of the narrative underlying the second principle is that the hierarchical is not the only natural structure of all living organisms. The lateral is more akin to the collaborative, cooperative building of authentic relationships, and not simply within the narrow confines of something like the “prisoners’ dilemma” argument.17

The Aboriginal approach to sustainable social and political structure is that a stable world must be in place for young people and future generations; that while the natural environment may have times of uncertainty (earthquakes, ice ages, etc.), the human environment must not be allowed to become fraught and uncertain it must retain its stability throughout the changing natural conditions. If people feel that their government holds their best interests in the sense of security and safety policies and practices, then confidence is retained. People need to maintain confidence in their system. Compare this view to the actual current situation in some communities where the administrative systems in place are generally not controlled by Aboriginal terms of reference, and the chosen or imposed solutions to social problems are nearly always non-Aboriginal and thus unstable and unsustainable.

ABORIGINAL APPROACHES TO PEACE AND CONFLICT: STRATEGIES AND TACTICS

Tactics, by definition, are short-term in scope; the term is used by the military to describe the art or science of organising and manoeuvring troops to achieve an immediate aim. The term ‘strategy’, on the other hand, when used in a military context, describes the science of war on a larger scale. Strategies are what are put into place to win an entire war. In a non-military context, strategies are plans of action or conduct used to achieve a long-term goal. Evolutionarily speaking, strategies are adaptations that advance viability.

Aboriginal people are more strategists than tacticians. This explains why we tend not to embrace ideologies, and this is why the Aboriginal Provisional Government (APG) did not go very far.18 It is also why Aboriginal people did not, in the formal sense, have a religion as such. There was no need for any one entity/personage, physical or spiritual, to tell or lead individuals or collectives to believe, act or
proceed in a particular way. No-one was searching for a spiritual truth; it was already present all around, immanent.

The best and most brilliant all-round strategy Aboriginal people have is the old saying *look after country—look after kin*: the Custodial Ethic. Following the structural form and the behaviour engendered by the Custodial Ethic, led Aboriginal people to not see others as ‘the other’; that is, the essential humanity of others was never hidden from view. We see their humanity clearly and easily, but they (non-Aboriginal people) sadly do not easily see ours.

Ethics should be seen as a normal part of human development not as an individual choice to adopt a self-developing, maturing process. The importance of embedding ethics in all walks of life is revealed through an understanding of relationality. Western schools and universities teach separation and categorisation of knowledge, delivered in the form of subjects; discrete learning areas. But all knowledge has practical applications and when knowledge is divorced from ethics, as it so often is, the results are often devastating, as Jared Field attests: “Our universities fail stupendously when they don’t teach ethical and moral responsibility”. Field is a Gomeroi man and a McKenzie Fellow at the University of Melbourne, who has the following to say about the current state of university education:

> I can already hear my colleagues in the science faculty moaning at my suggestion of their inadequacies: “We give students tools, what they do with it is up to them!”, “I teach chemistry; why should I care about Indigenous culture?” or even, “I’m a mathematician, why should I discuss ethics with my students?”

Learning, doing and ethics are not discrete areas. The developing ethical self is a calibrated being with an autonomous regard identity; he or she *grows into*, across time, a fully rounded human being—not just an anatomically correct, reflective and identifiable human being. The process has nothing to do with pursuing virtue, perfecting goodness or seeking approval. In this regard, calibrating is a proportionality exercise towards the singularity, i.e. the Land is the source of the Law.

We still adhere to our own logic, i.e. other people’s perspectives are as valid as our own even though we are obliged to defend our own side/party in a contested issue. People try very hard not to make other disputants lose face or be humiliated, even
though we have to make decisions, argue cases, settle disputes, make agreements etc., and a lot of effort is put into mediation or trying to get along. Aboriginal logic is unique in that it helps us (collectively) to suspend judgement; this is not to say that people cannot be opinionated, adamant or highly and loudly critical. But we tend not to make ideological arguments that force people into holding fixed positions, thus, making conflict worse.

The over-riding raison d'être for the development of this system is to ensure a stable, efficient environment for the safety, acquisition and receiving of knowledge, and transformative dynamic of growth for everyone, but especially for young people and future generations. Further, this rationale posits that this can be done without resorting to the short-term tactics of advantage over others, like opportunism, dishonourable conduct, selfish ambition, possessiveness. Instead, the development of empathy is a part of the process of socialisation as is the development of compassion, understanding, sympathy, mercy, the elation of giving and sharing, and other characteristics of empathetic relationship building. These are all qualities in which Aboriginal people have great skill and understanding.

Feeling and emotional knowing bring with them motivation in the form of being moved by the other's situation, not simply being aware of that situation. Being able to conceive of other moral contexts and being able to understand more deeply the other people involved are major achievements in moral development. This is where the term ‘poor-fella’ comes from; it means humans are not intrinsically good or bad, but, rather, they are vulnerable beings tossed this way and that by fate.

Although Justice Blackburn, in a Northern Territory Land Rights case, was describing Aboriginal Law in the following statement, he could have been describing Aboriginal civilisation in general:

A subtle and elaborate system highly adapted to the country in which the people lead their lives, which provided a stable order of society and were remarkably free from the vagaries of personal whim or influence. If ever a system could be called ‘a government of laws and not of men’, it is that shown in the evidence before me.²¹

To put things in a Greek way of thinking, we might say that Aboriginal people have the integrity and endurance of the Stoics but with a sense of humour.
EQUILIBRIUM OR BALANCE

The Aboriginal logic supporting the ethics we have referred to demonstrates two important points. The first is the tendency of the group (Clans/Nations) to locate and accept one another’s distinctiveness or singularity; not synthesise, not unify, not even necessarily agree on matters, but to accept that each identity belongs wholly to itself. The second is the continuous adherence to balanced social and political systems that enhance this distinctiveness.

A shallow reading of this system is to suggest it is simply ‘tribalism’, but in the Aboriginal context it is far more complex. These balanced relations between groups continue to be strengthened by protocols, diplomatic traditions, kinship arrangements, and simply by constant acknowledgement of such by Aboriginal people across the country. Despite the coming of colonialism with its state violence, resulting in social dislocation and lack of formal respect for and recognition of Aboriginal people, Aboriginal people still do not theorise conflict with the state. And despite the imposition of rigidly hierarchical government and governance systems of control of Aboriginal people—families, identities, movements, and even the few non-aggressive political attempts at an independent life—Aboriginal people continue to plan and work willingly with the Australian mainstream. Take the following example which references the 2012 Northern Territory Supreme Court case of *R v Yakayaka and Djambuy* whereby, a Yolngu couple were convicted but their sentence was suspended and supervised by the Aboriginal community:

This is the first time in a long time that BaLanda (European) and Yolngu laws have worked together like this. The lesson is in finding a common path to achieve a commonly desired outcome—increased community safety by making the law more relevant and meaningful for Yolngu. *Yolngu are not asking for a separate system. This is about creating a dialogue between the two systems.*

Walking together, working together, talking with each other; Aboriginal people use these phrases quite often, implying a disposition and readiness for equal status in any activity (which is rarely recognised), although it would not be quite correct to say the term ‘equality’ which has Western political connotations. ‘Balance’ is arguably a more accurate term as it contains qualities such as equilibrium and congruence.

This ongoing traditionally balanced approach to imposed and internal conflict
and conflict management) extends to decision-making (not democratic but consensual), social order (lateral not hierarchical), gender relations (separate but equal/balanced), and protocols (permanent standing procedures for facilitating peaceful relations).

PROPER WAYS AND CULTURE NOW

The discussion to this point is an attempt to describe how Aboriginal people have developed the kind of ethics we have. In addition, it demonstrates that our ethical system is sustainable and rational. The challenge we have is to answer the following question: how should Aboriginal people ensure that we continue with this system in the kind of world we now inhabit?

As Gayatri Chakravorty Spivak explains it, “Ethics are not just a problem of knowledge but a call to a relationship”. But what kind of relationship would this be? The strong will to power that brings about forced unifications also normalises, commodifies and even romanticises the modernising process, regardless of how much chaos it brings to those undergoing change. If part of the process of change involves the gradual building of our own institutions, being the creators and writers of our own future narrative—including social and political aspirations, policies, plans, community and economic development—then all the more reason to strengthen the ethical basis of our decision making governance systems, social relations, cultural activities and the careful awareness of being good character examples for our young people.

Perhaps, then, there should be a discussion or conversation about the overall direction we want to follow or should follow in the future. Should we aim for Aboriginal Affairs being run and controlled entirely by Aboriginal people? Or should it continue to be a shared responsibility between Aboriginal peoples and non-Aboriginal governments, keeping in mind that governments are not ethical entities and do not have friends or relationships, but only interests? And, more importantly, what kind of path do we choose so as to achieve positive change? That is, what values will we adhere to?

Aboriginal ethics are integral to Aboriginal social values, order, meaning and praxis. As such, they are an intrinsic part of our cultural heritage, and, therefore, as valuable as any other cultural action, expression and knowledge. Whatever the path chosen, it is to be hoped that our ethics remain a crucial part of the life we live, the work we do, the plans we make and the hopes we have.
GLOSSARY

Calibration: Measuring, weighing and aligning—seeking proportionality, like the calibrating mechanism of a weapon. Examining how long language will take to change, e.g. will the terms Settlers and Indigenous people always be with us? Estimating.

Consensus: The relational ethos is the willing agreement among equals, constructed through dialogic consensus. It is not parliamentary democracy or wringing concessions out of another as in wage negotiations. It is actually the state of ‘feeling together’ or a ‘common feeling’. The Settler/Western political process is adversarial—elections are fought, issues are debated, and goals are won. Aboriginal style consensus is actually peace cultivation—a process where participants are being treated equitably is a peace process. Settlers and Indigenous people alike share a repertoire of feelings and emotional states, which are a natural kind of equality, and that means that skilled people on both sides can manage the consensus process.

Land: Land with the small ‘l’ is the raw material, the soil, dust, plants that grow out of it. Land with a capital ‘L’ is country, it is someone’s responsibility and obligation.

Law: “Many of our First Nations legal systems are embodied in stories and songs. Our ancient laws were not written down; knowledge of law came through living, singing and storytelling. Law is lived, sung, danced, painted, eaten and in the walking of ruwe. Law inheres in all things and is alive in all things, but these days it is an ongoing struggle to keep many things alive in the face of the attempts to bury our law ways as a part of the ongoing colonial project.”

Lore: Creative narrative, dreaming story.

Obligation: Obligations here is meant not the in legal sense, but in a more relationalist way encompassing not just humans and other than humans but all things in a complex contextual way that extends across time, culture and geography.

Proper: The proper way is the lawful way. It is a concept that is both practice and principled. “I would argue that for ‘proper’ dialogue to begin, we need to begin again, from the time Cook set foot upon our shores. Cook needs to walk back in time, holding the flag in his hand, row back to his ship, and wait there, wait there for the old people to sing him a welcoming to ruwe. Then he needs to sit down
and wait for the smoking and the cleansing of his spirit. Then the teaching could begin. Cook could learn the protocols for him to observe in his coming to our ruwe. He could learn that there was already law, and that it was in songs and the Land. For him to come into that place, he would have to learn the ‘proper’ way to come to ruwe.”

Vitality: The vital life force that enacts/triggers self-realisation.

MARY GRAHAM is Adjunct Associate Professor at University of Queensland.
NOTES

1. Aboriginal People refer to Country and Land with capital letters as they are terms that denote the sacralising of country. This negates the need to correct the term, it is a redefining of the term to give back spiritual meaning to the Land.

2. As Bozalek and Zemblyas explain, reflectivity is commonly taken to mean, “a metaphor to express an inner mental activity” (Bozalek, V. & Zembylas, M., 2017, “Diffraction or reflection? Sketching the Contours of Two Methodologies in Educational Research, International Journal of Qualitative Studies in Education, 30:2, 111-127, 112), however, it is not used in this sense here, and therefore, escapes the Posthumanism troubling. Posthuman means post-liberal human (or, more generally, beyond/after humanism that affirms human agency and freedom or traditional notions of ‘human’ and ‘human nature’), but Aboriginal philosophy is pre-liberal human, which has led some Indigenous scholars, such as Zoe Todd, to criticise those “writing and thinking about the climate, ontologies, our shared engagements with the world without being aware of competing or similar discourses happening outside of the rock-star arenas of Euro-Western thought” (Todd, Zoe, 2016, “An Indigenous Feminist’s Take On The Ontological Turn: ‘Ontology’ Is Just Another Word For Colonialism”, Journal of Historical Sociology, issue 29, no. 1, 4-22, 5).


5. The phrase appears in both Plato and later the Bible.

6. See glossary for definition.


9. See glossary for definition.

10. Graham, Mary, 1999, “Some Thoughts about the Philosophical Underpinnings of Aboriginal Worldviews”, Worldviews: Global religions, culture, and ecology, 3:2, 105-118. Aboriginal Law is not reductionist it is not concerned with punitive judgement but rather with seeking to understand the why of action in a way that is closer to cognitive science or applied psychology than it is to Western legal systems. Such a calibration of Law allows for human behaviours such as ‘disturbing the peace’ that are outlawed in the West. A different view of peace follows also. For further differences between Western and Aboriginal Law see also: Watson, Irene, 2015, First Nations Peoples, Colonialism and International Law: Raw Law, Routledge, New York.

11. Akin to ethics, ‘spirit’ is a complex term that goes beyond any Western religious notions of the concept and would be a paper in itself.

16. The ego is seen like a potentially volatile substance to be treated with something like a combination of caring stewardship, referee-like supervision and watchful guardianship.
17. Axelrod, Robert, 2006, The Evolution of Cooperation (Revised ed.), Perseus Books Group, New York. In the original formulation of the prisoner’s dilemma, two prisoners are questioned separately over their alleged involvement in a bank robbery. The prosecutor, anxious to convict at least one of them, offers each of them the following deal (both are aware that the other is being offered the same deal). If both prisoners refuse to confess, then both will receive a two-year sentence. If one confesses (making it easier for the prosecutor to convict the accomplice) and the other remains silent, then the prisoner who confesses walks away free whilst the accomplice gets five years in jail. If both confess, both receive sentences of four years.
18. The APG was a political movement in the 1990’s that fought for the rights of Aboriginal peoples.
20. Field, 2020, Rio Tinto...
What are the tasks of political philosophy? You do not formulate such a question on your own initiative. You are asked to respond to it. You would not even contemplate it otherwise. This was the case for me when I was invited by the convenors of the *Collège de Philosophie* to take part in a conference reviewing the current philosophical landscape. I gladly accepted this request because it forced me to leave the path which is familiar to me and to situate myself in what constitutes a complex territory. From this exercise, even if the picture I propose is to be rejected, we shall at least, benefit from having an overall map by which to find our bearings. The usefulness of such a tool is self-evident and the number of
arguments I am presenting remains limited.

To conform with the customary requirements of this exercise, I will endeavour to offer an impartial and comprehensive view of what is being done in the field of political philosophy. I will, at the same time, put forward my personal opinion on what remains to be done. I will argue in favour of a particular task, a task that political philosophy, to my mind, must engage as a consequence of the historical situation in which we currently find ourselves. I will situate this task in the context of those other tasks that political philosophy legitimately pursues.

Why political philosophy? We have to acknowledge that this discipline possesses a contemporary relevance that seems to have gradually developed over the last two or three decades. What is the significance of this relevance? Politics is a constant feature of the human condition. Thus, ever since philosophy came into being, political philosophy has also existed. At the very least, there has been discourse by philosophers on politics. In this respect, one must say, political philosophy is a step removed from current events. This, however, does not prevent it, at times, from occupying a more prominent place than usual, when it acquires a sense of urgency and centrality, when it resonates with collective interrogations. There is good reason to think that, indeed, these are the times in which we are now living.

Let us straight away dismiss the simplistic cliché proposing that this revival of political philosophy is nothing but a fad. The duration and diffuse character of the phenomenon, combined with its somewhat general appeal in the wider public, are sufficient proof that we must do away with this specious notion. The truth is more interesting: we are now facing a wide-ranging intellectual shift, one that needs to be related back to the developments that have taken place in our societies since the economic crisis of the 1970s. This shift is directly related to the social transformations and the ideological metamorphosis that have been observable ever since. Three elements appear to stand out.

Firstly, there is a striking link between the contemporary relevance of political
philosophy and the demise of the revolutionary idea, the questioning of Marxism and the political breakthrough of anti-totalitarianism. I cannot imagine this idea being challenged by anyone. The deep consequences of this ideological swing need to be taken into account. It forces us all to consider the problem that emerged with totalitarian regimes: Marxism cannot account for what was done in its name. How can one account for the political form created under the auspices of dialectical materialism but with the interesting characteristic of contradicting its premises? At the same time, how can one understand democracy as a political phenomenon if it is not reducible to the capitalist economy and the power relations of bourgeois society? These questions are well-known, but rarely discussed in any sustained fashion, and this is why I take the liberty of reviving them. If we are to free ourselves, permanently and completely, from Marxism, what can we put in its place? The current configuration of political philosophy was first shaped by this uncertainty.

Secondly, it must be noted that the current, particular relevance of political philosophy goes hand in hand with a striking aspect of the transformation experienced by our societies over the past three decades, which is the rise of the law:

- an ideological rise— one need only think of human rights;
- a practical rise— juridical regulation having been given an increasingly expanded role;
- a political rise— that is not limited to the influence gained by constitutional courts, but concerns, more broadly, the place allocated to juridical control and arbitration as opposed to the political process.

This rise of the law is linked sociologically to the assertion of the individual.

Finally, from an intellectual standpoint, the contemporary relevance of political philosophy, owes much to the crisis of the social sciences, the crisis of the very notion of society, of this notion's explanatory powers and capacity to guide public action. This crisis has resulted in a resurgence of the normative perspective, which the objectivism of the social sciences had invalidated up to this point.
We are witnessing the rebirth of the moral viewpoint as the perspective through which prescriptive legitimacy is apprehended. We are returning to the question of knowing how things should be in reason and in law.

**HISTORY, LAW AND THE POLITICAL**

I will in fact speak of three things: history, law and the political in the strict meaning of the term; in more explicit and developed terms, I will talk of the history of political philosophy, of its links with history in its simple sense, then of the philosophy of political law, and finally, of the application of philosophy to political phenomena.

In the first instance, I will examine the conditions in which the history of political thought—which, in any case, is already being formulated because of the momentum inherent to the academic system—could acquire its particular significance or is true scope, and on the basis of which types of questions.

Secondly, I will attempt to understand the significance of the central phenomenon of recent times, the rebirth of political law, since the theory of political law constitutes the biggest part of what one calls political philosophy. Why has the problem of the foundation in law of the political order now come back to the forefront? What does it mean? What contributions does this foundational approach make? What can we expect from it? What are its limitations?

Thirdly, and lastly, I will argue for a philosophy of the political, by far the least represented branch in what is currently produced in the field. While it constitutes a minor strand, in my view, from a civic perspective this is the one that is of most use; and from a philosophical perspective the most fertile.

**the genealogy of modernity**

I cannot but start by noting that these three entry points correspond to what we can straight away identify as the three major innovations characterising modernity in the political domain. It is possible and indeed convenient to connect these
three innovations back to three names—Machiavelli, Hobbes and Hegel. These are the names of three pioneers and, consequently, they possess a symbolic value.

Modernity began with the emergence, in the 16th century, of a realistic approach to all things political; it became manifest in the emergence of a new perspective on the reality of politics, reflecting a new political reality. Modernity then passed through the introduction, in the 17th century, of a new approach towards the foundation of the political order in law, based on a conception of law that was itself essentially renewed. Finally, modernity represented the emergence, at the beginning of the 19th century, of a historical point of view that modified entirely the status and the perception of the political. Doubly so: first, it turned the political into a problem to be resolved within history and through history; and second, it subjected the political to a radical review, in the name of the illusion it presumably constituted.

I present this overview to make my first point less banal, to remove from it, as much as I can, anything that is too predictable and could be seen as announcing a sterile, conventional discussion. We cannot avoid it totally, however: the first task of political philosophy is to formulate its own history. This is obvious, I am bound to be told. We know it too well, especially in the French university tradition, which tends to merge philosophy with the history of philosophy, a tradition which has recently embraced political philosophy but only to turn it straightaway into a kind of museum artefact, hastily reducing the discipline to being the study of authors and works—and what’s worse, of a corpus of authors and works deemed legitimate, according to very questionable criteria.

To evade this fated trend, it is useful to remember the reasons why we are interested in this history, the controversial questions it raises and the challenges that are involved. Incidentally, the task is perhaps easier on this historical ground than on any other. The history of political thought is relatively less likely to lose its raison d’être than the history of philosophy in general. Undoubtedly, it is more difficult to forget why we construct this history of political thought and what we need from it; this task seems less exposed to the risk of becoming ossified, of
becoming a routine activity constituting its own objective.

That said, to lament this aberrant degeneration of philosophy stifling living thought under the weight of antiquarian memory is not enough. The powerful reasons that command it need to be understood. This degeneration is the negative side of what makes our intellectual situation distinctly different from that of our predecessors. We are now able to gain access to ourselves, to our identity and to the truth of our condition only through the past from which we emerge and which we are leaving behind. This is an unprecedented situation—one which we are far from understanding adequately and one which never ceases to fool us. I will use an example that is suitable for our topic, an example that is to be found in one of today’s most influential intellectual trends—that inspired by Leo Strauss. The representatives of this trend urge us to liberate ourselves from the modern illusion of history, to rediscover the political truth of human nature, whose secret the Ancients presumably uncovered. In a remarkable contradiction, they, nevertheless, spend all their time explaining to us in great detail the paths by which this exile from nature occurred in history. They denounce history and yet they do nothing but speak of it. No matter what they say, they are, in spite of themselves, well and truly modern. Now, it seems to me better to be modern knowing that this is what we are and trying to be so coherently. We must learn to be consciously responsible for this new environment in which our thinking is forcibly situated, one which distinguishes us from our predecessors.

We did not sufficiently reflect on the imperatives and pitfalls of this mental environment and as a result we now have to endure its pathological expressions. For want of an accurate assessment of the resources it offers and the difficulties it creates, we are constantly shifting between hyperamnesia and reactive amnesia. On the one hand, we are in the grips of a past whose weight stifles the present. On the other, as this weight becomes greater, even as museums, libraries, and archives keep growing, we are increasingly tempted to live without them, as if they did not exist. We have never been so obsessed with the past; we have never before been to this extent capable of living in the present, as if we did not have a
past. If, in some places, the past threatens to push out the present, in others, In spite of themselves, we face the threat of living in a present without a past. The two perils work together as a system.

When it comes to the history of political philosophy, we potentially have a greater chance of escaping this double peril than in other disciplinary contexts. Here, in reaction to the obsession with the past, the concern for the present can be argued more strongly and easily. Here, in reaction to the closure within the present, the genealogical dimension is more tangible than in other context; the essential quest for an understanding of our beginnings steers us towards a reflection on the past.

We live in regimes that distinctively lay claim to a legitimacy that is neither traditional, natural, nor transcendent. Neither the ancestors, nor the cosmic order of things, nor the gods dictate our laws. For two centuries, no more, a very short period of time if measured against the five millennia documented in writings (to consider only these), our regimes have been characterised by a twofold peculiarity: that of having their configurations set in written constitutions, but above all that of professing principles of law; and that of resting on juridical norms that make of the human will the driving force behind the political bond.

A historical situation that has this additional originality of referring back to a genesis defined by books, a situation which, let us say in passing, is very different from that of the Ancients. Political thought anticipated on actual history. It prepared the revolution in the definition of legitimacy. Over a century and a half, from Grotius to Rousseau, we saw a problematic unfold which emerged from books and ended up becoming actual history, a problematic to do with the rights of individuals and the just political order that must come out of these subjective rights. Since the time of the revolutions of the rights of man that took place at the end of the 18th century, the reorganisation of the political community through new legal foundations (on which theorists had previously reflected) has become part of the very customs of our societies. It took two centuries for this process of incarnation to be completed, but we achieved it. This constitutes the distinctive
mark of our present.

From this situation emerges naturally a three-pronged program of reflection:

1. How were these approaches and foundational thoughts born, with their potential for a radical break? On the face of it, it seems difficult to isolate them from those new political realities brought about by the modern political age: firstly, from the new relationship between religion and politics, starting with Luther’s Reformation or appearing simultaneously with it, as with Machiavelli; then from the new inner and outer consistency acquired by the sovereign States. Within States, this consistency was acquired in response to the challenges of the religious wars. Externally, it appeared in response to the challenges of the military revolution and those of the new politics defined by the balance of power.

2. How, at the end of the 18th century, did these forms of foundational thought find an institutional embodiment in the aftermath of the American and French revolutions that placed their principles on the agenda? By what means did it become part of reality in the 19th century and right up to our time, and in such paradoxical circumstances—that is, through an element, history—which at first seemed to contradict their rationalist ambition and, in the end, to destroy it? At first, as far as its consciousness established itself early in the 19th century, history seemed to bring an accusatory critique of the law, at least in its early ambitions: if there is history, no foundation in law is possible, as the law is itself a creation of history. After two centuries, we have now reached an interesting point where the problematic is reversed: the law, which history has materialised in its foundational scope, has actually reached the point where it condemns the illusion of history.

But at what cost was this concretisation of human rights secured? To what extent has it become a reality?

3. This direct genealogy requires a reflection on our situation and origins that encompasses a broader historical scope. Precisely, to what extent does this modern and contemporary situation of ours distance us from our most remote
Greek or Roman ancestors? To what extent does it separate us from them? For, as unexpected as it is, our situation does not condemn the authors of antiquity to irrelevance. Quite the contrary. If, on the one hand, we are today in a period when the rights of man have become the real touchstone of political legitimacy, on the other, we can also say that we are at a moment in time when, in our eyes, Aristotle’s politics are acquiring fresh relevance. It is an aspect of our reality, one that justifies up to a point (the question being how this point is measured) those attempts to “return to the Ancients” proclaimed and put into action by some eminent authors, with the intention of going against the illusions of modernity.

We have a dual genealogy. We are the product of two beginnings: one that was interrupted, the beginning of antiquity, and then a second one, of which we are the direct offshoot, the modern beginning. The latter took on many elements coming from the former but profoundly transformed them. Next to them it introduced elements that were essentially new. These took us far away from the Ancients, from their understanding of political and juridical phenomena, but without breaking off all the ties we have to them. The essential question then becomes that of distinguishing between origin and reinvention, between what came to us from them, be it directly or indirectly but whilst maintaining, nevertheless, a line of continuity. This is what leads us to rediscover the Ancient thinkers from within our own world, in awareness of how far this world is from theirs.

the three revolutions of the political

In other words, defining modernity constitutes the major challenge for the history of political philosophy, in itself and with respect to what came before it. I now wish to turn to this internal definition, after having analysed the form assumed by the genealogical interrogations that arise from the most basic review that we are able to conduct with respect to the distinctive nature of our political condition.

We operate within a constitutional-legal order. The activity of politics appears in a regulatory framework governed by well-defined juridical norms. This leads to questions to do with the content of norms, with the historical creation of this
situation and its originality in relation to previous periods in history. To this, we could add some reflections on the conditions in which this constitutional-legal order was implemented.

Because of its object, this anamnesis has some requirements when it comes to the approach and method to be used, requirements which it would be useful to highlight but which, for now, I have to put aside, though, in order to focus on the systematic inventory of political modernity. Indirectly, this inventory will lead me back to the question of the requirements.

Looking at what the names of Machiavelli, Hobbes and Hegel encompass, I will be forced to indicate the manner in which their works should be treated and situated within their respective historical periods. No need to insist on this too much to bring to light the fact that a certain contextualisation of the works seems to be the condition for their significance to be thoroughly understood.

To use Leo Strauss’ famous expression but with a different meaning, political modernity unfolded in three “waves”. In other words, political modernity took on the form of three revolutionary transformations of the political, which successively introduced critical innovations in the field: first, the concept of politics; then the justification of politics; and finally, the milieu in which politics can find an expression and materialise.

1. The first “wave” is the one to which Machiavelli’s name can be attached. It is commonly acknowledged as being connected with the concept of pure politics, a political activity approached, realistically, as self-contained and as serving its own purpose, outside of all religious and moral considerations. One must, indeed, consider the irruption of Machiavellian “realism” as the first moment in, or as the result of, a wide-ranging movement of redefinition of the political, which unfolded throughout the entire 16th century and ran well into the 17th century. This movement occurred in parallel with the religious revolution of the 16th century—Luther’s Reformation took place exactly at the same time as the writing of
Machiavelli’s major political works. While Machiavelli’s *The Prince* and *Discourses* were written between 1513 and 1519, Luther displayed his theses at Wittenberg in 1517. The movement achieved its final form by incorporating in the definition of the political the outcomes of the theological revolution with which it coexisted, a situation which surely must be considered as the matrix of modern consciousness. In the context of the religious divisions introduced by the Protestant Reformation and the ensuing civil wars, a party in favour of “politics” gathered strength—and we may very well say a party of the political, in the sense that the political took precedence over religion. The authority of the sovereign appeared to this party as the only chance for peace. The “civil magistrate”, the monarch and the prince—in short political power, regardless of how it is named and no matter its characteristics—must rise above the ecclesiastical authority and render “sacred matters” subordinate. The religious revolution which unfolded at the beginning of the 16th century, became, towards the end of that very century, a *religious revolution of the political*. From this revolution our modern political concepts were born, the first of which being the fundamental concept of the *State*. The State emerged as a concept defined by *raison d’État*, namely a State to which religion submitted; and it is defined, at this level, by *sovereignty*. The State possesses a supremacy that is metaphysically absolute, operative on the scale of the human realm since this supremacy even commands over those serving the divine.

The first way to define modernity thus concerns the total novelty which marks the symbolic shaping of the political (*mise en forme*), which begins to emerge around 1600 and achieves maturity towards 1650. The definition of modernity depends, in particular, on the understanding of these new symbolic forms, those of power and commanding authority.

2. We identify the second wave with the name of Hobbes, even more so than that of Grotius, even though referring to the latter would, from an historical perspective, have equal merit. This second wave is strictly linked to the first. Once we have clarified the rise of the sovereign State of divine right, then of the State defined by *raison d’État* that emerged from the political and theological revolution.
of the 16th century, we are able to understand how a new problem of legitimacy appeared in this new political order. Invoking a religious dimension existing above the established religions was no longer adequate; the new order had to be supported from below and it required a new foundation, which is provided by the law. The development of modern natural law came to address this very problem. In respect to this intellectual endeavour, one can speak, of a juridical revolution of the political insofar as what was involved was an attempt to redefine the political bond on the basis of a new, normative source of the law, one that was established by the fundamental rights of the individual.

Hobbes introduced a new principle directing the formation of the political community. It can be summarised in a very simple postulate: there can only be individuals. This is the principle from which we must examine the juridical origins of the political. The fundamental consequence of this organisational principle is the subjectivation of the political realm. As a general rule, the appearance of the modern subject has been approached within the confines of the field of knowledge. In reality, it is not any less to do with the field of politics. The philosophical challenge of modern natural law, from Grotius and Hobbes to Rousseau and Hegel, was that of redefining the political through the perspective of the subject and doubly so. First, on the side of the political component, the citizen, in the form of the subject defined by individual rights, and secondly, on the side of the political whole, of the political community, in the form of the political subject. This double determination defines the originality of modern democracy, in contrast with that of antiquity.

3. The third wave is intimately linked to Hegel’s name, and corresponds to a remarkable happening, the consequences of which we have so far only barely touched upon—the emergence of history, a new reality for human consciousness. This wave of change appeared over a few short years, around the 1800s. Hegel was first to give it a fully developed theoretical meaning. But it must be stated straight away that Hegel’s work was in fact only just the beginning. The concept of history continued to develop beyond Hegel. This history of historical consciousness, of
how it broadened and deepened over the course of the 19th and 20th centuries still remains to be written.

The emergence of history, once again, entirely modified the status of, and the approach to, the political, so much so that we can now speak of a historical revolution of the political. It is crucial to have a full understanding of the significance of this revolution, because it represents the factor that today influences most directly and most decisively the way philosophy approaches the political as a problem.

Its impact can be summarised in one sentence: the irruption of the historical viewpoint leads to the political being displaced, second to history (secondarisation). Despite the break with the thought of Ancient Greece, modern natural law and the individualistic philosophical theories based on the artificial idea of social contract remained in continuity with ancient thought on a crucial assumption—the explicit primacy conferred upon the political. The point of view of the political coincides with the point of view of the organisation of the human community, as a whole. If we want to examine a human community as such, we must grasp it from the point of view of the political, which is the element through which a human community defines and organises itself. History brought with it a totally new, all-encompassing conception of the human collective. The concept of society replaced that of body politic. Within society as a whole, the political domain represents nothing more than a specific sector, hence my using the term secondarisation. Politics now appears as one subsector of human matters, alongside others; it is no longer perceived as what commands over all these different sectors or organises them. Whether we look at it as a derivative factor, which can be explained in relation to other factors considered as possessing a greater structuring role, be it the economy or the class divide, or as an irreducible factor, one that refers to an independent and permanent dimension of life in society, the secondarisation of its role is ultimately the same.

This idea, now embedded, and unquestioned, in our minds, constitutes the main challenge (and this word is not too strong) for a philosophy of the
political. Is the political only fundamentally this? Is it only this secondary field of social life confined to the subordinate place to which the historical revolution, from the beginnings of the 19th century, encouraged us to reduce it? Do we need to recognise that, below this surface appearance of subordination, the political has an organisational strength, an instituting function, which is now hidden in our societies, but nonetheless effective? To a certain extent, this would imply reconnecting, within the historical world that has become ours, with the ancient and classical understanding of the political. If we can no longer contemplate the political as having an explicit, primary organisational status, even if it has now become totally implicit, doesn’t the political remain the all-encompassing and instituting factor, as identified by a long tradition of thought? But the fact that this role, which once occupied first place, has now moved into implicitness or into unconsciousness, imposes the need to rethink quite fundamentally what it means. I believe that this need to explain what the political is, and what place it now occupies in our societies, today constitutes for political philosophy its most fundamental problem.

I must point out that Hegel’s philosophy lies at the interface of this discontinuity between two understandings of the political. He still focuses on the ancient understanding of the primary status of the political. His way of thinking sits within this assumption, and this is why it continues to belong to the intellectual world of modern natural law. And yet, he was the first thinker to introduce the conceptual tools which eventually allowed this way of thinking to be overthrown. From this perspective, one can see that Marx well and truly accomplished the reversal initiated by Hegel. But this reversal was long prepared by the liberal thinkers of the early 19th century, such as Constant, Guizot and Bentham, insofar as they were already concerned with the need to give official sanction to the independence and freedom of civil society and to limit the reach of political power. Liberal philosophers were the first to strip political power of its ancient status of cause and to confer upon it instead, that of effect; in their writings, the political ceases to be viewed as a primary organisational principle and is reduced to being
a secondary product of society. Marx simply radicalised this liberal reversal by transposing it within history and within its dialectical development, just as Hegel had first suggested. In Marx’s work, the dethronement of the political reaches an extreme point. It is relegated to the rank of superstructure, a superstructure understood as essentially repressive next to a constituent infrastructure identified with the mode of production.

The emergence of the historical component of modernity does not only modify the status of the political, it further invalidates the problematic of foundation imposed by modern natural law. Once we learn to think in historical terms, the first thing that matters is change. What matters, on the one hand, is the need to identify this change and to define its driving force; and then, on the other, its direction. After this shift to history, any attempt to return to an earlier perspective stressing the point of origin, determining what must be from components defined by birth, from primordial norms, now appears as lacking any grounding in reality. The possibility of grasping these primary reference points vanishes. The attempted return loses its very meaning. The law itself can only be seen as a product of historical development. The essential question is not that of the law’s capacity to signify social obligation, to indicate an ought-to-be in purely abstract terms. It becomes rather that of understanding the specific conditions in which this abstract obligation comes into existence. These conditions can only be perceived as being created through the movement of history. This occurs even if one is willing to recognise that the law has its own consistency and the political also.

I have already alluded to the fact that two versions of political thought can exist within the intellectual universe of history, one that is liberal and one that is radical. One always thinks of the revolutionary thesis according to which the law is an illusion and the mask behind which hides political domination defined, only with respect to relationships of conflict, a domination that can only be explained by a class divide imposed by the system of property ownership and the relations of production. But alongside this radical thesis, there is a more moderate thesis that rejects the view that the law is an illusion and politics just a balance of
power. By contrast, this thesis gives an independent reality and a positive role to the law and to politics. However, it depends no less on the same assumptions and the same interpretation of how the collective works. It likewise located the primary moving force behind collective life in civil society and the freedom of action of its individual members. Except for the following difference: it considers this situation as a form of historical progress, whose crowning achievement is the system of representative politics. This system presumably enshrines a truth, the truth of politics. It does so by giving form to a power that is defined purely as the expression of society. The social is thought to occupy centre stage and the political is defined only as what serves social relationships through the channel of representative politics, as what regulates them by means of the law. At the basis of the liberal understanding of history, there is the same reversal of the primacy of the political into a primacy of the social, as can be found in revolutionary socialism. Just like revolutionary socialism, liberalism rejects what it sees as the illusory independence of the political and of the law in their ancient, classical claims to create a priori the norms which direct collective existence. A major difference lies in the fact that liberalism recognises the autonomous reality of the political and the law and that it will not contemplate its elimination. Liberalism restricts itself to imposing on the political and the law an instrumental form of limitation, whereas socialism aims at making the social regain control over the political and the law, to absorb them in the self-government of the social space. Liberalism and socialism share the refusal to assign to politics and law the power to institute and define that has traditionally been attributed to them.

This is why we can speak of the 19th century as having constituted the stage of an extensive attack on a perceived political illusion encouraged by an expanded notion of history. A radical critique of the understanding of the political as organising principle ran though the 19th century, and by extension, the notion of political law as foundational law. It must be noted that this radical critique coincided with the development of politics (la politique), understood as the realm of activities linked to the formation of and control over power, in the framework of representative
political regimes. The practical expansion of politics (la politique)—and simultaneously, of the law—was perfectly correlated with the relegation of the political (le politique) to a secondary status on the theoretical plane. In the field of knowledge, the ancient explanatory power of this notion was denied validity. History encouraged the belief in a science of society which turned its back on the old ways of thinking that accounted for collective existence. It fed an ambition, that of establishing an objective science of social reality, a science of social facts, a science, in short, free of the normative illusions that were at the heart of ancient politics as well as of modern natural law: only history and society could account for politics and law, certainly not the reverse.

