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## **Political Theologies of Constituent Power**

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### **Abstract**

Proponents of the theory of constituent power have criticized Hannah Arendt for rejecting its radical productivity in favor of the conservatism of American Constitutionalism (Negri) or—alternatively—sought to recover Arendt for a theory of constituent power via a partial rapprochement with Carl Schmitt, in the form of popular sovereign foundings tamed by a normative principle of “authorization” (Kalyvas). Arato and Cohen recognize that Arendt’s *On Revolution* is an argument with Schmitt’s conception of constituent power, but Arato marshals Arendt’s critique into service of a legal institutionalism conceived as guarding against the inevitable excesses of revolutionary politics. What these accounts miss is the extent to which Arendt’s theory of constitutionalism sought to overcome a problem that the thinking of constituent power brings to a head, one which structures disparate traditions of legal and political thought: the perceived opposition between established law and ongoing politics, between founding and new beginning, between constitution and revolution. Arendt eludes this obstacle to a radical political thought for an everyday context through her extended confrontation with Schmitt on the same terrain on which he formulated his theory of constituent power—political theology: specifically, through a reconsideration of political beginning in light of the Schmittian model of *ex nihilo* creation.

Jüdisch-christlicher Schöpfungsmythos und Begriff des Politischen: Alles hängt an der Schwierigkeit, die spezifisch menschliche Pluralität zu begreifen.<sup>1</sup>

(Hannah Arendt, *Denktagebuch*, April 1951, 70)

Alle politischen Begriffe, Vorstellungen und Worte haben einen *polemischen* Sinn; sie haben eine konkrete Gegensätzlichkeit im Auge, sind an eine konkrete Situation gebunden, deren letzte Konsequenz eine (in Krieg oder Revolution sich äußernde) Freund-Feind-Gruppierung ist, und werden zu leeren und gespenstischen Abstraktionen, wenn diese Situation entfällt.<sup>2</sup>

(Carl Schmitt, *Der Begriff des Politischen*, 1933 ed., 13)

Zunächst konstituiert sich das französische Volk als Träger der verfassunggebende Gewalt. . . . Dadurch, daß es sich eine Verfassung gibt, nimmt es schon den weitem Akt der Entscheidung über eine besondere Art und Form der Existenz vor. . . . Die *politische* Kraft dieses Vorganges führte zu einer Steigerung der Staatsgewalt, zu intensivster *Einheit* und Unteilbarkeit. . . . Das politische Große der französischen Revolution liegt darin, daß trotz aller liberalen und rechtsstaatlichen Prinzipien der Gedanke der politischen Einheit des französischen Volkes keinen Augenblick aufhörte, der entscheidende Richtpunkt zu sein.<sup>3</sup>

(Schmitt, *Verfassungslehre*, 50-51)

Jedenfalls ging die theologisch gebundene Einsicht: »ut initium esset, homo creatus est«, verloren. Und damit überhaupt die Einsicht in den Ereignischarakter der Geschichte.<sup>4</sup>

(Arendt, *Denktagebuch*, July 1951, 114-15)

America: Das politisch Neue:

1) Die Tatsache der Konstitution, das Etablieren des höchsten Gesetzes, das gegen alle Herrschaftsansprüche—die des Einzelnen, die der Wenigen und die der Mehrheit—gesichert sein muss. Erst im Moment der Konstitution wurde ein Anfang gesetzt und zwar zum ersten Mal ohne Gewalt, ohne *archein* und *archesthai*.<sup>5</sup>

(Arendt, *Denktagebuch*, September 1951, 130-31)

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<sup>1</sup> “Judeo-Christian Creation-mythos and Concept of the Political: Everything hangs on the difficulty to conceive the plurality specific to human beings.” (My translation.)

<sup>2</sup> “All political concepts, images, and terms have a polemical meaning. They are focused on a specific conflict and are bound to a concrete situation; the result (which manifests itself in war or revolution) is a friend-enemy grouping, and they turn into empty and ghostlike abstractions when this situation disappears.” Schmitt, *The Concept of the Political*, transl. George Schwab (1996), 30.

<sup>3</sup> “First, the French people constitutes itself as the bearer of the constituent power. . . . By giving itself a constitution, the French people already undertakes the additional act of reaching a decision on a particular type and form of political existence. . . . The *political* force of this process led to a heightening of state power (*Staatsgewalt*), to the most intensive *unity* (*Einheit*), and indivisibility, *unité* and *indivisibilité*. . . . The political greatness of the French Revolution lies in the fact that despite all its liberal and Rechtsstaat principles, the thought of the French people’s political unity did not cease to be the decisive reference point even for a moment.” Schmitt, *Constitutional Theory*, transl. Jeffrey Seitzer (2008), 101-102 (translation modified).

<sup>4</sup> “Likewise lost was the theologically bound insight: ‘ut initium esset, homo creatus est.’ And with it, generally, the insight into the event-character of history.” (My translation. Arendt will later translate the Augustine citation as “that there be a beginning, man was created.” See, e.g., *The Human Condition*, 177; *The Life of the Mind*, vol. 2, *Willing*, 217.)

<sup>5</sup> “America: That which is politically new: 1) The fact of the constitution (*Konstitution*), the establishment of the highest law (*Gesetz*), that must be secured against all claims to rule (*Herrschaft*)—of the one, the few, or the majority. Not until the moment of constitution (*Konstitution*) did a beginning get legally posited (*gesetzt*) and namely, for the first time, without violence (*Gewalt*), ohne *archein* and *archesthai* [without rule and being ruled].” (My translation.)

And it is not only our language which still derives “principle” from the Latin *principium* and therefore suggests this solution for the otherwise unsolvable problem of an absolute in the realm of human affairs which is relative by definition; the Greek language, in striking agreement, tells the same story. For the Greek word for beginning is *archê*, and *archê* means both beginning and principle. No later poet or philosopher has expressed the innermost meaning of this coincidence more beautifully and more succinctly than Plato . . . to paraphrase: “For the beginning, because it contains its own principle, is also a god who, as long as he dwells among men, as long as he inspires their deeds, saves everything.”

(Arendt, *On Revolution*, 213)

Hannah Arendt made one note at the back of the copy of Carl Schmitt’s *Begriff des Politischen* (*The Concept of the Political*) in her personal library amassed after she came to the United States. “[C]hecks & balances – 43,” she wrote. This note is one of many subtle signs of the debts that Arendt’s own work—in this case *On Revolution*—owes to her career-long confrontation with Schmitt’s work. As others, above all Andrew Arato and Jean Cohen, have recognized, *On Revolution* in particular seems to enter into a dispute with Schmitt, especially over his theory of the constituent power, or *verfassunggebende Gewalt* (Schmitt’s translation of the Sieyèsian *pouvoir constituant*), as the unitary will possessing the “power or authority [*Macht oder Autorität*],” as Schmitt says, of deciding on the type and form of existence of the state or the political unit (*Einheit*).<sup>6</sup> But the framework for Arendt’s critical engagement with Schmitt is broader than this, encompassing also his arguments in *The Concept of the Political*—a constant point of reference for Arendt ever since she first engaged its original version, quietly, in her doctoral dissertation on Augustine and love of neighbor, where she began to formulate her own political theory of plurality with and against Schmitt’s theory of the unitary political sovereign and its basis in the decision on the friend-enemy distinction.<sup>7</sup>

<sup>6</sup> Schmitt, *Constitutional Theory*, 125; Schmitt, *Verfassungslehre*, 75. See Andrew Arato and Jean L. Cohen, “Banishing the Sovereign? Internal and External Sovereignty in Arendt” in *Politics in Dark Times*, ed. Benhabib (2011), 137-71.