If we want to grasp the significance of the trend reversal that we have been experiencing over the past thirty years, we must not forget the conceptual parameters of this problematic. We are losing the illusions we once had regarding history, even if history once appeared as making us lose our illusions regarding politics and the law. We are distancing ourselves from the historical and social perspective—or rather we are discovering that history and society are in fact not what we used to think they were. And, paradoxically, this discrepancy leads us back to the law and to the political. Everything happens as if we were repeating the same experience but in the opposite direction and at an increased speed: history takes us back to the law and the law takes us back to the political. This surprising historical path explains the renewed relevance of political philosophy.

FROM HISTORY TO THE LAW

We are witnessing the resurgence of political law, namely of a theory concerned with the foundation in law of the political community. This resurgence takes place from within the intellectual element of history and society. For we are not in a situation where the pendulum is simply swinging back, a situation in which we could go back in time and would allow political law to be reinstated and take centre stage to replace the historical element, as if the latter had never existed.
The knowledge that was gained cannot be unlearned. But that knowledge has been changing. For a long time there endured a somewhat selective perspective emphasising only history and society. Social consciousness was transformed; within its framework, this allowed new progress for the juridical foundational approach. The exclusive domination of the social sciences is no longer relevant. Even if it seemed, once and for all, to have rendered meaningless the normative approach to collective phenomena, every new day increasingly reveals how this domination is being replaced by a philosophy of regulation, which the social sciences must now accommodate, within a new allocation of tasks. The juridical perspective now permeates sociology and inspires it.

What makes political philosophy so visibly topical is this rebirth of the normative dimension, operating alongside, and in connection with, the objectivity of social science. The theory of political law is the indisputable star of the field, to the point where it becomes, for many, the whole of the field and defines it entirely. To my mind, this is not the case, as I will discuss later, but this objection, which I will expose below, must not prevent recognition of the outstanding significance of the phenomenon.

The re-emergence of political law is most assuredly one of the greatest intellectual events in our recent history. It can be dated back to the publication, in 1971, of John Rawls's book *A Theory of Justice*. This work's widespread reception and tremendous success turned it into a landmark and symbol. The picture would not be complete if I did not mention Jürgen Habermas's seminal work *The Theory of Communicative Action*, published in 1981. This book constitutes a “continental” manifestation of the trend, one more concerned with integrating the knowledge that emerged from the last century's critical thinking, but still confirms it. After two centuries during which it was forgotten, we are now witnessing the rebirth of the problem of legal foundation as a burning question for the discussion of political phenomena.

*the reasons explaining this resurgence*
I will formulate three observations concerning this resurgence, in order to grasp the new features taken on by this foundational problematic compared with its previous manifestations.

1. It is impossible to ignore the correlation between this return of law and the major transformation of economies and societies since the beginning of the 1970s. In hindsight, every day a little more, we can see that what started as an “economic crisis” is turning into a global metamorphosis that touches on every single aspect of our societies. Its ideological impact is well known. In parallel with the major transformations occurring in industry and the economy, recent years have been marked by the striking decay of the faith in revolution. This decay acted as the backdrop for the breakthrough of anti-totalitarian thought which operated in unison with a generalised reaffirmation of democratic principles and values, both associated with a massive advance of individualism within our societies. But, underneath these changes too often discussed superficially, a more profound shift was at stake; a shift in the very conditions of self-understanding for our societies, together with a complete transformation of the reference system through which actors are able to conceptualise their world, in its time. This is a major shift in our relationship to history. It has taken the form of a crisis of the future, of which the decline of the revolutionary idea was the most obvious symptom. Together with the possibility of envisaging the future coming into crisis has been the ability of historical thought to shed light on the nature of our societies by analysing their evolution, and, with it, its capacity to provide guidelines for their self-transformation in the form of forecast and projection.

The mode of thinking foreshadowing the law is making a comeback and presents an answer to the dual deficit, theoretical and practical, opened up by the crisis of the future; it corresponds to a different way in which our societies can approach the question of what they are and what they are to be. This mode of thinking offers them a different way to define their identity: what we are cannot be revealed by the becoming to which we are subjected; only our foundational principles can do so. It opens up for our societies a new way of projecting
themselves and wanting to exist: at the very same time, these principles show us what they must strive for, in which direction they must go. Foundational law thus re-established itself as an instrument of intelligibility and as a means of action, as a political driver for social change.

2. In retrospect, we are discovering that, if the transition from the domination of history to that of the law was so readily possible, the reverse movement was an optical illusion. We need to reinterpret the history of the 19th century and that of the first half of the 20th century from this perspective. We now see that this period—marked by a critique of the illusions and lies of natural law seen as invalidated by its artificial nature, its abstract rationalism and its formalism—was in fact a period of gradual materialisation of the point of view of the individual and his/her rights. This period unfolded through those mass collective realities that were used to oppose the abstract character of natural law: the community, the nation, the State, social classes and work as a collective process. Both the 19th and the early 20th century claimed to be the age of social realism, as opposed to the juridical idealism of the Enlightenment. Except that all these real collectives showcased by the reflection on the socio-historical in fact operated as many drivers of individualisation. They were the incubators that enabled the individual to evolve from the admittedly “abstract”, or even utopian figure of the 18th century, into a “concrete” individual. The mode of thought foreshadowing the law was able to come to terms with this process of historical and sociological actualisation and at some point to start again, armed with a new credibility. It is in the context of the long social effort to create and construct the individual as endowed with rights, that it became possible to base upon that individual the reconceptualisation of the social body.

3. This situation allows us to understand how we are no longer situated in the cognitive space of natural law, even though, in formal terms, we are rediscovering its foundational logic. The similarity in the approaches does not prevent them from assuming different meanings. The theory of natural law
proceeded through a mythical rationalisation of its point of origin. It projected back into the abstract, non-historical past that defined the status of nature the search for a fundamental norm to justify the composition of the body politic, a norm which, in itself, was outside time.

The advent of historical time condemned this hypothetical backward looking stance (passéisme) and the a-temporal character of this foundation in nature. When it comes to the contemporary resurgence of the juridical perspective, we are obviously not going back to this ante-historical view of time. The critical specificity of the current foundational philosophy, such as we see it reborn today in contrast with its predecessor in the 17th and 18th centuries, lies in the fact that it operates within the historical environment. We have gone beyond the classical opposition between natural law and history. We can express it differently: if there is a return of the law, this return is uncoupled from the idea of nature. We now have the content of subjective law without the basis that first allowed it to be formulated.

What follows is a significant change in its implementation. The relationship between being and ought-to-be is no longer the same. There are two perspectives on the same reality: what presents itself as a fact in history can be perceived on the opposite end through the normative prism. To describe our societies the way they are, and to describe them also as they should be, are not two completely different tasks—in so far as describing them for what they are amounts to examining them in their efforts to come into being, efforts which involve their unceasing labour upon themselves and objective of self-reform. The reference to the original foundation was initially synonymous with claiming to possess an ideal basis located outside of historical time, which, had it been allowed to prevail, would have consolidated the political community in a permanent form, sheltered from the corrupting vicissitudes of being as becoming. It has now become a way to give a face to the future, to define a regulatory ideal for historical actors. In all cases it is conceptualised in immediate proximity to the possibility of it being realised. The being of our societies, in so far as it is historical, is made up of oughts, of
anticipation. This is how the juridical perspective operates as a substitute for the failing capacity to forecast.

*a catching up role*

Once we have established the civic and political function that the law has recovered, we are able to understand its role since the 1970s and what, to this day, remains, the intellectual task of these renewed foundational modes of thought. This task is essentially one of *adjustment*. The task also enables these foundational thoughts to be distinguished from their precursors. Despite their express reference to the past, the natural law philosophies of the 17th and 18th centuries constituted, historically, a form of conceptual anticipation. They invented and developed a new idea of human society, of its foundation, norms and finality, within a society that remained largely traditional and dominated by religion. Our situation is very different. For us, the role attributed to foundational thought is to render explicit a legitimacy in the making, one which has gradually established itself in our societies as safeguards for individuals and democratic freedoms materialised in the practices of our societies. The foundation of this latent legitimacy had to be conferred upon it after the fact, in terms of the fundamental legitimacy of human rights. As the exemplary case of the Welfare State demonstrates, this in fact involved undertakings which established social and political compromises to which a technical basis needed to be given, through insurance mechanisms or redistributive processes.

In other words, little by little, throughout the last two centuries, we have learned, to draw new practical lessons from human rights, quite different from the original ideas formulated by its first theorists. We have come to look differently at what kind of institutional *incarnation* the primary freedom and equality of individuals should be given. These new developments need their theoretical foundation. At this point in time, we are asked to align the formal principles of the law with the implicit form which our societies are acquiring, to provide a legal basis to realities or new demands that are confusedly perceived as legitimate, even though these
have often been established in the name of other orders of justification.

This catching up which involves a process of translation, an effort to render explicit the common understanding of legitimacy and to give it a foundation unfolds in the three registers that traditionally belonged to natural law philosophy. In the first instance these three aspects apply to natural law stricto sensu, to what we would now call the sphere of fundamental rights. Secondly, they apply to political law, in which they seek to define the consequences of such fundamental rights for any conceivably legitimate political order. Finally, they apply to what was traditionally called the jus gentium, namely the right that prevails between political communities and nations, or, to use what constitutes today a more appropriate expression, to cosmopolitan law in the Kantian sense.

1. Thus, the first register has to do with the nature of fundamental rights—the way they are understood, the way their meaning is defined, something which changes a lot from the moment one no longer seeks to give them a fictional basis in nature in order to establish them. Next to their significance there is, however, another issue that involves their extension. In this respect, the key question is that of social rights. It first concerns their existence and then what their exact content should be. This question is: in fundamental law, that is, from the perspective of human rights, what is to become of the Welfare State that was established within the framework of liberal democracy—but not without struggle—and which now constitutes a crucial dimension of liberal democracies, transforming them as such into social-liberal democracies. Should it be seen as a phenomenon that does not need the law to be able to prevail? This assessment is shared by the supporters of pure liberalism, for whom such social rights cannot exist, and revolutionary Marxists, who understand social rights as the product of a compromise between classes rather than the outcome of the development of the law in bourgeois regimes. These views remain relatively marginal. On the contrary, the dominant sentiment and prevailing common sense in our societies concern matters of fundamental law—even concerning the very truth of human rights. If we look beyond the political contract between individuals considered as free and equal,
and the consequences resulting from this contract with respect to the people’s sovereignty and public freedom, we, as a whole, converge on the view that this contract has other consequences. These consequences have to do with the way social justice should prevail within such a political community. Instinctively, we sense that these consequences are directly related to the core of the essential rights possessed by the individual. But, in point of fact, what are these consequences exactly? This constitutes precisely the problematic examined by the “first Rawls”, regarding A Theory of Justice.

However, more recently, after social rights, a new question has appeared: that of cultural rights; and this question raises perhaps even more formidable challenges. How should we define the rights that concern a person’s identity, which, we perceive, represents in fact components of their dignity, but to which it is so difficult to give an objective form?

2. Then, what is involved is a catching up, an effort to make things explicit, to establish foundations, within the register of political law. Here also the expansion of democratic life has made visible other ways of understanding what constitutes the legitimacy of a regime.

For example, we have witnessed the development of new requirements with respect to pluralism and, consequently, regarding also the forms of collective coexistence and the role of public authority. This phenomenon has changed the way in which the State’s liberal neutrality could be conceptualised. It did not go beyond a negative view of the State’s necessary withdrawal from the area of beliefs and ways of life—it was simply thought that the State should definitely not interfere in such matters which are not its concern. We are now acquiring a positive image of the role it plays in the organisation of political pluralism. We expect the State to actively recognise the existence and diversity of religious, philosophical and existential options. We are compelled to rethink freedom, and go beyond the classic image of freedom of conscience, to consider its embodiment in a form of social pluralism that creates for State power new obligations and
new limitations. This is the question raised by the “second Rawls”, the author of *Political Liberalism*.

In addition, in similar fashion, we have witnessed the emergence of new demands in terms of public deliberation, of participation in decision-making and of procedural guarantees relative to public choices and the way these are arrived at. It is an imperative that we translate into expert jargon when we speak of the new precedence of procedure over substance. A new democratic formalism has indeed been invented and is taking form. What must the democratic process be from the perspective of the law?

3. Lastly, catching up in terms of cosmopolitan rights, in a world that is moving towards unification (“globalisation”), a world in which States have closer ties with each other, a world of lowered borders and blending populations. How can we rethink human rights at a time when something close to a new global civil society is taking shape? In this respect, we can no longer remain within the pre-eminence of national law as it exists today; we must instead consider the rights of individuals in the midst of nations. The rights of minorities, of individuals in relation to the States, rights in the international space, the rights of the international society of States which bear on the individual States that constitute it. These questions are far from new, but the direction taken by today’s world compels us to give them new juridical answers.

Under these three aspects I have considered the task of catching up, of making explicit what has been a nascent legitimacy, of establishing the new democratic common sense, only from the perspective of the content of the law. But I believe that we can similarly speak of an adjustment at the level of the *philosophical form* assumed by the foundational problematic. The work of Rawls or that of Habermas also deal with the need to redefine (for the first) or replace (for the latter) the problematic associated with the notion of contract. It is a matter of reflecting on how collective legitimacy can be engendered anew, as derived from the rights of the individual and as validating them, in light of the achievements of contemporary
philosophy and its critique of the classical rationalism in which this foundational issue first emerged. How can we conceptualise subjective rights, namely rights that are inherent to personhood, without any reference to a presumed state of nature or a human nature? How can we conceive of a social contract without positing some transition from a state of nature to a social state? Should we look beyond the frame of reference where the individual is at the centre or do we need to remain within it? Further, do we not need, rather, to start from intersubjectivity and communication, in order to avoid the monological illusion or that of egology? It is not simply a question of updating the content of the law, it is necessarily a question of making the philosophy of political law contemporarily relevant in philosophical terms; but the difficulty here lies in finding our way through what being contemporary actually means.

FROM THE LAW TO THE POLITICAL

Once again, it is not tomorrow’s society which invents itself through this return to foundations, it is the present which becomes clearer. No alternative form of legitimacy is emerging from this effort of clarification; we are simply learning to become more consistent with ourselves. Unlike the heroic age where the abstract constructs of theorists allowed the appearance of a new way to conceptualise politics, we now exist in a society where human rights are institutionalised through their role of foundation, source and reference. Human rights are already partially incarnated, they are known for their propensity to find ever more forms of institutional incarnation. The task we face is simply that of conducting this process of concretisation in a more judicious and systematic way.

Alright, I may be told, this may be true but there is still a long way to go from the promised principles to their effective social existence. Human rights may well now be accepted in the theoretical realm but their implementation still remains incomplete. This is where the philosophy of political law, even if it no longer has the power it once had of sketching a new world, remains an irreplaceable critical instrument, an engine, a regulatory ideal, perhaps even our last utopia.
I would not want to deny this capacity of human rights to drive change but I believe nevertheless that one cannot avoid the question of its limitations, both intellectual and practical. To what extent does the logic of the law allow us to understand the nature of democracy, namely the nature of the regime that allows the gradual manifestation of human rights and aims for it? And to what extent does this same logic allow us, beyond legitimate criticism and discontent, to act upon democracy and transform it? This critical and utopian dimension of the law opens up a crucial problem: it cannot allow us to think through what allows it to be effective. The perspective of the law cannot account for the context in which the law can prevail. At this very point the transition needs to be made to the perspective associated with the political. The political perspective is needed because of the limits of all juridical foundational thought.

We are thus witnessing a resurgence of the law but in its wake, also a resurgence of the political. Such a resurgence takes us one step back—from a historical perspective—towards the most profound stratum of modernity’s foundations. A certain crisis affecting the forms of thought focusing on history and society have brought us back to those focusing on the law. From here, a certain crisis affecting forms of thought focusing on the law is bringing us back to forms of thought focusing on the political. The more prevalent the perspective of the law becomes, the more pressing is the need to return to the perspective of the political.

The political is reborn in our eyes as a problem that exists as a consequence of the limits involved in attempting to establish foundational law. This attempt reveals itself as hanging upon a principle that eludes it. To be realised it needs to rest on a base that it cannot itself create. In other words, the attempt to ground society in the law, itself, needs foundations. This is not a theoretical problem, only of concern for those overfond of abstraction. Rather, it constitutes a fundamentally practical problem, one at the core of all those uncertainties that haunt contemporary democracy. This is exactly where the shift to the political operates. From political law, we are referred back to a reflection on the political because the political is what makes the law possible, what limits its realisation or forces it. In this respect,
the return to political law brings with it a return to the political stricto sensu, which is synonymous with the critique of this return—the word critique being used in its strongest sense—in so far as it comes down to establishing the claims of this return to political law and at the same time to bringing out its limits.

Before proceeding, I must say here a few words about the distinction between the political and politics. I have already used and stressed this distinction, in what I hope was a clear and rigorous manner, but I have not yet defined it. It is now time to fill the gap. From a historical perspective, the distinction becomes fully meaningful. All societies possess a political dimension. Only our society enabled the establishment of a separate political domain in which social actors are at liberty to engage in politics (the only exception were ancient democracies, in which this freedom was relatively short lived and very limited). This is the domain of democratic freedom, in which citizens are able to gather and debate the res publica, to exert influence over it within the context of an open competition for power. I propose to use the word the political only to designate the political essence of all human societies and to retain the term politics to refer to the specificity of the democratic political regime that of possessing a sector that is separate from all other social activities, devoted to the creation and the control of government. From here we can therefore state that politics is, in our type of society, the form assumed by the political. The question to be asked here is whether the political is totally absorbed in democratic politics, or whether there isn’t some political component, some portion of the political that remains outside of the democratic element. This is the same as asking whether the type of society where the political dimension changes so much that it becomes democratic politics—where it becomes the object and substance of a deliberative activity on the part of citizen—still remains a political society, on the same basis as the other types?

By asking such questions, we articulate in a different manner the questions to which today’s prevalence of the law leads us. For the domain of politics—which is the domain within which opinions are expressed, within which the public debate takes place and governments are appointed through elections—is also the domain
within which the law is applied and put into practice. Political activity constitutes the means whereas the law defines the end that these means must serve. In a democracy, the essential debate is in fact concerned with knowing which is the best way to give the law a concrete realisation; the civic aim of political law theory is to throw light on this debate: which are the correct ways to translate into reality the foundational norms which we have chosen for ourselves. We can thus reformulate the question I have raised. This question was, to what extent is the political absorbed in the system of democratic politics? It is possible to convert this question into another: to what extent can the law submit to the political, the law being defined as the doctrine dealing with the foundations and purposes of democratic politics? Here is the central question brought up by the very progress of our societies, a question which, for a long time, is bound to give us food for thought.

*the lesson of totalitarianisms*

This inquiry into the political, it must be said, has a historical background. It would be incorrect to make it stem entirely from the questions raised today by the realisation of the law and the fulfilment of human rights. It has one major forerunner in the 20th century. The reflection on the political first reappeared under the test of the tragedy that unfolded in August 1914. It re-emerged as a result of the sequence of totalitarianisms that emerged from the apocalyptic battlefields of the First World War. The totalitarian tyrannies were first to reimpose, in European thought, the political perspective. They represented a brutal resurgence of the political within the so-called “bourgeois” world, in other words the liberal world which makes the political secondary and subordinates it in favour of economic interests and representative politics. This violent return of the repressed assumed two opposed and complementary appearances. With the Nazis, it took the form of a reassertion of the political that was explicitly stated, advocated and displayed under its most barbaric aspect, a naked domination which, what’s more, was anchored in a race-based division of humanity and was destined to blossom in war. In quite opposite fashion, with soviet communism,
this return of the repressed appeared as a denial of the political, a return of the political that was all the more appealing for the fact that it was pursued by a regime that invoked the primacy of the economy. In its actions, soviet communism provided the starkest negation imaginable of its own doctrine. The regime established in the name of the economic infrastructure's primacy was the regime that effectively demonstrated the structural primacy of the political as a presumed superstructure. Far from transcending capitalist exploitation and bourgeois domination, the collective appropriation of the means of production proved to have given birth to a new structure of political domination in which economic extortion was reintroduced, starting from the political structure.

Totalitarianism appears as a political form whose existence cannot be reduced to any economic explanation whatsoever—one can no more explain Nazism with reference to the needs of “almighty capital”, there is no need to expand on this. Totalitarianism is a pathological political form, one which, conversely, forces a comparison with liberal democracy as a political form. The contrast private/public property or capitalism/socialism is far less significant than the contrast democracy/totalitarianism, that is, a contrast that highlights the fact that the political truly plays a primary and organising role. Next to totalitarianism democracy appears a paradoxical form of society in which the political is concealed in this role, to the benefit of politics and in a way that establishes the conspicuous, primary position of civil society and its interests. The political allows other forces to have pride of place besides itself, gives them independence, starting with the economy, to the point that it creates an optical illusion: the idea that the economy comes first, representative politics limiting themselves to the regulation of its hegemony. In reality, the political is still here, even in a configuration where it no longer possesses any preeminent role. In the background, however, it still determines the free-play of economics, and the forces of civil society, as revealed by its pathological return to a commanding position in totalitarian societies.

Such was the first political lesson the 20th century taught us at a high cost. Such was the way our spontaneous and immediate understanding of the political
dimension was first proven wrong, this immediate understanding having been conditioned by the historical revolution of the political and the relegation of the political that it led to. This was a massive, brutal lesson, an absolute rebuttal. At the same time, it was so confronting a lesson for our ordinary way of thinking that the phenomenon was allowed to remain under everyone's gaze, for fifty years, without it being really seen or understood. If something was eventually learned from this lesson it was only minimal, in purely pragmatic and moral fashion: what was once called formal freedom is, in every case, preferable to real tyranny. This is an essential message. I would not deny it. However, with the benefit of hindsight, now that the case appears definitely closed, one cannot help but notice, with some dread, how the fundamental lesson has not in fact been integrated into our knowledge in any depth.

There is good reason to believe that we have come out of the era of totalitarianisms, they are virtually unanimously condemned but the question of their significance remains an extremely minor concern. They have been comprehensively disapproved and banished but they will not have been understood collectively. In a way, unless we develop, even belatedly, a thorough historical account and conceptualisation of our experience we will have lived through this ghastly ordeal without gaining anything. Pondering what this says about our societies and their capacity to understand themselves can only leave us puzzled and depressed.

Now that a second historical lesson about the political is taking shape in front our eyes, one cannot help but contemplate the matter, even if it is a very different kind of lesson, one cannot help but wonder whether our societies will be better equipped to face it. In light of past experience, one is inclined to doubt it.

*how the political is revealed when it is lost from sight*

We are, indeed, witnessing today the re-emergence of the political as a problematic issue but in a different manner, poles apart from totalitarian violence. The political is reappearing in the present moment, in the wake of the success of democratic
principles, as a result of this very victory, as an unexpected consequence of the law’s return. The uneasy and imposed rediscovery of the political towards which we are once again led, is unfolding from within democracies, as an internal critique of the illusions that democracy possesses about itself, and as a critique of the unintended dysfunctions generated by these illusions. This distinguishes it positively from the one that came before.

This return to the problematic issue of the political is required here and now because of the need to understand what constitutes the true meaning of democracy, what enables its existence and what it may become. The return of the political has surfaced and is becoming necessary as we face a new type of crisis facing our triumphant democracies. This has nothing to do with the questioning to which these democracies were subjected during the totalitarian age, by which they were either rejected, be it under the guise of a return to the past, or via futuristic attempts to transcend them. That challenge came from outside their very nature and form. By contrast, the current crisis is facilitated by the very implementation of democratic principles. This crisis appears to lead, at some point, to democracy losing its vitality, if not to a dissolution of its framework and of the instruments through which it is put, more profoundly, in practice. In its overall expansion, in the development of its juridical principles, democracy ends up attacking itself. As democracy moves forward, the implementation of its legal norms ends up turning against the political conditions in which it is exercised; the implementation of its legal norms eats away at these very conditions insidiously. Which is why, even if it is hidden, diffuse, even if it is as far as it possibly can be from the paroxysm of the totalitarian era, the contemporary crisis is, in its essence, of a comparable depth.

An analysis of the crisis that is creeping in forces us to re-examine the political from an angle that we did not previously perceive it. The political, or this dimension of democracies they tend to forgot or deny. The problem is no longer the uncontrollable resurgence of this dimension but its fading away, and the chain of knowledge failures stemming from this disappearance. Bolstered by the self-evident character of their principles, democracies end up considering themselves
as having no history, as being simply in conformity with the way things are from nature and consequently as the regime that ought to have always and everywhere prevailed. They lose sight of the historical exception that allows them to exist. Not only that, the same impulse leads them to consider the structure within which they are inserted and the apparatus through which they function as obstacles to their fulfilment. It is as if blind enthusiasm for their pure doctrine leads them to cut off their own supporting limbs. This internal problem of democracy explains the contemporary relevance of political philosophy, if it is understood as a philosophy of the political. It is around this contradiction now revealing itself—between the visible and hidden sides of democracy, between the law to which it appeals and the political on which it is based—that a reflection on the political is bound to stay with us for a long time to come.

In the light of this unprecedented configuration we are first required to reconsider the nature of democracy, as defined by a combination of politics and law, a combination that not only allows the law to find its realisation but also circumscribes it. The task requires us to examine the very particular form the political assumes in the modern era, under the name of “State”, as well as the continuous transformation of this form right up to our time, transformations that explain both its structuring role and its surprisingly inconspicuous character. But beyond this modern specification, we are called to reassess the very nature of the political in general, starting from the variety of forms it can assume.

Let us thus examine more closely the contradiction that develops between the logic of legal foundation and the political effectiveness of democracy. It is present at two levels, starting on the surface and then reaching into the depth.

At the first level, the foundational ambition serves to make the content of democracy problematic. It modifies the way it is understood. It imposes the idea of a minimal democracy in which individual rights take precedence over collective power. The very way the word ‘democracy’ is now understood indicates the shift experienced in the latest historical period. In its classical definition,
the term used to refer to the capacity of political bodies to self-govern. It now simply conveys the guarantee that personal freedoms will be respected. The idea of popular sovereignty is overshadowed by the idea of individual sovereignty. To put it differently, by contextualising this trend historically, one can say that one side of the liberal-democratic synthesis came to prevail over the other. Liberal democracy, such as it was painstakingly elaborated in the 20th century possesses two associated but distinct aspects: the major problem it faces is that of harmonising the protection of private and public freedoms with the conversion of these singular freedoms into a common power, into the whole’s self-government. Even if it has been recognised that its practice must be respectful of individual rights (as it was conceived to manifest it), this self-government is also understood to constitute a separate and superior form of power in so far as personal freedoms are realised through it. This second dimension of liberal democracy has taken a back seat to the other. The least possible amount of social power in exchange for the most possible amount of personal freedom: such is our new ideal. This ideal was translated into a vision of the way democracy functions now reduced to the procedural coexistence of individual freedoms. The problem to be resolved is that of securing the compossibility of the initiatives of individuals and the groups they form in such a way that these can enjoy a maximum of latitude in the pursuit of their own goals, whilst avoiding their impingement on one another. The objective of democracy is therefore to organise and manage “reasonable pluralism”, it being understood that everything pertaining to substantive ends is referred back to the side of individual actors and of the communities of belief with which they identify. The political regime, such as it is, must not know any such ends. It must only consist in developing the framework and the definition of the procedures that ensures the peaceful coexistence of free actors and the compatibility of their rights.

This understanding of democracy, however, is one-sided. It fails to recognise another necessary dimension of democracy. Granted, democracy does consist in managing coexistence and pluralism legally. It nevertheless, requires also
something else. It is and must be the entire collective governing itself, and not simply the freedom of its parts. In this perspective, more rights for everyone, indeed, becomes less power for all. The political community ceases to govern itself. There remains only a political market society, whose overall form is seen as the outcome of everyone’s different initiatives, at the end of an automatic process of aggregation, in which government only remains responsible for the rules of the game. Even if it corresponds to the profile of democracy in formal terms, shall we take this regulation of powerlessness for democracy itself? This is to say that the rights-based version of democracy is a mutilated form of democracy, one that is losing sight of democracy’s political dimension, properly speaking. It forgets the reality of political community, the level on which, in the last instance, democracy’s existence depends. For what kind of sovereignty do individuals possess if this sovereignty allows mastery over the collective whole to slip away or to put it better, if it contributes to collective impotence? What kind of freedom is a freedom that is exercised in common but causes the choices determining the future to evade all citizens? For the political community still exists even when it is denied, just as the governments’ capacity to direct subsists despite the limitations imposed on it. The way actors are enclosed in their particular interests, belief or identities effectively ends up handing all consideration of the whole being over to the managerial stratum. So much so that the general feeling of alienation is aggravated by a loss of power in favour of oligarchy when it comes to the part of decision-making that continues, day after day, to shape collective life. Hence the confused feeling of being disempowered that accompanies the undeniable progress of freedoms. The promotion of the individual legal subject and of his or her prerogatives ends up obscuring the existence of the collective political subject of democracy.

What’s more, the effects caused by the surge of the law are not limited to this confusion. They go even deeper. At a second level, not only working to render democracy blind to its own objective, the foundational approach also sets out to undermine its actual conditions of existence. It starts destroying democracy’s
own basis because, from its very nature, democracy aspires not to have any. The foundation only deserves its title if it is self-sufficient and if it has the capacity to command over collective existence as a whole. In this sense, it is possible to speak of a legalistic utopia. Its pragmatic mode of operation must not prevent us from recognising its radical character. Human rights have a specific logic and their own specific dynamics. Their ambition is nothing less than to absorb progressively into the law the very parameters of the political. This logic and these dynamics are thus led to turn against the framework within which they emerge. How could the universality of principles accept the contingent limitations imposed on it by a given territory? How could the principles recognise their dependency on historical particularity? This universality extends beyond the narrow framework of nations. It demands to rise above territorial and time constraints. In similar fashion, foundational universalism cannot but have distrust towards the States that were established on the basis of nations, or even to look upon them with revulsion. When it makes comparisons with its ideals of contractual transparency and procedural integrity, all that foundational universalism can see in those age-old power structures is arbitrary authority and an excessive use of force. To move away from this obsolete legacy it aspires to dissolve, it works to establish a global civil society of pure individuals, without politics or without politics other than the legal management of coexistence among individualities and their specificities, the only form of being-together it can identify with.

The legal foundational approach leads to a crisis in the foundations of democracy. It is a crisis of an unusual kind. An excess in the foundations produced the problem, not a lack: the fact that the foundations are in competition with one another. The cause of the crisis is none other than the foundational ambition itself, in so far as in these circumstances, it calls into question the foundations without whose support it cannot build anything. This approach dismantles the pedestal on which it rests whilst claiming that it can stay upright using its own means. It challenges the real community within which it materialises and the instrument of power which makes it effective. On top of making democracy blind to its own objective
it makes it blind to its very conditions of possibility as it disqualifies the political form that allowed its development and now sustains its practical realisation. This is a rather extraordinary historical configuration, one in which something akin to a form of democratic fundamentalism, invoking the purity of its principles, ends up making their institutional embodiment impossible to conceive and ends up depriving democracy of its means of realisation, whilst it throws it into a kind of vacuum.

This blindness and looming self-destitution explain how political philosophy today possesses its civic function as well as its philosophical necessity. Its fundamental questioning is inspired by this internal loss of balance which turns democracies against their historical-political supports and prevents an understanding of both their foundations and limitations.

What allowed democracy to arise? What makes democracy possible? Such are the questions that needs to be re-visited in the light of the uncertainties and contradictions of the present era. Once we have pushed aside what seems self-evident—and yet remains misleading—in these principles, which hides the question and draws democracies into a process of self-destruction without precedent, what do we identify as supporting this exorbitant dominion exercised by these principles? For no matter how illusory this dominion is, it has to have a powerful backing. The rediscovery of the political hinges on this critical point and it is poles apart from its distant or closer forms. We are no longer dealing with majestic heights, of orders coming from above, of imperious commandment or total domination. We are called upon to conceptualise the political in light of both its foundational force and the risk of its disappearance. This development that makes the political ever more central, and we must re-examine its modern morphology (mise en forme) on account of the practical foundation underpinning the task of juridification, and which simultaneously makes it vulnerable to dissolution, in so far as it makes the political indiscernible. I refer to the Nation-State, the vessel that made democracy possible and favoured its expansion to the point where it now tends to disown it, where it believes it can do without it.
the nature of democracy

From this perspective, the question of defining the nature of democracy becomes that of understanding the linkage that exists between the law and the political and how it is facilitated by a specific form of the political. We can no longer afford to be naïve. We cannot imagine legal principles that would apply solely through their own force and bend any kind of raw material to their will. The appearance and development of democracy presupposed a very specific form of political community, one that makes conceivable two phenomena that are highly improbable if one looks at the experience of human history over past millennia: a power that can be appropriated collectively and a collective bond that can be individualised. The old forms of powers, by definition, imposed their authority on the community that they ruled in the name of the religious externality they represented, making a conspicuous display of otherness and heteronomy. Whereas, modernity, under the name of “State”, invented a power conceived as the agent of the community’s immanent motivations, a power in which the community can recognise and project itself. Everywhere the collective bond worked against the individual and was known as such only because it was thought to exist before individual persons and to incorporate them, only because it was defined before the components it bonded and imposed its authority without them having any influence on its organisation. In place of this, through the entity that came to be known as the “nation”, modernity invented a form of belonging that could be individualised, a political bond whose elements are considered to exist before itself, in such a way that the bond can only appear as having originated from their will to forge ties—human beings come first, they associate later or put differently, they are born free and equally free, according to the principle that defines human rights. These ideas must be seen as underpinning democracy.

Such is the miracle performed by the Nation-State, the original outcome of European history over a millennium, a creation whose logic and long term dynamics still remain to be elucidated. I will discuss this miracle only briefly, my
only ambition being that of indicating the direction which such a needed task should take. The Nation-State is the symbolic form of the political (*mise en forme*) that corresponds to the exit from religion. Fundamentally, this shaping involves the construction of a form of collective unit that functions as an alternative to religious unity, an alternative that channels through the political specifically what used to go through religion. That the first wave of revolutionary change associated with modernity, that of the 16th and 17th centuries, concerns the political is not a coincidence. What started to be put in place with the State—a form of State equipped with a conceptual understanding of itself—came to be the basis for everything else. To propose a systematic description of this political form, one has to establish a contrast with the ancient, religious structuring of being-together. On every point it overturned the religious structure, be it the mediating role of power, the hierarchical bond, the organic and holistic form of belonging or the submission to the foundational past. It replaced the imperial logic of universal containment that constituted the obligatory framework for the creation of religious unity—humanity being brought together in its submission to a single authority whose task was to fuse it with the invisible—with a new logic of legal territorialisation that relocated the realisation of universality within the boundaries of a particular space existing alongside other similar spaces. Here lies perhaps the Nation-State’s most decisive innovation: the plurality inscribed in its very principle, which implicitly posits the existence of several parallel foci for the realisation of the same universality, of several close versions of a universality that does not actually materialise anywhere in a substantial form. One can thus see that even though many wars were fought in Europe that invoked nations, these, nevertheless, represent the political form that has rendered conceivable something which history seemed to hold as impossible: a genuinely peaceful form of co-existence between distinct political units, a coexistence based on the recognition of their sameness and of their shared ideals. The break with the imperial logic, however, also means a complete transformation in the status of universality. It is no longer, by principle, situated above, close to power and the centre of the supernatural order which power personifies. It shifts to the bottom,
it goes over to where the individual is, the individual becoming the only possible basis for a universal value, once the attachment to the supernatural dimension no longer determines collective organisation. Here one recognises the revolutionary transformation associated with natural law, which came in the wake of the sovereign State's creation and gave birth to the principle underpinning the modern understanding of legitimacy. A permanence across time established itself in parallel with territorial embeddedness and thanks to it, it became possible for the dependency on tradition to be dissolved and for collective action to be projected into the future. The Nation-State is the political form that made conceivable and feasible the historical revolution, that is, the recognition of a common past that allows a common future to be wanted.

The spirit of the Nation-State as a political form, in contrast with the older political formations, can be found to reside in the way it concentrates, specifies and monopolises the political bond. The monopoly conferred upon the sovereign State defines it. Such a monopoly does not stop social authorities from continuing to exist but it strips them of the political role they used to have before. There is only one truly political power, separate from and above the hierarchies of status, whatever they may be, this is a power to which all are directly accountable, a power that only recognises individuals—with no other entity allowed to come between this power and those that have been made its subjects. Moreover, since the sovereign State's “absolute” superiority is commensurate with the metaphysical enclosure of the human domain and with the immanent character of the reason governing its organisation, this superiority of the State makes of it the major vehicle for the repatriation into the political community of the supreme necessities that dictate its very existence. It is the agency through which the community's needs are served and with which it can identify. The separation of the sovereign authority triggers its redefinition as an authority whose essential character is functional, representative and impersonal. Alongside the individualisation of the relationship of obligation, this redefinition paves the way for the collective appropriation of power.
The State’s monopolisation of sovereignty is matched by the nation’s monopolisation of social inclusion. Likewise, the nation’s monopoly does not stop other forms of social affiliation (based on the place of residence, on work or condition) from continuing to exist but it takes away from them any kind of constituent role in the definition of the collective bond. There exists only one form of belonging that is absolutely constraining, one sole form of inclusion acknowledged in public law, because it concerns the existence of the political community, the other forms of inclusion being left to the good will of actors and the spontaneous mechanisms of collective life. Here, thanks to this disconnect between the properly political bond and social ties, it becomes possible to conceive of a collective space that can be juridified in accordance with civil rights. Here, on the basis of social relationships becoming autonomous, there emerges as well the possibility of conceiving of a field of politics, allowing society to express itself, a field of politics that is distinct from the domain in which being-together is created by the political in imperative fashion.

With this simplified characterisation of the Nation-State as political form, we have the main insights needed to address our problem. They must now be developed. This characterisation allows us to shed light on the linkage between the law and the political that appears with democracy and the history of this linkage right up to the present stage—whilst remaining within a historical assessment of the problem. Establishing a list of the distinctive features of this political form is, indeed, sufficient for us to bring out the historical dynamics with which their creation was associated. These dynamics have operated over the longer term, the revolutionary transformation of the 16th and 17th centuries representing, in this respect, only a starting point. The modern transformation of the political that started at that point went on to develop over five centuries. We are precisely under the impact of one of this transformation’s very significant outcomes. Modern society developed from within the old world which, for long a time, left its mark over it. Over a long time, it remained under the imprint of the organisational primacy conferred upon the old powers and the old social forms of belonging sustained by religious
transcendence. The abstract and representative State first displayed an attitude of superiority making it a natural successor to the monarchies’ splendour. The nation of equals often readily appeared as a form of tyrannical exclusivism that was every bit as constraining as the most holistic societies of the past. So much so that the relationship between this political framework and the legal norms designed to regulate the bonds between the people enclosed in this framework long remained invisible. As a result, modern natural law developed through a process of extrapolation in the realm of ideas, if not through a kind of fictional projection, according to the secret logic of the State matrix and without its debt to it ever becoming at all visible. Admittedly, this apparent mutual externality decreased once modern principles won over and the representative form of government was officially established. All the same, these two different sets of parameters were for a long time sufficiently in tension with one another for their affinities to remain unnoticeable. The authority of States and the demands of nations interfered too much with the prerogatives of individuals for the co-involvement of these phenomena to be sufficiently doubted, even if it was strongly suspected.

Totalitarian regimes brought the tension to its highest level to the point of making it appear as an outright contradiction, crushing subjective rights under the unconditional primacy of the political. Far from such extremes, democracies continued to pursue their patient work of reconciling these two different orders of demands, both relatively heterogeneous and relatively affiliated with one another (or there would be no possible transaction), they appear akin to the tension that exists between the eternal constraints imposed by reality and the inner logic of the modern ideal.

Then, in the course of the past half-century, something happened that completely changed the parameters of the problem. An additional step was taken in the move away from religion that stripped the State and the nation of all they had been able to retain that was part of the old imperative transcendence of the political. In parallel, their formula developed fully. The modern revolutionary transformation of the political bond (and by extension that of that the social bond) reached its
fulfilment. Political unity finally took over from religious unity, the difference between them being based on the fact that they have radically opposite appearances. Religious unity is imposed explicitly, from above. Political unity is created from below, implicitly. From its position of superstructure, which it owed to its old ties to the religious, the political moved to that of concrete infrastructure, this infrastructure providing support, from the shadows. The multiplication of the Nation-States’ structural and integrative functions went hand in hand with them being tilted into the dimension of invisible foundations.

Liberating its dynamics on the surface, this slide into the depths of collective life gave free reign to the individualisation of social bonds and expanded subjective rights. The democracy of human rights is the direct product of this transformation of the political into an implicit basis of collective life. The new freedom that appeared within the human social bond was made possible by the existence of a deeper bond operating as a tacit agreement. Human beings are linked to each other, they hold together but in a way that is not visible to them and that does not impose direct constraints on them, and they are linked in such a way that they are given leeway to define their relationships explicitly, according to the law. To put it differently, the invisible bond that exists between them leaves them free to define their relationships in a conscious manner, as if they were not from the start connected to each other. Our society can pose as a society of individuals, that is, it can take the risk of not appearing as a united and coherent society based on the model followed by all the societies that preceded it. This is because it has powerful means to remain a society at its disposal, despite the fact that its members have become unbound. Those means are provided by its political form. This incredible novelty lies in the uncoupling of what is said and what is done, of the political that is implicit and politics that are explicit, of the unconscious side of the collective organisation and its conscious one. This uncoupling is the condition upon which our unprecedented freedom depends. At the same time it is the source of all the dangers we face.

For nothing ensures balance and harmony between the visible and hidden sides
of our regimes. On the contrary, as has been seen, the tendency of human rights politics is to take over and to refuse help, whichever source it may be coming from and whatever it may be. This tendency is encouraged by the way the Nation-State’s functions operate in an implicit dimension, human rights politics no longer perceiving in the Nation-State anything but social dues left over from another era and limitations that need to be transcended. That is how the deliberate legalisation of the bonds between human beings ends up undermining the substratum of their invisible ties. Just as, in former times, we saw the political striving to obliterate the rights of individuals, now we are threatened by another danger, that of seeing the rights of individuals destroy the political form that holds individuals together and gives them power over their common world, that is, seeing individuals destroy what upholds them.

This situation forces us to review the way we think about the Nation-State as a political form, though a reflection on its recent transformations. This is the key to formulating a theory of democracy, a theory accounting for the linkage existing between the political and the law, a theory capable of bringing out the conditions that make this linkage possible as well as showing its limitations. We can no longer be content with the idea that the Nation-State was the historically contingent framework that offered, at a given moment, a more or less favourable shelter for the juridification of the social bond (on the basis of the subjective rights of individuals). We can no longer be content with the idea that it is, however, now overwhelmed by the magnitude of the task, to the point that it must give way to what would be the realisation of a global society for the entire human species, nothing more and nothing less. If the process that saw Nation-States become an empirical reality was largely subject to historical contingency, the principle behind the Nation-State as political form is not itself subject to the same contingency, and the Nation-State is not destined to become obsolete any time soon.

On the one hand, therefore, it is a matter of envisaging a full congruence of the political and the law, of the Nation-State form and of the conception of humanity associated with human rights. This does not mean that such a congruence already
exists, far from it, but that it belongs to the realm of what can be realised. It means that one must imagine a future form of democracy based on a close fit between the power of the collective and the equal freedom of individuals. We still have a long way to go in the task of reshaping the forms of belonging and of power in a way that will make them perfectly suited to the individualisation of the community of citizens. If such a synergy is to become reality, then the political must survive, it must avoid being denied recognition or being repressed, it must be acknowledged in its constituent role. Put differently, it has to be recognised that the law is not self-supporting, that it relies on the inclusion of individuals in a specified collective framework and presupposes their obligation towards a power capable of making its expressions effective.

On the other hand, it is a matter of measuring the limits that the political imposes on the law in order to allow its realisation. Or, to put it differently: measuring the limits the political imposes on politics in order to give politics the means required for their specific task, that of realising the law. It goes without saying that political power must guarantee a representation of the diversity of individual preferences that is as attentive and faithful as possible but only if it remains a power capable of embodying the paramount nature of collective choices. It goes without saying that the political community must allow as much space as possible for the expression of its components’ individuality but only if it remains a coherent community, possessing an identity that is substantial enough for it to evoke historical continuity in the minds of its members and for it to constitute the basis for a common project.

In the same vein, it goes without saying that this community must, as much as possible, be open to the outside world, as possibly conscious of the duties arising from its coexistence with other similar communities, similarly populated with human beings that are free and equal in front of the law. But only if it does not become blind to the need for human communities to have their specific boundaries. There is no such thing as a universal society of the human species. Humanity is such that the universality it is capable of conceiving has to be produced on the
basis of a self-aware particularity. This is why, even if it would not make much sense to consider the existing nations as immutable (in view of the accidental character of the circumstances that shaped them), it is still not totally absurd to see in their essence something that has permanence. They allow specificity to open up to a universal dimension. Without this, it is hard to see how democracy could exist.

I need to stress how the perspective I propose differs from a purely realistic account of democracy, one opposing the conscious ideals to which democracy lays claim and the constraints involved in political practice. Such a gap exists and the contribution made by political realism deserves to be given utmost attention. But the theories of democracy inspired by political realism are not up to the task at hand, one that is far more subtle. This task comes down to constructing a theory with the capacity to give legitimacy to the idea that democracy has of itself, whilst bringing into light the illusion that inhabits it and the limitations against which it is bound to come up. For that discourse, those principles, those ideals are not a mere mask and cannot be reduced to being just a dream: they really do shape the social and political reality of our regimes, and to an increasingly wider extent. We must account for this executive validity. But simultaneously, we must account for the dangers associated with this approach, for the self-destructive ambition threatening it, for the boundaries to which it is blind but on which it nevertheless depends for its existence.

It is necessary to instruct democracy, to bring into light the concealed dimension that supports the claims it asserts and at the same time restricts them. To put it briefly, we have to make the transition to a truly critical theory of democracy, one that can think through both the conditions required for its possibility and though its limitations. Only a critical theory, I must add, can be genuinely realistic. This is because it accounts for all the dimensions through which democracy operates, including the fictions that it believes in. Only a critical theory can fully bring together the political and the law as two coexisting, conniving and yet contradictory realities.
It is worth formulating our perspective in, yet, a different way by placing it within a comparative landscape. If we reflect on democracy in this way, with respect to the political, we are forced to think through two different things, simultaneously. We have to examine both what differentiates democracy from all the types of political order that preceded it and what, nevertheless, relates it back to all the political regimes ever known. We have to examine the transformation of the political that made it, to a large extent, become politics and in the process opened it up to an ever greater degree of juridification, to a legal redefinition that has become ever more demanding and been ever deepened. But we must do so without losing sight of the fact that this transformation does not prevent it from remaining fundamentally what it always was, in with all societies ever known.

_the nature of the political_

From the question of what constitutes democracy, we are naturally led to the question of what the political is, _per se_. The underlying role it has in democracy, which we are coming to recognise compels us to reconsider its previous forms and to re-examine the function it possesses in general.

Recent developments are enlightening. The concealment of the political behind politics, its slide into implicitness has lifted what had previously weighed on its definition since the aforementioned historical revolution of the political, a revolution which toppled its ancient position as society’s primary domain organisation and reduced it to being a secondary and derivative phenomenon. In fact, for a while, the political retained an ambiguous status, one that made it difficult for its significance to be grasped. Admittedly, it is politics based on representation which came to be accepted, society having become the primary authority and the source from which governments proceed. At the same time, as I stressed with respect to the historical course of the Nation-State, the political, for a long time, retained its old sense of superiority. Political powers, may well have come to originate from the collective through the mechanism of elections, and yet they nevertheless continued to look down upon it. Hence the confused arguments
which continued to surround this hybrid political form in which subsisted the trace of ancient domination, combined with modern functional specialisation. In the course of our previous century, by casting the political into the shadow, the transformation which caused the splitting of the political and of politics was, in this respect a moment of liberation. On the one hand, there is a new domain of politics, which functions as a particular segment of social life—to speak like Luhmann, a system that differentiates itself from other social systems or subsystems, on the same plane as economics, science or education. Then, there is this underpinning reality of the political that can only be identified through the disastrous consequences that stem from the fact that it is misapprehended. A reality that is now totally stripped of its former prerogatives but which can, as a result, be grasped by thought, in its most fundamental function. What was only partially possible to decipher during the whole epoch during which the political appeared as the lynchpin of collective organisation (or retained aspects of this preeminent role) now becomes fully readable as it topples into the infrastructural dimension. Its specific function becomes isolated, so to speak. The political does not pertain, properly speaking, to what defines a human community, but to what allows it to exist—to what allows human beings to constitute themselves as human beings within this community. To use a very loaded term but alone adequate: what is at stake in the political is transcendental.

This now apparent place and role of the political allows us to do justice to the perspective of the Ancients, whilst taking our distance and going much further than them. The political is what, in the last instance, structures societies, it is what makes them hold together. This, however, does not imply that the political controls their structure nor that it dictates the correct way of life. It can merely construct their consistency, confer upon them their unity and identity, provide them with a hold over themselves whilst leaving it to other authorities to define their concrete organisation. This is precisely the situation of our societies where the dynamics of history and society on the one hand, and the logic of the law on the other, now shape the content of collective life. A content that is mirrored,
discussed and regulated in politics, behind which the political stands quietly, in charge of supporting the operation of the collective body without participating in it directly. What we know as the separation of civil society from the State rests upon and depends on the separation/linkage of politics and the political. Here is the tremendous novelty which the now fulfilled modern revolution allows us to grasp: the political remains *instituting*, whilst no longer being *determining*.

In the age of religion these two functions were not only merged, determination in fact obscured the dimension of society’s (self)-institution. Society’s ordering (*mise en ordre*), through which the political extended religious unity, concealed the community’s self-production. The uncoupling of these two functions, within a framework that sees political unity substituted for religious unity, allows us to conceive of a role of the political that is even more crucial than what the Ancients conceptualised, since the existence and the subsistence of something that can be seen as a being-together depend on it; at the same time, conversely, this uncoupling reveals that the political possesses a much less constrictive nature, a much more flexible one than one could think, as it can accommodate a large spectrum of social relationships and inter-individual bonds. Further still, it encourages it. The political is no longer, as before, the operative force behind an imposing and overarching drive to establish a totality. It is now the operative force of an underlying unification that allows society’s divisions to find an expression on the surface. It is the cohesive factor thanks to which contradiction can be allowed to express itself.

This uncoupling throws light on the misleading aspects of the phase of liberation we are now experiencing and helps us understand them better. It clarifies the ambiguities inherent in the resistible withdrawal of the State because it distinguishes between the different levels at which this withdrawal operates. The State may move away from managing all collective activities directly, it may cease to appear as the supreme navigator, the prime mover, but its function, nevertheless, grows by as much elsewhere, in another register. What subsisted of its former determining role disappears, whereas its instituting role is reinforced, under the
surface. The power of this instituting role drives the process of liberation, which broadens the scope of action for civil societies, individuals, markets. The world where the political no longer commands is a world which still depends, more than ever, on the political. The dangerous situation in which the world finds itself is due to the fact that it tends not to see it.

This way of understanding the place and role of the political quite simply reactivates the question of transcendent in another conceptual domain than the one in which we have customarily encountered it and where it was first formulated. I have already alluded to it. The question first became prevalent in the register of knowledge: what allows us to know and how much can we know? We encounter it again in a vastly different domain of experience: what allows a human community to exist and to hold together if one considers that it does not belong to the realm of what is naturally given, nor to that of deliberate creation, even if it possesses features of these two orders of reality? If it were an organism, the problem would not even be worth discussing all we would need to do is to establish the anatomy, the physiology and, as it may be, the pathology of the social body. Such is not the case: society needs to bring itself into being and to decide what it is. This, however, does not mean, that it is the outcome of artifice, the product of a contract freely negotiated between beings that are originally unconnected—another scenario with which there would not be any problem either. It would be sufficient to know the specific clauses of the agreement that gave birth to this artificial association. In reality, individuals are always already bound to each other, the community in which they belong exists prior to any reflection on the conditions of their relationships. In this respect, the community does, in some way, fall within the scope of natural givenness (donation)⁸, even if this nature has a remarkable property, it is not only amenable to an intervening reflective action but also calls upon an activity of self-constitution and self-definition. It is a nature that has to be wanted, within boundaries that constitute an essential part of the problem. This means that a society can only exist as a society of persons, by which I mean beings endowed with self-awareness. This self-awareness precludes their
being reduced to being only parts of a whole, and gives them the capacity to want to create their society. Such a society, far from being the product of their will, is what allows this will to be exercised, in so far as society is, furthermore, capable of grasping itself as a global and collective entity that exists through and beyond the persons composing it. What makes possible this paradoxical and enigmatic mode of being? The reply is and can only be: the political. It is through the political that this task of institution unfolds, between nature and artifice, a task that defines the specificity of human communities. It represents the primordial structuring of collective existence that guarantees its inner coherence whilst leaving it open to reflection and action on the part of its members. The political constitutes the mode through which humans, nevertheless, possess some power over the common world that transcends them.

The objective of this text was to indicate the war forward, to chart a path, to establish the parameters of a new approach. I think I reached the limits of what was possible to establish, in this context. As my end point reaches dizzying heights of complexity, something I am well aware of, I would not want to end without offering some additional clarifications on what, otherwise, runs the risk of appearing as an undecipherable enigma. Even if I cannot claim to be providing an exhaustive definition of the political, it is still possible for me to give a substantive idea of what the political consist in and to remain at the same time within the boundaries I set for this brief presentation of my research program.

To summarise the main message in one abrupt statement which I will then need to unpack: humanity is political because it appears, always and everywhere, as a plurality of communities that are processually autonomous. It would not be political if there existed what classical authors called a societas humani generis, a society of man. The political is the force that brings order into this discontinuity across the different collective units of humanity. These units have to define themselves independently from one another but, at the same time, with respect to one another. For this purpose they are endowed with power over themselves. They do not merely exist, they actively make themselves. This is why it is appropriate
to describe them as autonomous, provided that one adds that the labour through which they refer back to themselves and organise themselves is not effected in just a conscious and deliberate manner but also in a processual fashion. Properly speaking, the political consists in the ways through which this concrete autonomy operates, or to put it differently, it consists in a system of mediations, those that put a community in relation with itself and make it capable of instituting itself. These constituent mediations seem to come down to three: power, conflict, and norm. Power, or the externality of a singuluar person whose word applies to all; conflict, or the questioning of what applies to all; norm, or the “ought”, which creates a common space because it is imposed on all, equally. Such are the three irreducible and specific dimensions that are responsible for the fact that human communities, as opposed to animal societies, possess a capacity of practical self-determination, are concretely reflective and govern themselves in processual fashion.

Over the longer timeframe of human history, the expression *par excellence* of this processual autonomy, was paradoxically its self-negation in religion. In this perspective we can define religion as the use of processual autonomy to establish explicit heteronomy. Indeed, positing that one does not control oneself, that what one is one owes to others, to anterior and superior ancestors or gods in fact constitutes, very much so, just another way to control one’s destiny. But conversely, processual autonomy is also what makes possible the prospect of an explicit form of autonomy. It constitutes the operative starting point from which the democratic aspiration can develop, as the antithesis of religious renunciation. A new problem arises in this configuration: the project of autonomy, once fully formed, tends to see itself as self-sufficient and to be ignorant of the foundations on which it rests. Such is precisely the point we have reached, as a result of the strength gathered by the move out of heteronomy; from this comes the crisis of democracy we are now experiencing, a new type of crisis. We can reformulate the principle that defines this crisis in the following way: the pursuit of explicit autonomy, through politics, represses and negates the processual autonomy.
guaranteed by the political in which it is rooted and which, alone, can provide it with substance. The task of democracies will be to overcome this fatal divide and to re-connect the two sides; they will need to find the means to bring together the politics of deliberation and the dimension of political institution.

When it comes to these conditions of being-together we are truly allowed to speak of a transcendental challenge because they are ultimately synonymous with the conditions of being-oneself. With these conditions we are dealing with the kernel of the human-social phenomenon, with what allows us to exist for ourselves, individually and collectively. We are endowed with personhood. That is, we are beings capable of knowing they exist and, to certain extent, capable of wanting to exist because, together, we belong to political communities that possess some power over themselves. Individuals endowed with consciousness can only exist in the context of collective bodies that are organised politically, that is, in the context of collective bodies endowed with identity and with their own capacities to act. The structures which produce this self-determination at the collective level are closely related to the structures that guarantee every one’s reflective self-assertion. They are not the same but they belong to the same category operating at a different level, and they are interconnected. It is necessary to reflect on these two lots of structures, on their interdependence as parts of a whole.

This reflection on the political thus ultimately opens up onto a vast transcendental anthropo-sociology, but it constitutes only one chapter.

MARCEL GAUCHET is professor emeritus of the Centre de recherches politiques Raymond Aron at the École des Hautes Études en Sciences Sociales and founding editor of the former periodical Le Débat.
NATALIE J. DOYLE is adjunct senior research fellow in the Faculty of Arts, Monash University (Melbourne, Australia). She is author of *Marcel Gauchet and the Loss of Common Purpose. Imaginary Islam and the Crisis of European Democracy* (Lexington Books, 2018), and co-editor of the collection *Marcel Gauchet and the Crisis of Democratic Politics* (Routledge, 2022).
NOTES

1. The translator wishes to thank Cristina Savin, Louise Bernasochi, as well as Virginie Pfeiffer, for the invaluable support they provided when they were graduate students in translations studies at Monash University (Melbourne, Australia).

2. The collège de philosophie is an independent research centre and think tank founded in the 1970s. This text was originally prepared for a seminar at collège de philosophie in 1998, and was subsequently published in Revue du Mauss: Gauchet, Marcel, 2002, “Les tâches de la philosophie politique”, Revue du Mauss, 2002/1 no. 19, La Découverte, Paris.

3. Translator's note: Gauchet uses the term “fait politique” which corresponds to an expression used later, “social facts” (fait sociaux). The term “fait” alludes to its use in French sociology and anthropology, starting with the work of Marcel Mauss.

4. Translator's note: The article discusses the growing role of the law as a system but also the reasons behind this growing influence: the progress of individualisation and the new role played by the notion of fundamental rights. The connection between these two phenomena (ideological, practical) to which is added an institutional one (the appearance of courts safeguarding these fundamental rights and their greater power) appears clearly in the French text through the dual meaning of the word “droit”, one of those words that is, as a result of history, without equivalent in English. The word corresponds to what is designated as “the law” (the system of laws, i.e. positive law) but also to what is conveyed by the English word “right” or “rights”. The problem discussed in the article and conveyed by the expression “le droit” thus concerns the appearance, with the progress of individualisation, of a new form of law as a system of rights or “un droit des droits”. This idea is implicitly evoked in the author's use of “le droit” but this, unfortunately, cannot be conveyed fully in the English translation.

5. Translator's note: The French expression mise en forme refers to the process whereby the political body acquires a collective identity through a symbolic self-representation. The notion first started to be theorised by Gauchet in the 1970s and drew inspiration from Ernst Cassirer's Theory of Symbolic forms. From then on it was used to develop a comparative analysis of the different political forms known by humanity (tribe, empire, City-State, kingdom, and Nation-State). Mise en forme, a nominalisation of the verb “mettre” has a dual meaning. It refers both to the process whereby a symbolic identity is created (and is thus related to what the text later analyses as “processual autonomy”) and to the outcome of the process, i.e. the symbolic form of the political body, its morphology. In its first meaning it has been translated as the gerund “symbolic shaping”.

6. Translator's note: The words “instituting function” translates the French expression “fonction d'institution”. ‘Institution’ is a notion which is central to Gauchet’s thought and originates in his intellectual exchanges with Claude Lefort and Cornelius Castoriadis.

7. Translator's note: the author speaks of the “liberal option” by which he means the ideological understanding of what he calls the liberal reality of modernity (“fait liberal”). Gauchet has
developed an account of ideology and contends that there are only three possible fundamental responses to the new social reality (conservatism, liberalism, socialism). This theory was first outlined in “Croyances religieuses, croyances politiques” (Le Débat, 3(115), 2001,3-12).

8. Translator’s note: The author’s vocabulary, his use of the terms being-onself, being-together, givenness bears the marks of his early engagement with phenomenology, especially the work of Merleau-Ponty.
Can we speak of an interdisciplinarity without metaphysics? What kind of meaning can we give to this exigency which resembles so many others posed at the beginning of this century? The positivism of that time accompanied a science of laws, in which the main problem was the verification of these laws through the observation of phenomena that they predicted. This positivism told us about facts, observations, phenomena, measurement—all things which have remained meaningful. And yet, we wager that the question of this exigency can change something in our way of thinking about interdisciplinarity.
THE TWO SOURCES OF INTERDISCIPLINARITY

When we speak of interdisciplinarity, we do not only speak of a situation, but also of an imaginary driven by the inevitable projection of disciplinary logic onto interdisciplinarity. This imaginary manifests interdisciplinarity as divided by an unexpected situation. There would be an interdisciplinarity that exists *de facto*, and one that is presented as the aim of scientists researching another scientific practice than what their discipline alone requires.

The first, *de facto* interdisciplinarity, would be what engineers and many scientists practice by industry and State demand. They fix a technological objective, implement an industrial, economic, political, and scientific collaboration—and they realize it. The design of the majority of current technological objects presumes a managed and deliberate interdisciplinarity, one that is more and more integrated, requiring not only a concept of this multiple modeling, but also “metaconcepts” to make it more coherent. As soon as there is agreement between the political and the economic, these objectives can be attained with the collaboration of specialists of very different disciplinary origins, with more or less delays and transformations. Thus, interdisciplinarity is a fact acquired through politics and the economy together. Interdisciplinarity is both an effect and an already banal constituent of technology.

The second interdisciplinarity would result from the will to modify scientific practices considered obsolete and coming from a science of laws, rather than from a modeling that allows for the study of objects other than “ideals.” Monodisciplinary habits remain the majoritarian usage within the scientific community, and this situation is increasingly recognized as harmful to research. Nevertheless, for many researchers, the idea of instituting an interdisciplinarity which modifies the attitude of scientists *vis-à-vis* their discipline and the disciplines of others obviously seems like wishful thinking, even a naive illusion or simple fantasy. Scientific institutions are themselves based on classical disciplinary regularities. They only listen to “interdisciplinary” opinions in terms of the prospect of
prompting the invention of new objects of research, rather than modifying
disciplinary structures. This interdisciplinarity is considered the general culture,
rather than the bearer of scientific results.

This contrast perverts the debates concerning interdisciplinarity because it
extends a ready-made metaphysical conception that opposes the order of fact
and the order of dream as contraries. These oppositions allow all the chiasmata
that are possible: for example, the imaginary of science-fiction accompanies the
achievements of engineers, while a new kind of “positivism”—a positivism of the
terrain rather than verification—inhabits the scientists who turn interdisciplinarity
into their ideal. However, we cannot escape from these chiasmata, we cannot
undo them, we nuance them indefinitely. This situation is a sign that the question
of interdisciplinarity is badly posed and that its importance requires evaluation
from another point of view.

**IS SCIENCE DISCIPLINARY?**

The previous contrast shows us immediately that, from a political perspective,
science is dependent on its achievements and that the scientist is attached to the
discipline that formed them, and that it is useless to divert them from it. However,
this double observation precisely depends on a very narrow idea that one makes
of *Science* [la science] as an ensemble of disciplines. Without speaking of the quasi-
vicious circle or back-and-forth game [*jeu de renvoi*] between fact and dream that
one such approach presumes, this makes science depend on a historical situation
that is too particular to comprehend it, one that always fascinates.

To determine what science is, one habitually seeks the criteria within the classical
models of science: physics or mechanics. The main novelties would have been
introduced by disciplines that are especially relevant to physics: thermodynamics,
relativistic mechanics, and quantum mechanics. Many works concerning science
seek to refine the criteria of scientficity within this historical perspective, which
is extended by the great epistemological tradition. In parallel, a very lively critique
of “mechanism” (or mechanicism) has been rightly developed. However, it is sometimes overdone: it attributes characteristics that are dependent on our idea of science to mechanism. This results in a fascination for mechanism within science’s very critique, a fascination which one can say makes up a part of the same paradigm.

The history which leads to an awareness [conscience] of the necessity of interdisciplinarity is pertinent in itself. This awareness is each time the result of a precise discipline, from an institutional and political history of science practiced in a particular country, etc. All of this is essential to understand the situations. But in our opinion, if our concept of science must be able to take account of this history and evaluate effective situations, it is not necessary that the concept depends on them. It is this dependency that gives rise to the contrasts described above. It is the same dependency that gives rise to metaphysical conceptions of interdisciplinarity. Therefore, we postulate that a concept of science that takes account of disciplines—one that is not dependent on them—is possible, and that this concept of science would allow us to comprehend the question of interdisciplinarity in a less narrow fashion.

EVERYDAY METAPHYSICS AND INTERDISCIPLINARITY

A disciplinary conception of science leads to one of the most classical metaphysical perspectives. We know what metaphysics consists of: transgressing beyond a border (as one says in philosophy) to give meaning from beyond that which it starts from (that is the meaning of meta in metaphysics). This transgression can take on all forms. For example, seeking a reality in-itself behind the statements of science, postulating a thing in-itself which would be the cause of observable phenomena, generalizing a disciplinary perspective into a worldview, or passing from the borders between disciplines to make one among them the explanatory rule of the others.

The question here is not to know if metaphysics is good or bad. The transgression
of a border, the search for a horizon, or for a more fundamental explanation makes up part of the most everyday gestures—it is not exceptional. Common sense is metaphysical as well and lives out its spontaneous philosophy in the form of metaphysics. It is one of the philosopher’s duties to seek to distinguish between philosophy and metaphysics, and the philosopher is never certain that the whole technique of a philosophical system ever suffices for that: the history of philosophy demonstrates that numerous philosophies seek to liberate themselves [se débarrasser] from metaphysics thanks to their philosophical technique, but metaphysics reappears from another perspective.

However, when transferred to the question of interdisciplinarity, this everyday gesture limits interdisciplinarity’s significance and scope. What emerges from these passages between contraries that structure our Western culture and our sensibility is the opposition to the interdisciplinary achievements of technological capitalism, and the ideals of scientists who postulate the existence of complex objects. Under these conditions, it is natural that interdisciplinary perspectives have been above all metaphysical perspectives, seeking to generalize particular concepts with systemic value. This has been the most natural path. For example, one can generalize the quantum concept of the bootstrap to make an image of disciplinary relations. All of these perspectives have interesting effects, but they derive from spontaneous metaphysical practices which revive oppositions analogous to what we put forward. They are a way of superseding the specialization of the starting discipline to find an interpretation of the relations between disciplines which compensates for this specialization. Here, science is seen within its disciplinary superseding, which nevertheless always still depends on the original disciplinary conception that we feel entitled to apply to other disciplines.

THE DISAPPEARANCE OF SCIENCE?

This discussion has a particular scope today. The whole epistemological tradition is founded on one disciplinary conception because its problem was to find a status
for the physical disciplines which no longer seems to be reducible to the principles of mechanics. The term epistemology appeared at this moment in the history of the sciences, in the middle of the [19th] century in English and at the beginning of this [20th] century in French. Epistemology is a discipline which seeks to determine what would make an advancement, a method, a theory, an experimentation, etc., “scientific.” It can be defined as a study of methods and the advancements of the sciences, engineering and relations between sciences, societies and ethics. Since the middle of the [20th] century, epistemology also dealt with technology and modeling, and it is currently leaning towards becoming a study of disciplinary interfaces, giving meaning to the title of this text. The governing question of epistemology was to attempt to establish the criteria of scientificity, provided that mechanical theory could no longer be comprised as a universal image of the world. The broader public above all knows the names of Popper, Lakatos, Kuhn, and Feyerabend, but regardless of their respective importance, their works are but a fragment of a complex tradition.

However, the research into these criteria has never succeeded, except through a war between criteria for which no referee has been found. Nothing allows us to affirm that we have the technical, philosophical or scientific means to know that a discourse is scientific and that it is thereby distinguished from other discourses of culture, Western or otherwise. At the end of the 20th century, the idea that we no longer have criteria for scientificity predominates. Only a little while ago was it the most advanced point of view. What followed was that the epistemologists most aware of this situation renounced the concept of science to the extent that they turned it into the sole effect of the political and economic strategies of technology. They strictly reversed the situation to make us see at which point it is not science that thinks its object, but an even broader strategy that produces science as an effect where it is difficult to distinguish the two (strategy and science). Every experimentation, achievement, and technological network that rendered the political immanent to the scientific, currently seem to replace the classical and the very theoretical concept of science. One of the sharper epistemological signs
of this is the progressive substitution of an image of science as the research of laws with the image of a science that is constructive of models. No concept remains comprehensible within the single discipline in which it was born: technology brings about a nomadism and a cultural hybridization [métissage] which tends to destroy the most grossly metaphysical aspects of science, but not its disciplinary origins.

**THE IDENTITY OF SCIENCE**

We adhere to these views to the extent that we think we can only observe the blends of scientific rigour, metaphysical project, philosophical conception, ethical utopia, etc., within the effectiveness of the research or in the history of the sciences. In the face of a current or past situation of research, nothing allows us to isolate a pure case of science or philosophy: there are always blends and mixtures, and the search for criteria of decision between science, philosophy, and metaphysics seems illusory insofar as it would want to be univocal and dogmatic. We are only dealing with complex situations that cannot be explained by a single principle. But we do not accept that contemporary relativism (which puts classically distinct discourses on the same level) would be the only way to interpret and understand this phenomenon. This makes the human the product of their technologies, whether discursive or not, and this point of view is only partial according to ethical or scientific categories. Nothing obliges us to consider these ideological consequences as the only possible paths.

Rather than seeing the epistemological tradition as a failure, we assume that its so-called criteria, even contradictory ones, are partial descriptions of science, all of which have a value in principle and can obviously vary according to empirical conjunctures. Depending on the case, it may be better to insist on one means of description rather than another, but at the level of principle, we posit the equivalence of criteria. This is possible because no particular method can lead to the identification of science. None of the old criteria should be ruled out from the point of view of the description, but their value as criteria is illusory. The
epistemological war to know what science is no longer has a reality as a war, even if some disciplines are at war with each other. But for that, it is necessary to reverse the usual point of view and no longer consider epistemology and philosophy as surveying [survolant] science through their generality, but as discursive traditions to be treated as materials from which we can extract hypotheses. These will implement partial descriptions that will be all the more interesting insofar as they will be multiple.

If what we observe is a blend—a blend of disciplines, for example—this carries with it an obligation for an explanation through blends. We are free to make hypotheses, provided that these do not, on the basis of one disciplinary principle, exclude facts and research studies. We do not rule out what does not look like physics, what does not look like a science of laws, a hypothetico-deductive theory, or a monodisciplinary approach. But in our opinion, it is not enough to accept relativism and blends to maintain one such attitude that does not want to restrict research. The attitude that we propose therefore supposes that it is possible to practice [faire] epistemology from hypotheses.

This requires a theoretical modesty, this time of principle rather than a psychological one because none of the hypotheses have the value of a criterion, a law, or a definitive principle that would determine what we can call truth. This is an approach contrary to that of philosophy because the latter always supposes, at one point (however small), that it directly touches something real and that it is affected by it in a circular way; that it masters a relation to the real and that it knows how this relation is made. Philosophy thus builds the real, but, in return, is affected by it (since it is real), and what could rigorously be presented as its object is constantly affected by this relation.

Let us suppose a philosophical attitude that admits everything of philosophy, its concepts, its categories, its theories, its multiplicities, but by renouncing its ontological value: the admitted link between philosophy and reality and thus, the ideological domination of philosophy over other disciplines. The relation
of philosophy to science will no longer need to be hierarchical and, as a result, the hierarchy between scientific disciplines will no longer take place because it depends on metaphysical generalizations of concepts drawn from a particular discipline, preferably from physics. Then we will be able to speak about an interdisciplinarity without metaphysics, and thus without hierarchy. The very concept of this interdisciplinarity does not depend on any particular discipline.

Rather than a science determined by its disciplines, a philosophy governed by its object and affected by it, science and philosophy are attitudes or fundamental postures that we try to describe in a minimal way based on the materials called science, epistemology, and philosophy. This posture makes the identity of science and, depending on the case, the “coherent-isms,” the “verification-isms,” the “falsification-isms,” can have their meaning in the interpretation of situations where this posture is in play. But they are no longer principles of scientificity.

Science is then characterized as a description of the real, such that it neither affects nor transforms it. This is a minimal hypothesis, an example of what we will term an order. An order is never given in a pure way in concrete cases because the historical contexts always reveal blends of science, culture, ethics, philosophy, politics, etc. This characterization is also suggested by the fact that false theories in science mix the conceptual and the real. The scientist describes the real and they do not seek to understand nor do they need an understanding of the relation of their concepts to the real. Such is their posture in front of the real and the order of knowledge that it determines. When the scientist discovers, invents, models, experiments, implements field research or a research-action, they modify the geography of scientific concepts, not the real. There is a positive obscurity of the relations between science and the real which gives science total freedom. Such a characterization of science no longer derives from disciplines and allows us to pose complex objects without making them step out of a hierarchical disciplinary story [histoire] where in the beginning we find physics and laws, then biology and singularities, and finally, at the end of the journey, the human sciences and their models, whose status—ideological as much as scientific—does not cease to raise
debate. We no longer need these hierarchies which derive from a metaphysical conception, generalized outside its limits, of the concepts of a particular discipline. This does not mean that the disciplines have no status, but they change their function. Rather than organizers of the cartography of science and knowledge, they become a scientific material from which we can extract the tools necessary to study complex objects.

THE CONCEPT OF SCIENCE AND INTERDISCIPLINARITY

This hypothesis allows us to undo many prejudices about interdisciplinary work. We like to say that the habits of the scholar more or less force them to return to their discipline, even if some collaboration (technological, for example) has made them leave it temporarily, or at least made them walk along some border. From the disciplinary point of view this is true, but already too historically determined. We should rather say, as Jean-Marie Legay suggested in a conversation, that the scientist always returns to their object rather than to their discipline, the first object that they worked on and which they understand better than all others. Let us interpret here the object, not in its habitual metaphysical conception of given / constructed, real / modelled, but quite simply, in a much more minimal way, as that which the scientist works on. They think that their object exists and they construct models to understand it. This approach appears contradictory or metaphysical only from a philosophical point of view which would like to be the governor, the legislator of relations between these models and the real. This approach can only be criticized if one assumes that models are always and must be a representation of the real, thus having an ontological value. There is a positivism necessary for the practice of science, but it is in no way necessary that this positivism be attached to a general or regional ontological distribution that the disciplines suppose. Interdisciplinarity then admits the multiplicity of borders as acquired, even as normal, and no longer seeks to cross them, like a beyond. Scholars whose objects are diverse can collaborate and thus postulate and construct complex objects: their “disciplines” will then be the material from which they can extract the necessary and partial concepts for their description.
The discipline is always there, like the other criteria, but rather than a starting point, it will be thought of as material, a set of methods and concepts that allow the elaboration of certain facets of the complex object.

What then becomes of the paradigmatic opposition from the beginning? It is the illustration of an older point of view and the effect of a disciplinary fantasy. There is no longer any reason to understand interdisciplinarity in the alternative of realization or of wishful thinking. Let us postulate that it exists, that it only has to be exercised, and that from the point of view of science, it does not even have to be defended. Of course, one can describe science as dependent on politics and economics and see science as the effect of a strategy that escapes it and against which science must defend itself to be better accepted by it. However, this is a partial point of view, one that is historically determined though current, as has been the era of disciplines. To extend and generalize this point of view as universal would again be to plunge science into metaphysics, according to the everyday gesture. A particular situation, like that of sciences in politics, is not describable under a single hypothesis: nothing prevents us from making it a complex object, i.e., an object for which no discipline can account in isolation. While those who realize and those who prospect can be on the same field, one is not more or less useful than the other.

THE PASSAGE FROM DISCIPLINES TO ORDERS

This change [transformation] of the attitude with regard to the sciences has its equivalent with regard to philosophy, technics, technology, ethics, etc. The search for orders is a form of liberation, whereas the geography of disciplines is a working tool. Orders are also minimal epistemological hypotheses (we spoke above of epistemology from hypotheses) to account for the diversity and complexity of fields of knowledge and not a description of historically given disciplinary blends. As we have seen, the latter leads to a hierarchical conception in function of the chosen disciplinary model. A transformation of epistemology, so that the characterizations of the essential human postures would also be
minimal hypotheses, would allow for all the effective blends without relativism and without flattening problems. The identity of postures does not seek cultural hybridization and the nomadism of the concepts to come, but admits them as they are. We obviously cannot do the work of hypotheses and description that the transcendental distinction of orders supposes. Nevertheless, we can suggest that within philosophy, the abandonment of ontological sufficiency implements a very rich invention without the will to totalization or systematization. This does not seek to rule the other orders, but to favour their relations and let them be without a historically determined hierarchy. For the philosopher, the research of hypotheses and the field, theoretical research and research-action would no longer be sciences that are opposed but sciences that are juxtaposed without totalization. They would be just like ingredients that could coexist in accordance with situations. Interdisciplinarity would no longer be experienced as a practice that adds a supplement to the normal or banal exercise of sciences, but as its most normal modality because it is not organized by a hierarchization of disciplines.