<sup>7</sup> See John Wolfe Ackerman, “The Memory of Politics: Arendt, Schmitt and the Possibility of Encounter,” in *Concentrationary Memories*, eds. Griselda Pollock and Max Silverman (forthcoming 2013); and Ackerman, Review

On the aforementioned page 43 of the 1933 edition of *Der Begriff des Politischen*, Schmitt argues that “liberalism,” which finds its classical formulation for him in Thomas Paine, manages “neither a political theory nor a political idea,” has “neither advanced a positive theory of state nor on its own discovered how to reform the state” but, rather, solely “produced a doctrine of the separation (*Teilung*) and balancing of ‘powers’ [*Gewalten*]: Schmitt places “powers” in quotes to underscore that for him there can be no such thing as division or separation of political power], i.e., a system of checks and controls [*Hemmungen und Kontrollen*] [underlined by Arendt in her copy] on the state, which cannot be characterized as either a theory of state or a constructive political principle.”<sup>8</sup> Arendt’s response to Schmitt’s theory of the constituent power (*Gewalt*) in *On Revolution*, and to the conception of the unitary state that corresponds to it, will indeed take the form of a political theory and theory of state—of another form of state—with the separation and balance of powers (*Gewalten*) as its central, federal principle, in which political power is *generated* federally. Indeed, Arendt’s often underestimated concern in *On Revolution* with the kind of institutional questions necessary for the formulation of an alternative theory of state can perhaps be partly explained by this background reference to Schmitt. At least since completing *The Origins of Totalitarianism*, where, in the original 1951 Concluding Remarks, she turned her attention to the possibility of a new, post-totalitarian mode of “foundation of a new polity,” Arendt had associated this possibility with the events of the American Revolution, as an entry in her *Denktagebuch* (or

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of Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, in *The Germanic Review: Literature, Culture, Theory* 86: 4 (2011), 320-324.

<sup>8</sup> *Der Begriff des Politischen*, 1933 edn., 43. Arendt’s personal copy is in the holdings of the Hannah Arendt Collection at Bard College’s Stevenson Library. Cf. *Begriff des Politischen* [1963] [hereafter BdP], 61; and *The Concept of the Political*, transl. George Schwab (1996) [hereafter CP], 61. Translation modified and emphasis added. In Schmitt’s 1928 *Verfassungslehre* (translated as *Constitutional Theory*) he explains that the existence of the state belongs to the positive, *political* element (*Bestandteil*) of a constitution (the most important aspect of which is the constituent power), whereas the principle of the separation of powers belongs to its normative, *rechtsstaatliche* element, which constrains the state rather than constituting it. The distinction between these two elements guides Schmitt’s theory of the constitution.

“thought diary”) from the same year indicates.<sup>9</sup> There, under the heading “America: That which is politically new,” Arendt marked the possibility of a new mode of constitutional beginning or founding that, unlike the *verfassunggebende Gewalt*, would take place “*ohne Gewalt*,” without violence—including the violence that, remaking society revolutionarily, sovereignly “gives” the new constitution.<sup>10</sup>

Contemporary proponents of the theory of constituent power have variously criticized Arendt for rejecting its radical productivity in favor of the conservatism of American Constitutionalism (Negri) or “absolving [the authoritative “Founding”] from its own event character” (Vatter) or—alternatively—sought to recover Arendt for a theory of constituent power via a partial rapprochement with Schmitt, in the form of popular sovereign foundings tamed by a normative principle of “authorization” (Kalyvas).<sup>11</sup> These thinkers seek to reclaim constituent power for radical democratic theory, to varying degrees through Schmitt, as a device for articulating the democratic people or multitude’s radical capacity of self-production, self-institution, or self-authorization.<sup>12</sup> They have attended less (if at all) to the extent to which Schmitt’s constituent power, the *verfassunggebende Gewalt*, represents—as Arato and Cohen have recently observed—one of his central applications of his political theology, and they certainly have not recognized how Arendt mobilizes alternate resources also offered by political theology in formulating her own, alternative theory of constitutional foundings.<sup>13</sup> Indeed, readers tend to assume that *On Revolution*’s account of the foundation of a “*novus ordo saeculorum*” is

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<sup>9</sup> Arendt, *The Origins of Totalitarianism* (1951), 439.

<sup>10</sup> Arendt, *Denktagebuch*, September 1951, 130-31.

<sup>11</sup> Antonio Negri, *Insurgencies: Constituent Power and the Modern State* (1999); Miguel Vatter, “Legality and Resistance: Arendt and Negri on Constituent Power,” in *The Philosophy of Antonio Negri*, vol. 2, *Revolution in Theory* (2007), 52-83; Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (2008).

<sup>12</sup> See also Jason Frank, *Constituent Moments: Enacting the People in Postrevolutionary America* (2010).

<sup>13</sup> Arato and Cohen, “Banishing the Sovereign?,” 143.

intended, as Samuel Moyn has recently argued, as a rebuttal to “political theology” in general.<sup>14</sup> In this paper, I seek to show how, on the contrary, Arendt’s engagement in her own critical version of political theology also forms the basis for her response to Schmitt’s theory of the constituent power in *On Revolution*, and how her theory of new, “secular,” political beginnings—of the necessarily ongoing possibility of a “foundation” of a “*novus ordo saeculorum*,” a “new order for the ages”—is also part of that alternate political theology, a political theology not of sovereign decision but of plural encounter. Whereas the theory of constituent power’s account of a radical power of self-creation tends to cement the perceived opposition, which dichotomously structures disparate traditions of political thought, between established law and ongoing politics, between founding and new beginning, between constitution and revolution, Arendt, in contrast, on the basis of a rethinking of the Biblical account of the Creation and the political lessons that might be drawn from it, eludes this opposition and the stumbling block it poses to all efforts at formulating a radical or transformative political thought for an everyday context, or times of so-called “normal politics.”<sup>15</sup>

### **Radical Democratic Theory and Constituent Power**

Sheldon Wolin’s work provides a clear example of how efforts to conceive a mode and practice of so-called radical democracy tend to find themselves structured by a problematic that seemingly cannot but render such a democracy fleeting, “exceptional,” “extraordinary,” in Wolin’s term of choice, “fugitive.” Like the work of other radical democrats, Wolin’s thinking is governed by the opposition between “constitution” and “revolution,” between the “settled

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<sup>14</sup> See Samuel Moyn, “Hannah Arendt on the Secular,” *New German Critique* 105 (2008), esp., e.g., 90.

<sup>15</sup> For a recent volume devoted to the “paradox” posed by this series of oppositions—which it largely ends up reiterating—see *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Loughlin and Walker (2007). A notable exception is James Tully’s contribution, “The Imperialism of Modern Constitutional Democracy,” 315-38.

structure of politics and governmental authority” that, he observes, is always assumed to be necessary to contain and thereby conserve democracy but which also inevitably diminishes it, and the life-giving “political movement” that unsettles every constitution and keeps it from suffocating democratic energies.<sup>16</sup> Wolin’s proposed remedy is an “*a*constitutional conception of democracy” that avowedly accepts this traditional opposition but takes sides with revolutionary democracy instead of with constitution.<sup>17</sup>

Appeals to the theory of constituent power in radical democratic theory bring this particular problem to a head. To the extent that they reinforce the distinction between constituent and constituted power, they reinscribe the problem. As Arendt observed of the modern revolutionary tradition leading from the end of the eighteenth to the twentieth century, to revolutionary actors and thinkers there has almost invariably seemed to be no way out of viewing revolution and foundation, revolution and constitution, in terms of a perpetual cycle of “tearing down and building up”—and contemporary radical democrats are no exception to this pattern.<sup>18</sup> Arendt’s own work on revolution and constitution is distinguished by its effort to put forth a dissenting view: in Arendt’s analysis, it was precisely this recurring limit to revolutionary thinking that, namely, explained the common inability of revolutionary praxis to “provide [the

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<sup>16</sup> Wolin, “Norm and Form: The Constitutionalizing of Democracy,” in *Athenian Political Thought and the Reconstruction of American Democracy*, ed. Euben et al. (1994), 29; cf. Wolin, “Fugitive Democracy,” in *Democracy and Difference*, ed. Benhabib (1996), 37ff.