ANNE-FRANÇOISE SCHMID is associate researcher at the Chair of Theory and Methods of Innovative Design, MINES Paristech.
This article contributes to the discussion of philosophical archaeology in Foucault’s early works by reexamining its influences and recent developments using two concepts that appear in *The Order of Things*—a *history of the Same* and a *history of the Other*. Foucault viewed his work in *The Order of Things* as a departure from his earlier archival research into madness because madness is the object for a *history of the Other*, while order is the object for a *history of the Same*. A *history of the Other*, he says, is: “that which, for a given culture, is at once interior and foreign, therefore to be excluded (so as to exorcize the interior danger) but by being shut away (in order to reduce its otherness).” Eventually, Foucault would
pursue this in his “Lives of Infamous Men” essay and *Parallel Lives* project. A *history of the Same*, by contrast, is “that which, for a given culture, is both dispersed and related, therefore to be distinguished by kinds and to be collected together into identities.” It is the history of a culture that does the Othering, deployed as a means of preserving that culture against the encroachment of “foreign” influences. I will use this distinction throughout the paper to figure various archaeological projects in relation to one another. I will reexamine philosophical archaeology through these two categories and the permutations that result when they are brought to bear on one another.

This paper includes seven sections and a conclusion. In the first section, I argue that when thinking about archaeology through these concepts, it becomes apparent that Kant’s non-transcendental project provides us with the best sense of what Foucault thought was at stake in philosophical archaeology. In the second and third sections, I argue that by placing Kant within a history of the Western search for order, Foucault brings forth a paradox in Kant’s philosophical history, showing it to be a mere *history of the Same* against which Foucault’s early *histories of the Other* were situated. In the fourth, I name this insight as *historiological* because it raises the question of the relation between possible histories. This, in turn, highlights the agonism of Same and Other within any history—being able to “think that” or not. In the final three sections, I show how attempts to avoid the *history of the Same* have led post-Foucauldian scholars to develop three hybrid categories of history: the *history of the Other within the Same*, the *histories of the Same among others*, and the *histories of others among the Same*. In the fifth, I describe how Agamben’s extension of Foucauldian archaeology produces the *history of the Other within the Same* in his *Homo Sacer* project. Then in the sixth, I turn to Agamben’s work on paradigmatology, which I consider in conversation with Colin McQuillan’s recent critique of this method. I draw from Agamben’s alternative logic of the example (*para-deigma*) to argue that archaeology takes place between the posit of an historical *a priori* and its exposition. The example an archaeologist chooses determines the conditions of inquiry for Agamben—not universally,
but as “one singularity among others.” This means archaeology cannot claim to found a universal rational history, as Kant wanted, but this does not make it useless. In the seventh section, I argue that the modality of the singular entails a reconsideration of the example’s critical and productive capacities, particularly in relation to that constellation of events it collects as archaeology. This is what I call a history of the Same among others. In closing, I consider critiques of Kant, Foucault, and Agamben, which also lead us to think about a history of others among the Same.

READING FOUCALUT THROUGH KANT

Scholars have described several influences on Foucault’s concept of the historical a priori—including Husserl, Heidegger, and Levi-Strauss. Recently, several excellent Continental scholars produced a volume on the historical a priori in Foucault and Husserl, which contains valuable insights about the future compatibility of phenomenology and quasi-transcendental projects (i.e., as critical phenomenology). However, it seems they were unable to find a substantial agreement about the nature of the historical a priori itself. For Husserl, it is “the overarching, ideally possible structure of meaning-constitution: of intentionality itself systematically and modally construed.” For Foucault, it is something geared toward the historicization of projects like Hegel’s, concerning or aiming at some kind of universal history: “Foucault’s aim is to offer a genealogy of history.” The co-editors ask, “Can the threads of this prima facie aporetic bind between the eidetic and the historical be productively woven?” Yes, they argue, in several senses, though it appears this productivity is qualified. As they also note in their introduction: “this volume is a testament to the fact that rich and productive dialogue across traditions is possible even in the face of deep and even intractable disagreements.”

Colin McQuillan argues that we should look instead to Foucault’s early interest in Kant to understand the historical a priori. To my mind, the most convincing evidence for this view is the fact that Foucault himself says so. After the publication
of *The Order of Things*, George Steiner accused Foucault of obscurantism for choosing the term “archaeology.” Foucault replied sharply in writing: “Mr. Steiner does not know that Kant used this word in order to designate the history of that which renders necessary a certain form of thought.” This does not appear to be a random appeal to authority. Kant was particularly important for Foucault early in his career. His most substantial work on Kant, *Introduction of Kant’s Anthropology*, can help us think about the historical *a priori* and his developing archaeological method.

Kant’s *Anthropologie* text, drafted just three years before the 1775 “Different Races” essay, raises important questions of method for the empirical sciences. In his *Introduction* text, Foucault insists on the fundamental divide between the realms, methods, and aims of anthropology and critique: “In the *Anthropology*, the relationships between synthesis and the given are the mirror-image of how they appear in the *Critique.*” They are related through an “inverted analogy that casts the *Anthropology* as the negative of the *Critique.*” This is because there are two *a prioris* at work in Kant’s transcendental and non-transcendental projects—the *a priori* of knowledge and the *a priori* of existence. These two cannot be immediately transposed onto one another; the *a priori* of knowledge appears in anthropology only as “the density of a becoming where its sudden emergence infallibly assumes the retrospectively constituted meaning of the already there.” In *Anthropologie*, in other words, the given is not pure, but “grouped and organized, as having already been given the provisional or solid figures of synthesis”. The *a priori* in the realm of knowledge becomes what Kant elsewhere calls an embryo, “an originary which is not chronologically first, but which, having appeared in the succession of figures of the synthesis, reveals itself as already there.” On the one hand, this is the arche or seed crystal of those natural purposes we cannot help but posit (albeit regulatively) in the third *Critique*. But on the other hand, it gave Kant a way to encounter these purposes “in the reflection of concrete existence, lit up by muted lights which give it the depth of the already occurred.” At this point, Foucault argues, Kant’s theory of the method becomes “a regressive analysis that aims to uncover...the primitive
It is a way to use the non-transcendental world of history as a confirmation of the course it ought—and therefore must—have followed. I think this is Kant’s sense of what Husserl will later develop as the historical \textit{a priori}, though here, it is more like an \textit{a-historical \textit{a priori}}.\textsuperscript{22} Foucault, on the other hand, argues that this double movement constitutes a confusion of the ‘\textit{a priori}’ with the ‘fundamental’, via the intermediary notion of the ‘originary’. He writes:

The intermediary character of the originary and, with it, of anthropological analysis, situated between the \textit{a priori} and the fundamental, is what allows it to function as an impure and unthought hybrid within the internal economy of philosophy: it will be accorded both the privileges of the \textit{a priori} and the meaning of the fundamental, the preliminary character of critical thought and the realized form of transcendental philosophy; it makes no distinction between the problematic of the necessary and that of existence; it confuses the analysis of conditions with the interrogation of finitude. One day, the whole history of post-Kantian and contemporary philosophy will have to be envisaged from the point of view of the perpetuation of this confusion—a revised history which would start out by denouncing it.\textsuperscript{23}

If we want to follow Foucault’s recommendation here, it appears we must construct an account of the perpetuation of Kant’s “originary \textit{a priori}” to continue, so we must pass over a further analysis of Foucault’s \textit{Kant’s Anthropology}. I will pursue this account in the following two sections, by analyzing Kant’s non-transcendental project using the concept of a \textit{history of the Same}.

\textbf{A PRIORI HISTORY: A HISTORY OF THE SAME}
The historical *a priori* is not found directly in Kant, but its development alongside philosophical archaeology can be demonstrated from passages in his mid to late career. As McQuillan notes, a discussion of the problem of a rational history first explicitly appears in the final section of the first *Critique* (1781), where Kant suggests a history of philosophy from a merely transcendental point of view. McQuillan also discusses Kant’s 1793 essay, “What Real Progress has Metaphysics Made in Germany Since the Time of Leibniz and Wolff?,” which argues for the conceptual possibility of a history of philosophy that proceeds according to a sequence “founded in the nature of man’s cognitive capacity.” Yet, these are only two moments in a longer train of Kant’s thinking, which he instigated before the first *Critique*, and to which he returned until the end of his life. In four essays between 1775 and 1788, Kant deals with the problem of history from the perspective of the non-transcendental realm as well. While these four essays have rightfully been the target of critique for their racist characterizations and anecdotes, they productively reveal how Kant grappled with important questions of method. Together, they provide a stronger background for understanding Kant’s initial formulation of philosophical archaeology in the 1793 essay.

At issue in these earlier essays is the question of writing a rational history, a history based on the nature of reason instead of on empirical facts—what I call here an ‘*a priori* history’. By the time Kant formulates his concept of philosophical archaeology, however, the issue has shifted to the question of writing a history of reason, an account of the development of the rational faculty as progressively employed by humanity—what I call a ‘history of the *a priori*’. In the rest of this section, I will look at Kant’s attempts at an ‘*a priori* history’ through a series of four essays. In the following section, I will turn to the transition between these two projects and give an account of his later attempt at a ‘history of the *a priori*’. Finally, I will argue that both are instances of Foucault’s *history of the Same*.

First, Kant’s 1775 essay, “Of the Different Races of Human Beings,” gives a theory of the common descent of all humans. We descend from a “single phylum” containing the “germs” of non-essential variation, which manifest in us in relation
to different environmental factors. Many of his racist opinions are on full display in expounding upon this theory, though Kant acknowledges that the “boldness of opinions” is not a substitute for a “history of nature, which is a separate science and which could gradually advance from opinions to insights.” To this end, Kant formally announces a plan to examine the empirical world through non-empirical means [Weltkenntniss], which he divides into the study of nature (physical geography) and human beings (anthropology). Both of these should be considered cosmologically, “not with respect to the noteworthy details that their objects contain...but with respect to what we can note of the relation as a whole in which they stand and in which everyone takes his place.” This principle of holism in the examination of the natural world is a first clue that Kant is seeking a history of the Same—of what can be “both dispersed and related, therefore to be distinguished by kinds and to be collected together into identities”—though he assumes this can be done universally, and not simply “for a given culture.”

Kant begins this anthropological program ten years later in his 1785 essay, “Determination of the Concept of a Human Race.” There, he states that the historical investigation of inessential human factors, like race, must be guided by a “previously determined...concept that one wants to elucidate through observation before questioning experience about it; for one finds in experience what one needs only if one knows in advance what to look for.” It is awkward to claim a priori that something inessential can nonetheless bring about hereditary changes without reverting to mere opinion, so Kant bases his determination of the concept in a “maxim of reason” [Vernunftmaxime] instead. He worries if the “magic power of the imagination” is given reign—either in the development of species over time, or in the philosophical study of them—no account of the human species would be possible: “one would no longer know at all [that] from which original nature had started, or how far its alteration could go...given that the human imagination knows no boundaries.” To counter the botching influence of imagination, Kant thus posits a maxim that preserves the identity of the human across all possible epochs. It states: “that throughout all of organic nature, in all
changes of individual creatures, their species is preserved unchanged.” For Kant, this “monogenetic” thesis is the only one possible in order to speak intelligibly about the history of any given species as a species. Any other maxim, he argues, would ultimately be to promote a “raving penchant to the art of magic.”

Third, in “Conjectural Beginning of Human History” (1786), Kant attempts an a priori history of human development using this maxim. While he generally eschews the imagination when examining natural kinds, Kant allows that a certain amount of conjecture is permissible in historical accounts. Conjectures here are works of the “imagination, supported by reason.” Rather than simply invented, conjectures can be deduced from experience. As he writes:

In the progression of a history it is indeed allowed to insert conjectures in order to fill up gaps in the records, because what precedes as a remote cause and what follows as an effect can provide a quite secure guidance for the discovery of the intermediate causes, so as to make the transition comprehensible.

Here, Kant conjectures that “what was experienced at the beginning of history was no better or worse than what is experienced now — an assumption” he says, “which accords with the analogy of nature and which has nothing presumptuous about it.”

Precisely because his history is now a journey beginning from the imagination, Kant believes he is justified in adopting his own ‘map’ for the journey, just as previously he adopted his own maxim. Likely in mockery of Herder’s 1774 “Oldest Document of Humankind,” which patterned human history on Genesis, Kant chooses this same “sacred document” to guide his narrative. He predicts this history will be so true to its map that the reader can follow along in Genesis.
After taking the reader through an imaginative tour of the cosmological beginnings of the world, Kant confirms his own choices of map and maxim for this tour by concluding “the result of an oldest history of humanity attempted by philosophy is contentment with providence and with the course of things human on the whole—which...develops gradually from the worse toward the better.”

Finally, in “On the Use of Teleological Principles in Philosophy” (1788), Kant clarifies the limits of the use of human reason in the search for the origin of the human species. He reiterates that, in the study of “knowledge of the world” ([Weltkentniss] the purely theoretical path of inquiry is limited, and a teleological explanation based solely on arguments from experience is insufficient. Thus, we stand in need of “an end that is given and determined a priori through pure practical reason (in the idea of the highest good) that may supplement the shortcoming of the deficient theory.”

When we search for the origin of any history, we find ourselves in search of a basic power of causality, as Foucault rightly noted. However, reason has a “hereditary defect”: it cannot concoct a priori powers, but can only work toward an account that assumes as few of these powers as possible, ideally only one basic power. Since we can only know basic powers through cause and effect, we cannot posit an origin that did not take place, nor can we posit an origin that failed to entail some purpose. Whatever this power might be, therefore, it must be decipherable by reasoning from effect to cause, just as in “Conjectural Beginning,” here adding that the relation between the two must be seen as purposeful. However, from the third Critique, published two years later, we know that relations of purpose in nature are always subjective, regulative principles. Thus, in the writing of a rational history of the empirical world, it appears there is no objective, non-regulative principle that can ground an account of human origins.

With the maxim of nature’s regularity as his guide, Kant produces both an arbitrary table of categories (the Genesis schema) and an overarching principle of order (purposiveness), which together ensure that all he describes in his conjectural
history will be grounded in the structure of the whole—as a priori history. Kant’s choice of Genesis in the 1786 essay, therefore, is not innocuous, for it succeeds in producing its own confirmation through a history of the Same—and from reason’s point of view, necessarily so. This is what causes Foucault to call Kant’s originary a priori: “an impure and unthought hybrid within the internal economy of philosophy.”

PHILOSOPHICAL ARCHAEOLOGY: A HISTORY OF THE A PRIORI

Taking these moments together, we can return to the 1793 “What Real Progress...?” essay with a stronger sense of Kant’s trajectory. Here, Kant sets this conception of an “a priori history” in opposition to his search for a transcendental “history of the a priori.” He describes the latter as a search for the “rational grounds... concerning all things,” an enumeration of the concepts and categories of reason in general, before or without any object. It is an examination of the categories undergirding reason’s development. Although human reason was bound to come to its truths over the course of its development, it could not have done so via experience with necessity. Thus, Kant says that a history of the a priori could not possibly come from historical narrative but must proceed from the nature of reason. In other words, this history of reason must be possible a priori, and he dubs the search for it “philosophical archaeology.” Reconstructed, the original justification goes like this:

1.) If there were an a priori schema for reason, it would show the history founded upon it to be necessary, demonstrating that “the epochs and opinions of the philosophers so coincide, that it is as though they had had this very schema before their eyes, and had progressed by way of it.”

2.) If this is the case, that a priori must have existed since the beginning of philosophy as “wholly prefigured in the soul, albeit in embryo.”

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3.) If this is the case, the writing of a ‘history of the a priori’ could follow, despite its episodes having taken place over time. Such a history would be different from a non-philosophical history because it would detail, not the haphazard order of events by which humans came to understand reason more fully, but the necessary path of “reason developing itself from concepts.”

This shift in focus—from the a priori history to a history of the a priori—can be understood through a shift in Kant’s understanding of the basic nature of systems from the earlier essays, a theme which is forefronted in the third Critique’s division between the mechanistic and (apparently) purposive. Without giving a detailed discussion of the significance of embryology in Kant, we can note that the principle to which he is alluding in the 1793 essay is what, following Foucault, I call the “originary a priori.” Kant is staunchly opposed to introducing existence based on regulative principles, but he still wants to find a “wholly permissible” principle of systematicity, one which ensures the events related in any history belong together as stages of perfection of one rational faculty. To achieve this, however, he must reinvent his notion of purpose.

In the first Critique, Kant treated purpose as a way of relating the necessary order of nature to the contingent order of technical pursuits (as a mechanistic form of making), which we can see in his earlier attempts at an a priori history. The nature of reason is the template to which any history must ultimately cohere, since nothing can ever happen without a reason, and the nature of reason itself is perhaps the ultimate non-empirical reason for human development in the empirical world. In the third Critique, however, Kant attributes purpose only to the necessary order, seeing that order as having a structure, thus a plan, thus a purpose. This shift is born, first, out of the reflection judgment makes about itself, and second, out of Kant’s decision to grant the technical model of purpose from
the first *Critique* a transcendental position regarding the maxim about organic
purposiveness. In the introduction, he writes:

Hence, though the understanding cannot determine anything a priori
with regard to these (objects), still it must, in order to investigate these
empirical so-called laws, lay an a priori principle at the basis of all reflection
on nature: the principle that a cognizable order of nature in terms of
these laws is possible...*This harmony of nature with our cognitive power is
presupposed a priori by judgment, as an aid in its reflection on nature in terms
of empirical laws*.54

Kant claims that the presupposition of the systematicity of nature is required
to ensure that we can find at least some empirical concept for any empirical
intuition.55 In other words, he needs this decision to avoid empty empirical
intuitions, from positing a natural law that does not exist in nature.

However, as Paul Guyer argues, the univocity of the world Kant seeks to
ardently defend is not something reason can demonstrate for itself. It is not a
straightforward condition for the possibility of cognition; it is, at most, a principle
of efficiency. Guyer writes:

But here Kant does claim that the presupposition of the systematicity of
nature is required not just to ensure that we can systematize our empirical
concepts, which are themselves discoverable without reference to such
systematicity, but in order to ensure that for any empirical intuition we can
find at least some empirical concept. A restricted number of uniformities
in nature is necessary for that purpose, Kant argues. He also seems to
assume that such a restricted number of uniformities will be hierarchical,
leading to classifiability of lower species under even smaller numbers of higher ones. Strictly speaking, that does not follow.56

Again, Kant claims that judgment must presuppose the systematicity of nature to be assured of always being able to find empirical concepts for its intuitions. He further claims that this presupposition is “equally transcendental” with the laws of understanding itself, but he draws back from asserting that the discoverability of empirical concepts is a condition of the possibility of the unity of apperception (the a priori of knowledge). He also holds back from asserting that the presupposition of systematicity is as secure as the postulation of the categories (the a priori of existence). I therefore side with Guyer here, highly suspecting that the unity of experience depends on this later presupposition of systematicity and is itself only a regulative ideal.57

We can find support for this suspicion in the 1793 essay itself. Despite Kant’s consistent desire to keep separate reason and experience, the division between the a priori and the historical—between the maxims of reason and episodes of experience that comprise the history of reason—remains troubled. He says the necessity ascribed to a history of reason could only be legitimized by those episodes it comprises, which means these events would have to be both determined by the a priori and serve as the proof of its aptness. Looked at this way, a “history of the a priori” is, in fact, no less conjectural than Kant’s Genesis history. Synchronically, reason must serve as its own sacred map and as the standard of its own legitimation. Diachronically, the regularity of reason and nature must extend across the arc of the history produced, for nothing can be determined to be part of this history of the a priori, he says, “without knowing beforehand what should have happened, and also what can happen.”58 This formulation of philosophical archaeology requires that reason place a regulative principle before itself to ensure its own identity. Thus, although Kant intends the “history of the a priori” to be a transcendental endeavor, it seems there exists no verification of reason
independent of the history one’s maxims produce—again, a self-production of order, another *history of the Same*.  

**HISTORIOLOGY: BEING ONE HISTORY AMONG OTHERS**

We are dissatisfied with this result because writing either an “*a priori* history” or a “history of the *a priori*” requires a *reconciliation* of the transcendental and the empirical that Kant, sitting on the threshold of the modern *episteme*, could not achieve. McQuillan points out that Foucault avoids the same trap by denying that the relation between the historical *a priori* and its history must be necessary. In his reading, Foucault instead positions the historical *a priori* as a “quasi-transcendental principle: one that conditions the order of knowledge, without being universal or necessary.” Because the postulation of an historical map must happen before or outside the bounds of the history’s own terms, no such posit can avoid or discredit the claims of any other historical *a priori*, and that history must ultimately exist, therefore, as *one history among others*.  

Philosophical archaeology has potentially many futures from this vantage point. When thinking about the three elements of Kant’s original *a priori* history—1.) a maxim, 2.) a table of categories, and 3.) an overarching principle of order—we find that the third has already been altered to transform the *a priori* history into a history of the *a priori*, and thus it cannot strictly speaking be necessary. The first two may be similarly modified by the philosophical archaeologist in ways that would radically alter the history thus produced. Regarding the first element, what if we suppose that nature is not universally regular, but only regionally so, as Einstein’s Theory of Special Relativity implies? Or perhaps it is human nature that might be otherwise than Kant imagines. What if we were to posit certain “intuitive” human capacities, as Goethe does by claiming Kant’s archetypal intellect for himself in his *Scientific Studies*? Or, certain “magical” ones, as Marcel Mauss does in his *A General Theory of Magic*? Regarding the second element, what if we were to choose a different and surprising sacred text as our guide? What if we were to choose a polytheistic text, like Hesiod’s *Theogony*, instead of a monotheistic
one, like Genesis? Upon what divine order could we rely, on what name could we swear, and on which occasions? Or, perhaps we choose Jorge Luis Borges’ “Chinese encyclopedia”—which Foucault cites in the introduction to The Order of Things—and write a history that is only thinkable on the basis of its categories. By that table, dogs would never be dogs first, but always “royal,” “embalmed,” or “frenzied” in their essences, and only ever barking and loyal accidentally. This inversion of Aristotelian substance and accident could never be grounded in the structure of the whole Kant has chosen, but why not in some Other? I take this to be the point of Foucault’s nervous laughter that opens that work. Given that these dimensions of writing a history for Kant were only elements of the regulative posits required for a complete human conception of nature, these alternate maxims, posits, and assumptions could succeed in producing incommensurable and incomplete histories with technically equal right, and they would not have to exclude one another because of their plurality. A history of magic, for instance, could find itself locked in an antinomy with Kant’s rational history, its polythetism wrapped around Kant’s monothetism, or alternatively perhaps, as a history of what is beyond the bounds of reason alone.

The register of inquiry that philosophical archaeology opens for philosophy at this point is what we should call “historiology”—not a science of history, but a discourse about the conditions of writing any history in a philosophical context. In other words, historiology is the dimension in which incommensurable historical systems and their assumptions can be dealt with comparatively. For instance, how should we evaluate Kant’s assumption that history always moves from the worse to the better in relation to, say, Oswald Spengler’s diametrically opposed view? Or, where do we stand to weigh Kant’s assumption that the human has always been the same in essence against Foucault’s project of tracking the construction and epistemic transformations of “Man”?

Fiction writers like Borges, Umberto Eco, and Herman Hesse operate best in this space, modulating histories in relation to one another, and allowing fictions and falsities to intermingle and affect well understood maxims of the Western tradition.
Thinking Otherwise is not confined to the fictional, of course. Foucault’s studies were of madness, criminality, possession, and deviance, but there are many other figures outside of “Man the rational” or “Man the knower” \( (\textit{homo sapiens}) \); and they are not all “mad.” \( \textit{Homo faber} \) and \( \textit{homo ludens} \) both come to mind; in my work, I also consider \( \textit{homo magus} \), the figure of a self-possessed polythetic master behind its different genealogical masks—as the sorcerer, heretic, witch, illusionist, superstar, and so on. This would be a fantastic history of the “infamous men” power rejected but could never quite catch or destroy. Nothing in such a history would be true \( \textit{a posteriori} \), but this is because, like the histories of madness, such archaeologies would be histories of the Other. If the truth of a history is ultimately derived from its being merely a \( \textit{history of the Same} \), we nonetheless need to begin to consider the formal historiological structure and value of these “untrue” histories of the Other.

There are also important questions here from postcolonial and decolonial studies that challenge even Foucault’s best understanding of the limits of archaeology. For Gayatri Spivak, Foucault hits his limit quickly regarding non-Western histories, giving only the barest thought to Western ethnology and its theoretical and practical implications.\(^6\) Her point is not only about how sparsely he deals with any non-Western Others, but how in failing to do so, the non-Western world also becomes the non-historical Other. In Spivak, we are reminded that Western academic cultures are not neutral in their choices, even when they are able to recognize their limits. These complex critiques of Man call for more nuance than a simple bifurcation into histories of the Same and histories of the Other.

\textbf{HOMO SACER: A HISTORY OF THE OTHER WITHIN THE SAME}

According to Giorgio Agamben, the beginning of every history is situated on the edge of what he calls “the fringe of ultra-history” and so hovers between \( \textit{a priori} \) necessity and the cultural bounds of “thinking \( \textit{that} \),” as Foucault says of Borges.\(^6\) Agamben muses that perhaps nothing is technically impossible in this space. In his 2010 essay, McQuillan gives a critique of this historiological claim. For McQuillan,
“the movement of freedom” is central to Agamben’s archaeological method. Agamben does not propose “an objective account of the past as it was” but instead develops the “poetic license” of Foucault’s archaeology to conjure “an image of the past, which it then proceeds to deconstruct.” McQuillan finds this development in conflict with Foucault’s own characterization of archaeology—as “the history of that which renders necessary a certain form of thought.” As he writes, “it is impossible to recount the history of that which ‘renders necessary’ a certain form of thought, when one has suspended questions of causal determination, explanation, and influence.” This is certainly an important consideration. Any critique of the present must be willing to suspend these determinations to some extent, but not the questions surrounding them, and not to leave them in suspense indefinitely. When Agamben proposes homo sacer, for instance, the posit of this figure and its logic of exclusion does indeed suspend our Western political categories of causal determination, but only to refashion our view of history from the point of view of that chosen figure’s logic.

In his essay entitled “Philosophical Archaeology,” Agamben is focused not on the imaginative possibilities of his method, but on the necessity of the act of positing itself—one necessity Kant wants to deny. McQuillan sidesteps this problem when he argues for Foucault’s continuity with Kant, as both “motivated by the experience of order and its effects upon knowledge,” not because it has been conjured up by a certain form of inquiry, but because “it has regular and observable effects on knowledge and discourse.” He continues: “Even if order is historically contingent and different orders obtain in different periods, the fact of order remains, along with its effects.” While this describes one aspect of Foucault’s inquiry, it is not all encompassing. Indeed, I think we are hard pressed to hear Foucault’s nervous laughter in response to Borges as a confession of faith in the priority of order. If Foucault can be said to be indebted to phenomenology in any sense, it is through his recognition that order shows up as an anticipated structure of experience only through its loss or overturning. What appears primary to Foucault, rather than “the fact of order”—which is perhaps an oxymoron in my reading—is the
orderability of beings by a principle of differentiation, an historical *a priori* utterly different from the one that appears to us in slipping away and being overturned. And the one that appears to Foucault via Borges is that structure displayed in Kant’s *histories of the Same*.

Foucault does not consider the logic required to posit any historical *a priori* in itself, but this logic raises ontological questions which Agamben nonetheless undertakes to explore. *That* Agamben recognizes the necessity of *producing* any historical *a priori* does not mean the archaeology based upon it will be arbitrary or trivial; rather, he is concerned about how the production of the *a priori* takes place. Because there can be no account of the moment history itself arose, the historical *a priori* hovers in the place of the regulative posit, which is not easy to differentiate formally from Mauss’ “magical power of the imagination.” Strikingly, Agamben suggests his idea of the historical *a priori* originates more from Mauss than from Kant, because Mauss accepts that such a posit also conditions magical representations in a society, “making magical ideas possible in the same way as we have categories that make human ideas possible.” I agree with McQuillan that Agamben’s logic of the exception is not the most fruitful for archaeology in the present, but this is because *homo sacer*’s logic of exclusion more closely resembles the logic Foucault attributes to a *history of the Other*: that which is at once interior and foreign, therefore to be excluded by being shut away. When this Other shows itself as “bare life” for Agamben—as the inhuman sequestered within the human—it becomes central to every *history of the Same*, and hence, is a *history of the Other within the Same*.

The figure of *homo sacer* and its structure of bare life, however, cast a dark shadow on his presentation of current and future archaeological inquiry. We might follow Lisa Guenther in observing that Agamben’s analysis “of the inhuman becomes practically indistinguishable from radical dehumanization.” Furthermore, if we are speaking about Agamben’s desire to identify the paradigm of Western politics, however—even as a *history of the Other within the Same*—it carries the danger of reduplicating the totalizing character of Western Man’s *history of the*
Same and remains an accessory to it. As Alexander Weheliye argues, homo sacer “discursively duplicates the very violence it describes without offering any compelling theoretical or political alternatives to our current order.”

Following Franz Fanon, Weheliye asks how the process of introducing “invention into existence” might appear differently when we “focus on how humanity has been imagined and lived by those subjects excluded from this domain?” His posit of racialized assemblages, I think, manages to provide an archaeological figure, but in a way that questions the necessary unity of the figure to be posited.

PARADIGMATOLOGY: HISTORIES OF THE SAME AMONG OTHERS

While I acknowledge these critiques of Agamben’s Homo Sacer project, I also agree with Agamben that universality need not be the purpose of any philosophical history. The force of these critiques relies mainly on Agamben’s use of the exception, and the zones of indistinction this logic creates. But the logic of the exception is not the only archaeological engine Agamben offers. In his essay “What is a Paradigm?”, Agamben demonstrates how to use the logic of the example in conversation with Foucault, showing the way toward what we can call a history of the Same among others. The paradigm is not arbitrary; it is an historical phenomenon, raised to the status of a singular a priori posit, as an historical a priori. This thematizes the phenomenon into the arche of an archaeological history, at once constituting and making intelligible a broader context. Agamben believes Foucault used this strategy often. As he writes: “The great confinement, the confession, the investigation, the examination, the care of the self: these are all singular historical phenomena that Foucault treats as paradigms, and this is what constitutes his specific intervention into the field of historiography.” Ewa Ziarek notes that the paradigm clarifies the “relation between belonging and the expropriation of identity.” In being beside itself, the chosen phenomenon becomes “singular, irreplaceable and, at the same time an exemplar for all the other singularities with whom it shares—not just particular qualities—but precisely the fact that it is called at all.” For Agamben then, the paradigm represents a nexus of naming, or being-called [λέγω-], and becoming
intelligible, which together ground archeological inquiry.\textsuperscript{80}

A paradigm can do this work only by being purposefully lifted out of the archive in which it lays dormant as a possible \textit{arche}. In Plato, this is called a \textit{nome}; in Heidegger, it is the poet’s Word.\textsuperscript{81} For Agamben, positing a paradigm is ontological because it requires transforming the being of the phenomenon from a particular to a singular, which in turn allows it to function as its own standard. It then becomes available as the justification for anything related to it. Agamben observes: “by exhibiting its own singularity, it makes intelligible a new ensemble, whose homogeneity it itself constitutes.”\textsuperscript{82} The paradigm is a figure whose posit “assures the synchronic comprehensibility and coherence of the system” the archaeologist wishes to create.\textsuperscript{83} Followed faithfully, each paradigm tends toward an internally self-consistent diachronic history—one which would be nonetheless foreign to that \textit{history of the Same} we find in Kant. Like Kant’s timeless reason, the paradigm is a singular figure that determines the bounds of intelligibility, but unlike reason, it does not seek to be the sole source of a rational exposition. For Agamben, the example is always “one singularity among others, which, however, stands for each of them and serves for all.”\textsuperscript{84} Thus, even a single author may re-cast her archaeologies in ways that broaden or cancel her earlier attempts—a freedom Foucault maintained throughout his career. According to Agamben, therefore, archaeology becomes “that practice which in any historical investigation has to do not with origins but with the moment of a phenomenon’s arising and must therefore engage anew the sources and tradition.”\textsuperscript{85}

As a singularity, the paradigm must have a definite, non-arbitrary structure with virtues and limitations, but no one “map” can exhaust or ultimately exclude its Others. To extend this logic outward for the sake of bringing forth ensembles of knowledge is not to fictionalize them; only in claiming universal status for itself would this posit become a fiction. And yet, by assuming a position outside the history it “makes arise,” we must consider the mode of its existence and the determinate, non-necessary effects a given example has upon those events it helps make intelligible. The logic of this “paradigmatic ontology” is not one of
cause and effect but a logic of self-showing and self-appropriation. For Agamben, philosophical archaeology is always a paradigmatology because “the paradigm determines the very possibility of producing in the midst of a chronological archive.”

HOMO MAGUS: HISTORIES OF OTHERS AMONG THE SAME

While I support McQuillan’s critique of homo sacer for failing to overcome its own particular paradoxes, I disagree that acknowledging the contingency in our practice leads us into a place of trivial fiction-making, no matter whether this is meant to bear on the past or on our present. For instance, homo magus is a figure I find as a remnant in many histories of the Same, which can be used to productively critique the naturalness of Western Man’s sense of order when centered within its own history of the Other. Here, I am interested in what we might call a history of Others among the Same, the history of paradigms excluded from philosophy’s search, whether as a straightforward history of the Same, like Kant developed, a history of the Same among Others, like Foucault and Borges developed, or a history of Others within the Same, like Agamben developed.

My choice of the magician as the figure of this history is neither fictional nor arbitrary; it gets at one of the central operations by which the West produces its Others in two ways. First, magic is that which is outside of reason. Early in Greek culture, it already denoted foreign, incomprehensible, and dangerous cultural forms to be countered by religion and science, a view that persisted and even intensified through the Roman and Medieval eras. In each of these epistemes, magic did not truly exist to reason; but to power, magicians have always existed, and they have always posed challenges to authority over nature and history in their times. Their role is often “disfigured” in the historical record, as Weheliye writes of habeas viscus, but the magician is not merely an assemblage. In every age, we find the figure, or specter, of the magician as an important political, religious, or scientific foil, and it is often thought to be more than a typical individual. A history of almost any European law code prior to 1735 can confirm they are persons whom
the law holds accountable, but their personal histories confirm they are not merely “infamous,” since they often also escaped power’s grasp.

Second, magic describes the imaginative mode by which Western powers produced their foils, especially among those attacked by colonizers and whose histories and cultures the mechanisms of coloniality destroyed. As Achille Mbembe argues, colonialization in practice functions like Kant’s “permissible conjectures,” by bringing its arbitrary schema to bear on the lives and cultures of its Others. Mbembe writes:

At the root of colonization is thus an inaugural act, within a jurisdiction all its own, that of arbitrariness. That act consists not only in ordaining without limits, but also in freeing oneself from reality’s limits. But the effort in freeing oneself from all determinations is aimed at acquiring power, of a particular type: the power to paint the real either as a void or as unreal, on the one hand, and, on the other, the power to posit every thing represented and representable as possible and realizable. Colonial arbitrariness knows neither cause nor effect, since the one may be the other and vice versa. Since law lacks validity, one can submit everything to oneself.⁹²

Like a history of the Same, colonization means to “summon” what is self-Same and what is Other, what is being and what is nothing, what is figure and what is void, and so on. Homo magus is one who defies and grates against this effort. Speaking from the view of the colonized, while simultaneously revealing the magic at the heart of colonial attempts to bring his people or culture “into the fold” of Western history, Mbembe takes up his position here as an Other among the Same.⁹³ Spivak and Mbembe are concerned with showing that Western sovereignty and colonialism
have employed arbitrary and racist regulative judgments for cosmological aims like Kant’s—in Mbembe’s words, “destroying and creating, creating by destroying, creating destruction and destroying the creation.”94 As an archaeological figure, homo magus provides a “whatever” view, living and speaking without respect among the recognized and powerful. Better, she provides a “somehow” view that speaks against the limits of her own history and grammar. In this act, she exists also as an enemy produced by the “magic power of the imagination” who is then routinely blamed for using magic.

CONCLUSION

In this article, I have contributed to the discussion of philosophical archaeology by strengthening the connection between Foucault’s stated influence for the notion and the actual source texts Kant composes to formulate it. Rather than querying the historical a priori directly, I used Foucault’s distinction between a history of the Same and a history of the Other to show how philosophical archaeology has developed through a series of interactions between the two types of history. Initially, Kant’s a priori history and history of the a priori attempted to integrate the inessential and non-transcendent in human experience systematically into the necessities of nature and of reason itself. This succeeds in nothing but a history of the Same, outside of which there is nothing historical. After Foucault’s historiological insights, however, archaeology can only produce histories of the Same among others. And, after Agamben, this means either as a history of the Other within the Same, (i.e., the state of exception that reveals homo sacer), or as history of others among the Same (i.e., the state of example that reveals homo magus).95 Regardless of which historiological form we consider, academics today must consider the ontological work of the paradigm, and we must remain open to future products born from the magic power of the imagination; these singularities will not come via deduction. Finally, we must pay close attention to those moments in our institutional lives when one singularity foists itself from among the countless singularities waiting in our contemporaneous archives—as some future historical a priori.96
ROBERT S. LEIB received his PhD in Philosophy from Villanova University in 2016. He is the author of *Exoanthropology: Dialogues with AI* (Punctum, 2023). He has also published essays on a range of topics in Continental Philosophy, micro-physics in Foucault and Goffman (*Philosophy Today*, 2017; Routledge, 2022); philosophical archaeology as a practice (*Journal of Speculative Philosophy*, 2017); the relation between myth in Cassirer and poetry in Heidegger (*Research in Phenomenology*, 2018); and Agamben’s political theory (*Law and Critique*, 2020). He is currently Visiting Assistant Professor in Philosophy at Elon University.
Endnotes
10. Ibid., 7.
11. Ibid., 2.
12. Ibid., 9.
16. Ibid., 66.
17. Ibid., 67.
18. Ibid., 68.
19. Ibid.
20. Ibid.
21. Ibid., 73.
22. Foucault sees this as an errant project:

Doubtless, this “destructuring” of the philosophical field, has never been more sensitively undertaken than in the wake of phenomenology. To be sure, it was Husserl’s initial project—such as it is set out in the *Logische Untersuchungen*—to liberate those regions of the a priori of forms that reflection on the originary had been deprived of. But, because the originary can never itself serve as the grounds for its own liberation, in the end the task of getting away from the originary
conceived as immediate subjectivity falls to the originary conceived in the density of passive syntheses and the already there. The reduction gives rise to a transcendental illusion, and never manages to play the role destined for it—which was to reserve a place for an elided critical reflection. Even the reference to Descartes, which, at one point in Husserl’s thinking, takes over from the predominance of Kantian remembrances, does not succeed in masking this structural imbalance. As soon as all openings onto the realm of the fundamental stop short of directing us toward what should have been its justification and its meaning, the problematic of the Welt and the In-der-Welt is open to the hypothec of empiricity. All forms of phenomenological psychology, and all the other variations on the analysis of existence, bear doleful testimony to this.

Foucault, *Kant’s Anthropology*, 106–107.

23. Ibid.


28. Ibid., 97 (2:443).

29. Foucault, *Kant’s Anthropology*, 32.

30. As Foucault writes:

For a long time, the “anthropologists” thought that they could absorb Kant’s teachings without any difficulty, without any rethinking on their part being required: Schmid, Hufeland, and Ith are the first to attest to this, but the list could go on and on, and is by no means confined to the eighteenth century. It would take the inflexible naivety of our contemporaries to congratulate anthropology for having at last moved beyond the dissociations—between body and soul, subject and object—in which the drought of rationalism would otherwise have been lost. But what they took to be the marvel of reconciliation was in fact just the more predictable miracle of their failure to register the grammatical ambiguity of Menschenkenntnis.

Foucault, *Kant’s Anthropology*, 117–118.


32. Ibid., 150 (8:96).

33. Ibid., 150–51 (8:97).

34. Ibid., 150 (8:97). He adds: “(according to the school formula: quaelibet natura est conservatrix sui).”

35. Ibid., 152 (8:89).

36. Ibid., 151 (8:97).

37. Immanuel Kant, “Conjectures on the Beginning of Human History” in *Kant: Political Writings*, 116 · robert s. leib
42. Ibid., 175 (8:123).
44. Foucault, Kant’s Anthropology, 73. “...a regressive analysis that aims to uncover to the primitive seed of the powers.”
46. Ibid., 216 (8:181).
48. Foucault, Kant’s Anthropology, 106–107.
50. Ibid. This is the first use of the term, and the only one in Kant, meaning it must be the moment to which Foucault refers in response to Steiner. Cf. Colin McQuillan, “Philosophical Archaeology in Kant, Foucault, and Agamben” Parrhesia 10 (2010), 39–49, 41.
51. Ibid., 418 (20:342).
52. Ibid., 419 (20:343).
53. Ibid.
55. Guyer cites Kant here:

Thus the power of judgment makes the technic of nature the principle of its reflection a priori, yet without being able to explain this or determine it more precisely, or to have for that an objective ground for the determination of the universal concept of nature (from a knowledge of things in themselves), but rather only in order to be able to reflect according to its own subjective laws, according to its need, yet at the same time in accord with laws of nature in general (FI, 20:214).

56. Ibid.
57. Ibid., 39.
59. “For the threshold of our modernity is situated not by the attempt to apply objective methods to the study of man, but rather by the constitution of an empirico-transcendental doublet which was called man.” Foucault, Order of Things, 319.
60. “Foucault distances himself from Kant, because he does not consider the epistemic...
configuration which orders knowledge in a given period under the sign of necessity.” McQuillan, “Kant, Foucault, and Agamben,” 45.

In the moral area...we are expected to ascend to a higher realm and approach the primal being through faith in God, virtue, and immortality. Why should it not also hold true in the intellectual area that through an intuitive perception of eternally creative nature we may become worthy of participating spiritually in its creative processes? Impelled from the start by an inner need, I had striven unconsciously and incessantly toward primal image and prototype, and had even succeeded in building up a method of representing it which conformed to nature. Thus there was nothing further to prevent me from boldly embarking on this ‘adventure of reason’ (as the Sage of Konigsberg himself called it).

The mythical qualities of which we have been speaking are powers or produce power. What appeals most to the imagination is the ease with which the magician achieves his ends. He has the gift of conjuring up more things than any ordinary mortals can dream of. His words, his gestures, his glances, even his thoughts are forces in themselves.

See also: Ibid., 145-146:

This concept means that the reality of magic need no longer be brought into question; doubts may even be turned to its advantage. It is an idea which is, in fact, the very condition of magical experimentation and permits the most unfavourable facts to have the benefit of the doubt. Indeed, it is above all criticism. It exists, a priori, before all other experience.

68. McQuillan, “Kant, Foucault, and Agamben,” 43.
70. McQuillan, “Historical A Priori,” 153.
71. McQuillan, “Kant, Foucault, and Agamben,” 45.
72. This is the primary reason why McQuillan critiques Agamben for going beyond Foucault, but Agamben recognizes this, and he says so explicitly. Agamben, Signature of All Things, 94, 8.
73. Mauss apud Agamben, Signature of All Things, 94.
74. Lisa Guenther, “Resisting Agamben: The biopolitics of shame and humiliation,” Philosophy
and Social Criticism 38, no.1 (2010): 66–67. Catherine Mills offers a stronger critique: that this specific figure of Roman law “operates without interruption through the ages,” she writes, “overstretches the notion of a paradigm along with historical credibility.” Even if it can be seen as uninterrupted as Agamben surmises, this does not prove that homo sacer is the central danger of Western politics. See: Catherine Mills, The Philosophy of Agamben (London and New York: Routledge, 2008), 87.


76. Weheliye, Habeas Viscus, 82–83, 8.

77. Agamben, Signature of All Things, 23.

78. Agamben, Coming Community, 17.


82. Agamben, Signature of All Things, 18.

83. Ibid., 92.

84. Agamben, Coming Community, 10.

85. Agamben, Signature of All Things, 89.

86. Ibid., 32.

87. McQuillan, “Kant, Foucault, and Agamben,” 43.


89. “To say that humankind has lived through three stages—magic, religion, and science—is an oversimplification. At every stage in the history of civilization, the three coexisted, as far as we can tell.” Georg Luck, Arcana Mundi (Baltimore: Johns Hopkins University Press, 1985), 1.

90. Weheliye, Habeas Viscus, 2.

As modes of analyzing and imagining the practices of the oppressed in the face of extreme violence...resistance and agency assume full, self-present, and coherent subjects working against something or someone. Which is not to say that agency and resistance are completely irrelevant in this context, just that we might come to a more layered and improvisatory understanding of extreme subjection if we do not decide in advance what forms its disfigurations should take on.

The question of the magician’s disfigurations or coherence remains open.

91. And many existed much later: “De jure decriminalization...occurred in very few jurisdictions prior to the end of the eighteenth century, and in those where it did, the repeal of laws was often incomplete, leaving some activities encompassed within the definition of witchcraft as prohibited.” Bengt Ankarloo and Stuart Clark, eds., Witchcraft and Magic in Europe: The eighteenth and nineteenth centuries (Philadelphia: University of Pennsylvania Press, 1999), 74.


93. I would not say that homo magus “names” Mbembe’s position here, though. This figure is not one element in another meta-historical system; rather, it attempts to pick out actual speech of other histories: philosophical archaeology, historiology, and paradigmatology · 119
against the effects of Western Man’s *history of the Same*. This speech invariably exists, in many cases even when the structures of that history were intended to eradicate or render such speech unintelligible. In characterizing Mbembe’s perspective as serving an important and erosive critical function, I do not think I have “explained it” or given it place in any kind of system. Cf. Mbembe, “Out of the World,” 186:

In desperation to endow the colonized with an essence and enshrine them in a fossil, the colonizer can confine them in a name. The colonized will later appropriate it for themselves, use it, and thereby become its co-users. They will have appropriated it with all the strength at their command—and will also have appropriated all its deadly effects. Thanks to this name given by the settler, the native will become a fragment of the real, an objective thing, matter. The world of things and the world of names will then be a single reality, and the settler able to make a representation of the colonized.

94. Ibid., 189.
96. I would like to thank Lauren Guilmette for being my first and best reader. Thank you for your very helpful suggestions on several earlier drafts of this essay and for guiding me to a number of these texts for the first time.
Deleuze’s philosophy of the event seeks to provide understanding for how pathways towards thinking about the world and acting in it differently can be produced. Deleuze’s event, as Daniel W. Smith puts it, is the cardinal point of a “Copernican revolution of its own in philosophy” which renders rupture, change and “the problem of the new (difference) not simply a question to be addressed in a remote region of metaphysics, but rather the primary determination of Being itself.” The event forms the hinge of Deleuze’s politically activist, postfoundational
philosophy that seeks to offer conceptual tools for the actualisation of manifest change. But what exactly is an event for Deleuze?

The concept of the event is subject to a process of becoming which takes place over the entirety of Deleuze’s work. It begins with Nietzsche & Philosophy, where Deleuze terms the death of God that allows humanity to actively participate in the creation of its own future “a joyful event” of “becoming-active” and ends with the proclamation that philosophy must create conceptual personae that bring forth events whose creative potentiality exceeds the conditions of their emergence in What is Philosophy? Deleuze’s event does not directly or necessarily produce change—but its creative potentiality always at least opens epistemic and social relations to the possibility of such change. In The Logic Of Sense, Deleuze identifies the creative sense-event as “something unconditioned” that is capable of “determining both the condition and the conditioned.” The creativity of Deleuze’s event is immediately puzzling. The event produces novelty, but what exactly renders it creative remains unclear because the event at the same time escapes any established notion of causality and conditioning. The event is both the creative force that charges the genesis of novelty and the rupturing operator of this creative production. In “May ’68 did not take place,” Deleuze suggests that the particular creativity of the event is at work in all political revolutions.

In historical phenomena such as the revolution of 1789, the Commune, the revolution of 1917, there is always one part of the event that is irreducible to any social determinism, or to causal chains. [...] The event is itself a splitting off from, or a breaking with causality; it is a bifurcation, a deviation with respect to laws, an unstable condition which opens up a new field of the possible.

The theoretical riddle of Deleuze’s event is thus given additional political urgency by how closely it is linked to the possibility of actual change. If the event opens up pathways for being in the world—and for the world to be—different, then it is of
vital importance for critical philosophy to understand how creative potentiality works here. The theoretical and political challenge of Deleuze’s event has generated a vast amount of secondary literature offering diverse readings of the source and precise operativity of evental creativity in Deleuze. This paper adds to the existing scholarship on Deleuze’s event, and to a continental philosophy that aims to understand how the event can bring forth manifest change, in two ways. First, the paper draws out how Deleuzian scholarship is dominated by theories which, in one way or another, solve the riddle of evental creativity by retracing the former to a particular original source. Here, I distinguish an ontological perspective, where creative events are charged by a force of differential multiplicity, from genealogical-discursive interpretations of Deleuze’s event, which identify the former as an opportunity for understanding social happenings beyond established structures of meaning. Finally, new materialist-affective readings of the event links its creativity to an affective encounter that allows for conditioned epistemic and social relations to be re-directed towards a different future.

Despite their different theoretical situatedness and set-ups, I argue that all three readings of Deleuze’s event have in common that they displace the moment of evental creativity. The event can here only function productively in so far as it is charged or driven by a virtual difference, critical subjectivity or bodily-material force, which hereby becomes the external source of evental creativity. It is argued that understanding the creativity of Deleuze’s event by externalising it is problematic for two reasons. It ambiguates not only what exactly the event’s contribution to the creation of novelty is, but also, I suggest, re-introduces a primary cause to Deleuze’s theory of sui generis creativity, thus leaving the radical potential of a Deleuzian event that is “irreducible [...] to causal chains” in part unexplored.6

To retain evental creativity as fully immanent to the moment of the event, this paper suggests an alternative reading of Deleuze’s event via the philosophy of Alfred North Whitehead. It is argued that with Whitehead, the event can be thought as a moment of emergent creativity irretraceable to a particular source
but defined instead by the creative effects it unfolds. In Whitehead’s *Process and Reality*, the actual occasion of creative production emerges in an external materiality but only becomes “event” when the former is enfolded by the sense relations of the nexus of perceptions and abstractions. In this sense, the emergence of evental creativity, as well as its scope and direction, are dependent on the state of the nexus relations the event is immanent to. Understanding Deleuze’s event as a moment of emergence in this sense shifts the philosophical focus away from the necessity to isolate the source of evental creativity and towards its relational context and effects. This shift in focus, I suggest in the conclusion, does however not place critical philosophy and resistant action in a place of passivity—material ruptures, affective experience and genealogical critique are still vital conditions of the emergent evental effect, even if neither can, on its own, bring forth something new.

In the first part of the paper, I provide an overview of different ways in which the event is read in Deleuzian scholarship. The second part of the paper introduces Whitehead’s theory of a both genuinely creative and relationally emergent event as set up through the concepts of evental occasion, eternal object and evental nexus. The third part of the paper then retraces Whitehead’s event in Deleuze’s evental philosophy to argue that, in Deleuze and Whitehead, the *sui generis* creativity of the event cannot be linked back to a deeper, external ground or driving force but follows from its relational complexity.

**RETRACING THE CREATIVE POTENTIAL OF DELEUZE’S EVENT:**
**ONTOLOGY, GENEALOGY, EMBODIED AFFECT**

The following section will provide a structured overview of the central interpretational strands that dominate the secondary literature on Deleuze’s evental philosophy. The multiple readings of Deleuze’s event can certainly be mapped in different ways, for example with regard to the central source of philosophical inspiration they attribute Deleuze’s event to—Leibniz, Heidegger, Nietzsche or, indeed, Whitehead. The ordering scheme which I apply and flesh
out in the following groups and divides the Deleuzian scholarship with regard to how it makes sense of the event’s unconditioned creativity. Two caveats regarding this approach are made explicit here. Firstly, this focus on the breadth of the field automatically comes at the cost of depth and specificity. As a consequence, the three readings of Deleuze’s event I distinguish below should not be understood as a complete or exhaustive summary of the rich scholarship the former has generated, but are rather ideal-typical representations of the perspectives which dominate the scholarly reception of Deleuze’s event, painted in the broad brushstrokes of prominent Deleuzian thinkers.

Secondly, different theories are grouped together with a focus only on the particular way in which the event’s unconditioned creativity is deciphered. While I many of the theories assembled in one interpretational strand do have affinities that additionally support the ordering scheme developed, these affinities do not take away from their multiple differences and even tensions, which are however bracketed here in favour of drawing out their alignment on the “non-causal cause” behind Deleuze’s event. For the ontological perspective on Deleuze’s event, Smith views the event as the expression of a being which is multiple, problematic and always in excess of any specific form given to it, while James Williams’ event is the product of a creative processual reality and Sean Bowden deciphers the event from the position that singularities occupy in Deleuze’s ontology. However, their theoretical projects not only share the desire to unpack the precise workings of the machinery of Deleuze’s thought, but also the particular source of evental creativity they identify: the multiplicity of being that is made available in the event.

For the genealogical-discursive perspective, François Zourabichvili is interested in reading Deleuze’s work as an activist philosophy that aims to open up an alternative to both analytical philosophy and liberal politics. Paul Patton, on the other hand, instead draws out what Deleuze’s work, read as a political theory, can offer democratic communities. However, they share a reading of Deleuze that, contrary to the thinkers in the first group, avoids any reference to the ontological...
level and instead emphasises the political nature of Deleuze’s thought. Against this background, both Zourabichvili and Patton link evental creativity to the epistemic intervention of the political subject.

Finally, while the new materialisms of Claire Colebrook and Brian Massumi lean towards a cybernetic, relational conceptualisation of onto-genesis, Rosi Braidotti embraces a more vitalist ontology in her evental ethics. However, the philosophical projects of all three seek to recover the transformative potential of bodies and matter and, against this background, unpack evental creativity as the consequence of material affect. For all three, it is a materially entangled, posthuman subject that receives and acts on the event. In the following section, I will draw out all three theoretical perspectives on Deleuze’s event. Regardless of their theoretical diversity, it will be argued that they have something in common: all three perspectives conceptualise Deleuze’s event as functioning creatively through a constitutive externality that operates through, but is located on the outside of, the event.

A first theoretical perspective which can be found in Deleuze scholarship identifies the event as an ontological force of creative becoming. Here, the creative event defies causality because the source of its productive potentiality is nothing other than the virtual multiplicity of being itself. For Smith, one of the central achievements of Deleuze’s philosophy is that it replaces the ontology of foundations and essences that has so far dominated Western philosophy with an ontology of events and differential multiplicity. Following Smith, Deleuze’s events “have full ontological status” but in a manner that is “ungrounded and problematic.” Conceptualised by Deleuze with different theoretical means, including Stoic philosophy in *The Logic of Sense* and the differential calculus in *Difference and Repetition*, evental being is situated between expression and expressed, conditions and conditioned. It undoes the analytical logic of cause and effect insofar as it is this creative middle ground that charges the production of both. However, at the same time, this renders evental being the ontological source of creative production.
Smith makes it clear that for him, Deleuze’s evental production of the new should not be understood as a case of ungrounded emergence: whereas the former implies the spontaneous production of a new quality from composite parts, Deleuze’s concept of the new “implies conditions in which novelty or creativity (difference) becomes a fundamental concept at the most basic ontological level.”

While not subject to the logic of Platonic foundationalism or Kantian causality, the new here still has a cause insofar as it actualised from an evental being that always pre-exists the former, even though its specific form changes in every process of actualisation. Distinguishing Deleuze’s event from Alain Badiou’s, which reveals the latter’s “taste for the transcendent” insofar as it operates on being from a revelatory outside, Smith suggests that Deleuze avoids such a turn to the transcendent by inscribing evental productivity on the level of ontology. Events are “always are ontological, not subjective”; they exceed the problems they give rise to not in the form of “a mere ‘tear’ or ‘rupture’ in the axiomatic” but through their “objective and determinable ontological positivity.” Deleuze’s event is not derived from an absolute externality, but instead from the immanent “outside” of an ontological potentiality both withdrawn from and in excess of any epistemological or social mechanism of capture.

In *The Priority of Events: Deleuze’s Logic of Sense*, Sean Bowden produces a close reading of Deleuze’s *The Logic of Sense* which, I suggest, similarly identifies the event as the ontologically charged, self-iterative motor of creative genesis. Here, the event is the “objective ontological ideality” that sets in motion a process of reciprocal determination that draws sense from the chaotic depth of bodies and materiality and the static series of linguistic signs. Here, events are relational because their specific form depends on their particular expression, and immanent in so far as they have no clearly defined cause external to the surface of sense. However, for Bowden, this does not take away from “Deleuze’s affirmation of the ontological priority of events” over individual substances in the creative process of onto-genesis. Following the course of *The Logic of Sense*, Bowden retraces evental creativity from the bodily quasi-causes of Stoic philosophy to the iterative
excess of linguistic expression and finally the phantasm expressed on psychic surface zones in Lacan’s psychoanalysis. Here, the phantasm-event is charged by a pre-conscious, pre-linguistic multiplicity which generates the creative event of linguistic expression as the constitutive underside of sense. Bowden concludes that the process of evental emergence thus unidirectionally moves “from noise to the Voice, from the Voice to speech, and from speech to language or the verb.” While every particular expression of the event is dependent on pathways of actualisation that involve subjects, their bodies and the series of linguistic signifiers in sense, these do not condition the possibility of creative emergence as such, which is located in a chaotic, pre-conscious sub-sense. In Bowden’s reading, as in Smith’s, the creative event escapes the logic of causality that drives creative production in modern-Western thought, but its creative potentiality nevertheless has a defined ontological cause. Sub-sense can give rise to creative events because it precedes, and remains withdrawn from, the socio-epistemic dynamics of sense-making.

For Williams, every particular event that marks a significant change of direction within the order of actualities is the product of a reality which is in itself fundamentally processual and evental. Like Smith, Williams views evental creativity as the consequence of an ontological multiplicity—but here, it is not a virtual difference in which every event participates but rather a differential multiplicity internal to the event. The event always has “physical and ideal or virtual sides,” rendering it “resistant to causal determinism and to a systematic restriction of possible significations.” The factual or physical side of the event, for example of a protest during the 2010 Arab Spring, is determined by place, time, participants and social context. But its virtual side, following Williams, is “prior to location in space-time” and thus opens up new cause-effect relations in any given state of affairs. Williams importantly shows that events, for Deleuze, are not originally meaningful but are rather given meaning in a social context, for example “a rise in outrage.” He thus allows us to catch a glimpse of a Deleuzian event whose quality as such depends on the relations it is enfolded in, which I will
develop further through Whitehead in the following.

However, context relations merely condition the actualisation of evental force but do not bring it into existence in Williams; the reciprocal shaping between evental creativity and context of actualisation remains limited. This is the case because Williams attributes an ontologically primary, originary status to the processual multiplicity of the event vis-à-vis the “settled objective state” of its representations, structures and agents, which are “always an illusory cover over” the former.21 When “a state is undergoing events,” the event is “an intensive transformer running through lives,” which are the active actualisers of evental force, but nevertheless always its secondary recipients.22 While Williams relates the evental production of novelty closely to the relational quality of the event, ultimately it is the ontological configuration of the event itself, more specifically its virtual side, that renders the event creative. Again, evental creativity is displaced away from the event itself to an ontological multiplicity which operates in and through the event, but remains withdrawn from any further investigation or action.

In direct opposition to anchoring Deleuze’s philosophy of the event in the depth of ontology, Zourabichvili and Patton develop a second, genealogical-discursive reading of the event, which operates in and on structures of expression. Here, the event is identified as a theoretical tool which can recover the underlying differential multiplicity from structurally fixed representations to open up discursive space for the counter-actualisation of different expressions. In the introduction to his *Deleuze: Philosophy of the Event*, Zourabichvili rejects an ontological interpretation of Deleuze’s philosophy and instead argues that Deleuze’s approach is genealogical: “there is no ontology of Deleuze. [...] It is not the univocity of being in itself that interests Deleuze, ... it is the moment of history where the thesis of univocity arises.”23 For Zourabichvili, Deleuze’s event is the hinge of a philosophy where creativity lies at the intersection of the multiple interpretations which link a linguistic system to the becoming of the world. Here, the event “is that of the world which allows itself to be enveloped in language.”24 It holds in motion a
particular epistemic system but is never bound to and exhausted by it, and can thus also function as the operator of change. Zourabichvili uses the event as a hook to develop Deleuzian philosophy as a methodology to recover conceptual creativity from the notions of causality, teleology and the dogmatic dualism of true/false.

As “the complex theme of the proposition,” the event reveals the problematic difference underlying every propositional expression. Evental singularities burst forth from every instance of sense-expression, which the method of dramatization can utilise to reveal an otherwise to the way in which evental series are actualised as socio-political forms. What is ultimately at stake in evental becoming is a becoming-different that philosophy must counter-effectuated once the iterative potentiality of the event has dissolved structures of representation. While evental creativity emerges at the intersection between language and the becoming of the world, Zourabichvili displaces this evental creativity to the realm of subjective thought, where the event’s epistemic potentiality becomes actual and actionable. Here, the essential creativity of thought is the “internal outside” which momentarily escapes socio-epistemic conditioning and thus can set change in motion. In Zourabichvili, the evental encounter that forces us to think is “the encounter with a sign.”

Forces are not exterior to thought; they are its outside. Thinking consists in the emergence of sense as force: classical thought is affected by the infinite [...] Infinity ceases to be a simple signification in order to become the very event of thought, that which haunts it and inspires it, that which it encounters and with which it continually clashes. The field of forces is nothing other than the field in which sense is produced - a transcendental field.

The task of the thinking philosopher subject is to identify and act on “the authentic event [...] The philosopher must become a clinician.” In Zourabichvili,
there is at the end nothing puzzling about Deleuze’s event—it presents itself as an opportunity in thought and must be seized by the subject, rendering Deleuze’s evental philosophy ultimately an iteration of the modern project of emancipation grounded in individual reason.

Patton conceptualises Deleuzian events in close theoretical proximity to Zourabichvili as operating through a purely epistemic creativity. For Patton, Deleuze’s events are “ideal forms abstracted from the specific features of any one occasion, or even as open-ended and indeterminate idealities characterized by their ‘iterability’ in Derrida’s sense of the term.”30 The event is here a moment of excess which deterritorialises socio-epistemic apparatuses. For Patton, the idea of the philosophical concept developed by Deleuze and Guattari in What is Philosophy? illustrates this functioning of the event most clearly. Concepts are “pure events of deterritorialisation, becoming, incorporeal transformation, capture, metamorphosis.”31 Like Zourabichvili’s, Patton’s retracing of evental creativity to a potentiality which operates in epistemic relations also attributes a decisive role to the subject—and especially to the philosopher. Philosophy is a practice of creating “untimely concepts” which extracts not “just any event from things but ‘new’ events, meaning events which are forever new, like justice, unconditional forgiveness, absolute hospitality or democracy to come.”32 Patton places evental novelty in quotation marks here because, different from the ontological reading, he sees nothing genuinely new in the event that happens, which is always-already caught up in language systems and the power relations they are productively intertwined with. Drawing something new from the socio-epistemically conditioned event is here the task of the philosopher as the external force that renders the event creative by resisting its common sense interpretations and counter-effectuating the event. This subjective counter-actualisation is the source of actually creative events.

The third, new materialist-affective perspective on Deleuze’s event accepts and begins with its relational situatedness. Massumi employs Gilbert Simondon’s relational understanding of onto-genesis to show how Deleuze’s event forms
against the background of a contrasting field of emergence spanned between specific socio-political conditions and an individuated actuality. Every individual is here produced through a trajectory of difference/citation that is conditioned by the former field of individuation. Massumi’s aesthetic event, which can be a particular sequence of images on a television screen or an artwork, emerges under the same determined conditions of individuation. However, Massumi employs Deleuze’s materialist reading of bodily potentiality in Spinoza to argue that the relationally emergent event can generate a spontaneous response within the neuronal relations of the affected subject’s body. The affective event can rupture and change relations of thought, economic production or political power because it is autonomous from the relations of capture that make up its social context. As Massumi puts it, the “autonomy of affect is its participation in the virtual. Its autonomy is its openness. Affect is autonomous to the degree to which it escapes confinement in the particular body whose vitality, or potential for interaction, it is.” In Massumi, evental creativity is secondary to a pre-conscious, extra-rational bodily force that the affective encounter opens up.

Like Massumi, Colebrook understands Deleuze’s event as an affective break with social relations. Following an immediate encounter with the material world that forces us to think, the affective event unfolds from the relational interaction of singularities as a force that transcends its relational terms of origin and can thus escape state overcoding or the flows of capitalist axiomatisation. Colebrook uses the example of a group of churchgoers to show how the event arises from material entanglements between humans and nonhumans—spaces, sounds, smells—that produce an intense affective experience.

Imagine a group of Catholic churchgoers on Good Friday gathered around a procession of the crucifix. The crown of thorns, the wood of the cross, the suffering body, the subdued lighting and the recording of Bach’s cantata in the background unite the group through direct affect. We feel the pain, the suffering, the mourning, the melancholy and the elevation.
This is a political event [...] The politics lie in the relation between image and perceivers, the desiring investment in affect. The event produces a group through an organisation and coding of intensities.

As Colebrook's example shows, the socio-political effect of the affective encounter is not necessarily revolutionary, but the affective intensity experienced collectively in the event underlies every political revolution. Affective are actualised through the bodies of subjects, but these subjects are produced through rather than pre-existing the becoming of the event. The subject is “the self-occurring form of the event.” While subjective action is necessary to make use of evental creativity and produce change, this action is only secondary to the pre-conscious event of bodily-emotive affect in which creative force resides. For Colebrook, the feminist potential of Deleuze’s evental philosophy lies precisely in the fact that evental creativity via the affective encounter decomposes the subject of judgement and removes political agency from the (male) acting individual. However, this undoing of subjective agency here comes at the cost of displacing evental creativity to an ontologically primary, essentially creative force of matter and its interrelations, which the acting subject can merely channel.

Colebrook uses the example of light producing a spectrum of colours to illustrate the intense “power to differ,” which she attributes to matter, and which might then enter “into relation with the eye, thereby producing a visibility that can create new terms and new relations. Any space or plane, then, is the unfolding of matter, with relations being effected by specific expressions, which are events of specific powers to relate.” Colebrook is explicit that, in her reading, Deleuze’s evental creativity amounts to “an affirmation of the affective or material over the formal.” Braidotti, on the contrary, attempts a tentative reconciliation of Deleuze’s evental theory with the idea of the subject as the actor of a rupturing (counter-)actualisation. “The free subject, the ethical subject” is here “the one with the ability to grasp the freedom to depersonalise the event and transform its negative charge.” Emergent as conditioned by given socio-political relations, the
event must be seized and counter-effectuated by the subject who thereby proves herself worthy of the event. For Braidotti, an evental politics must extract positive productivity from the happenings historically embedded in networks of ressentiment, modulating local, affective becoming into a collective flow which can bring about a different state of socio-political relations. At the same time, Braidotti also dethrones the human subject as the sole or even primary agent of evental change. In *The Posthuman*, Braidotti makes it clear that her acting subject is a cyborg. They are only capable of acting differently because they can access and channel a force located in the assemblage of composed of multiple humans, animals and objects in which “the vital energy that is *bios/zoe* gets expressed in all its ruthless splendour.” Braidotti’s creative event is not produced by the reason or will of a human subject but rather originates in the affective creativity of post-human relations. “At the beginning, there is always already a relation to an affective, interactive entity endowed with intelligent flesh and an embodied mind: ontological relationality.”

**EVENTAL CREATIVITY: FROM EXTERNAL SOURCE TO IMMANENT EMERGENCE**

The three interpretive strands that dominate the secondary literature on Deleuze’s event resolve the puzzle of its non-causal creativity in three distinct ways. However, they also have something in common. All three readings make sense of the *sui generis* creativity of Deleuze’s event by retracing it to a source opened up in, but external to, the event itself. Attempting to understand evental creativity via its source, all three approaches, I argue, ultimately displace it to an externality which is thereby reified as the event’s essentially creative cause. Beginning with what I have identified as the ontological perspective, virtual difference is here what renders the event creative. The evental driving force of virtual difference is framed and located in different ways within individual theories. Smith’s event participates in the virtual multiplicity of being, while Bowden’s event is brought forth by a pre-subjective plane of differential multiplicity and William’s event...
is internally multiple, with one side always remaining virtual and inexhaustible in any creative actualisation. However, in all three, it is not the event itself that functions creative. Rather, the event is only creative because it is derived from or accesses an ontologically situated creative difference which is primary to any particular moment of evental constitution and exceeds the former insofar as it also charges other creative processes, for example the differentiation of ideas or the individuation of subjects.47

At a first glance, the genealogical-discursive reading of Deleuze’s event seems to escape the above formulated charge of displacing evental creativity to a primary source. Here, evental creativity is explicitly not ontologically situated but emerges from the excessive quality of expression, which always transcends states of affairs, specific representations and historical series. However, as the event is here always-already caught up in apparatuses of knowledge and social production, it also has no guaranteed, ontologically grounded creative force. For the event to even have the potential to produce something new, its creativity must be activated—by the resistant subject on the receiving end of the multiple, socio-epistemically enfolded events. In order to access the problematic multiplicity behind an actualised evental ‘problem’, a critical subject, who “does not simply take the actualized event at face value,” must utilise their rational faculties to refuse “the common sense view of events as standing outside and apart from the means of representation.”48 This critical subject here becomes the agent of a counter-actualisation which brings forth a novel expression that exceeds existing structures of representation. Once we zoom in on the unfolding of political creativity which is here always coupled to genealogical analysis, it becomes evident that the resistant-creative force of the event ultimately resides in a subject who is able to free herself from the confines of historical and discursive path-dependencies to counter-effectuate the new. Again, it is not the event itself that functions as creative—rather, the event is creative because, and only insofar as, the creative potentiality of thought operates in and through it.49

Overcoming such a subjective-humanist understanding of agency in favour of a
relational conception of creative genesis is one of the foundational aims of those Deleuzian thinkers who approach the event from a new materialist-affective perspective. On the one hand, evental creativity is here importantly located within the relations spanned between human and non-human actors and social structures and thus understood as immanent to the social context it can rupture. More than in ontological and genealogical-discursive readings, in the new materialist-affective perspective, the event itself—the relations which constitute and situate it and the human and non-human singularities these relations bring to it—carries the explanatory weight of unpacking the conditions for the creative emergence of an epistemic or political otherwise. However, on the other hand, I argue that evental creativity is here still theorised with a focus on its source, which is then retraced to the outside of the event itself. The rupturing quality of affect is derived from the original creativity of matter and its interrelations. The affective encounter channels this creativity, and brings it into contact with, allows for it to be experienced by, the human subject. But the affective encounter is always the secondary product of an originally creative materiality located on the outside of the socio-politically axiomatised epistemological realm, which allows the event to rupture and redirect the relations of the former. Again, evental creativity is not unpacked as *sui generis*, but rather retraced and thereby deflected to an external source which renders the event creative.

All three interpretational strands of Deleuze’s creative event unravel its puzzling creativity by locating it in a source on the outside of the event, which thereby becomes the primary cause of evental creativity. But why should this be considered as problematic? At this point, one might interject that the relationship between event and a creative external source might simply be one example for how Deleuze’s thought utilises the theoretical figure of the outside. In both *Difference and Repetition* and *The Logic of Sense*, creative intensity, regardless of whether it takes the form of pure difference or nonsensical chaos, is always linked to the notion of excess, to a beyond which escapes capture in established representational systems and therefore can be made use of to rethink and restructure them. The notion
of the outside is most clearly present in Deleuze’s book on Foucault, to whom the outside is a vital constituent of change in thought and action because such change necessitates an epistemologically unconfined, smooth space, an outside of thought without image. As Deleuze argues here, “transformation occurs not to the historical, stratified and archaeological composition but to the composing forces, when the latter enter into a relation with other forces which have come from outside.”

Productive relations always retain the potentiality to produce something genuinely new because they remain external to their socio-politically coded terms, because they continuously open up a diagrammatic outside which exceeds all relational confinement. In this sense, Keith Robinson describes Deleuze’s “metaphysics of creativity” as “an experiment with the ‘outside’.” The issue I diagnose here thus does not lie in thinking the evental creation of something new in conjunction with the theoretical figure of the outside. It rather arises from theorising evental creativity in a way that implies a definitive original source from which the former is derived. Deleuze’s event, which aims to subvert any notion of causality and foundation, resists such a pinning down of evental creativity. Any attempt at the former can only displace evental creativity to a source external to the event itself, which however then renders this source the primary cause of evental creativity. Conceptualising the event as charged by a creative externality in this manner is, I suggest, unsatisfactory for Deleuzian philosophy for two reasons.

Firstly, it ambiguates the analytical purchase of the event. All three readings of Deleuze’s creative event aim to resolve the puzzle of its uncaused creativity—but they go too far, and end up dissolving the contribution of the evental moment. For Deleuze, events cannot be deliberately brought forth or encountered; their potential to create something new is closely linked to the spontaneity with which they operate on knowledge- and social relations, breaking with history, truth or experience. But if we add to this that the event further does not produce but only channels a creative force, it is not at all clear what, if anything, the concept of the event actually adds to our understanding of the production of novelty. Displaced
to an external source, the evental creativity that the various Deleuzian theories unpack so richly and productively can in fact be theorised without reference to the event, as the creation of the new ultimately operates via virtual difference, discursive genealogy or material affect. Similarly to what Robinson observes for the notion of process in Deleuze and Guattari, a lack of engagement with how creative force emerges and operates within the event itself risks reducing the event “to a dependent state or condition of something else [...] in danger of functioning as an abstract (and transcendent) substratum that differences or becomings move along or undergo, identical with its manifestation as difference, becoming and so on.”

Secondly, and certainly unintended by the thinkers discussed above, I suggest that pinning down evental creativity to a definitive source reintroduces a notion of linear causality to Deleuze’s theory of the event. As Deleuze makes clear in *The Logic of Sense*, the event does not have a clearly defined, primary cause. Events have material causes and ideational and relational quasi-causes that always interact to produce an event. That the “cause” of evental creativity is thus nothing but the relational multiplicity unfolded by different causes in the moment of the event.

The above discussed readings of evental creativity in Deleuze however bind the event to a definitive cause, bracketing rather than engaging the radical potential of an evental creativity that is genuinely without clearly delineated source. The ontological becoming of difference, resistant subjectivity or bodily affectivity here function as the event’s primary causes, endowed with a creative essence that is theoretically black-boxed because it is presumed rather than unpacked and qualified within the respective theories of evental creativity. François Laruelle, in his aligned observations on continental philosophies of the event, terms this external cause the “Other-as-One” of evental philosophy that “indexes an ontological ground with which [the event] remains complicit even as it detaches itself from it.”

In either reading, the primary source of evental creativity is precisely not a Deleuzian (or Foucauldian) outside because it retains a particular, philosophically
representable—even if not accessible—form. It is for exactly this reason that Deleuze emphasises the necessity to “distinguish between exteriority and the outside.”\textsuperscript{57} The externality of evental creativity, which operates on socio-epistemic relations from an ontological or rational-subjective outside, rather pushes Deleuze closer to the revelatory-messianic undertone of Badiou's event,\textsuperscript{58} which, I suggest, is ultimately foreign to Deleuze's philosophy. I suggest that the unintended consequence of ambiguating the creativity immanent to the evental moment can be mitigated if Deleuze's creative event is not unpacked with a view to the source of evental creativity, but instead as an instance of creative emergence. The event's creativity, in this reading, is not determined by an originary impulse, but instead by the relational effects this impulse establishes. The event can here always bring forth an otherwise, albeit that the outcome of the creative process is uncertain and depends on the specific relational situatedness of the event. In the following, I will develop such an understanding of evental creativity as immanent emergence by, borrowing from Isabelle Stengers, thinking Deleuze’s evental creativity with Whitehead.