<sup>17</sup> “Norm and Form,” 37.

<sup>18</sup> Arendt, *On Revolution*, 1965 edn., 233; hereafter OR. Even attempts to find ways out of the blockages this opposition seems to impose (Sieyès’s “vicious circle,” the “paradox of founding”) tend to underscore the perceived opposition. Consider, e.g., the work of Ernesto Laclau and Chantal Mouffe. There, the reason that “the classic concept of ‘revolution’” constitutes “the ultimate core of [the] essentialist fixity” that is “the fundamental obstacle” in the formulation of a radical and plural democratic alternative is precisely that the classic concept of revolution “implied the *foundational* character of the revolutionary act, the institution of a point of concentration of power from which society could be ‘rationally’ reorganized. This is the perspective which is incompatible with the plurality and the opening which a radical democracy requires.” *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*, 2d edn. (2001), 177-78. As a result, (radical) democratic politics must entail a permanent oscillation between the pursuit of closure (unification around an overarching political goal and in the form of a political identity) and the necessary frustration of this pursuit that sustains contingency and secures the openness required for political change or revolution.

revolution] with a lasting institution” (OR 232). Indeed, in her reading of the two great eighteenth-century revolutions that she analyzed in *On Revolution*, this was precisely the reason that both the French and the American Revolutions ultimately defeated themselves.

Arendt’s quixotic praise for the American Constitution in *On Revolution*, and the unfavorable comparison of the French Revolution with the American one that underlies it, has been the object of much criticism and misunderstanding. Indeed, a good deal of this criticism (and more than with regard to any of Arendt’s other works) has been formulated via unfavorable comparison and or alignment with the constitutional theory of Carl Schmitt. At the center of that comparison lies the question of the role of constituent power at the intersection between revolution and constitution. Among contemporary thinkers of constituent power, Antonio Negri provides perhaps the most suggestive reading of how Arendt’s account of constituent power brings her into a distinct but critical proximity with Schmitt. Negri simultaneously welcomes Arendt’s contribution to the thinking of constituent power, noting that “Arendt has given us the clearest image of constituent power in its radicalness and strength,” and condemns her for betraying her discovery through a “conversion to classical and conservative constitutionalism,” concluding:

For Arendt the *Constitutio libertatis* is simply and merely identified with the historical events of the American constitution. . . . In fact, Arendt opens by refusing contractualism and ends by praising it; she begins by grounding her argument in the force of constituent power and concludes by forgetting its radical quality; she starts by foregrounding the reasons for democracy and ends by affirming those of liberalism. . . . The antagonistic event disappears.<sup>19</sup>

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<sup>19</sup> *Insurgencies*, 19, 21, 17-18. On Negri and Arendt, see also Vatter, “Legality and Resistance.” In Vatter’s Machiavelli-inspired terms, the opposition is between political “form and event.” Vatter seeks to use constituent power to illuminate “the kind of legitimacy that any rule of law, any constituted power, can aspire to” (52) but concludes, analogous to Negri, that Arendt overlooks the real “tragedy” of the modern revolutionary tradition, expressed in revolution’s inevitable repetition: “the inevitable aporia of institutionalizing, in any political form of government, the experience of political freedom[.] In this case, the repetition itself would not signal, as such, a failure of revolutions, but rather their most proper character: that political freedom as constituent power can only exist in the essentially iterable dimension of the event, rather than of form” (79). Vatter reads Arendt as “analyz[ing] constituent power in order to understand revolution as the origin of *the state*, . . . the process of giving freedom a



Negri seeks a new conception of constitution *as constituent power*, as the persistent force and potency of never-ending innovation—*constitution as revolution*—and he credits Arendt with this crucial redefinition of the constituent principle in terms of freedom, of “a beginning that poses its own conditions” and is grounded on nothing more than itself—that is, as “political constitution, an absolute process,” absolutely radical, coming “from a void and constitut[ing] everything,” “constitut[ing] the political from nothingness.”<sup>20</sup> Yet Arendt’s own American-inspired account of constitutionalism, he argues, “resolves” all these productive ambiguities “in formal terms, according to the demands of an idealism content to find a correspondence in institutions”; it ends up making permanent and absolute not revolution or foundation but “instititution” or “form.”<sup>21</sup> In fact, in the end, and despite the acrobatics he initially lent to the effort to rethink constitution, Negri, like other proponents of constituent power, recurs once again to the opposition between constituent power and “constitutionalism”:

This political form of constituent power . . . we can also call “democracy.” . . .  
*[D]emocracy* means the omnilateral expression of the multitude, the radical immanence of strength, and the exclusion of any sign of external definition, either transcendent or transcendental. . . . This democracy is the opposite of constitutionalism. . . .  
 Constitutionalism is an apparatus that denies constituent power and democracy.<sup>22</sup>

Others, too, have seen that Arendt’s work intersects with Schmitt’s when she approaches the question of constituent power in *On Revolution*, which has, more than any of Arendt’s work, recurrently been held up as evidence of a point of contact between them.<sup>23</sup> Sometimes this

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legal constitution” (54), the attempt “to resolve the ‘problem of the law’ by arguing that this unfindable political freedom as no-rule can itself serve as the ground of rule, that is, as the source of the authority for legal commands, for a political form, which in turn grants political freedom ‘a space where this freedom could be exercised’” (59).

<sup>20</sup> *Insurgencies*, 15-16.

<sup>21</sup> *Insurgencies*, 18.

<sup>22</sup> *Insurgencies*, 322.

<sup>23</sup> See especially Kalyvas, *Democracy and the Politics of the Extraordinary*. Kalyvas brings Schmitt and Arendt together to show “the possibility of reconciling extraordinary politics with a lasting constitutional government” (192), but he makes his task of reconciliation infinitely more difficult by conceiving all “normal,” i.e. non-extraordinary, constitutionalized politics in purely negative terms, as a state of disenfranchisement,

contact is seen to reflect favorably on Arendt, sometimes not, but the readings of Arendt on offer vary little in attributing to Arendt a conventional, legalistic account of constitutionalism. None of these readers concludes that Arendt confronts Schmitt's ultimately conservative account of the relationship between revolution and constitution in his theory of the constituent power and in effect poses a more "radical" alternative to Schmitt that she expresses precisely through her critical account of American Constitutionalism and her examination of the institutional possibilities born in the revolutionary council. Nor that she does so on the terrain of political theology, as the terrain on which she meets and engages Schmitt. In the remainder of this paper, I will revisit this point of encounter between them, to reconsider how to read its lessons for efforts in contemporary democratic theory to think the relation between revolution and constitution, underscoring the resources that political theology offers for such a reconsideration—and thereby also proposing new ways of considering the relevance of political theology to democratic theory.

### **Arendt, Schmitt, and the Concept of the Political**

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bureaucratization, and depoliticization in which the people is completely alienated from politics by institutional, representational mechanisms. He retains the model of the popular constituent subject as the opposing site of society's extraordinary self-institution and suggests that Arendt's innovation entails reworking the constituent power and its capacity to "lay down the political and legal foundations that will govern power and secure normal politics" based on her supposed rejection of the possibility of "absolute beginnings" (204). When Kalyvas seeks an account of how the people might persist during times of normal order, allowing for the continuing "emulation of the founding experience," he can thus only see a way for it to do so via a "third moment," alongside the established, constitutional, legal order—in the form of a quasi-constituent power, mimicking the activity of the popular sovereign founder outside of moments of actual founding (in popular councils, in civil disobedience) without reconstituting the order entirely. Kalyvas's work, too, ends by shoring up the supposed opposition between revolution and constitution. See also Helmut Dubiel, "Das nicht angetretene Erbe: Anmerkungen zu Hannah Arendts politischer Theorie," in *Ungewißheit und Politik* (1994), 29-42; Andrew Arato, "Forms of Constitution Making and Theories of Democracy," *Cardozo Law Review* 17 (1995-96), 191-231; Arato, *Civil Society, Constitution, and Legitimacy* (2000); Carl K. Y. Shaw, "Power and Authority in Constitutional Theory: Hidden Dialogue between Hannah Arendt and Carl Schmitt," conf. paper, Annual Meeting of the American Political Science Association, Philadelphia, 31 Aug. 2006; William Scheuerman, "Revolutions and Constitutions: Hannah Arendt's Challenge to Carl Schmitt," in *Law as Politics: Carl Schmitt's Critique of Liberalism*, ed. Dyzenhaus (1998), 252-80; Samuel Moyn, "Hannah Arendt on the Secular," *New German Critique* 105 (2008): 71-96; and Jason Frank, *Constituent Moments*, esp. Ch. 1, "Revolution and Reiteration: Hannah Arendt's Critique of Constituent Power," 41-66.

According to Andrew Arato, Arendt in *On Revolution* engages in a direct critique, in particular, of Schmitt's account in the *Verfassungslehre* of the unitary source of power and authority in the will of the "constituent power" (*verfassunggebende Gewalt*).<sup>24</sup> And Schmitt's opening line of the section on the *verfassunggebende Gewalt* in the *Verfassungslehre* indeed draws the contours of the terrain Arendt will explore and re-map: "*The constituent power is the political will, whose power or authority is capable of making the concrete, total decision on the type and form of its own political existence, that is, to determine the existence of the political unit (Einheit) as a whole.*"<sup>25</sup> That the framing of a constitution should be understood as the act of a (unitary) will, moreover, a will whose effectiveness could be equally a matter of power or authority, evidently captures quite clearly the position that Arendt will oppose in *On Revolution*—and these are not surprisingly the key terms for prior efforts to read *On Revolution* as, in part, an argument with Schmitt.<sup>26</sup>

Indeed, this book is in many important ways an argument with Schmitt, one considerably broader than Arato or any other commentator has remarked. That this is so is announced already in its introduction—a meditation on "War and Revolution"—and the role of violence in both—that seems less out of place than it otherwise might when read in relation to Schmitt's work. It is perhaps easy to forget—although Arendt clearly did not, marking up this passage in her copy—

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<sup>24</sup> Arato, "Forms of Constitution Making," 202, 205-10.

<sup>25</sup> "*Verfassunggebende Gewalt ist der politische Wille, dessen Macht oder Autorität imstande ist, die konkrete Gesamtentscheidung über Art und Form der eigenen politischen Existenz zu treffen, also die Existenz der politischen Einheit im ganzen zu bestimmen.*" *Verfassungslehre*, 75-76; *Constitutional Theory*, 125 (translation modified). In a footnote to this passage, Schmitt explains that for the purposes of his presentation of a *Verfassungslehre* it is not necessary to distinguish between power and authority, a point that Arendt would evidently dispute.

<sup>26</sup> Arato writes: "The Americans, according to Arendt, did not attempt to derive power (a matter of fact) and legal authority (a matter of normative validity) from the same federated source" ("Forms of Constitution Making," 208). Arato goes too far in ascribing to Arendt a "dualistic" theory that too sharply separates the "normative validity" of "legal authority" from political acts by which power is constituted as Arendt's response to Schmitt. (In fact, though Schmitt does insist that the—otherwise important—difference between power and authority is irrelevant for his constitutional theory, Arato's version of the distinction simply replays Schmitt's split between the legal-normative *staatsrechtliche* and political elements of the constitution—that is, the typical opposition between law and politics—which is, I am arguing, the real object of Arendt's critique of Schmitt.) For Arendt's distinction between power and authority, see OR 178 ff.

that Schmitt in *The Concept of the Political* argues insistently and repeatedly for an equation of the political (via the friend-enemy distinction) with the permanent possibility of war or revolution:

All political concepts, images, and terms have a *polemical* meaning. They are focused on a specific conflict and are bound to a concrete situation; the result (which manifests itself in war or revolution) is a friend-enemy grouping, and they turn into empty and ghostlike abstractions when this situation disappears.<sup>27</sup>

Without this ever-present limit in the possibility of deciding on the—foreign or domestic—political enemy as one (another organized political unit or grouping) who poses a fatal threat to one’s own (collective) existence, Schmitt argues, the political dissipates. Indeed, the decision on war is something like the paradigmatic instance of the existential decision on the state of exception (*Ausnahmefall*). This connection to Schmitt’s well-known explication of his particular concept of political theology is key to understanding the link between his thinking in *The Concept of the Political* and his account of revolutionary constitution-giving via the *verfassunggebende Gewalt*, or constituent power, that will be the more direct object of Arendt’s critique in *On Revolution*.<sup>28</sup> As is well known, Schmitt opens his *Political Theology: Four Chapters on the Concept of Sovereignty* with a statement, perhaps his most famous formulation, of the connection between the political limit situation, or *Notfall*, the decision it calls for, and sovereignty: namely, he who makes this decision, who decides on the state of exception, *is*

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<sup>27</sup> CP, 30; BdP, 1933 edn., 13 (cf. BdP, 31). Cf. also: “Feind ist nur eine wenigstens eventuell, d. h. der realen Möglichkeit nach *kämpfende* Gesamtheit von Menschen, die einer ebensolchen Gesamtheit gegenübersteht” (BdP, 29). “Die reale Möglichkt des Kampfes, die immer vorhanden sein muß, damit von Politik gesprochen werden kann,” which means, within any state, “Bürgerkrieg” (BdP, 32; BdP, 1933 edn., 15, underlined and marked with 2 x’s by HA), oder “bewaffneter Kampf innerhalb einer (dadurch aber problematisch werdenden) organisierten Einheit” and the possibility of physical killing this entails. “Der Krieg folgt aus der Feindschaft, denn diese ist seinsmäßige Negierung eines anderen Seins” (BdP, 33). “Der Krieg ist ... die als reale Möglichkeit immer vorhandene *Voraussetzung*, die das menschliche Handeln und Denken bestimmt und dadurch ein spezifisch politisches Verhalten bewirkt [Arendt marks with “XXX.”] . . . ebenso wie es mit jeder Politik . . . zu Ende ist, wenn die reale Möglichkeit von Kriegen überhaupt entfällt” (BdP, 34-35; 1933 edn., 17).