RELATIONAL IMMANENCE AND EMERGENT CREATIVITY IN WHITEHEAD AND DELEUZE

Recalling the starting point of this investigation into Deleuze’s evental creativity, Deleuze, in The Logic of Sense, defines the creative event as that which generates both the condition and the conditioned, disrupting any conventional understanding of causality. At the same time, this should not be taken to mean that the event, as in Badiou, appears \textit{ex nihilo}. Deleuze’s evental creativity disrupts causality not because it has none, but because it has too many causes: Evental creativity “is subject to a double causality, referring on one hand to mixtures of bodies which are its cause and, on the other, to other events which are its quasi-cause.”\textsuperscript{59} Events are, in part, caused by the multiplicity of other events. This assertion can certainly be read in support of the idea that a creative externality is at work in Deleuze’s theory of the event—especially in line with the ontological and material-affective reading where the former is an ontological force primary to actual social relations
and their “mixtures of bodies.” In the following, I will develop a different reading of the “non-causal causation” of evental creativity in Deleuze—one that is opened up by the philosophy of Whitehead. The following discussion, rather than unpacking Whitehead’s conceptualisation of the event in its nuances and shifts in full, engages with Whitehead where and because his philosophy resonates with Deleuze’s thought on the event.

In *The Fold*, his book on Leibniz, Deleuze paraphrases Whitehead to offer yet another puzzling conceptualisation of the event; at first glance, it has little to do with the moment of creative rupture that Deleuze’s event is usually associated with. As Deleuze writes here, the “Great Pyramid is an event, and its duration for the period of one hour, thirty minutes, five minutes.”

I suggest that Deleuze’s reference to the eventalness of perceived and experienced duration offers a different perspective on the creative event: the event is here an emergent moment of relational ordering that can produce anything between the experience of radical rupture and the complete continuity of the world that we perceive. The event is here determined by its creative effect; emergent from the relational complexity at the intersection of matter, sensations and ideas, the event’s creativity is without a clearly identifiable source.

Whitehead’s philosophy has recently received much interest from theorists who draw a non-essentialist vitalism focused on the relational becoming rather than an essential force of life from his thought. Yet, Whitehead himself insists that his philosophy is concerned with and seeks to explain a reality consistent of the “abstractions” of forms and concepts. He situates his thought in opposition to “[t]he evil produced by the Aristotelian ‘primary substance’,” the philosophical belief that ideas can be unambiguously deduced from a material actuality which therefore must be the focal point of philosophical investigation. This apparent discrepancy can be resolved if we look closer at how Whitehead actually conceptualises both materiality and the realm of abstractions that give form to the latter. Whitehead’s speculative empiricism avoids attributing constitutive primacy to either realm and instead locates creativity in the relations between both. In *The Concept of*
Nature, Whitehead describes materiality in explicit reference to Henri Bergson’s élan vital as a fundamentally processual passage of nature. The passage of nature is a constantly flowing, creative potentiality that emits the evental singularities that the material world is composed of.⁶⁴

Whitehead’s passage of nature is not an original force of matter or substance of nature. On the contrary, it is located in an intermediary realm between an ontic materiality and the epistemic abstractions which allow us to perceive, understand and conceptualise the singularities it emits. The passage of nature is “[o]ur knowledge of nature [which] is an experience of activity (or passage),” not independent from but always interrelated with the subject perceiving it. Since we have no means to perceive nature as it is, we are only aware of it in so far as it is moving, productive, expressive. It is our perception of nature which takes the form of a passage or force of becoming because it can only be experienced in the events it creates. In The Concept of Nature, Whitehead terms these creative effects, which constitute “the ultimate substance of nature,”⁶⁶ actual occasions. The experience of passage, where actual occasions come into existence, is “a concrete slab of nature limited by simultaneity which is an essential factor disclosed in sense-awareness.”⁶⁷ Nature, as we perceive it, emerges from a multiplicity of particular experience-events that, taken together, produce a sense of spatio-temporal passage.

While The Concept of Nature focuses on the evental occasion that produces our experience of nature as its creative effect, it is the event of Process and Reality that, I suggest, resonates with Deleuze’s evental creativity. Here, the creativity of the relationship between perception, thought and the singularities emitted by matter enveloped by the former, which The Concept of Nature has already highlighted, is placed centre stage. The creative event is not an individual occasion, but the nexus of actual occasions from which any new occasion experienced emerges. Whitehead’s evental nexus is composed of previously produced and experienced occasions, and thus spans and interrelates both physical sensations and conceptual abstractions. While the materiality we perceive as passage, and the singularities
it emits, constitute one end of the nexus relations, their other end is formed by conceptual abstractions. As Whitehead’s version of Platonic forms, abstractions have an immobile, unchanging core—they give conceptual form to eternal objects. Like their material counterpart, the passage of nature, eternal objects are potentialities for the process of creative becoming. However, their character is radically different from Plato’s forms in the context of Whitehead’s theory; eternal objects are not unchangeable and independent from the materiality they represent but rather always enfolded with it. The eternal object expressed in abstractions is not primary but radically relative to its relational connectivity to the realm of matter. It is located in the evental nexus where it “provides definiteness to the experience of becoming.”

Eternal objects “work regulatively, or problematically” insofar as their excessive potentiality always outlives any specific actualisation or “solution” drawn from them. In this sense, the eternal object binds materiality to a certain idea, but at the same time functions as a reminder that the link between matter and ideational abstraction could be established differently to produce a different actuality. In the words of Whitehead, eternal objects “involve their own nature’s indecision.” They contain a creative potential but never “in themselves disclose in what actual entities this potentiality of ingression is realized.” Only if an eternal object exists in the nexus of actual occasions, has become entangled with sensation and experience to give form to something perceived, does it produce a creative effect. But on the other hand, the genesis of the world as we can know it in actual occasions also requires employing the epistemic resources of eternal objects in order to give meaning to perceptions—“objectification is abstraction.”

Whitehead’s nexus is populated by a multiplicity of previously produced actual occasions, each interlinking perceived matter, and the eternal object’s ideational potentiality, in a particular way. It is evental insofar as every actual occasion is created from its relations. But this evental creation must be understood as emergence from relational complexity because it cannot be retraced to a particular source or driving force. Neither matter, its experience or abstract ideas
have a privileged role in creating the world from the nexus of actual occasions. While material singularities, and their perception by the subject, are necessary in order to create something new, the eternal object’s ideational abstractions are equally necessary for material experience to become conceivable, and thus to attain actuality. The evental nexus does not pre-exist either the passage of nature or the abstractions which form eternal objects in any absolute sense, but only temporally—it is composed of nothing but already actualised occasions. It can function creatively only insofar as it is conditioned by previous processes of abstracting creation which always already involve intertwined matter and thought.

The understanding of evental creativity that can be drawn from Whitehead’s Process and Reality has no stable foundation. The event emerges in the moment when a new singularity is connected to the nexus of past occasions, and from the relational complexity of connective possibilities opened up here. Whitehead’s nexus offers a way to make sense of the fact that Deleuze, on the one hand, asserts the non-causal nature of the event and, on the other hand, refers to its multiple causes. In Whitehead, the event has no primary cause, but at the same time multiple causes—the multiplicity of relations between matter, experiences and ideas that make up the world as previously made sense of. The idea of creativity as emergent effect that comes to the fore in Whitehead’s evental nexus, I suggest, mirrors Whitehead’s understanding of divine creativity. While there are different interpretations of the way Whitehead conceptualises the primordial nature of God, this paper aligns itself with a reading that views Whitehead’s divine creativity not as a primary creative impulse to which all existence can be traced back, but rather as surfacing in the effects of creation. In Process and Reality, Whitehead develops a “conception of God, according to which he is considered as the outcome of creativity ... and as the goad toward novelty.” Creativity does not lie in the source, but rather in the effect of evental genesis.

Every particular actuality is the product of how a new experience is linked to already existent actual occasions in the nexus. Here, a material singularity becomes “a throb of experience including the actual world in its scope.” When we perceive
the colour red, it is not because we directly receive the evental expression emitted from matter. We can only receive it as it comes into being—becomes a particular actual occasion with a particular ordering position in the nexus. For Whitehead, being “is located neither in the object itself nor in the subject that perceives it [...] The key to Whitehead’s concept of becoming is that each becoming occurs in a specific environment and in a specific fashion. That which both enables becoming and differentiates this becoming from any other is the way in which the becoming unfolds.”

In Whitehead, there is no conflict between conditionedness by the abstracting relations of sense and the creation of novelty. Rather, conditionedness by relationally immanent forms of sense, formed with the help of abstractions that reflect a particular image of thought, and a particular socio-political context, is the background against which a creativity, which always happens as a synthetic interaction between perceptive affect and epistemological structures, becomes possible in the first place. While a material singularity is necessary to constitute something it only becomes perceivable, expressive and therefore productive when it is enfolded by the relations of the nexus in a particular way. The duration of the nexus of actual occasions is the evental background from which both continuity and change are produced as particular ways in which a new experience is relationally ordered in the nexus. The event of the Great Pyramid can be one of unchanged continuity if we view it as a historical monument vis-a-vis the multiplicity of changes Egyptian societies have undergone since its erection—but it can also be one of change if, visiting the Pyramid for the second time, we notice that a few of its stones have disappeared.

I argue that Deleuze’s event can, with Whitehead, be understood as emergent from a relational multiplicity which does not pre-exist that what it creates in any absolute sense. The concept of sense here plays the equivalent role to Whitehead’s evental nexus of actual occasions. As Deleuze stresses in different parts of *The Logic of Sense*, the event is always a “sense-event.” While Bowden, who also unpacks evental creativity in Deleuze through the concept of sense,
views the sense-event as charged by a pre-representational subsense,\textsuperscript{83} I suggest that the former functions analogously to the relationally immanent, emergent creativity of Whitehead’s nexus. Deleuze’s sense-event is without primary cause. As “the fourth dimension of the proposition [...] an incorporeal, complex, and irreducible entity, at the surface of things, a pure event which inheres or subsists in the proposition,”\textsuperscript{84} the creativity of the sense-event is neither derived from the materiality of the object it makes sense of, from the ideas of the sense-making subject nor from a fixed, logical relation between signifier and signified. As in Whitehead, something on the level of materiality has to happen in order for something new to be created—but this material singularity is not the driving force, or on its own sufficient cause of, evental creativity.

Something new is created only when this singularity is brought into contact with a series of already-produced sense-events where multiple “singularities [...] communicate in one and the same Event.”\textsuperscript{85} As in Whitehead, the actually creative moment from which something new emerges is when a singularity connects to the order of already produced sense. This “Event,” “pure event” or “Eventum tantum”\textsuperscript{86} causes something new to emerge, but only as “quasi-cause” because what functions creative here is not a particular ontological or subjective force, but rather the relational complexity spanned between subjective rationality, expressive proposition and expressed object. Because sense is always-already present as the condition for the emergence of creative events and always expressed in every new instance of evental creation, it is without outside. As Deleuze puts it, bodies and their mixtures produce sense “not by virtue of an individuation which would presuppose it. Individuation in bodies, the measure in their mixtures, the play of persons and concepts in their variations—this entire order presupposes sense and the pre-individual and impersonal neutral field within which it unfolds.”\textsuperscript{87}

CONCLUSION

This paper has drawn on Whitehead’s philosophy to think Deleuze’s event as a moment of relationally immanent, creative emergence. Whitehead’s nexus of
actual occasions opens up a theory of evental creativity that is located in the creative middle ground spanning between the perceivable materiality of the passage of nature and the abstractions which express eternal objects in thought and language. A material singularity can only unfold creative force if and when it is enfolded in the nexus relations of previously produced occasions which thus condition all evental emergence. It was argued that the same, immanently creative event which consists of a material-bodily singularity and an always-already synthesised set of sense-relations enfolding the former can be found in Deleuze. Deleuze’s event is a sense-event that escapes the need for constitutive grounding in an external source that drives evental genesis, and is thereby reified as the origin of all ideational and social change. Emergent from a relational complexity which contains matter, language and their interrelations, the sense-event has a multiplicity of causes, but does not directly follow from an identifiable external impulse. Its creative effects are determined by the state of the nexus relations through which it comes into being.

Conceptualising Deleuze’s event via Whitehead as emergent creativity does not, I suggest, remove any link and relevance to resistant action aimed at manifest change, even if such political change does not (at least explicitly not) feature in Whitehead’s philosophy. The decisive moment for change is the point at which a new evental singularity is enfolded by the nexus relations and linked to the abstractions it contains and conditions—to lines of meaning, orders of knowledge and structures of power. This is the moment of the “decision” over which particular actuality is produced through the connection between singularity and nexus. In the opening pages of *Process and Reality*, Whitehead repeatedly speaks of the need for an “imaginative leap” or “leap of the imagination” which would allow philosophy to understand phenomena beyond the limits of existing trajectories of meaning. It seems that Whitehead shares with Deleuze a distinct dislike, and mistrust, of common sense. Whitehead uses a negative turn of phrase to describe this imaginative leap in the event as negation. A leap of imagination requires the thinker to negate rather than
accept the connective opportunities most obvious, most readily available in the sphere of abstractions. It is not the simple actualisation of a pre-given evental potentiality that is just waiting to unfold its rupturing force but rather implies an imaginative-conceptual move against the grain to draw something genuinely different from the event.

Deleuze actually develops a very similar account of the revolutionary event in *The Logic of Sense*. Here, too, we encounter a creative event whose potentiality, which is the creative potentiality of sense, is in theory open-ended. In practice, however, upon entering the conditioned nexus of the sense-event, with its links to existing structures of meaning, production and power, any singularity is always “in danger of being snapped up by its cause”—in danger of simply renewing existing lines of sense rather than making use of the creative potentiality it offers. In order to actually instigate a change of tracks in the way world and self are produced in sense and actualise something new, the event must be counter-effectuated. Reading Deleuze’s event with Whitehead thus leaves room for resistant agency in the form of negation or counter-effectuation. Different from the genealogical-discursive perspective on the event, resistant agency is not what brings forth the creative event here, rendering its conditions and effects radically insecure. Whether an evental moment offers opportunities for resistant thought or action to actually produce change is determined by the event’s relational position, and can only be judged after the fact, by its creative effects. In Whitehead’s words, the production of novelty has no conscious elements, but is always “free, complete, eternal, actually deficient, and unconscious.” However, under the right conditions of relational emergence, and with the right action to seize it, Whitehead’s event, as Isabelle Stengers puts it, provides a “resource for telling our stories in another way” and places us in a position “in a way that situates us otherwise—not [...] defined by the past, but [...] able, perhaps, to inherit from it in another way.”
HANNAH RICHTER is Lecturer in Politics and International Relations at the University of Hertfordshire, England. Her work seeks to develop Continental philosophy at innovative intersections, including those with Niklas Luhmann’s systems theory, political ecology and Non-Western critique and resistance. She has published in *International Political Sociology*, the *European Journal of Political Theory*, the *European Journal of Social Theory* and *Distinktion*. Her *The Politics of Orientation: Deleuze meets Luhmann* is forthcoming with SUNY Press.
Notes
6. Ibid.
11. Ibid., 437.
12. Ibid., 436.
15. Ibid., 275; see also: Sean Bowden, “Deleuze’s Neo-Leibnizianism, Events and The Logic of Sense’s ‘Static Ontological Genesis’.” *Deleuze Studies* 4:3 (2010, 301–328).
17. Ibid., 243.
19. Ibid., 88.
20. Ibid., 84.
22. Ibid., 113-114.
27 Zourabichvili, *Deleuze: Philosophy of the Event*, 73; see also: ibid., 87.
28. Ibid., 90.
29. Ibid.
38. Elizabeth Grosz’ reading of Deleuze’s event in *The Incorporeal. Ontology, Ethics and the Limits of Materialism* is, I suggest, aligned with the new materialist-affective reading I draw out here, but requires special consideration because the external-material source of the creative event is developed more cautiously and implicitly. Grosz identifies the event as incorporeal. Spanning between material and ideational constituents, it emerges from the subsistence of the material in the ideational and vice versa, “a change of state, a modification, something that adheres to or floats on the surface without penetrating the identity and continuity of the body” (Elizabeth Grosz, *The Incorporeal*. New York/Chichester: Columbia University Press, 2017, 39) to affect the subject once it rises to the level of consciousness. Grosz conceptualises her incorporeal against reductive accounts of materialism which exclude or devaluate the productive capacity of epistemic relations. However, I suggest that she ultimately retraces evental creativity solely to the affective surface of the body which is charged by nothing else than the biological-physical becoming of life itself (Grosz, *The Incorporeal*, 7; 66-67; 206-208).
41. Ibid., 18.
49. Smith, not only but also against the background of Patton’s concept-focused reading of evental creativity and the production of novelty, points to the affinities between his reading of Deleuze and the liberal theoretical tradition (*Essays on Deleuze*, 344-348).
55. Deleuze, The Logic of Sense, 7-8; 86-95.
57. Deleuze, Foucault, 86.
59. Deleuze, The Logic of Sense, 94.
64. Robinson, “Back to life.”
67. Whitehead, ibid., 53.
70. Shaviro, “Transcendental Empiricism” 87.
72. Ibid.
73. Whitehead, Process and Reality, 110.
77. Whitehead, Process and Reality, 5.
78. In this sense, I agree with Tim Clark’s observation that “a [Whiteheadian] process metaphysics could indeed dispense with Whitehead’s God” even if Whitehead himself does not do so (“A Whiteheadian Chaosmos: Process Philosophy from a Deleuzean Perspective”, Process Studies 28:3-4 (1999, 192)). However, different from Clark, this paper suggests that that Deleuze’s philosophy also does not operate through a primordial creative potentiality but instead in the same logic of creative emergence.
80. Ibid., 190.
82. Deleuze, The Logic of Sense, 22; 31; 167.
84. Deleuze, The Logic of Sense, 19.
85. Ibid., 50; 207.
86. Ibid., 19; 63.
89. Ibid., 4; 13.
90. Deleuze, *The Logic of Sense*, 95.
I. THE PARADOX OF CONTEMPT

In the literature on the ethics of forgiveness, one finds frequent reference to what is called the paradox of forgiveness. Although the paradox is formulated somewhat differently by different authors, the basic idea is captured well by Aurel Kolnai in his influential 1973 paper “Forgiveness.” According to Kolnai, forgiveness is necessarily directed toward someone who has wronged the forgiver; the idea of forgiving someone who has committed no wrong at all, or who has committed a wrong against some other person, he thinks, is conceptually incoherent. In any
case of forgiveness, then, one of the following must be true of the person who is forgiven: either he has had a genuine change of heart, having disavowed the wrong he had done and having done what he could to make amends, or he has not. This gives rise to a paradox, Kolnai thinks, because in neither case can the victim’s gesture be characterized properly as forgiveness. In the former case forgiveness becomes redundant, having lost its *raison d’être*. If the wrongdoer has sincerely changed his ways, such that for practical purposes he is no longer the same person who committed the offense, then there remains nothing for the victim to do except to take note of the change and to begin engaging with the wrongdoer accordingly. Forgiveness in this case would amount to a “mere *registering* of moral value in the place of previous disvalue.” But this is not what we mean by forgiveness. As the etymology of the term suggests, forgiveness is a kind of gift in which the forgiver gratuitously forswears the retributive attitude that she would be justified in maintaining toward the wrongdoer precisely *qua* wrongdoer. In cases where the wrongdoer has had a genuine change of heart, then, “there is no room for [forgiveness], seeing that there is nothing to be forgiven.” On the other hand, in cases where the wrongdoer has not demonstrated any kind of change of heart, the victim’s forswearing of her retributive attitude would be morally unjustifiable. To do so would be merely to condone or to acquiesce in the wrongdoing. And once again, this is not what we mean by forgiveness. If a victim forswears resentment toward a wrongdoer in order to maintain a prudentially beneficial relationship, for example, or because she lacks the sense of self-worth that would be necessary for her to continue to press her rightful claim, her act would amount merely to “a *simulacrum* of forgiveness proper.” In short, then, either one has no compelling moral reason to forgive, in which case the purported act of forgiveness would reduce to an act of condonation, or else one does have a compelling moral reason, in which case the purported act of forgiveness would be superfluous.

A very similar paradox seems to apply to the ethics of contempt that Immanuel Kant develops in *The Metaphysics of Morals*. In Section 39 of the Doctrine of Virtue, Kant asserts that “to be contemptuous of others (*contemnere*), that is, to
deny them the respect owed to human beings in general, is in every case contrary to duty.” 4 What is most remarkable here is Kant’s insistence that expressions of contempt are always morally impermissible, even when they are directed toward persons who truly are contemptible. Other moral philosophers of the early modern period—most notably Nicolas Malebranche—agreed that contemning others was always morally wrong. (Malebranche went so far as to characterize it as “the greatest of injuries.”5) But the wrongness of contempt was understood primarily epistemically: if we could form judgments of our fellow human beings on the basis of God’s infinite understanding, then we would discover that no one is truly worthy of contempt. Because our understanding is finite, though, and because it is unavoidably distorted by considerations of self-love, we often fail to recognize others’ good qualities. Judgments of contempt are always wrong, then, because they are always false. Kant disagrees with this. As he makes clear throughout his ethical writings, and especially in his Lectures on Ethics, there are many things we can do that would render us objectively contemptible. If we sell parts of our own bodies or allow ourselves to be used for the sexual pleasure of others, for example, then we throw away our own humanity, reducing ourselves to the level of mere things. 6 If we practice other vices, such as drunkenness and gluttony, we render ourselves contemptible by reducing ourselves to the level of the non-rational animals. 7 And in the Doctrine of Virtue, Kant argues that the vices of lying, avarice, and servility are contrary to inner freedom and human dignity. To adopt them is to “throw oneself away and make oneself an object of contempt.”8 Even if we correctly judge others to have done the sorts of things that would render them objectively contemptible, though, we must not contemn them. Because the sense of all of our moral experience is given by the legislative activity of pure practical reason, it may well be impossible for us to avoid “inwardly looking down” on persons who have rendered themselves contemptible, Kant thinks, but “the outward manifestation of this is, nevertheless, an offense.”9 This gives rise to an apparent paradox similar to the one that applied in the case of forgiveness: it seems that the command never to contemn is either superfluous or unjustified. On the one hand, if the other person has not done anything to render herself contemptible, or if
the person had rendered herself contemptible in the past but had since reformed her ways, then the command not to contemn that person would be redundant: it would amount to the command to act in accordance with the moral sense given by legislative pure practical reason. But that is just what we are commanded to do in general; there is no need for a supplementary command that would apply specifically to the case of contempt. On the other hand, if the moral sense given by pure practical reason presents the other person as contemptible, then it seems morally unjustifiable to treat the person as if she were not. Of course we can imagine prudential justifications for treating contemptible people as if they were worthy of respect: we might, for example, want to preserve good relationships with contemptible people from whom we benefit financially. But the command not to contemn is categorical, not hypothetical. On Kant’s account, then, we are commanded by pure practical reason to disregard, or perhaps to bracket, the moral sense that it itself legislates. It is not at all clear why such a bracketing of moral sense would be justifiable in the case of contempt, but not in any others.

I believe that Kant’s view that we ought not to contemn people even when they have done things to render themselves contemptible is plausibly correct. But it also seems that Kant’s own argument for that view is incoherent. My goal in this paper, then, will be to support Kant’s conclusion by reformulating parts of his argument. More specifically, I will argue that the philosophy of phrases that Jean-François Lyotard develops in The Differend—specifically, the ideas of phrase-event, presentation, situation, addressor, and addressee—provides us with the resources to resolve the paradox of contempt. I will begin this argument with a brief overview of Lyotard’s philosophy of phrases, emphasizing those aspects that are especially relevant for the problem of contempt. I will then describe how Kantian critical philosophy, in both its theoretical and practical forms, can be understood in terms of this philosophy of phrases. And finally, I will show why the command never to contemn is neither superfluous nor unjustified.

II. THE PHRASE-EVENT: PRESENTATION AND SITUATION
In outlining the main points of Lyotard’s philosophy of phrases, it will be best to begin with the concept of phrase itself. Even though he declares in the preface to *The Differend* that the phrase will be the book’s primary object, Lyotard refuses to provide his readers with any straightforward definition of the term. Nonetheless, we can begin to get a sense for what the term means by looking at some of his examples. First, and probably most intuitively, the various kinds of natural language sentences, including declaratives, interrogatives, imperatives, and exclamations, count as phrases. Bodily expressions, such as winking and shrugging one’s shoulders, are also phrases in Lyotard’s sense, even when the expressions are unintentional, as in the cases of blushing or tachycardia. And perhaps less intuitively, even silences and inarticulate feelings can count as phrases. What do all of these have in common, such that it makes sense to treat them all as examples of the same thing? Most basically, Lyotard thinks, all of them present what he calls a phrase universe, which consists of four instances: 1) something that the phrase is about (the referent), 2) the sense of the referent, or what is signified about it, 3) that to which the signification is addressed (the addressee), and 4) that through which or in the name of which the sense is signified (the addressor).

Suppose, to take a simple example, that there is a person on the bus who is talking loudly to himself and that another passenger makes eye contact with me and shrugs her shoulders. In this case, the woman shrugging her shoulders would be the addressee, I would be the addressee, the referent would be the person talking loudly to himself, and the sense would be that he is acting strangely.

This account of the phrase as presenting the four instances of the phrase universe is valuable, I believe, as a first approximation, but it also runs the risk of being somewhat misleading. In order to avoid some important misunderstandings, then, it will be important to emphasize two additional points. First, a single phrase never immediately presents its own sense. In any presentation, the four instances and their relations to each other are less than fully determined. This point is obscured somewhat in the example above, where the sense of the situa-
tion was described as if it were unequivocal: I was the addressee of a message calling on me to agree with the addressee's assessment of the strangely behaving person and to commiserate with her a little bit about the annoyance he caused. The relation between us and the strangely behaving person also seemed to be given immediately with the shrugging of the addressee's shoulders: there was nothing we could do about the person's behavior other than to acknowledge our mild annoyance with it. But this picture simplifies too much. The sense of the presented phrase universe is not in fact given immediately with the presenting phrase, but is rather deferred to a second phrase that links onto it. Lyotard gives an example in *The Differend* that brings out the indeterminacy of the universe presented by the first phrase: an officer in the military “cries Avanti! and leaps up out of the trench; moved, the soldiers cry Bravo! but don’t budge.” In this case, the phrase *Avanti!* seems at first blush to present a universe in which the instances and their relations are well defined. The soldiers are the addressees of an imperatival phrase, and as such they are called upon to *do* something. They are presented, then, as obligated subjects. Moreover, the phrase seems to establish a well-defined relationship between the addressees and the enemy soldiers referred to (although not explicitly) in the command: they are called upon to attack them. But Lyotard's point is that even though this sense seems to be given immediately with the presenting phrase, it is not. The sense of the presentation is determined only by means of a second phrase that links onto the first. And importantly, there is always more than one way to link onto a phrase; as Lyotard puts it, “to link is necessary; how to link is contingent.” This is precisely why the sense of the presentation is suspended between the two phrases. In linking onto the officer's *Avanti!* with their *Bravo!*, the soldiers situate themselves not as obligated subjects, but rather as something more like aesthetic subjects, taking a distance from the presenting phrase and expressing their approval. The soldiers could also have linked onto the officer's phrase in such a way as to situate themselves as knowing subjects, treating the phrase not as something to be acted upon but rather as something to be known. They could have done this, for example, by saying “*Avanti!* is an example of an imperative.” Both of these possibilities bring out the way in which the sense of
a presentation is given only as deferred and as calling upon a second phrase to determine it.

A second and closely related point that must be emphasized is that the phrase is to be understood as an event. For Lyotard, an event is the bare “it happens,” the fact that there is something and not nothing. This bare “it happens” is presentation itself, as distinct from what is presented in the presentation. Presentation itself is never presented as one of the elements within the universe that is presented by the first phrase. The presentation—the “there is”—exceeds what there is. What follows from this is that the event necessarily exceeds knowledge, which is always knowledge of what is the case. Now of course one can present the event of presentation, treating it as something to be known. That, indeed, is what I am attempting to do here. But doing so requires a second presenting phrase, and this second phrase unavoidably deprives the first presenting phrase of its currentness and thus of its character as event. In Lyotard’s terms, the second phrase situates the first. This second phrase, like all phrases, is itself an event, a “there is” that is irreducible to “what there is,” but once again its event character is not itself presented in the presentation. Yet another phrase would be necessary to situate its presentation. The event, then, is never present as such: it is never among the things in the presented universe that can be known (this explains why Lyotard refused to provide a definition of the phrase: to say what the phrase is would be to cover over its character as event). Because presentation is not itself presented, we tend not to notice the event of presentation at all. The structure of presentation thus encourages us to treat presentations as if they were reducible to their situations. But this is a mistake, and as I will argue below, it is one that contributes in a major way to the appearance of paradox in the prohibition on treating others with contempt.

III. THE PHILOSOPHY OF PHRASES AND TRANSCENDENTAL IDEALISM

In the section of The Differend titled “Kant Notice 1,” Lyotard argues that we can
understand Kant’s transcendental idealism in terms of this philosophy of phrases. He focuses there almost exclusively on redescribing the theoretical philosophy that Kant developed in the *Critique of Pure Reason*. Later in the book, in the section titled “Kant Notice 2,” Lyotard develops the implications of this analysis for Kant’s ethical philosophy, which is grounded in the same transcendental idealism. He focuses there primarily on the ideas of respect, freedom, and obligation, but his analyses can be extended to the phenomenon of contempt as well. Doing so, I believe, will yield some valuable insights that will help us to resolve what I have called the paradox of contempt.

I believe it will be most helpful to begin here by following Lyotard’s treatment of transcendental idealism as it applies to the theoretical philosophy. One of the most revolutionary innovations of Kant’s transcendental idealism was the idea that the cognizing subject actively contributes to the ordering of experience, giving the laws that govern specified domains. It is precisely this active contribution to the structure of experience that is supposed to explain the possibility of synthetic a priori judgments. But as Kant emphasizes in the Introduction to the B edition of the *Critique of Pure Reason*, “there is no doubt whatever that all our cognition begins with experience; for how else should the cognitive faculty be awakened into exercise if not through objects that stimulate our senses...?”¹⁸ The legislative activity of the cognizing subject, in other words, “takes place only insofar as the object is given to us; but this in turn, is possible only if it affects the mind in a certain way.”¹⁹ According to Kant, this “certain way” is by sensation. In the language of Lyotard’s philosophy of phrases, then, we could say that the cognizing subject is given most originarily as the addressee of a sensation-phrase. The sensible given is a phrase in Lyotard’s sense of the term because it is a presentation, a “there is” that is prior to any determination of what there is. Who or what is the addressee of this sensation-phrase? The answer to that question is not given in the presentation, and so finite rational beings like us simply cannot know. Neither does the sensation-phrase present a referent. We might be inclined to think that the object is the referent, but this is exactly what transcendental idealism denies:
reference to an object becomes possible only by means of the synthesizing activity of the cognizing subject. And finally, since the sensation-phrase does not present a referent, neither can it present a sense for the referent.

The presentation of the sensation-phrase is situated only when a second phrase links onto it. To situate the presentation is to establish the familiar world of experience with its determinate objects standing in regular, law-governed relations with each other. The addressee of this second phrase is the cognizing subject who had previously been presented in the addressee position. What Kant attempts to show in the Transcendental Aesthetic, translated into Lyotard’s language, is that the subject addresses a form-phrase—the a priori forms of space and time—to the undetermined matter given in the sensation-phrase. Only as situated within space and time does the matter of sensation become an object that can be referred to. From our natural, everyday point of view, which Kant characterizes as transcendental realism, the determinate world of experience seems to exist in itself, independent of the activity of the cognizing subject. Such a view overlooks the event of presentation, treating the presentation as if it were already situated. The key insight of transcendental idealism, on the other hand, is that the world of experience is a combined product that requires the linking of two very different kinds of phrases. The first phrase—the event of presentation that is given in sensation—exceeds the situation that determines its sense. The failure to recognize this excess of presentation over situation is the source of metaphysical illusion.

Moral experience, on Kant’s account, is a combined product in much the same way as theoretical experience. In describing the production of moral experience, I will follow Kant’s own order of exposition and begin with the subject’s role as addressee of the law that situates the sense of moral experience. According to Kant, all specifically moral sense is given by the subject’s legislative faculty of pure practical reason. Any practical sense that does not have its origin in the activity of pure practical reason—for example the sense that presents \( x \) as good for bringing about \( y \), where \( y \) is an object of the inclinations—is not moral sense.
properly speaking. I do not give myself any specifically moral credit, for example, when I have the presence of mind to purchase a ticket that will enable me to see the opera that had gotten such good reviews. The goodness of buying the ticket is not a moral kind of goodness; it is good only in the prudential sense of the term. But when I deliberate about whether or not to keep a burdensome promise, I recognize that the goodness at issue is qualitatively different. Keeping the promise is good in the specifically moral sense of the term, as it falls under the moral law that commands me unconditionally to “act only in accordance with that maxim through which [I] can at the same time will that it become a universal law.”23 The moral law performs a function within moral experience analogous to the function performed by the a priori forms of space and time within theoretical experience. In Lyotard’s terms, it situates the sense of an event of presentation that cannot present its own sense. The addressee of the law-phrase that situates all moral sense is the practical subject herself. The practical subject is also the addressee of this phrase. The referent of the phrase in our example is the keeping of a promise and the sense of that referent is its obligatoriness. Without the practical subject’s functioning as addressor of the law-phrase, there would be no experience of unconditional obligation or prohibition (or by extension, of permission), and so there would be no specifically moral experience at all.

Kant has much less to say about the presentation whose sense comes to be situated by the moral law. In the *Groundwork*, his descriptions of the moral subject focus almost exclusively on her position as addressor. This privileging of the addressor position is reflected in many of the commitments that are most closely associated with Kantian ethics. It is reflected, for example, in the quintessentially Kantian idea that “the most common understanding” can always determine what is morally required “quite easily and without hesitation.”24 As addressors of the moral law, each of us “knows very well how to distinguish in every case that comes up what is good and what is evil, what is in conformity with duty or contrary to duty....”25 It seems as if there is no room at all in this picture for a moral subject understood as the addressee of any kind of obligating phrase. Indeed Kant states explicitly in
the Critique of Practical Reason that “autonomy of the will is the sole principle of all moral laws and of duties in keeping with them; heteronomy of choice, on the other hand, not only does not ground any obligation at all but is instead opposed to the principle of obligation and to the morality of the will.” This is because if the subject allows herself to be positioned as the addressee of practical laws that originate in the objects of experience, then the imperatives that result will only be hypothetical. The practical force of these imperatives will depend entirely on the subject’s preferences. But the force of obligation never depends on what the subject happens to want; to be obligated is to be practically necessitated, unconditionally. To be an addressee of the law without being more fundamentally its addressee, then, seems utterly incompatible with genuinely moral experience.

In the Critique of Practical Reason, however, Kant does provide the sketch of an account of the phrase-event whose sense will be situated by the moral law. This phrase-event is called the fact of reason. Kant arrived at this notion only as a last resort, after having failed in the Groundwork to provide a deduction of the objective validity of the moral law that would be analogous to the transcendental deduction of the categories in the Critique of Pure Reason. The primary task of the Groundwork, which is carried out primarily in Sections One and Two, is to discover the supreme principle of morality. Importantly, both of these sections take for granted the idea, well established in our common sense, that morality does impose genuine obligations on us, i.e., that it does bind our wills completely irrespective of our preferences. But Kant also recognizes the possibility that morality might be an “empty delusion” and “a chimerical idea without any truth.” In Section Three, then, Kant attempts to provide a deduction of the moral law, demonstrating that we truly are obligated by it. But for reasons that have been pointed out by numerous Kant scholars, this attempted deduction of the moral law fails. At the end of the Groundwork, then, we are left only with the knowledge of what the supreme moral law would be, supposing it were objectively valid; we do not yet know what is apparently the most important thing, namely whether the law truly does obligate us. The doctrine of the fact of reason is Kant’s response
to this problem. In the second *Critique*, he abandons the project of providing a
deduction of the moral law, arguing instead that its validity “has no need of justi-
ifying grounds.”31 The objective bindingness of the moral law is given as a fact that
“forces itself upon us of itself as a synthetic a priori proposition that is not based
on any intuition, either pure or empirical.”32 This fact, Kant insists, is absolutely
basic: “one cannot reason it out from antecedent data of reason, for example from
consciousness of freedom....”33 As such, the fact of reason is importantly different
from any of the other facts we are familiar with from everyday experience, such
as the fact that water boils at 212° Fahrenheit at sea level or that Lisbon is the
capital of Portugal.34 These are facts in the sense that their place within the coher-
ent, law-governed totality of experience can be verified by established cognitive
procedures. The fact of reason, turning back once again to Lyotard’s language, is
not situated in this way. It is rather an event, the bare presentation of an unde-
determined *You ought to*.35 This event is an obligation-phrase, which presents the
practical subject as its addressee. As Lyotard so memorably expressed this idea in
*The Differend*, “a phrase is obligatory if its addressee is obligated. Why he or she
is obligated is something he or she can perhaps think to explain. In any case, the
explanation requires further phrases, in which he or she is no longer situated as
the addressee but as the addressee, and whose stakes are no longer those of obey-
ing but those of convincing a third party of the reasons one has for obeying.”36 It
is in response to the obligating phrase, to the undetermined *You ought to*, that the
subject qua addressee converts herself into an addressee, situating the sense of
the obligation in terms of the moral law.

Having undertaken the conversion from the addressee to the addressee posi-
tion, though, the subject neutralizes the event-character of the obligation-phrase,
treating the presentation as if it were always already a situation. Or perhaps more
precisely, in situating himself as addressor of the moral law, the practical subject
tends to lose sight entirely of his having ever been situated as the addressee of an
obligating presentation. The subject loses sight, in other words, of the fact that
moral experience requires the linking of at least two phrases. Indeed from the
point of view of someone who has established himself in the addressee position, moral subjectivity appears utterly incompatible with occupying the addressee position. This is exactly the point of view that is reflected in Kant’s insistence that autonomy is the supreme principle of morality and that heteronomy is “the source of all spurious principles of morality.” It is also the point of view that is reflected in Kant’s claim in The Doctrine of Virtue that we cannot help inwardly looking down on others who act contemptibly: as rational practical subjects, we simply cannot help actively forming judgments about the moral sense of others’ acts on the basis of the law that we ourselves give, any more than we can refrain from judging theoretically that an event we have observed in experience must have a cause.