<sup>28</sup> BdP 35-36, 30; CP 35, 30.

sovereign: “*Souverän ist, wer über den Ausnahmezustand entscheidet.*”<sup>29</sup> In recent years, investigations of Schmitt’s theory of the state of exception inspired, above all, by Giorgio Agamben’s work, have drawn attention to its authoritarian character: the state sovereign is the authority or instance with the power to suspend the law in its entirety in the face of the *Ernstfall*, or limit situation, that arises with the perception of an enemy posing a mortal threat to the very political unit; as in the American president’s pronouncement of the war on terror in the wake of 9/11, which seemed to many observers to validate Schmitt’s thinking, this decision achieves its paradigmatic realization in a situation of war, in which the governing executive appropriates far-reaching powers of sovereignty to itself, subjecting “enemies” external and internal to a power beyond any law.<sup>30</sup>

War (that is, war with a foreign power) is, namely, one of the clear occasions for a total decision on the form of the political unit, “*eine Gesamtentscheidung über Art und Form der eigenen politischen Existenz*”—the decision that constitutes the “constituent power” as such—although it is not necessarily one in which the people itself (*das Volk, die Nation*) obviously takes that decision; Schmitt’s political theology of the state of exception, formed through the analogy with a personal God with the ultimate power of decision, clearly has authoritarian implications. It is thus the other, ultimate, quintessentially political instance of decision on the friend-enemy distinction identified in *The Concept of the Political*—the case of revolution (and the state of civil war (*Bürgerkrieg*) almost certain to come with it)—that corresponds more obviously to the situation of framing a “bourgeois constitution,” *die Verfassung eines bürgerlichen Rechtsstaates*, that is Schmitt’s subject in his *Verfassungslehre*. Here, the sovereign who decides in the limit situation, who decides *on revolution*, is unmistakably the popular

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<sup>29</sup> Schmitt, *Politische Theologie* [2004], 13; cf. *Political Theology* [2005], 5.

<sup>30</sup> See, esp., Agamben, *Homo Sacer: Sovereign Power and Bare Life* (1998) and *State of Exception* (2005).

sovereign, the element of the Volk or the nation that makes the decision to defend the political unit against its internal enemy, which threatened the very continued existence of the political unit (or state) as such. In the event of the revolution's success, this popular sovereign will also become the sovereign *verfassunggebende Gewalt*, the constituent power, which takes the total decision (*Gesamtentscheidung*) on the type and form of existence of the political unit as a whole going forward.<sup>31</sup>

Arendt will provide a different interpretation of the relationship between revolution and constitution, and the introduction to *On Revolution*—over the course of its meditations on the “interrelationship of war and revolution”—signals her direction, moving quickly, toward its conclusion, to another problem raised centrally in Schmitt's writings: the problem of revolutionary beginning (and its relation to violence), *of the possibility of a beginning “aus dem Nichts,”* out of nothingness or *ex nihilo* (like the “*aus dem Nichts geschaffene absolute Entscheidung*” Schmitt invoked at the end of *Political Theology*<sup>32</sup>). In doing so, Arendt moved to undertake, finally, an extended consideration of the possibility that she had associated singularly with an understanding of the American Constitutional founding at least since 1951, in the process of concluding *The Origins of Totalitarianism*, where (especially in the original “Concluding Remarks”) she turned her attention to the need for a new mode of founding (of a “new polity,” of a new “common world”) in the wake of totalitarianism—so as to make politics once again possible. The possibility that interested Arendt was that of an alternative mode of constitution that precisely because it would not take the form of a *Gewalt* but of a “beginning” would secure itself against all claims to rule—a “constitution” that, as such, would exclude the

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<sup>31</sup> A successful revolution, in Schmitt's understanding, is one that *succeeds* in *preserving* the state.

<sup>32</sup> See, e.g., Arendt's annotated copy of *Politische Theologie*, 2d edn. (1934), 83. Cf. *Political Theology*, 32, 66; *Politische Theologie*, 38, 69.

very possibility of all rule, including even “majority rule.”<sup>33</sup> To argue for the alternative model of the American Revolution thus entails staking out a position that is distinctly counter-Schmittian, opposing the Schmittian tendency of contemporary revolutionary movements to take the French Revolution and its “revolutionary” violence, or *Gewalt*, as their model.<sup>34</sup> But, Arendt

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<sup>33</sup> “Die Tatsache der Konstitution, das Etablieren des höchsten Gesetzes, das gegen alle Herrschaftsansprüche—die des Einzelnen, die der Wenigen und die der Mehrheit—gesichert sein muss. Erst im Moment der Konstitution wurde ein *Anfang* gesetzt und zwar zum ersten Mal ohne Gewalt, ohne *archein* und *archesthai*.” Arendt, *Denktagebuch*, September 1951, 130-31.

<sup>34</sup> Though he is often thought to give an account of an *extralegal* founding here, Schmitt makes very clear that the pre-existence of the state (i.e., its continuation) is a prerequisite for the decision entailed in the giving of a constitution; he thinks that the framing of the U. S. Constitution does not represent a clear instance of this kind of modern *Verfassunggebung* through a *verfassungsgebende Gewalt* because he sees the constitution-giving as taking place, confusedly, simultaneous with the founding of new states, that is, in the absence of a persisting political order. See *Verfassungslehre*, 78-79; *Constitutional Theory*, 126-27, and, on this point, Ingeborg Maus, *Bürgerliche Rechtstheorie und Faschismus: Zur sozialen Funktion und aktuellen Wirkung der Theorie Carl Schmitts*, 2d edn. (1980), 57-58. For a particularly useful indication of the problem that Schmitt was negotiating in the German context—and of the potential significance of the investigation pursued here for European integration today—see Christoph Möllers, “Pouvoir Constituant–Constitution–Constitutionalisation,” in *Principles of European Constitutional Law*, eds. von Bogdandy and Bast, 2nd ed. (2010), 169-205.

The first draft of *On Revolution* (in the Arendt papers at the Library of Congress) provides additional clues of the extent to which Arendt viewed this book as a response also to what she saw as the *conservative* use of the French Revolution, a trend she clearly sees as exemplified in Schmitt and then, in a sense, imitated in twentieth-century revolutions that let themselves be inspired by the French Revolution. What Arendt says here—in the first two paragraphs of the Library of Congress manuscript, but partly in a footnote in the published version—is that the reigning view of the history of modern revolutions as a continued working out of the French Revolution, manifested in a cycle of revolution and counter-revolution, produced conservative, counter-revolutionary thought and its “polemics,” a mode that “revolutionaries” then absorbed from their conservative opponents. In Schmitt’s account, after all, as Arendt knew, it is precisely the “polemical” character of “all political concepts, images and terms” that describes their ultimate origin and meaning in the friend-enemy opposition and its expression “in war or revolution” (BdP 31; CP 30). Arendt, for her part, observes in her earlier draft that this picture of “the revolution and its spirit as an absolute in the good old political sense of *legibus solutum*, absolved from laws and a law unto itself”—as in Schmitt’s understanding of the constituent power—is indeed the understanding that undergirds both “revolutionary or counter-revolutionary dictatorships” (as one might also conclude from Schmitt’s own analysis of dictatorship). Schmitt goes on to characterize liberalism as a kind of *weak* “polemical” opposition to the state and state interference (*Einmischung*), which seeks to put the state in the service of “society,” as if society possessed its own “order” without the state, and thus never manages to produce any positive theory of the state or of a liberal *Staatsform* (BdP 60-61; CP 60-61). Arendt concludes her footnote on the “conservative,” “reactionary” appropriation of the French Revolution and its almost exclusively “polemical” character—which revolutionaries have then attempted to imitate, less successfully—in the published version of *On Revolution*: “Conservatism, and neither liberal nor revolutionary thought, is polemical in origin and indeed almost by definition” (OR 283n3, emphasis added). That is indeed Schmitt’s definition of the political, and Arendt seems moved here to defend liberalism—which she otherwise almost never does—against Schmitt’s specific attack. In the context of her larger project in *On Revolution*, there is a reason for this, as I noted in opening, for it is precisely the revolutionary potential of that which Schmitt attacks under the label of “liberalism” in *The Concept of the Political* that Arendt seeks to recover (in the process giving it a form bearing little resemblance to most of what goes by the name of liberalism today). In the Library of Congress version, Arendt moved directly to related questions of sovereignty and (absolute) beginning: “It has been said, I think quite appropriately, that the nation stepped into the shoes of the absolute Prince, but surely it was not only the nation that stepped into those shoes. It was the revolution that in Europe had given birth to the nation-state, and national sovereignty was not simply the legacy of absolute monarchy,

ventures, another revolutionary understanding might yet be identified in so far as it would orient itself, through a further critical distancing from Schmitt, not to violence, which is always mute (nor to the acclamatory capacity of the assembled mass or mob—a point she will make later, in clear reference to Schmitt), but to the revolutionary power of speech—i.e., via which power becomes manifest, making an appearance in public. Arendt underscores this point in concluding the book’s Introduction by making appeal, against the purportedly universal political beginning in violence from Cain to Romulus, to another theological image, underscoring the point that another political theology—that is, other than Schmitt’s—and another mode of political beginning, is possible: “‘In the beginning was the Word.’”<sup>35</sup>

The next chapter moves on—to revolution, the actual subject matter, stating, to open—again, *contra* Schmitt: “We are not concerned here with the war question”—which for Schmitt evidently would have excluded any discussion of politics (OR 21). No, the real (thoroughly political) problem is the problem of beginning, and Arendt moves now straight to the issue that for her distinguishes the American and French revolutions most crucially from each other, which is also the one that lies at the center of Schmitt’s political theology: the relationship of (political) beginning to (the establishment of) sovereignty, namely of sovereignty considered as necessarily national and unitary (as opposed to the multiple separations of powers, especially through the

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but had passed through a very different kind of sovereignty, that of the revolution and its experience of an absolute, namely, the experience of an absolutely new beginning which cannot be bound by laws because it is the source of all future laws, and the experience of a revolutionary process, which, though unleashed by the acts of men, develops a force of its own whose very momentum appears to follow a law that no man made. . . . [W]hat revolutionary or counter-revolutionary dictatorships still have in common with absolute monarchies is that they base the legitimacy of their rule not on the will of tyrants, but on being the incarnation of some absolute on earth” (Ms., 3. Speeches and Writings File, 1923-1975, Hannah Arendt Papers, Manuscript Division, Library of Congress, Washington, D.C.). In the published edition, the consideration of national/unitary sovereignty and the revolutionary absolute moves down, dispersed, into the body of the book.

<sup>35</sup> OR 20 (citing the opening verse of the Gospel of John).



federal principle, established in America—which Schmitt had referred to pejoratively as the “Teilung und Balancierung der ‘Gewalten’”<sup>36</sup>):

Montesquieu’s theory of a division of powers . . . was rejected at once even before the French Revolution broke out, by Turgot, for considerations of national sovereignty, whose “majesty”—and *majestas* was Jean Bodin’s original word, which he then translated into *souveraineté*—allegedly demanded undivided centralized power. . . . [I]t is as though the nation-state, so much older than any revolutions, had defeated the revolution in Europe even before it had made its appearance. (OR 24)

Indeed, this prejudice was also connected to the other great difference, which has so often attracted the ire of critics of Arendt, the French Revolution’s preoccupation with “the social question”—for what the French Revolution proposed was in effect to transform society (not politically but) through violent revolutionary (“popular(ly) sovereign”) social transformation and society’s centralized, sovereign administration.<sup>37</sup>

For Schmitt, revolution is like war and entails above all the determination of the (sovereign, deciding) subject and the enemy who constitutes that subject (thus, as sovereign, constituent). The constituent power in its Schmittian formulation, Arendt recognized, is a conservative, counter-revolutionary power, one intended to serve the preservation of the existing order by giving it a new constitutional form. It seeks to manage political and constitutional crisis by forcibly deciding anew for the form that the pre-existing political unit will need to take if it is to continue to exist, warding off those political and existential threats that might ultimately constitute the polity otherwise. Schmitt’s constituent power is thus always a power of, as he says, the most extreme intensification of unity or oneness—of the people or nation that has already

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<sup>36</sup> BdP 61; CP 61.

<sup>37</sup> See, e.g., Emiliios Christodoulidis and Andrew Schaap, “Arendt’s Constitutional Question,” 101-116, in *Hannah Arendt and the Law*, ed. Goldini and McCorkindale (2012), for a sophisticated version of the argument that Arendt’s account of the social question excludes from politics precisely that concern with the social production of suffering that is necessary for a just politics. For a classic version of this argument, see Sheldon Wolin, “Hannah Arendt: Democracy and The Political,” *Salmagundi* no. 60 (1983), 3-19; see also Hanna Fenichel Pitkin, “Justice: On Relating Public and Private,” *Political Theory* 9 (1981), 327-52, and Richard J. Bernstein, “Rethinking the Social and the Political,” *Graduate Faculty Philosophy Journal* 11 (1986), 111-130.

constituted itself as one and thus is now capable of taking a decision on the type and form of its continuing existence.<sup>38</sup> Arendt, in contrast, refuses to locate the constituent power in any one—in any subject, people, or unitary sovereign (or collective self)<sup>39</sup>—and repeatedly takes on this Schmittian conception of politics—including its taking politics and political decision for an instance of supposed *ex nihilo* creation (*Entscheidung aus dem Nichts*)—in her own theorization of political plurality. In the central section of *The Human Condition* titled “The Traditional Substitution of Making for Acting,” Arendt presaged this investigation of the linked concepts of beginning-rule-violence-revolution in *On Revolution*, connecting them there to the tradition’s recurrent attempts to do away with plurality and its challenges—often, as the notes in her *Denktagebuch* that form the background to this discussion make abundantly clear—by reading the divine creation in a “most perniciously (*verderblichste*)” anthropomorphizing mode that equates it with human fabrication and, in turn, conceives politics analogously as a kind of “monarchy” or “*Ein-Herrschaft*” (including in those forms of democracy that see the people as “many in one” and “*Alleinherrscher*”).<sup>40</sup> This “traditional substitution of making for acting” as an attempt to evade plurality and politics, she argues here, finds its most consequential and “*virulent*” instantiation in the modern conception of revolutionary founding through the lens of “its innermost belief that history is ‘made’ by men as nature is ‘made’ by God, with the consequence of a singular “glorification of violence as the only means for ‘making’” “the

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<sup>38</sup> See *Verfassungslehre*, 50-51.

<sup>39</sup> For an attempt to settle the problem of the “paradox of constitutionalism” by (against both Schmitt and Hans Kelsen) thinking *collective selfhood* “reflexively,” see Hans Lindahl, “Constituent Power and Reflexive Identity: Towards an Ontology of Collective Selfhood,” 9-24, in *The Paradox of Constitutionalism*.

<sup>40</sup> Arendt, *The Human Condition*, 220-230; Arendt, *Vita Activa*, 214-225; *Denktagebuch* 219-20; cf. also 203-204. As Arendt notes, such *Ein-Herrschaft* had been recommended in antiquity only for household matters or—as in Schmitt’s framework—for warfare. She points out further: “*So groß ist die Verführung, die menschlichen Angelegenheiten durch die Einführung einer unpolitischen Ordnung zu stabilisieren* [cf. Arendt’s incipient critique of Schmitt (via Augustine) in her dissertation], *daß der größte Teil der politischen Philosophie seit Plato sich mühelos als eine Geschichte von Versuchen und Vorschlägen darstellen ließe, die theoretisch und praktisch darauf hinauslaufen, Politik überhaupt abzuschaffen*” (*Vita Activa*, 216).

foundation of a new body politic.”<sup>41</sup> As Arendt noted there, the one notable exception to this pattern seemed to be the American Revolution.