IV. RESOLUTION OF THE PARADOX OF CONTEMPT

This redescription of transcendental idealism, and specifically of Kantian ethics, in terms of Lyotard’s philosophy of phrases helps point the way toward a resolution of the paradox of contempt. To show how it does so, I would like to begin by drawing attention to a feature of contempt that has remained in the background up until now: when we form judgments of contempt, the intentional objects of those judgments are persons rather than acts. As Michelle Mason notes in her paper “Contempt as a Moral Attitude,” “one typically holds _____ in contempt, regards _____ with contempt, or expresses contempt for _____, where what fills the blanks are particular persons or groups of persons.” We do not typically say that we hold a person’s having defrauded his business partners in contempt or that we regard breaking promises with contempt. We would say that we resent these things, but not that we contemn them. We contemn the authors of these acts, and more specifically, we do so when we judge that the actions are reflective of the general badness of the persons who performed them. As Macalester Bell puts it, “contempt is a response to perceived badness whereas hard feelings like resentment and guilt are responses to perceived wrongdoing.” It is helpful to understand this kind of person-focused judgment in terms of what Margaret R. Holmgren has called
the “performance-judgment paradigm:” when we make judgments about others’ moral worth, we tend to judge them *qua* possessors of moral records that include all the acts for which they can be held responsible. On this account, “if an agent develops a poor moral record, she might improve her standing by doing better in the future, in much the same way that a student who has performed poorly in the past might attempt to get A’s to improve her GPA. But the previous moral failures remain on the record, and if they are serious or extensive enough, it may be impossible for the agent to bring her moral GPA above the failing level.”40 At that point, the judgment of contempt seems to be justified, and from the point of view of the moral subject *qua* addressee, there seems to be no reason to refrain from making it.

One of the most common arguments against the moral permissibility of contemning others is based precisely on the person-focus of contempt. We can understand a person’s moral GPA as the situation, in Lyotard’s terms, of his moral worth. The argument is that this GPA does not situate the sense of the whole person correctly, or at least that we cannot be sure that it does. Jean Hampton suggests an argument of this sort when she writes that “the inner moral state of a person is notoriously difficult to determine, not only that of others, but also (as Kant reminds us) our own. Evidence garnered from the moral quality of actions isn’t decisive proof either way.”41 Nicolas Malebranche advances a similar argument, emphasizing the ways in which our finite intellects inevitably fail to notice qualities that should contribute to raising others’ GPAs above the passing level. Both of these arguments suggest, in different ways, that there is more to the whole person than is captured in the moral GPA, and thus both conceive the wrongness of contempt primarily as an epistemic wrong. If this argument were right, then the paradox of contempt would dissolve, as the command not to contemn would never be unjustified (the command would be justified by the fact that no one truly falls below the failing level, or at least by the fact that we cannot be sure). But I do not believe the argument is right. Granted that we cannot form judgments about the moral worth of whole persons with perfect accuracy, surely there are cases in
which we can judge whole persons at least as well as we can judge the rightness or wrongness of individual acts. Our lack of perfect certainty does not entail the moral impermissibility of the latter kind of judgment, and so there is no compelling reason to think it ought to entail the impermissibility of the former.

What I want to argue instead, based on Lyotard’s philosophy of phrases, is that there is more to the person than the whole person. By “whole person” I mean the referent of the judgment, the person whose moral sense is situated by a law-phrase. Arguments in favor of the moral permissibility of contempt, including those advanced by Mason and Bell, as well as the arguments against contempt described above, all agree that the appropriate object of the judgment of contempt is this “whole person.” All of these arguments are given from the point of view of the moral subject qua addressor and all of them fail to take into account that the moral sense of the situation is not exhausted by that point of view. What Lyotard’s philosophy of phrases brings to light is the event of presentation whose sense exceeds that of situated moral sense. As we have seen, moral sense only happens for a subject who is first situated as the addressee of an obligating phrase and who then converts herself to the addressor position. Qua addressee, the subject is presented with a minimum of moral sense, a You ought to whose addressor, referent, and sense are unspecified. In this regard, the moral subject is in a situation analogous to that of the theoretical subject who is presented with a sensation-phrase but who has not yet converted herself into the addressor of the space and time phrases that will situate the sense of the presentation. Just as the theoretical subject qua addressee of the sensation-phrase is not oriented toward objects, properly speaking, so the moral subject qua addressee is not oriented toward whole persons conceived as bearers of moral records. Rather, as addressee of a current obligating phrase, the moral subject finds herself responsive to a singularity, an undetermined this. It is precisely this orientation toward singularity that is lost in the conversion to the addressor position, where the given is manifest as bearing a determinate sense.
The moral sense that is presented to the subject \textit{qua} addressee is different from the sense presented to the subject \textit{qua} addressor, and indeed from within the moral universe situated by the law-phrase, these two senses are incompossible. But neither of these incompossible senses is eliminable. On the one hand, there could be no determinate moral sense at all without moral subjects acting as addressors of situating phrases. But on the other hand, these situating phrases presuppose presenting phrases with their undetermined yet obligating \textit{You ought to’s}. Moral experience thus requires the linking of two heterogeneous phrases, from which it follows that moral sense exceeds what can be captured by the law. From the addressor’s point of view, the whole person can indeed be given as contemptible. When the moral subject makes such a judgment, he is not necessarily mistaken. But what Lyotard’s philosophy of phrases allows us to see is that the “whole person,” conceived from the addressor’s point of view as the bearer of a moral record, is not the whole person. The dimension that exceeds the purportedly whole person who is the referent of the judgment of contempt is not present to the subject \textit{qua} addressor, but only to the addressee of a current obligating phrase. This excessive dimension, which is that of singularity, is not another part of the whole person which is typically hidden from our view and which a more adequate moral judgment would have to take into account. This excessive dimension is not given as a subject of moral predicates at all, but it is nonetheless inseparable from the moral sense of the person. In no case, then, is the command not to contemn either superfluous or unjustified. In cases where the whole person, the referent whose sense is situated by the moral law, truly is very bad, the command not to contemn is justified by the fact that the person is more than that situated sense and that being a moral subject at all requires us to maintain ourselves in the position of addressees. The command not to contemn only appears unjustifiable to a subject who has established himself in the addressor position and who has failed to recognize that he is more basically the addressee of obligating phrases. To refrain from contemning others on this account would be to continue to regard them as full members of the moral community, no matter how badly they may have acted. In John Rawls’s memorable formulation, it is to continue to en-
gage with others as “self-originating sources of valid claims.” And it is for a very similar reason that the command not to contemn others is never superfluous: it calls upon us to take note of an excessive dimension of moral sense that the very structure of presentation encourages us to overlook. Even if the referent of our moral judgments is a good person, as measured against the law, we remain under an obligation to maintain ourselves in the position of addressees, engaging with him not only in terms of his situated moral record but also as a singularity.

NOTES

2. Ibid.
3. Ibid., 96.
7. Ibid., 420 [27:692-693].
9. Ibid., 580 [6:463].
11. Ibid., 70.
12. Ibid., 14.
13. Ibid., 30.
15. Ibid., 68.
16. Ibid., 79. “But It happens is not what happens, in the sense that quod is not quid (in the sense that the presentation is not the situation).”
17. Cf. Jean-François Lyotard, Discourse, Figure. Trans. Antony Hudek and Mary Lydon. Minneapolis: University of Minnesota Press, 2011, 18: An event is “always what defies knowledge, either by challenging knowledge articulated in discourse or, just as well, by shattering the quasi-comprehension of the body itself, putting it out of tune with itself and with things, as in emotion.”
19. Ibid., 155 [B19/B33].
20. Ibid., 426 [A369].
22. I am using “experience” here in a sense broader than the one Kant typically gives to the term. For Kant, experience “consists in the synthetic connection of appearances (perceptions) in a consciousness, insofar as this connection is necessary.” The judgment that the sun warms the stone, to take Kant’s own example, is a judgment of experience in that it links together two appearances (the sun and the stone) by means of a category that has its origin in the legislative faculty of understanding (causality). Moral judgments, such as the judgment that it is wrong to break promises, are not judgments of experience in this sense because wrongness is not an appearance given in perception. Immanuel Kant, Prolegomena to any future metaphysics that will be able to come forward as a science in Immanuel Kant, Theoretical Philosophy after 1781,


25. Kant, GMM, 58 [4:404].
27. Kant, GMM, 89 [4:441].
28. Ibid., 47 [4:392].
29. Ibid., 57 [4:402]; 93 [4:445].
31. Kant, CPrR, 178 [5:47].
32. Ibid., 164 [5:31].
33. Ibid.
34. Perhaps recognizing the strangeness of fact of reason, Kant characterizes it in certain passages as a fact “as it were” (gleichsam als ein Factum). Ibid., 177 [5:47].
35. Lyotard, D, 120.
36. Lyotard, D, 108.
37. Kant, GMM, 89 [4:441].
The subtitle of the final publication in Giorgio Agamben’s *Homo Sacer*-series *Stasis: Civil War as a Political Paradigm* announced civil war as the paradigm of the political. While this may have seemed somewhat abrupt, he had in fact already identified civil war as the original and decisive political structure of occidental history in the first volume of the series *Homo Sacer: Sovereign Power and Bare Life* twenty years prior. Here he used the concept of civil war to denote both sovereign power’s continuous production and elimination of bare life in the state of exception and revolution. He employed this duality to explain the supposedly inevitable failure of the revolutions of the twentieth century, which, he argued, were always
already caught in the state of exception and thus bound to reconstitute sovereign power. Agamben’s deployment of Carl Schmitt’s conceptual figure of the state of exception subsumed revolution to the sovereign state and thereby produced a seemingly irresolvable political aporia that he sought to escape throughout the rest of the series, albeit with limited success.³

However, I argue that Agamben’s reconceptualization of the figure of civil war in *Stasis* provides the necessary but unexplored conceptual resources to move beyond the political aporias of his earlier thinking. The subtitle of the book suggests that the initial paradigm of the exception has been displaced by the paradigm of civil war and, in spite of Agamben’s insistence on their continuity, I show that the argument of the book involves a subtle but significant conceptual shift that facilitates the conceptual decoupling of civil war (and/as revolution) and the sovereign state, which, in turn, reveals novel political possibilities that Agamben fails to pursue. I explore this opening in order to develop the duality of the concept of stasis – simultaneously denoting civil war (*qua* revolution) and inoperativity – towards a concept of destituent power that may finally render the mutual implication of civil war and sovereignty, as well as sovereign power’s continuous production and elimination of bare life, inoperative.⁴ This approach follows Agamben’s own methodological principle of identifying what is left unsaid or underdeveloped in a given text and developing it beyond its own immediate limits, in this case, Agamben’s conservative conclusions.⁴ In other words, this essay attempts to think with and, crucially, beyond Agamben through the aporia of the exception in the *Homo Sacer*-series.

The structure of my argument is fairly straightforward; in the initial two sections, I establish the conceptual parameters of the rest of the essay, analyzing Agamben’s conceptualization of civil war as the political structure of occidental history before turning to his concomitant conceptualization and critique of the revolutions of the twentieth century. The third section traces his unsuccessful attempts to move beyond the resulting political aporia. In the fourth section I provide a close reading of Agamben’s *Stasis* in order to uncover the subtle but significant shift
in his conceptualization of the relationship between civil war and the sovereign state. In the final section I reinterpret and develop these conceptual resources towards a positive concept of destituent power that inverts the state of exception and may thereby succeed in challenging and overcoming the sovereign state.

I. CIVIL WAR BEFORE STASIS

Today the concept of civil war primarily evokes images of sustained armed conflict between different political or ethnic factions within the borders of the same state that disproportionately involves and/or targets the civilian population. However, this was not always the case. Throughout much of the European history of ideas, various concepts of civil war (Stasis, bellum civile, etc.) were used to conceptualize and understand revolutionary change rather than such contemporary images. Civil war was used to denote class struggle and/or factional conflict, the breakdown of pre-existing political authority and, centrally, the possibility of major social and political transformations, i.e., what we today associate with revolution. However, this conceptual connection began to fray around the eighteenth century as the distinctly modern concept of revolution, characterized by a notion of radical novelty, progress and break with tradition, came to the fore. Nevertheless, even this concept has, ironically, remained shaped by the preceding historical experiences and concepts of civil war. The connection remained explicit in the works of a number of central modern political thinkers. Thomas Hobbes’ reflections in Leviathan (1651) sparked by the English Civil War have been central in this regard: he famously conceptualized a state of nature that supposedly preceded and produced the sovereign state as a form of “civil war.” Karl Marx (following G.W.F. Hegel) subsequently used this as the model of his early conceptualization and analysis of class struggle within civil society [bürgerliche Gesellschaft] in his 1843 Critique of Hegel’s Doctrine of State. The conceptual coupling of civil war and class struggle persisted in The Communist Manifesto, The Civil War in France and his analysis of the struggle over the length of the working day in Capital. This association was later reiterated in the works of Vladimir Ilyich Ulyanov, commonly known by his pseudonym Lenin, from whence it proliferated within
the Marxist tradition. In this tradition the concept of civil war was primarily used for its connotations of class struggle, the breakdown of sovereign authority and as the potential for revolutionary transformation of existing social and political structures, while the connotations of violence remained secondary; at most a means of overcoming the much greater systemic violence of state and capital.

These latter aspects were more pronounced in Mao Tse-tung’s analyses of class struggle, anti-imperialism and revolutions in terms of civil war and “people’s war” (reflecting the context and trajectory of The Second Sino-Japanese War, The Chinese Civil War(s) and The Chinese Revolution), which, alongside the aforementioned, would go on to exercise a significant but highly heterogeneous influence on anti-colonial and left-wing struggles around the globe. Precisely these concepts also seem to have had a formative impact on the genealogical works of Michel Foucault (and his rereading of Hobbes), who was closely involved with the French post-1968 Maoists left alongside a number of notable French intellectuals including Jean-Paul Sartre, Simone de Beauvoir, Gilles Deleuze, and Alain Badiou. Deleuze has subsequently elaborated a notion of war as a social form irreducible and opposed to the state alongside his collaborator Félix Guattari in A Thousand Plateaus and more recently the Tiqqun collective have developed a concept of civil war as a non-sovereign political form of insurrection that does not coalesce into a state-form and which they eventually identify directly with “communism” in their Introduction to Civil War.

Throughout the initial parts of the Homo Sacer-series Agamben explores this historical and conceptual coincidence of civil war and revolution – which he identifies as the fundamental political structure of occidental history – although its valence changes markedly in his deployment. Agamben argues that civil war and/as revolution cannot overcome the sovereign state but is always already implicated in and inevitably reaffirm it in and through the state of exception.

Agamben first introduces the concept of civil war in the last aleph-section of the first book in the Homo Sacer-series Homo Sacer: Sovereign Power and Bare Life, in
the context of an extended analysis of the concept of “the people.” He suggests that this concept has always referred to two distinct entities, on the one hand, “the total state of integrated and sovereign citizens,” the sovereign people that appear solely in the form of the state and its representatives (as in “We, the people”), and, on the other hand, “the wretched, the oppressed and the defeated” (as in “common people,” “Pöbel,” “foule,” etc.). Agamben distinguishes these two meanings of the people by capitalizing the former (“People”) and leaving the latter in lower case (“people”). He proposes that this division within this central category of western political is the “fundamental biopolitical fracture,” which has characterized all of western political history and thought: People and people in their various historical guises, have been continually pitted against each other in “an incessant civil war,” which constitutes “the original political structure: bare life (people) and political existence (People).” Agamben thereby identifies a perpetual civil war between People and people, as the original political structure, which has characterized all of occidental history up to the present.

In order to understand Agamben’s conceptualization of civil war, it is necessary to scrutinize the aforementioned parties in more detail, starting with the sovereign People. Agamben derives his concept of sovereignty from Schmitt’s 1922 *Political Theology*, which famously defines the sovereign as “he who decides on the exception.” Schmitt argued that all legal systems are based on and continue to rely on an extra-legal power, whose sovereign and fundamentally arbitrary decision founds the law, but cannot itself take the form of law or be subjected to it insofar as it precedes, founds and maintains it. Sovereign power is the extra-legal foundation of the legal system – the exception that defines the rule. Moreover, this sovereign power is not exhausted in the founding of the legal system, but remains inscribed within it as its ultimate guarantor, often explicitly, in constitutional clauses regarding states of exception where the constitutional order can be suspended in favor of unrestrained sovereign power to defend that very same constitutional order. However, the precise conditions that may warrant this cannot be anticipated or legally codified and must thus be deferred.
to sovereign power itself, which alone has the capacity to decide when to declare a state of exception and suspend the law. Insofar as the sovereign exception is inscribed within the constitutional order and forms its necessary foundation, it cannot be said to abrogate the constitutional order and disintegrate the state into civil war.\textsuperscript{21}

In its original historical context, this argument was meant to demonstrate the legal possibility and legitimacy of invoking the emergency powers afforded to the president by article 48 of the Weimar Revolution, against the threat of revolution and/or civil war, which continued to haunt the Weimar Republic throughout its relatively brief existence. Schmitt’s somewhat idiosyncratic reading of article 48 suggested that the president had the sole authority to decide when the situation required the suspension of the law in favor of unrestrained sovereign power, i.e., the declaration of a state of exception to combat threats to the state.\textsuperscript{22}

But Schmitt’s argument was not merely a practical intervention in the juridical and political debates of his day; it also involved an insidious conceptual shift, whereby the anomic force of civil war and revolution were subsumed by the sovereign state. What would usually be considered the breakdown of sovereign authority and the legal order is reconceived through the state of exception, as the reiteration of sovereign power. The juridico-political order is thus rendered conceptually inescapable through the state of exception. It is no coincidence that Schmitt’s work was entitled \textit{Political Theology}: sovereign power in this definition is rendered absolute and omnipresent – any attempts to contest or challenge it are always already internal to it and can therefore only serve to reaffirm and reproduce it.

Agamben embraces Schmitt’s understanding of sovereign power, deploying it to suggest that in the state of exception, the law applies precisely in no longer applying. The state of exception thus constitutes what he refers to as a “zone of indistinction” between the normal functioning of the law and sovereign violence, which remains at the heart of all western political systems. The state of exception
thereby reveals unrestrained sovereign power, rather than the rule of law, as the foundation of the modern state, as well as the secret affinity between democracy and dictatorship, insofar as it is not an exception in the ordinary sense of the word but, on the contrary, the fundamental, underlying structure of democratic states and increasingly, as he explains in *State of Exception*, also the norm.\(^{23}\)

Agamben incorporates Schmitt’s claim that the political is defined by the distinction between friend and enemy. The sovereign decision not only grounds and guarantees the legal system, but also defines and delimits the political community it governs. The sovereign decides who forms part of a political community and who should be excluded as enemies or otherwise undesirable elements.\(^{24}\) This exclusion is what Agamben refers to as sovereign power’s production of “bare life” – a concept that does not denote the simple fact of biological life, but a life defined by its exclusion within a political community, which is thus left without any legal status or protection but is entirely at the mercy of the sovereign.\(^{25}\) It is this paradoxical (inclusive exclusive) relationship that Agamben describes as an “incessant civil war” between those included in the sovereign political body of the state (“the People”) and those excluded within it (“the people”).\(^{26}\)

The implicit passivity of bare life in this relationship is foregrounded towards the end of the passage in *Homo Sacer: Sovereign Power and Bare Life*, where Agamben initially introduced the concept of civil war. The register shifts rather abruptly from civil war, with its connotations of contestation and the concomitant possibility of change, to the altogether more disquieting “elimination” of bare life exemplified by the Shoah.\(^{27}\) Contrary to traditional conceptions of civil war, Agamben’s deployment of the term does not denote a conflict with the concomitant possibility of victory for either side, but merely sovereign power’s one-sided and continuous production and extermination of bare life.

II. THE INEVITABLE FAILURE OF THE REVOLUTIONS OF THE TWENTIETH CENTURY

Agamben’s concept of civil war differs significantly from what we are accustomed
to associating with this term, namely contestation, struggle and the breakdown of sovereign authority. This traditional conception of civil war traces back to Hobbes’ *Leviathan*, where Hobbes famously argued that the “natural” condition of mankind in the absence of a sovereign authority was like a “civil war.” The conflict and constant insecurity of this situation would eventually push the warring multitudes to unite and “confer all of their power and strength upon one man” thereby founding a sovereign power capable of imposing peace and security amongst them. To Hobbes the institution of sovereignty marks the end of civil war. Agamben incorporates and revises this argument, proposing that insofar as the sovereign state is founded on and legitimized by civil war, it must continue to reproduce this condition within itself. It does this through the constant threat of abandonment of life to its unrestrained sovereign violence in and as the state of exception. The institution of sovereignty therefore does not mark the end of civil war, but its incorporation into the juridico-political order and/as its most fundamental mode of operation. Agamben’s conceptual maneuver is identical to Schmitt’s assimilation of civil war to the state through the state of exception, thus Hobbes’ conception of civil war, defined by the absence of sovereign power and law, is absorbed by the sovereign state; as Agamben remarks “the state of nature and the state of exception are nothing but two sides of the same topological process.”

Agamben then proceeds to mobilize Schmitt’s state of exception to account for the failures of the revolutions of the twentieth century. He argues that Marxist and anarchist revolutionaries inevitably failed in their attempts to overcome the sovereign state because they did not grasp the topology of the exception, that is, the mutual implication of civil war (and/as revolution) and sovereignty, constituent and constituted power. As a result, they did not recognize that the different forms of direct contestation, insurrection and revolution, i.e., forms of civil war, which they pursued as means to challenge the sovereign state and institute a stateless society, were always already internal to it and thus inevitably reaffirmed and reproduced it – even if some succeeded in replacing its immediate
In light of the state of exception, revolution no longer marks the breakdown of sovereign power and the possibility of overcoming it, but an inevitable continuation, if not intensification, of its inherent violence, i.e., sovereign power’s constant production and elimination of bare life. The exception is, in the dramatic words of Agamben, “the reef on which the revolutions of our century have been shipwrecked.”

The topology of the exception, i.e., the capacity of the state and law to maintain itself in and through its relation to its outside, appears as an insurmountable obstacle to revolution and, indeed, any model of political contestation and change. According to Agamben it has left us “constitutionally incapable of truly thinking a politics freed from the form of the State.” The topology of the exception leaves no way out of this intolerable situation, defined by sovereign power’s continuous production and elimination of bare life. But this aporia is a direct consequence of Agamben’s deployment of Schmitt’s state of exception, which was a conscious attempt by Schmitt to forestall and subsume contestation of the juridico-political order to that very entity via the figure of the sovereign decision. But whereas Schmitt’s argument was motivated by his awareness that revolutionaries might succeed and shatter the sovereign state, Agamben appears genuinely persuaded that all of these modes of contestation are always already implicated in either the founding or perpetuation of the sovereign state and its continuous production and elimination of bare life. His failure to identify the normative import and political implications of Schmitt’s topological configuration leads him to a highly conservative evaluation of the modern revolutionary tradition and an apparent political aporia, which he attempts to escape in various ways throughout the rest of the *Homo Sacer*-series.

III. EXCEPTION WITHOUT EXCEPTION

The problem with Schmitt’s state of exception is the topological diffusion and conceptual confusion it produces; it efficiently substitutes suspension for application and absence for presence within a generalized zone of indistinction.
The topology of the exception thus amounts to a totalization of the sovereign state, which, ultimately, renders it inescapable and incontestable. Agamben comes close to acknowledging these shortcomings as early as the initial installment of the *Homo Sacer*-series, when he announces that “in the state of exception, it is impossible to distinguish transgression of the law from application of the law” and when he proceeds to suggest that the state is “always already also a non-state.” But he ultimately recoils from these insights and surrenders them to the omnipresent “structure of the sovereign relation” and the concomitant political aporia.

There are a number of subsequent attempts to break away from Schmitt’s totalization of the sovereign state and begin to conceive of a way to overcome it and its continuous violence in Agamben’s oeuvre: the second book in the *Homo Sacer*-series *State of Exception* suggests that Schmitt developed his conception of the state of exception in response to Walter Benjamin’s conceptualization of a pure (and/or divine) violence or power (*reine Gewalt*) located entirely “outside the law” and/as the incessant cycle of constituent (“law-making”) and constituted (“law-preserving”) power. Reactivating this anomic figure of revolution and reading Schmitt’s works through it, reveals the exception to be a conceptual-juridical fiction, constructed to tie this anomic figure to the state via the exception, in order to maintain the illusion of continuity and the inescapability of the juridico-political order. As Agamben explains:

> The state of exception is unmasked by Benjamin for what it is: a fictio iuris par excellence ... what now takes its place are civil war and revolutionary violence, that is, human action that has shed every relation to law.

Here we catch a glimpse of civil war and revolution, as they would appear if they were not framed within the (fictional) state of the exception, i.e., as possibilities
of contesting and abolishing the juridico-political order. Agamben, thus implicitly reconsiders his previous extrapolation of Schmitt and consequent evaluation of the (im-)possibility of revolutionary modes of contestation via Benjamin. But as his analysis proceeds it becomes clear that although Schmitt’s state of exception is fictional, it nonetheless remains effective and constitutive of our political system as Agamben concludes: “[the state of exception] has continued to function almost without interruption from World War One, through fascism and National Socialism and up to our own time.”

The task that Agamben outlines as the necessary response and resolution to the continued operation of the exception is to challenge this fiction and assert the separation of anomie and law, so as to render it inoperative: “the only truly political action ... is that which severs the nexus between violence and law” as he explains. It is, in other words, necessary to insist on the non-coincidence of civil war and the sovereign state in both theory and practice. Taking exception to the exception in this manner would revive the possibility of civil war, insurrection and revolution in contrast to the previous volume, where the political catastrophes of the twentieth century, were framed as the result of revolutionaries failing to understand the state of the exception, i.e., their coincidence with sovereignty. This seems to invert Agamben’s initial pronouncement on the revolutions of the twentieth century, suggesting that it is precisely the conceptual figure of the exception which will shipwreck our attempts to think beyond the sovereign state.

While Agamben identifies the exception as a fiction and asserts the necessity of challenging it in *State of Exception*, he does not actually commence this project. It is not until *The Kingdom and the Glory: for a Theological Genealogy of Economy and Government*, that he begins to elaborate such a detotalizing analysis of its operation in the tradition of Foucault’s genealogy of governmentality. Foucault’s investigation of governmentality originated in his critique of the traditional sovereign model of power, which he criticized for treating power as an inherent attribute of a single centre. The historical fact that the sovereign had been deposed and decapitated during the French Revolution attested to the inadequacy of this
model. Foucault proposed that political theory had to catch up to historical events by “cutting the king’s head off,” i.e., deposing the orthodoxy of the sovereign model of power, in order to develop an analysis of the practical techniques and strategies employed to govern populations.\textsuperscript{42} The Kingdom and the Glory can thus be read as an attempt to shift from Schmitt’s political theology towards Foucault’s governmentality; from sovereignty to government, as Agamben now insists:

\textit{The central mystery of politics is not sovereignty, but government; it is not God, but the angels; it is not the king, but the ministry; it is not the law, but the police – that is to say, the governmental machine that they form and support.}\textsuperscript{43}

Foucault’s critique of the sovereign model allows Agamben to approach the question of sovereign power in terms of an analysis of government, rather than the political theology of Schmitt. In The Kingdom and the Glory, the dual structure of the state, sovereign violence and law, held together by the fiction of the exception, is rearticulated in terms of kingdom and government. This allows Agamben to reconceptualize sovereignty as an “empty throne,” which exists solely in the practices of acclamation of it as sovereign, which is also conceptualized as “glory.”\textsuperscript{44} What remains is government, that is, the practical management of populations and glorification of sovereign power. Glory can thus be read as the practices which constitute and uphold the fiction of an omnipotent sovereign power, simultaneously inside and outside the law, i.e., the state of the exception.\textsuperscript{45} Although Agamben never explicitly addresses the political implications of his analysis in this text, the move from political theology towards governmentality allows Agamben to reconsider and thereby challenge the functional fiction of the exception suggesting that it may indeed be possible to contest sovereign power.

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In a subsequent essay entitled “What is a Destituent Power,” that was later reworked and incorporated as an epilogue to The Use of Bodies and the whole Homo Sacer-series, Agamben confirms that the entire project was conceived as an attempt to shift the site of politics away from the paradigm of the exception.\textsuperscript{46} However, it is at this exact juncture that the topology of the exception reappears, even if it is no longer conceptualized in the same terms. Agamben suggests that “constitutive power,” i.e., “revolutions and insurrections,” will inevitably reproduce the sovereign order: “a power that was only just overthrown by violence will rise again in another form, in the incessant, inevitable dialectic between constituent power and constituted power, violence which makes the law and violence that preserves it.”\textsuperscript{47} Rather than shifting the site of political thought and practice, at this point, Agamben’s project appears to have come full circle and returned to the starting point, the paradigm of the exception, which condemns any attempt to challenge and overcome the sovereign state to the inevitable “recreation of powers even more oppressive.”\textsuperscript{48}

Agamben’s inability to escape the paradigm of the exception and the corresponding political aporia suggests the potential significance of the paradigm shift announced in the title of the final publication in the series Stasis: Civil War as a Political Paradigm. In spite of the previously established affinity between the exception and civil war, and Agamben’s insistence on their continuity, there is a remarkable shift in his conceptualization of the fundamental political structure of occidental history in this book, particularly the second chapter, which potentially allows for the decoupling of civil war (qua revolution) from the sovereign state.

IV. CIVIL WAR AS POLITICAL PARADIGM

Stasis consists of the revised manuscript of two seminars on the topic of civil war that Agamben held in October 2001 at Princeton University. The central ideas contained in this book were, in other words, formulated prior to the majority
of the series, which it informed and shaped in important ways.\textsuperscript{49} This partially explains Agamben’s retrospective insertion of \textit{Stasis} as the third book (II.2) in the official sequence of the \textit{Homo Sacer}-series (displacing \textit{The Kingdom and the Glory}, which was moved to II.4) in spite of its publication in 2015 as the final publication in the series, a year after its formal conclusion with \textit{The Use of Bodies}.\textsuperscript{50} But this slim volume also contains novel material that warrants its late and somewhat abrupt publication, namely a systematic reconstruction of the historical origins and significance of civil war in Ancient Greece and, more significantly, a subtle but significant displacement in his conceptualization of the relationship between the sovereign state and civil war, which reveals novel political possibilities that nonetheless remains unexplored in the course of the book.

Although the book is explicitly dedicated to the theme of civil war, Agamben insists that he does not intend to develop a fully-fledged theory of civil war, but merely to explore the concept’s appearance and development at two crucial junctures in western political philosophy: Ancient Greece and the political philosophy of Hobbes. These two moments correspond in turn to the two chapters that make up this brief book, as well as the two central theses outlined in the foreword: the identification of civil war as the fundamental threshold of politicization and the modern, sovereign state’s foundation in \textit{ademia}, the absence of a people; two theses which together outline Agamben’s notion of civil war as the paradigm of the political.\textsuperscript{51}

The initial chapter of \textit{Stasis}, simply entitled “stasis,” traces the historical emergence of the distinction between political existence and bare life to the Ancient Greek conception of civil war (\textit{stasis}), which was initially conceived as a type of conflict originating in the family. Yet, Agamben notes that the family was attributed a highly ambiguous position in relation to civil war, as both its origin \textit{and} potential remedy through various kinship practices such as (inter-)marriage between quarrelling clans and the obscure “brotherhood by ballot” devised to reconcile the populace of Nakônê after a civil war in the third century BCE. These and various other practices, contributed to the displacement and reconstitution
of kinship at the level of political community. Thus, around the fifth century BCE citizenship increasingly became the primary political identity, displacing familial forms of kinship and identification to the correspondingly depoliticized sphere of the household (oikos).52

On these grounds, Agamben argues that civil war was not peculiar to the family but, rather, constituted the fundamental threshold of politicization and depoliticization, which delineated and defined political community as a distinct and dominant form of existence.53 This division between polis and oikos corresponds to the fundamental scission between natural life common to animal, gods and men (zōē), and politically qualified existence (bios), which allows for the (inclusive) exclusion of the former from the polis, that is, the production of bare life – a life included in the juridico-political order only through its exclusion and thus left without any political status or legal protection therein.54 It is only against this backdrop that we can appreciate the significance of the Solon’s Laws that replaced Athens’ first legal code (Draco’s law) around the sixth century BCE and which stipulated that any citizen, who did not choose sides and fight in a civil war would be punished with legal and political disenfranchisement (Atimia). Stripped of their citizenship, they would only be included in the polis by way of their (inclusive) exclusion.55 Solon’s Laws thereby cemented civil war as the decisive threshold of the politicization and depoliticization of life; the political structure, which Agamben insists has defined our political paradigm ever since then.56

In the second chapter of Stasis “Leviathan and Behemoth,” Agamben returns to the work of Hobbes and introduces a significant shift in regard to his previous conceptualization of civil war. The chapter’s title refers to the two biblical beasts Leviathan and Behemoth that God recounts having subjected in order to illustrate his omnipotence to Job and which Hobbes redeployed as titles for his classical works concerned with the sovereign state and civil war respectively, which is how they figure here, i.e., as representations of the sovereign state (Leviathan) and

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The mainstay of the chapter consists of an intriguing analysis of the famous frontispiece of Hobbes’ *Leviathan*, created by Abraham Bosse after extensive dialogue with the author. Agamben’s analysis starts with the figure of the Leviathan, whose torso is composed of miniscule interlinked human figures, representing the Hobbesian doctrine of the covenant, which unites the warring multitude in the person of the sovereign whose head sits atop the body politic. Agamben draws attention to the strange (dis-)placement of this figure outside the city – a city that appears almost entirely deserted. Agamben suggests that this is the central enigma of the emblem: “a city devoid of its inhabitants and [...] a state outside its geographical borders.” He proceeds to propose that this is a visual representation of the paradox of Hobbes’ conception of the body politic, split between the people and the multitude. In *On the Citizen* (1642) and later in *Leviathan* Hobbes describes the people as constituting a coherent political body, which always rules through its unification in the sovereign (whether in the form of a king or a representative assembly), who in turn rule them in the form of a disunited multitude. The body politic thus (dis-)appears suspended in the paradoxical relation between the people as king and the multitude: sovereign and subjects.

Agamben suggests that we must understand this paradoxical relationship in terms of a sequence, wherein the people only exist temporarily, at the instant where the multitude is united in the covenant constituting the sovereign and ending the state of nature. The people is immediately exhausted in this constitutive political act; dissolved into a multitude once again, they only persist politically through their investment in and representation by the sovereign; the people as king or the *populus-rex*. This has significant parallels to Agamben’s previous
conceptualization of the sovereign People (with a capital “p”) who only appear in
the form of the “total state.”

Agamben identifies a further division between the initial “disunited multitude”,
the subject of constituent power, and the subsequent “dissolved multitude”,
which has exhausted its constituent power in the (irreversible) covenant and is
consequently excluded from politics. It is this constitutive exclusion of the body
politic from the polis, which is represented by the deserted city and, which in
turn, corresponds to Agamben’s assertion that the fundamental condition of the
modern state is *ademia*, that is, the absence of a people. The sovereign state is
similarly exiled from the city insofar as it is the projection of this absence of a
political body, which transcends and rules the city without being a part of it.

Agamben proceeds to identify civil war with the constant possibility of conflict
between the dissolved multitude and the sovereign. Civil war is now understood
to denote the former’s attempt to destroy the latter in order to return to its initial
state as a disunited multitude capable of asserting constituent power momentarily.
The civil war between multitude and sovereign power, takes place in the context
of the sovereign state and as such, does not immediately subvert the latter; it
is only if the multitude triumphs that the commonwealth and the covenant are
shattered and the multitude “returns” to the state of nature. This is of course no
simple return to a natural or pre-historical state; Agamben insists that the state of
nature is merely Hobbes’ projection of civil war into a mythical past separate from
the state. Yet there is no resolution in sight; insofar as the multitude successfully
overturns the sovereign state, the people re-emerge momentarily, only to dissolve
itself in the (re-)constitution of sovereign power. Agamben even provides a visual
illustration of the circular relationship between civil war and the sovereign state,
showing how constituent power invariably turns into constituted power and the
sequence of civil war – disunited multitude – people-king – dissolved multitude will repeat itself indefinitely thereby, seemingly, underscoring the fundamental futility of civil war and/or revolution as a means of challenging the sovereign state.\textsuperscript{69}

The endless cycle of civil war and sovereignty, constituent and constituted power is at the centre of the \textit{Homo Sacer}-series as I have already shown. In Agamben’s initial reading of Hobbes, the state of nature qua civil war was always already internal to the sovereign state, constituting its most fundamental mode of operation, i.e., the state of exception. This state of exception marked the inclusion of civil war within the sovereign state, effectively totalizing it and thereby foreclosing any attempts to contest and overcome it.\textsuperscript{70} But, in spite of Agamben’s insistence that his conceptualization civil war in \textit{Stasis} is identical to his previous analysis of the state of exception,\textsuperscript{71} there are significant divergences between them: most significantly, the state of exception in his previous works denoted the inclusion of civil war in the sovereign state whereas in \textit{Stasis} civil war is no longer identical to the sovereign state, and their relationship is conceptualized as one of coexistence rather than coincidence.\textsuperscript{72} Civil war is no longer a part of the sovereign state, in the form of the state of exception, but instead denotes a discrete phenomenon whereby the dissolved multitude attempts to (and may successfully) overthrow sovereign power, even if only to reconstitute it.

While the distinction between the sovereign state and civil war introduced in \textit{Stasis} implicitly contributes to overcoming the previous totalization of the sovereign state, civil war and sovereign power remain mutually constitutive elements in a single overarching political structure.\textsuperscript{73} Moreover, civil war remains subordinate, insofar as it is merely a possible exception to the rule of the sovereign and only takes place within the context of the sovereign state, which it is inevitably compelled
to reproduce. Thus, the result appears similar: a vicious circle of revolutionary attempts to contest the sovereign state that are always already implicated in it, and therefore inevitably end up reconstituting it. Agamben thereby also, implicitly, reasserts the pre-modern meaning of revolution as a series of cyclical, movements that return to the point of origin.