It is precisely this problematic that is taken up again as the last section of the *Novus Ordo Saeclorum* chapter of *On Revolution*, where Arendt most clearly establishes the distinction between an attempt, in the mode (appropriated by man to himself) of a Creator God, to re-make society via the means of violence—which continues to form the reigning understanding of revolution—and, breaking with all the inherited, legendary understandings, an actual *new beginning*—absolute and *ex nihilo*, i.e., the only possible (not futile, political, potentially durable) solution to the problem of beginning. That is, to the Schmittian understanding of the constituent power—and the misuse of political theology it entails—Arendt opposes a conception of constitution—inspired by another reading of political theology—as wholly contingent upon ongoing, radically plural encounter and the new beginnings (events that change everything) it makes (always newly) possible. Arendt thus celebrates the American founding as a moment of this kind of beginning, *even as* she bemoans the failure to keep this spirit of revolution alive in the institutions of the American Republic. In fact, despite her critical depiction of the French Revolution (and especially of the Schmittian picture of it),<sup>42</sup> Arendt sees in the sections of the original Paris Commune and in the revolutionary popular societies, as well as in similar forms that have spontaneously appeared in the midst of other modern revolutions ever since, the most promising incipient institutionalization of this spirit, which her constitutionalism aims to sustain. Though the spirit of revolution could not but be crushed by the nation-state, it nonetheless requires institutional iterations for its survival: in order to prevent dispersal and non-encounter

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<sup>41</sup> *The Human Condition*, 228; cf. *Vita Activa*, 223.

<sup>42</sup> *Pace* William Scheuerman, who thinks she just internalizes Schmitt’s depiction and is thus unable to see both “the humane elements of the French Revolution’s legacy” and the shortcomings of the American alternative, especially its conception of the separation of the powers, which she simply constructs as “an *inverted* portrait of the French experience” as she distortedly presents it (“Revolutions and Constitutions,” 261, 267).

(or war), to equalize difference enough to make negotiation of plurality possible, i.e., to provide spaces of politics in which political power can be—plurally—constituted.<sup>43</sup>

### Political Theology and Constituent Power

It has been argued that Schmitt did not apply his political theology thesis to any political instance other than the state of exception, but, as Arato and Cohen have recognized, his theory of the *verfassunggebende Gewalt* is also a clear instance of political theology.<sup>44</sup> Like the more general concept of sovereignty, Schmitt understands the constituent, or constitution-giving, power as a political theological term, modeled on a sovereign, unitary God with the power of decision:

“According to the medieval understanding, only *God* has a potestas constituens, so far as it is spoken of at all. The clause ‘All power (*Gewalt*) (or superior authority [*Obrigkeit*]) is from God’ [Rom. 13:1] means God’s constituting power (*konstituierende Gewalt*). . . . The secularization of the concept of the constituting power first emerges later,” that is, in the American Declaration of Independence and, more clearly, in the French Revolution, which together “signify the beginning of a new epoch.”<sup>45</sup> It is the continuing stakes of this particular account of the secularization entailed in the revolutionary emergence at the end of the eighteenth century, of a new order for the ages, a *novus ordo saeculorum*, that Arendt took as her problem in *On Revolution*. In doing so, she was carrying on a confrontation with Schmitt that went back to her own Weimar-era work

<sup>43</sup> See HC 198; VA 192; and Ackerman and Honig, “Agonalität,” in *Arendt-Handbuch: Leben – Werk – Wirkung*, ed. Wolfgang Heuer et al. (Stuttgart: Metzler, 2011), 345-46.

<sup>44</sup> See, e.g., Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (2000), 47: “In Chapter 3 of [*Political Theology*], he explained what he meant by ‘political theology’: the claim that all significant political concepts are secularized theological ones. This claim, however striking, taken literally, seems manifestly implausible, and Schmitt did not even attempt to prove that it applied to other core concepts of political theory, like ‘state’ and ‘constitution’. In fact, the only concept he discussed in these terms was the concept of sovereignty”; Arato and Cohen, “Banishing the Sovereign?,” 143: “Sovereignty, which always presupposes representation by and personalization in an actor or an *organ* capable of decision, requires a different political theology with the miracle or the extraordinary as its central concept. Thus Schmitt came to concentrate on two extraordinary contexts in which sovereignty—*organ* sovereignty *capable of decision*—reappears in the modern world: revolutionary constitution making and states of constitutional exception.”

<sup>45</sup> *Constitutional Theory*, 126 (translation modified); cf. *Verfassungslehre* 77, 78 and see ff.

and developing further the alternative train of political theological thought that she had generated largely out of this confrontation, from her dissertation on Augustine and love of neighbor, through her writings of the early thirties on German romanticism and antisemitism, to the study of totalitarianism that eventually grew out of it, and beyond.<sup>46</sup> As Arendt signaled in an entry in her *Denktagebuch* from 1951, the very problem with Schmitt's concept of the political—which also characterizes the (philosophical) tradition's more general misunderstanding of what politics entails—lies in the failure to conceive human plurality: “Judeo-Christian Creation-mythos and Concept of the Political: Everything hangs on the difficulty to conceive the plurality specific to human beings.”<sup>47</sup> And this basic flaw in Schmitt's political theology, Arendt also noted, reflects a mistaken interpretation of the meaning of the Biblical Creation for politics: according to Schmitt's political theology, man, created in the image of God, appropriates God's (creative) powers to himself—but this *misappropriation*, she argued, makes politics impossible. Indeed, to the extent that the Biblical account appears to deny human plurality—the simple “impossibility of politics within the Western Creation myth”—it is one of the roots of continuing Western efforts to escape politics in favor of rule or sovereignty in the singular.<sup>48</sup> Schmitt's unrelenting pursuit of unity as essential to what he calls “the political” corresponds to this misunderstanding—a misunderstanding that replays itself centrally in his theory of the constitution and his reading of the *pouvoir constituant* as unitary will bringing about ever greater “political” unity. Arendt returns again and again to the Genesis Creation story in an effort to reconceive the significance of the Creation myth for the problem of beginning.

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<sup>46</sup> See Ackerman, “The Memory of Politics,” and Ackerman, Review of Andreas Kalyvas, *Democracy and the Politics of the Extraordinary*.

<sup>47</sup> Arendt, *Denktagebuch*, April 1951, 70.

<sup>48</sup> “Unmöglichkeit der Politik innerhalb des abendländischen Schöpfungsmythos.” *Denktagebuch*, 17 (my translation). Arendt will sometimes suggest that the “second creation-myth”—male and female created He them—can provide an adequate alternative basis for politics. See, e.g., *Denktagebuch*, 295.

Once we read Arendt's engagement with Schmitt's constitutional theory in *On Revolution* back into her longer-standing debate with Schmitt on the terrain of political theology, we can begin to see Arendt's constitutionalism in a different light—taking critical distance from prior attempts to process Arendt's response to Schmitt via the theory of constituent power. Founding its own authority in the very act of beginning, the constitutionalism Arendt theorizes rejects Schmitt's account, in his *Verfassungslehre*, of the unitary source of power and authority in the will of the "constituent power" (*verfassunggebende Gewalt*), as well as the conventional, liberal constitutional alternative that is typically advanced as the proper response to Schmitt's authoritarianism (and sometimes even in Arendt's name), which would derive power and authority from separate, political and legal sources.<sup>49</sup> These accounts continue to put constitution at odds with beginning (this is why, for Andreas Kalyvas, for example, they need to be "reconciled" in a "proper balance" between extraordinary and normal politics, or why Negri sees Arendt as betraying her best, most radical insights when she valorizes American revolutionary Constitutionalism, in doing so unavoidably assimilating its inherent "conservatism"), duration at odds with novelty, politics at odds with law; Arendt rejects them all, in favor of an account in which the constitution of a stable and lasting political order depends on the maintenance of an orientation to the world and each other in which entirely new beginnings can continue to occur and to be received as such. That is, Arendt's constitutionalism seeks to overcome that split and the perpetual, "paradoxical" oscillation it provokes between new, aspirationally democratic (but inevitably exclusionary) foundings and the breaks with every founding that (a more inclusionary) democracy demands—where "radical democracy" will always be at odds with law and constitution, where normal politics excludes new beginnings, where every "constituted" political

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<sup>49</sup> See, e.g., Arato, "Forms of Constitution Making and Theories of Democracy," and Carl K. Y. Shaw, "Power and Authority in Constitutional Theory."

self is condemned to forever seek to constitute itself anew in order to approach, always only incompletely, a state of being self-constituting that can never be achieved.