V. Civil War and Inoperativity

From this perspective Agamben’s *Stasis* seems to reconfigure but ultimately reiterate the bleak vision of politics caught in the sovereign exception, advanced in the rest of the *Homo Sacer*-series. Yet some oblique references towards the end of the book suggest a possible “messianic” resolution:

*The two primordial monsters, Leviathan and Behemoth, will fight one another in the days of the Messiah and both will perish in the struggle. Then the righteous will prepare a messianic banquet, in the course of which they will eat the flesh of the two beasts.*

Here Agamben draws on the Talmudic tradition where Behemoth and Leviathan are said to struggle in the final days of the messiah, eventually annihilating one another, before their flesh is consumed at the messianic banquet, which marks the end of time. Agamben proceeds to suggest that the third part of *Leviathan* “Of a Christian Commonwealth” should be read against such an eschatological backdrop, as a treatise on the coming Kingdom of God. While this specific aspect of the Talmudic tradition may or may not have been known to Hobbes, Agamben makes the slightly strained case, that it is implicit in the Christian tradition,
referring mainly to Paul’s Second Letter to the Thessalonians, which describe the eschatological conflict preceding the constitution of the Kingdom of God.\textsuperscript{78}

Hobbes does indeed outline a vision of the Kingdom of God, which he insists must be understood as a real political entity rather than a metaphor, insofar as God is always already supreme.\textsuperscript{79} Agamben argues that this Kingdom of God emerges at the end of days to replace the incessant struggle of Behemoth and Leviathan; constituent and constituted power, overcoming the separation of the body politics from itself and finally “at this point may the righteous be seated at their messianic banquet, freed forever from the bonds of law.”\textsuperscript{80}

The book ends rather abruptly at this point, without exploring the meaning of this eschatology and the messianic banquet any further. However, it is possible to develop this otherwise obscure conclusion by looking to Agamben’s other works, where the messianic event and the feast are consistently invoked as figures of “inoperativity” or the more recently introduced synonymous concept of “destituent power.”\textsuperscript{81} In a recent essay “What is a Destituent Power” Agamben explains that this concept is derived from Benjamin’s notion of a pure violence that might finally break the incessant cycles of constituent and constituted power, which either makes or preserves law but never seems able to escape it. Agamben traces Benjamin’s concept of pure violence back to the French syndicalist Georges Sorel’s vision of the “proletarian general strike:” an indefinite strike, which would not aim for industrial or political concessions or to seize power; it would instead constitute a complete refusal of the entire system that would thereby render it inoperative indefinitely.\textsuperscript{82}

At this juncture, it is also instructive to note that Agamben has previously also
elaborated his concept of inoperativity in terms borrowed from the Italian tradition of (post-)operaismo (workerism), as an “exodus from any sovereignty.”\(^8\) The concept of exodus is obviously biblical in origin, referring to the flight of the Jews from slavery in Egypt, but has subsequently been developed in radical Italian theory and practice. The concept was initially employed to signify a mutation of the “refusal of work”-strategy (rifìuto di lavoro) developed in the course of Italian labor struggles of the late 1960s and 1970s. This strategy initially aimed to elevate the strike from a tool of collective bargaining for higher wages and better working conditions under capitalism, to a complete refusal of the condition of wage labour and/as capitalism.\(^8\) Here it is instructive to note that the root of Agamben’s concept of inoperativity (inoperosità) opera also translates as “work” and as such can be read as a continuation and development of this refusal of work.\(^8\) The refusal of work-strategy was subsequently broadened into a more general strategy of refusal and defection from all oppressive and exploitative social relations and institutions, which was conceived in terms of an “exodus.” The fundamental insight leveraged by this strategy is that oppressive and exploitative social relation and institution generally cannot sustain themselves for longer periods of time but rely on the tacit acceptance and participation of its members including those oppressed and exploited by them. As such, their withdrawal from these social relations and institutions may efficiently undermine them. In its contemporary formulations this concept designates a strategy, which emphasizes refusal rather than direct confrontation, as a means of undermining sovereign power.\(^8\) And it is precisely in this way that we must read Agamben’s notion inoperativity and/as exodus if we are to evade the aporias of his political thought: rather than a strategy to achieve an impossible victory in an endless civil war, which would only serve to reaffirm and reproduce sovereign power in a different guise, the strategy of exodus offers a way out of this impossible struggle.

Agamben develops the conceptual contours of this “inoperative operation” further via Paul’s description of the relationship between the messianic event
and the mosaic covenant in terms of the Greek verb *katargein*, whose etymology he traces back to *argos* meaning “inoperative, not-at-work (*a-ergos*), inactive,” and which he proposes simultaneously refers to the fulfilment, preservation and abolishment of the law. The *katargein* of the messianic event is the completion of the mosaic covenant’s prophecy and insofar as it fulfils it, it also preserves it, all the while replacing it with the new (messianic) covenant. However, as we have just seen, Agamben insists that this does not take the form of law, but a new form of life, which renders law inoperative: “the *kainē diathēkai* [new covenant] ... is not a text but the very life of the messianic community, not a *writing*, but a *form of life.*” Agamben summarizes this messianic form of life with the (Pauline) formula *hōs mē* (as not); a form of life which does not destroy what precedes it, but renders it inoperative by not partaking, behaving as if it did not exist. It is “a form-of-life ... which unrelentingly deposes the social conditions in which it finds itself living, without negating them” – depriving the sovereign state of its power without destroying and/or replacing it.

It is important to note that Agamben’s messianism is not a politics of deferral to some transcendent entity, i.e., simply awaiting the second coming. Agamben insists, in his reading of Paul’s Letter to the Romans, that we are already living in the messianic “time that remains” – the time between the end of history, marked by the coming of the messiah, and the messiah’s full presence (*Parousia*), which is to be achieved in the messianic form of life, that is to say, the destitution of sovereign power.

However, there remain some seemingly significant challenges, as Antonio Negri and Michael Hardt remind us in regard to the strategy of exodus and its biblical precedent: “the pharaoh does not let the Jews flee in peace,” that is to say, a withdrawal from the sovereign state cannot be completed without facing significant opposition and repression from that very same state, which cannot simply be ignored or wished away. Negri and Hardt therefore conclude that the strategy of exodus requires a readiness for active and potentially violent resistance – while avoiding being drawn into a direct and prolonged confrontation with the
state. While they operate within different conceptual parameters, they remind us that any exodus will be forced to confront the very same civil war it is trying to evade in one form or another.\footnote{Previously in the Homo Sacer-series this paradox would have entailed that any such exodus would inevitably be subsumed to the sovereign state via the topology of exception. However, Agamben’s reconfiguration of the relationship between civil war and the sovereign state in \textit{Stasis} opens up the possibility of thinking civil war and destituent power together even if he does not pursue it himself in any meaningful way beyond the messianic imagery.}

The point of departure for thinking about the connection between civil war and destituent power should be the exploration of the dual meaning of \textit{stasis}, starting not with civil war but with the other meaning of \textit{stasis} as immobility or suspension of movement; a meaning which likewise derives from the Greek \textit{histemi}, designating standing up or, more significantly, a fixed stance or position, which Agamben notes in passing but fails to investigate any further.\footnote{Insisting on the potential practical and conceptual coincidence of civil war and inoperativity – \textit{stasis} and \textit{stasis} – facilitates a reinterpretation of the eschatological sequence outlined by Agamben, wherein Behemoth and Leviathan destroy each other in advance of the messianic banquet, in terms of the dissolved multitude successfully defeating the sovereign state in civil war and thus disbanding itself as such, as the necessary precondition of a destituent power. Destituent power would then come to designate the paralysis of the sequence outlined by Hobbes, at the threshold between civil war and the sovereign state, that is, the precise point where the multitude and the people momentarily coincide. Destituent power would thus come to designate a form of revolution that does not constitute a new sovereign power.}

However, this interpretation sits uneasily with Agamben’s call to “abandon” revolution and constituent power in order to think a “purely destituent power.”\footnote{Yet, such pronouncements are not necessarily incompatible with the present argument: the concept of abandonment was central to the first book of the \textit{Homo Sacer}-series, where it denoted “the simple positing of a relation with}
the nonrelational”, that is, an inclusive exclusion structurally identical to the state of exception. Thus, Agamben’s call to abandon constituent power and revolution can also be read as an inclusive exclusion rather than a rejection, which incorporates revolution within destituent power.

However, this seems to pose another problem, insofar as it appears to implicate destituent power in the state of exception, whereby the state subsumes and incorporates its outside, i.e., civil war or revolution. Agamben seems to corroborate this in a passage in *The Time That Remains*, where he proposes that the messianic form of life is structurally identical to the state of exception, insofar as it renders law indiscernible from its suspension and, by extension, the state indistinguishable from civil war. But this may also be read in terms of another type of exception Agamben has invoked at various points throughout the *Homo Sacer*-series, Benjamin’s “real state of exception,” which stands in opposition to our contemporary state of exception caught in the incessant interplay of constituent and constituted power. Agamben consistently identifies both the real state of exception and destituent power with Benjamin’s pure violence, suggesting that they coincide in his thought. If the state of exception is the totalization of the sovereign state, so as to includes its outside, i.e., the non-state, civil war and/or revolution, we may conceive the “real state of exception” as an inverse totalization whereby the non-state incorporates (and destitutes) the sovereign state. The real state of exception can thus be conceived as an exception to the exception, which overcomes the state of exception by simultaneously fulfilling, maintaining and rendering it inoperative; an interpretation, which is supported by Agamben’s description of this destituent power as “an *Aufhebung* of the state of exception, an absolutizing of the *katargēsis*."

This reading suggests that we both can and should think civil war and destituent power together. Such an interpretation of the dual meaning of the concept of *stasis* has the twin benefits of rehabilitating the potentials of the revolutionary tradition without ignoring its potential pitfalls and rendering destituent power a plausible practical and political project to overcome the sovereign state and its continuous
production and elimination of bare life. Destituent power can thus be conceived as a form of revolution, which does not constitute a new sovereign power. Instead, it can be thought of as an exception to the exception, which breaks the continuous cycle of constituent and constituted power at the point of their intersection. A constitutive power, which does not produce constituted powers per definition ceases to qualify as constitutive power and must instead be conceptualized as a form of destituent power. Such a destituent power could interrupt the incessant cycle of constituent and constituted power from within and create new political possibilities that point beyond the paradigm of the exception and the sovereign state.

MIKKEL FLOHR is a postdoctoral research fellow at the Department of Social Science and Business, Roskilde University. He is currently working on a research project entitled “The Politics of the Exception: Towards a Political Theory of the State(s) of Exception” funded by the Carlsberg Foundation. He has previously published on topics of power, sovereignty, and revolution in Telos, Distinktion, Contemporary Political Theory, Theory and Event and elsewhere.

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NOTES

1. *Stasis* was published in Italian in 2015 as the last of the nine books that together comprise the *Homo Sacer*-series but was (retrospectively) inscribed as the third (II.2) book in the official sequence of the series. See Adam Kotsko, *Agamben's Philosophical Trajectory*. Edinburgh: Edinburgh University Press, 2020, 203.


C. B. Macpherson notes that the exact phrase “state of nature” primarily emerged in the subsequent reception of Hobbes’ works whereas Hobbes relied on a number of closely related synonyms (“natural state,” “state of pure nature,” and “the natural condition of mankind”). For ease of reference and consistency in regard to the secondary literature, I will nonetheless employ this phrase as a synonym for the aforementioned variations, which I take to refer to a single conceptual figure. See C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*. Oxford: Oxford University Press, 2011, 25.


16. The “total state” here seems to be an implicit reference to Carl Schmitt’s On the Political, where it denotes the “identity of the state and society.” Schmitt argued that this could either take the form of a quantitative total state where a plurality of social forces and interests dominate the state and threaten to tear it apart or a qualitatively total state that dominates and integrates all of society on the model of Italian fascism. Carl Schmitt, On the Concept of the Political. Chicago: Chicago University Press, 2007, 22; Carl Schmitt, Four Articles, 1931-1938. Corvallis: Plutarch Press, 1999, 20-7, 7-18; see also Jan-Werner Müller, A Dangerous Mind: Carl Schmitt in Post-War European Thought. New Haven: Yale University Press, 2003, 32-2, 36.

Agamben explicitly invokes Marx’s conception of class struggle at this juncture. But in spite of this reference and the obvious parallels between his description of the excluded “people” and Marx’s description of the proletariat, Agamben does not engage with the critique of political economy nor the potential universality of the proletariat outlined by Marx here. Marx, Early Writings, 255-7; but see also Giorgio Agamben, The Time That Remains: A Commentary on the Letter to the Romans. Stanford: Stanford University Press, 2005, 57-8.


Note that Agamben seldom employs the distinction between “People” and “people” subsequently, but generally relies on the synonymous concepts of sovereign power and bare life.

19. The duality of the concept of the people can be traced all the way back to Ancient Athens where the concept of demos, denoting the citizenry, was also associated with the poor and/as the majority of the population [plethos]. This in turn also parallels the association of populis with the plebs in the Roman Empire, which Agamben highlights. Marc Crépon, et al, “People/Race/Nation.” Dictionary of Untranslatables. Ed. Barbara Cassin. Princeton: Princeton University Press, 2014, 760-3; Agamben, Homo Sacer, 178.


25. Agamben, Homo Sacer, 107, 88; Agamben, State of Exception, 80.


26. Agamben, Homo Sacer, 176-9; see also Agamben, State of Exception, 2; Agamben, The Use of Bodies, 198.


It is interesting to note that many of the historical figures of bare life that Agamben invokes in the beginning of Homo Sacer are imposing avatars of anomie, much closer to the traditional conceptions of civil war as a threat to the existing juridico-political order, than the passive victims of sovereign violence he subsequently describes, from the bandit and the outlaw, to the


This has significant parallels to Foucault’s reinterpretation of Hobbes and may very well have been influenced by it. See Foucault, Punitive Society, 13-40; Foucault, Society must be Defended, 89-110.
32. Agamben, Homo Sacer, 179, 38, 12; see also Agamben, “What is Destituent Power,” 70, 72; Agamben, Use of Bodies, 266, 274-5.

35. The limitations of such an analytical totalization of the sovereign state, which threatens to subsume everything to the state of the exception, is amply illustrated by Agamben’s recent critique of the “frenetic, irrational and unprovoked emergency measures adopted against a supposed epidemic.” Although it should be acknowledged that his original intervention was written at an early stage in the global COVID-19 pandemic and was based on the (Italian) National Research Council’s underestimation of the virus and did raise some relevant questions about emergency powers whereas his subsequent commentaries defending and elaborating on his initial article became more and more absurd (particularly the recurring comparison of contemporary public health measures with National Socialist Germany). The majority of the present essay was composed prior to the pandemic and Agamben’s unfortunate interventions. See Giorgio Agamben, Where Are We Now? The Epidemic as Politics (second edition). London: Eris, 2021, 11; passim; see also D’Eramo, Marco, “The Philosopher’s Epidemic.” New Left Review: 122:2 (2020), 23–8; Sotiris, Panagiotis, “Against Agamben: Is a Democratic Biopolitics Possible.” Viewpoint Magazine (2020) available via [https://viewpointmag.com/2020/03/20/against-agamben-democratic-biopolitics/] (accessed 6/4/2020); Adam Kotsko, “What Happened to Giorgio Agamben.” Slate (2022) available via [https://slate.com/human-interest/2022/02/giorgio-agamben-covid-holocaust-comparison-right-wing-protest.html] (accessed 28/8/2022).
37. Agamben, State of Exception: 54, 59; Benjamin, “Critique of Violence.”

On the limits of Agamben’s reading of Benjamin see also List, “Benjamin Against Agamben.”


46. Agamben, “What is Destituent Power,” 65; see also Agamben, *Use of Bodies*, 263.

47. Agamben, “What is Destituent Power,” 70; see also Agamben, *Use of Bodies*, 266.


The inherent limitations imposed by the deployment of Schmitt’s state of exception on the reading of any attempt to overcome the juridico-political order are neatly exemplified by the final threshold of *The Highest Poverty*, where Agamben concludes that the Franciscans’ attempts to create a form of life and community outside of the law and property ultimately failed, because they defined this project “negatively with respect to the law” and were therefore incapable of moving beyond it. See Giorgio Agamben, *The Highest Poverty: Monastic Rules and Form of Life*. Stanford: Stanford University Press, 2013, 144-5.

49. See Kotsko, *Agamben’s Philosophical Trajectory*, 104, 112-9, 204.

50. This is easily missed since *Stasis* was translated into English in 2015, a year before the translation of *The Use of Bodies* was published.


Agamben initially traced the relationship between sovereign power and bare life back to the assumption of tribunal sacrosanctity by Emperor Augustus (see note 27). However, he did also invoke the supposedly homologous Greek distinction between natural life (zōē) and political existence (bios), drawing on Aristotle, from the beginning of the Homo Sacer-series, albeit without providing an account of its political origins. Note also that this interpretation of Aristotle is disputed. See Agamben, Homo Sacer, 84, 1ff; James Finlayson, “‘Bare Life’ and Politics in Agamben’s Reading of Aristotle.” The Review of Politics: 72:1 (2010), 105-116; but see also Kotsko, Agamben’s Philosophical Trajectory, 83-4.

53. Agamben, Stasis, 2.
54. Agamben, Stasis, 12-3; see also Agamben, Homo Sacer, 107, 88; Agamben, State of Exception, 80; Agamben, “What is Destituent Power,” 66.
55. Agamben, Stasis, 17.
58. Agamben also notices the presence of a few guards and plague doctors inside the city, but they remain irrelevant for the present argument. See Agamben, Stasis, 47-9.
59. Agamben, Stasis, 42
60. Note that this invocation of the people comes closer to what he previously described as the People although there are also significant displacements, which will be explored in the following.
62. Agamben, Stasis, 45.
63. Agamben, Stasis, 43-5.
64. Agamben, Homo Sacer, 177.
See also note 16 on the concept of the “total state.”
This is a recurring theme in contemporary political thought: the Invisible Committee has suggested the distinct lack of a people in contemporary western societies and Wendy Brown dedicated an entire book to the undoing of the demos by neoliberalism. See The Invisible Committee, To Our Friends. Los Angeles: Semiotext(e), 2015, 44; Wendy Brown, Undoing the Demos: Neoliberalism’s Stealth Revolution. New York: Zone Books, 2015.
68. Agamben, Stasis, 52-3; see also Hobbes, Leviathan, 218-9.
69. Agamben, Stasis, 46.
Agamben’s seems to derive his conception of constituent power from Schmitt’s reading of Emmanuel Sieyès’ “What is the Third Estate?” (1789) in Constitutional Theory (1928), which reduces it to another instance of sovereignty in spite of the fact that Sieyès never used the concept of sovereignty to describe constituent power. This reading is also at the heart of Agamben’s critique of Antonio Negri, who makes the case for a concept of constituent power that is separate from and fundamentally opposed to sovereign power; Agamben, on the other hand, insists that the two cannot be differentiated. See Carl Schmitt, Constitutional Theory. Durham: Duke University Press, 2008, 125-9; Emmanuel Sieyès, Political Writings. Indianapolis: Hackett, 2003; Agamben, Homo Sacer, 43-4; Antonio Negri, Insurgencies: Constituent Power and
70. Agamben, Homo Sacer, 35-7; Agamben, State of Exception.
71. Agamben, Stasis, 22.
72. Agamben, Stasis, 53.
73. Agamben, Stasis, 53.
75. Agamben, Stasis, 58.
76. See also Agamben, Stasis, 69.
78. Agamben, Stasis, 58; 64-7; 2 Thess. 2:1-12.
79. Agamben, Stasis, 59-60; see also Hobbes, Leviathan, 276, 412-3.
80. Agamben, Stasis, 69.
Note that Benjamin’s essay seems to have been written, at least in part, as a reflection on the right-wing Kapp putsch of 1920 and its defeat by a general strike (subsequently repressed by the social democratic government). See Howard Eiland and Michael Jennings, Walter Benjamin: A Critical Life. Cambridge, Harvard University Press, 2016, 130-3.
83. Agamben, Means without Ends, 8 (emphasis added); see also Giorgio Agamben, “I am sure that you are more pessimistic than I am ...: an interview with Giorgio Agamben.” Rethinking Marxism: 16:2 (2004), 121.
Note that operaismo does not carry the connotations of moral celebration of (wage) labour, productivism and/or anti-intellectualism commonly associated with the English term “workerism.”
85. Note also that Agamben initially cited a recent interview with Mario Tronti as the source of the concept of “destituent power.” Tronti was one of the founding figures of operaismo, he was involved in the central journals Quaderni Rossi (‘Red Notebooks) and Classe Operaia (‘Working Class’) and published the highly influential Workers and Capital in 1966, before returning to the


This also has significant but unexplored parallels to the secessio plebis in 494 BCE where the plebeians withdrew from and thereby efficiently threatened to undermine the Roman Republic as part of The Conflict of the Orders. See note 27 on this topic.

87. Agamben, “What is Destituent Power,” 70-1; Agamben, The Time That Remains, 95; see also 96-9; Agamben, Use of Bodies, 273-4.

It is no accident if this formulation seems familiar to readers of Hegel: Agamben suggests that katargēsis was transmitted to Hegel through Martin Luther’s translation of this term as Aufhebung – a tentative conceptual lineage, which nonetheless suggests the possibility of destituent power as a genuinely dialectical resolution to the interplay of constituent and constituted power – although Agamben is, predictably, rather hesitant about embracing such conclusions. See Agamben, “What is Destituent Power,” 71; Agamben, The Time That Remains, 99-100; see also G.W.F. Hegel, Science of Logic. Cambridge: Cambridge University, 1969, 81-2 (§§ 21.94-21.96 remark); G. W. F. Hegel, The Encyclopaedia Logic. Part I of the Encyclopaedia of Philosophical Sciences. Indianapolis: Hackett, 1991, 154 (§ 96 addition).


Agamben acknowledged as much in his 1990 “Marginal Notes on the Society of the Spectacle:” “the threat the state is not willing to come to terms with is precisely the fact that the unrepresentable should exist and form a community without either presuppositions or conditions of belonging,” concluding “wherever these singularities peacefully manifest their being-in-common, there will be another Tianmen and, sooner or later, the tanks will appear again.” See Agamben, Means
without Ends, 89.
98. Agamben, *The Time that Remains*, 108; see also note 87.
He was never the clearest writer. Reading Jacques Lacan’s written works is a lot like listening to a free-associating analysand, whose stammering speech is replete with unexpected twists and turns. But for those who defend his singular style, the virtue of Lacan’s prose is that it helps sharpen the act of interpretation, demanding that readers make their own cuts, punctuations, and scansion in order to make sense of it. One reason for Lacan’s notoriously difficult prose style may very well be that its lack of clarity helps spark the desire of the reader, providing them with the motivation to keep turning the pages, to move on to the next seminar, to make meaning, all in the name of a fantasy that, one day, everything will become
clear. The kernel of this fantasy, however, is that such a day never arrives. Instead, Lacan’s prose style is there to make the reader work, allowing them to access a kind of thinking-in-motion that resists ready-made knowledge—or worse, psychological advice.

So the truism about Lacan’s style goes. But for the French linguist Jean-Claude Milner, Lacan was in fact a crystal clear writer whose long psychoanalytic career was underwritten by a set of rational epistemological propositions. In his recently translated The Search for Clarity: Science and Philosophy in Lacan’s Oeuvre (2021), originally published with Éditions du Seuil in Alain Badiou’s L’Ordre philosophique series in 1996, Milner reads Lacan in the same way that Martial Gueroult read Descartes in Descartes’ Philosophy Interpreted According to the Order of Reasons, Vol I & II (1984). In other words, Milner does not seek to “clarify,” “correct” or interpret the psychoanalyst’s supposedly opaque work, showing how his key ideas shifted throughout his career. Instead, Milner offers a structuralist interpretation of the psychoanalyst’s work, articulating the core principles that condition Lacan’s conceptions of science, modernity, education and the subject of psychoanalysis. As Milner himself puts it, his work aims “to establish clearly, for the record, that there is a thought in Lacan. A thought—that is to say, something whose existence imposes itself on those who have not thought it” (vii).

This austerely hermetic approach may seem counter-intuitive. But, ingeniously, Milner reverses the standard approach to deciphering the psychoanalyst’s opaque writing. For Milner, Lacan was never so complex as when he was at his clearest: citing his reference to the French historian of science Alexandre Koyré in “Science and Truth”—“Koyré is our guide here”—Milner notes that “the apparent simplicity of the phrase must give us pause. Precisely because its syntax and wording are simple, the reader must be careful” (114).

The idea that Lacan was neither difficult nor obscure, and that his own thought can be reduced to a number of plainly stated propositions, is emblematic of Milner’s own counter-intuitive, occasionally reactionary and deeply under-appreciated reading style. As Justin Clemens and Sigi Jottkandt write in “Milner the Obscure,”
“it is perhaps due to his rigour, his range, and—as almost every reader of Milner has remarked—his extraordinary style, which is at once unparalleled in its stringent perspicuity and baroque in its very minimalism, that has rendered him ‘obscure’ as a thinker.” Having been introduced to Lacan by Jacques-Alain Miller in the mid-1960s, Milner’s philosophical work began with the Cahiers pour l’analyse, an experimental journal from the pre-’68 era dedicated to articulating a minimalist rationalist epistemology. But when Milner read Noam Chomsky’s Aspects of the Theory of Syntax (1965) in 1966, he distanced himself from the Cahiers, citing the lure of the maximalist epistemology that he thought Chomsky’s work made possible. When May ’68 struck, Milner broke with Badiou and many other of his former comrades, going on to author numerous critiques of French philosophical radicalism (his revisionist history of May ’68, L’Arrogance du présent (2009), was published in part as a reply to Badiou’s earlier The Century (2005)). In fact, in the title of the final chapter of Les noms indistincts (1983), a complex book that interprets various philosophical concepts through the lens of Lacan’s RSI, Milner invokes Jakobson’s essay on the death of Mayakovsky and other Russian poets entitled “For a Generation which Squandered its Poets.” The May ’68 generation was, for Milner, one that had similarly “squandered itself.”

In the years between his break from the Cahiers and the publication of The Search for Clarity, Milner authored a series of linguistic studies that set about refining his conception of a rigorous and consistent scientific epistemology. In the yet untranslated Introduction à une science du langage (1989), he developed an idea of “extended Galileanism,” arguing that although linguistics was not strictly speaking a quantitative science, it still attempted to embody the ideals of a post-Galilean scientific epistemology. Basing this argument in part on Koyré’s magisterial From the Closed World to the Infinite Universe (1957), as well as Karl Popper’s principle of demarcation, Milner notes that Galileo’s mathematisation of the empirical radically broke with the previous scientific epistèmè. With Galileo, as Milner elsewhere puts it, “we no longer have a cosmos, but a universe; the paradigm of science is mathematical physics; precision becomes a requirement; mathematics
The Galilean break was thus an absolute break, redistributing the sensible away from the subject, shattering the ideal of a finite cosmos and replacing it with a non-hierarchical, radically decentered universe divested of any telos. For Koyré, mathematics gave this universe a language, not because it captured something eternal about it—after all, the post-Galilean universe is one constantly in flux, teeming with transitory and contingent phenomena. Rather because, as Milner puts it, mathematics can “cover all of the empirical realm, without regard to any hierarchy of being” (31). “The book of nature is written in geometrical characters’ declared Galileo,” Koyré writes, “this implies that in order to reach its goal modern science is bound to replace the system of flexible and semi-qualitative concepts of the Aristotelian science by a system of rigid and strictly quantitative ones.” Yet Milner argued that linguistic science—in the form of structuralism—could also be considered Galilean. While linguistics is not a quantitative science that employs quantitative concepts, it still relies on a formalisation of linguistic matter, crucially removing all quality from its subject matter. Extended Galileanism is thus defined not simply by a mathematisation, but rather by what Milner calls a literalisation: the ability to render an object of study intelligible by turning the properties of that object into opposing and opposed letters, of which mathematical literalisation is merely one (albeit paradigmatic) instance.

In the 1990s, Milner began to wonder about Lacanian psychoanalysis, which had once had a profound impact on him and whose insights he had previously brought to bear on linguistics in his earlier work For the Love of Language (1978). With literalisation, Milner gave Galilean science a precise contour; what he now called ideal science. But how was psychoanalysis, whose founder Freud had been seduced at various points in his career by scientism, affected by this ideal? Although Lacan spent much time asking “what would be a science that includes psychoanalysis,” in the 1990s Milner interrogated whether his “attachment to Lacan’s oeuvre was anything other than loyalty? Anything other than a refusal—a stubborn refusal to renounce something that had dazzled me as a youth?” (114). Indeed, The Search
For Clarity is an attempt to find out whether Lacan’s own work was marked by this
ideal science (as opposed to Freud’s ideal of science)—a question to which Milner
provides an emphatic answer. Yes, Milner argues, there is thought in Lacan, as
his work is undoubtedly conditioned by Koyré and Alexandre Kojève’s strong
interpretations of Galilean science: Lacan’s work was marked by ideal science.

Milner calls this Lacan’s “core doctrine” of science—the subject of the first, and by
far the longest, chapter of The Search for Clarity. As Lacan himself writes in “Science
and Truth,” “the subject upon which we operate in psychoanalysis can only be
the subject of science,” an equation which suggests that the subject theorised by
psychoanalysis is the same one birthed by Galilean science (17). And that subject
of science is also the modern subject too—the subject of modernity—insofar as it
is “in sync with Galilean science and there is nothing modern except that which
is in sync with Galilean science” (21). For Milner, this equation of psychoanalysis,
modern science and modernity is at the heart of Lacan’s reading of Descartes’s
cogito. For Lacan, Descartes represents the first philosopher whose thought had
been affected by modern science and whose cogito represents precisely a subject
without quality, “neither mortal nor immortal, pure nor impure, just or unjust,
sinner or saint, damned or saved” (22). Descartes’s modern subject is thus the
very same that Freud would also establish, though with one crucial distinction.
The Cartesian subject is not just modern and Galilean; it is also self-conscious,
continually doubting in order to affirm itself. But for Freud, self-consciousness
is merely “one aspect of empirical individuality,” unduly “introduced into the
subject” by a megalomaniacal philosophical desire (24). For Freud and Lacan, self-
consciousness is a property of the Ego and thus tied to the imaginary, registers that
are actually antithetical to the literalising and anti-qualitative impulses of Galilean
science. In fact, through literalisation, modern science “dissolves the imaginary”
(35), providing the ground with which to theorise the subject of science.

Lacan’s doctrine of science is thus modern, literal and non-historicist, rebuking
the Ego as a narcissistic exception to the Galilean universe in favour of the
unconscious (Milner offers a stunning interpretation of Lacan’s well-known
aphorism “God is unconscious,” suggesting that “the triumph of the modern universe over the worlds of antiquity is thus that the unconscious even wins out over God” (42)). By accepting that there are no exceptions to the universe, the doctrine of science also implies a rejection of the theme of finitude: as Milner comments, if psychoanalysis is interested in death—the marker of finitude par excellence—then it is only insofar as death is an object of a drive. For all the comparisons between Lacanian psychoanalysis and Heideggerian phenomenology, Milner argues: “if being towards death is being towards finitude, then, despite the exchanges of letters and private visits, despite even the importance that the definition of truth as unveiling has for the doctrine of the cure, Lacan’s doctrine, as a doctrine of psychoanalysis, is contradictory to Heidegger’s philosophy” (44).

Lastly, this core doctrine is also a doctrine of contingency. Unlike the ancient epistéme, where mathematics captured the eternal and the unchanging, “what is essential to modern letters,” Milner writes, “consists of grasping the contingent as contingent, the primary motto of the age of science would be: no letter will ever abolish chance. And its secondary motto would be: every letter is a throw of dice” (40).

Throughout Lacan’s long career, this core doctrine was subjected to differing interpretations and configurations, which Milner calls the first and second Lacanian classicisms. Outlined in the manifesto-like Rome Discourse from 1953 and then fully-realised in his “great masterpiece” the Écrits (72), Lacan’s first classicism is defined by a period of “hyper-structuralism.” As Milner had clarified before he wrote The Search for Clarity, structuralism applies ideal science to a human object—like language or systems of kinship—by “rendering” that object “into letters” and engaging in a “nonquantitative dissolution of the quantitative” (57). In his first classicism, Lacan’s account of structural linguistics adheres to this minimalist structuralist epistemology, articulating an “object-minimalism” (whereby a language is known only through “the minimal properties that make it into a system” (61)) and a “property-minimalism” (meaning that “the only properties that an element of a system has are those that are determined by the
system” (61)). Indeed, as Lacan famously stated, the unconscious is structured like a language, “conceived as a chain” (68) and literalised only through the insights of structuralist linguistics. But where the classical structuralist thesis suggests that a structure is only knowable through its particular realisation (through, for example, a particular language like English or a particular kinship system), Lacan’s hyperstructuralist position rests on the following “conjecture”: “Any unspecified structure has some properties that are not unspecified” (66).

For Milner, the specified element of Lacan’s hyperstructuralism is nothing less than the existence of the subject itself. As he writes, “Since signifiers are nothing other than the minimal elements of any structure whatsoever, the definition of the signifier must include this emergence. Whence the logion ‘a signifier is what represents the subject to another signifier’” (67).

But the first classicism suffered from a number of instabilities, of which Lacan grew increasingly cognisant in the late 1960s and early 1970s. Although he did not renounce science’s “Core Doctrine,” Lacan became uneasy about the trajectory of linguistics: by the time of 1972-1973’s Seminar XX, one of the clearest statements of his second classicism, Lacan spoke of “linguistricks,” believing that after “its golden age in Geneva, Moscow, and Prague […] there is nothing to expect from it anymore” (75). At the same time, the psychoanalyst began to articulate a more refined concept of the letter and its relationship to mathematisation, one based on his new concept of the matheme. In Seminar XX, Lacan invests in the unsullied transmissibility of the matheme. However, far from relying on the resources of the signifier—which operate relationally, representing the subject for another signifier—mathemes are constructed out of letters, which by contrast are univocal, utterly self-reflexive and material, governed only by a set of logically determined rules. In fact, mathematics, for Lacan, is not at all a deductive enterprise; it is rather the manipulation of letters, the “very essence of mathematicity” (87). This “new and scandalous definition” (87) of mathematics—of “what makes it the case that mathematics is mathematics” (87)—does “not renounce Galileo at all” (85). As Milner comments, Lacan’s position
reaffirms science’s Core Doctrine. Except, however, the mathematics implicated in its mathematisation is entirely purified of whatever it might still contain of Euclid and the *more geometrico* [...] Mathematics is important not because of how it chains together lines of reasoning, but because of the strictly circumscribed zones of literality that it authorises—what we can call a ‘calculus’ (85).

What results from this second classicism is a new, more radicalised capacity to reject the imaginary determinations that have, for Lacan, marked the history of the philosophical thinking of the subject. Since Aristotle, the thinking of the subject has been tied to a set of imaginary qualities: as Lacan himself put it, “man thinks with his soul’ means that man thinks with Aristotle’s thought.”\(^5\) However, through the transmissibility of the matheme, psychoanalysis succeeds in establishing a thought without qualities—in other words, a thought of that which lies on the other side of thinking itself, namely, the unconscious.

This is where Milner’s reading of Lacan concludes—or so it seems. In an extraordinary but truncated conclusion entitled “The Deconstruction,” Milner hones in on another of Lacan’s obsessions: Borromean knots and their theory, something also discussed at length in Seminar XX—the supposed manifesto of the second classicism. Unlike the matheme, which exposes the mathematicity of mathematics itself, Milner argues that Lacan actually saw the Borromean knot as a dissolution of the doctrine of the matheme and its relationship to the letter. For just as Lacan articulates this classicism, so he also writes in Seminar XX, “[...] as of our point in time today, there is no theory of knots. Currently, there is no mathematical formalisation applicable to knots.”\(^6\) Knots, as Milner reads them, provide an exception to mathematisation; yet they retain a kind of literality that is at odds with the doctrine of the matheme. As Milner points out, Lacan assigned to the knot the letters RSI, each one representing the real, the symbolic and the imaginary. So while the knot retains its literalised status, it paradoxically cannot be formalised—that is, its own letters cannot be rendered into the very letters that are the hallmarks of mathematical formalisation. “This means,” Milner
concludes, “that a nonliteral object is given the task of revealing what the essence of the literal is. In letters themselves there is nothing to be found that lets it be sufficiently rendered into letters” (104). Indeed, for Milner, “the second classicism was over at the very moment it seemed to be accomplished” (108), as Seminar XX contains its clearest statement as well as its dissolution. This is a stunning conclusion to a stunning book. Lacan’s work ends in an impasse, a theoretical construction that dissolves under its own internal pressure, like climbing to the top of a ladder only in order to throw it away. Although Milner is sensitive to later moves in Lacan’s career—“New places take over from mathematics,” he writes, ‘and the curiosities that it offered; the roads led to Joyce, the poem... Literature, in a word” (105-106)—_The Search for Clarity_ does not end with another classicism. Rather, Lacan’s life ends in a “deconstruction.”

This conclusion satisfied Milner for 30 years—that is, until he encountered Èric Laurent’s _L’Envers de la biopolitique_ (2016). “Reading, line by line, the text and the notes of _L’Envers de la biopolitique_,” he writes in an afterword to this edition, “I realised that I had totally misrecognised the nature and importance of the Joycean turn. In no way did it have to be reduced to a deconstruction; quite the contrary, it had to be understood in positive terms” (118). There, as well as in another recently published essay, Milner outlines a final moment in Lacan’s teachings, a moment where the impasse outlined above finds its resolution in the primacy of homophony. Noting his own “resistance” (118) to Lacan’s work on Joyce and the sinthome in Seminar XXIII, Milner considers the importance of homophony to the psychoanalyst’s work: homophonies, for Lacan, become “the matheme par excellence. They are the means of its transmissibility,” pure and literal actualisations of the disorienting and estranging powers of _lalangue_ itself (119).

_The Search for Clarity_ thus ends in a peculiar and oddly moving place. As Milner notes, to engage seriously with homophony is to ignore one of the foundational scientific elements of structuralist linguistics: namely, that the sonic material which makes _d’eux_ (those) and _deux_ (two) sound the same is in fact arbitrarily determined, nothing more than a mere accident of language. To take homophony
as the paradigm of literality—to say, as Lacan did, that it is “not purely by chance”
that \textit{d’eux} and \textit{deux} sound the same (122)—is to reject the very ideal science which
first sparked Lacan’s investigation into the literalisation of psychoanalysis. As for
Milner, who spent so many years of his life refining the contours of ideal science,
he ends \textit{The Search for Clarity} by quietly but definitely announcing his fidelity to
Lacan, that thinker which had so profoundly “dazzled” him in his youth: “The
Lacanian orientation [of homophony] thus establishes a research program for
itself. I would be happy to take part in it, but it is out of the question that I work
on it alone” (123). Whether this means that Milner will renounce his own vision of
ideal science in his future work is unclear, but reading this outstanding work does

CHRISTIAN R. GELDER is a Research Fellow at Macquarie University.

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6. Ibid., 129.