### **Arendt's Revolutionary Constitutionalism**

“Where and when men succeed in keeping intact the power which sprang up between them during the course of any particular act or deed, they are already in the process of foundation,” Arendt writes in the midst of her account of the constitution of political freedom and perpetuation of “new beginning” prospectively enacted by the American “founders” at the time of the Revolution (OR 175). In her suggestive if somewhat fantastical account, these accidental revolutionaries, seeking freedom, though otherwise than how it actually emerged, brought about an “entirely new beginning,” despite themselves, founding a republic of freedom that was nonetheless ultimately lost, through the failures of their own, and their successors’, acts of constitution. It is in reflecting upon both this ultimate failure and the promise it nonetheless continues to contain that Arendt seeks to further elucidate an ongoing—and thus durable—political foundation, one which cannot be separated, especially not temporally (they are “already,” she says), from the everyday “any particular act or deed” out of which what she calls power springs and through which this power is kept alive.

“Power,” Arendt famously explains in *The Human Condition*, “is what keeps the public realm, the potential space of appearance between acting and speaking men, in existence. . . . Power is always . . . a power potential and not an unchangeable, measurable, and reliable entity like force or strength. . . . [It] springs up between men when they act together and vanishes the moment they disperse.” It is no more than “this potentiality in being together” (HC 200-201). Schmitt’s translation of Sieyès’s *pouvoir* (power) as *Gewalt* (force, violence, authority),

frequently covered over by contemporary discussions of constituent power that draw on Schmitt, is no innocent translation.<sup>50</sup> It transforms a political capacity of constitution *qua* spontaneous beginning—one that, in Arendt’s theory of constitutionalism, must remain part of any “highest law” and the organization of the polity it institutes—into a one-sided, violent assertion of a new law that will govern over the political order it has reaffirmed and reconstituted. The consequences of this common misidentification of power with violence—captured pithily in Schmitt’s interpretation of constituent power as a *verfassunggebende Gewalt*—would continue to preoccupy Arendt well beyond *On Revolution*, forming the theme also of *On Violence* (1970). As Arendt stated unmistakably there, “power and violence are opposites.”<sup>51</sup> In doing so, she reiterated her objection to Schmitt’s thinking, but also to a broad spectrum of constitutional theory.

Arendt’s constitutionalism is premised, in contrast to Schmitt’s but also, paradoxically enough, to much of the contemporary thinking of “radical democracy,” on the wager that beginning can be part of everyday politics; if it seems otherwise, she indicates, this is because deeply engrained habits train us to misconceive politics in terms that reflect the persistence of the temptation to find a “solution” to politics’ aporias. That Arendt turns to a theory of constitutionalism as the site for theorizing such beginning reflects her conviction that ongoing beginning is only possible in the context of modes of political organization in which political encounter can occur. Indeed, the central purpose of such institutions, as Arendt sees it, is to enable such radical encounter across lines of difference that might otherwise seem so stark as to provoke attempts to eliminate it; this, she argued in 1951 in *Origins*, was the frightening lesson of twentieth-century totalitarianism. The political problem of the encounter with difference,

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<sup>50</sup> *Gewalt*, in German, it is worth noting, is always unitary and one-sided, whether in its “executive” (*exekutive* or *vollziehende*), “judicial” (*richterliche*), or “constitution-giving” forms.

<sup>51</sup> Arendt, “On Violence,” in *Crises of the Republic* (1972), 155.



whose full perplexity totalitarianism had definitively made visible, thus called for nothing less than the evidently revolutionary “foundation of a new polity”—and the task of such a revolutionary foundation, which Arendt eventually theorized in *On Revolution*, would indeed be to institute the kind of relative equalization of difference that makes possible the ongoing revolutionary encounter with difference and its political negotiation as plurality out of which all new beginnings emerge.<sup>52</sup> Such a constitutionalism would be permanently revolutionary, capable of sustaining the revolution’s “treasure,” not in the form of a “permanent revolution” (Trotsky) of the sort Arendt had analyzed in *Origins* (i.e., a permanent state of lawlessness and revolutionary movement, based, again, on the mistaken assumption of an absolute opposition between revolution and law) but, rather, in the form of a revolutionary constitutionalism.

It is indeed the *combination* of the two elements typically taken to separate constitution, foundation and law from revolution—“the concern with stability and the spirit of the new”—that Arendt understands by “constitution(alism)” and seeks to illuminate through the differing examples of the American and French Revolutions. Ultimately, she considers both to have failed to achieve such a constitutionalism, revolutionary and durable—and she does not produce an apology for the American Constitutional amendment process as sufficient for keeping this spirit alive (as Vatter, like others, suggests). Although she views the American Revolution and mode of constitutional founding it produced in a more positive light than the French Revolution, she also just happens to find “the germs, the first feeble beginnings, of a new type of political organization” that would realize the promise of this revolutionary constitutionalism above all in “the Parisian Commune, its sections, and the popular societies which had spread all over France during the Revolution” (OR 244).

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<sup>52</sup> For discussion of this background see Ackerman, “The Memory of Politics.”

From the beginning of *On Revolution*, Arendt insists that revolution can only be understood through the coincidence of “the idea of freedom and the experience of a new beginning”—and then explains how this coincidence is illuminated by the ancient Greek opposition between political freedom and rule (“the ‘archy’ from *archein* in monarchy and oligarchy, or the ‘cracy’ from *kratein* in democracy”). The plot of the two great revolutions at the end of the eighteenth century, she argues, “was unmistakably the emergence of freedom,” but this only became manifest over the course of what “turned out to be a revolution,” out of the experience of being engaged in a new beginning, which was set in motion by the revolutionary actors but which, as entirely new, they could not have foreseen or conceived beforehand (OR 28-30). That freedom could be founded in America—and eventually lost there—lay in the contingent fact that the revolutionary actors had already begun to constitute their freedom long before the actual Revolution broke out, when lasting power issued from their acts of promising and covenanting—and it was from the perpetuation of these very experiences of founding “civil bodies politic,” and the ongoing new beginnings they provoked, that the new republic was able to draw the authority to contingently sustain itself.

The newness of this beginning was only obscured by the fact that the founders themselves continued to look beyond their own actions for a more secure ground for what they were doing: “Politically speaking, they had been right in deriving the stability and authority of any given body politic from its beginning, and their difficulty had been that they could not conceive of a beginning except as something which must have occurred in a distant past” (OR 198). And yet what they could have found in their turn to the past, to ancient Rome as a source for their own foundation, was indeed the key to their own practice: “The very concept of Roman authority suggests that the act of foundation inevitably develops its own stability and

permanence, and authority in this context is nothing more or less than a kind of necessary ‘augmentation’ by virtue of which all innovations and changes remain tied back to the foundation which, at the same time, they augment and increase” (OR 202). What the revolutionaries did not realize their own practice had revealed was “that it is futile to search for an absolute to break the vicious circle in which all beginning is inevitably caught, because this ‘absolute’ lies in the very act of beginning itself” (OR 204)—not, that is, in an earlier, authoritative source of beginning, but in the ongoing beginning that has been begun and can be kept alive to the extent that those who come after it continue to bind themselves back to it, in further political activity.

This is the “foundation of freedom” Arendt caught sight of in the American revolutionary praxis. What the American revolutionaries failed to secure, she demonstrates, was not any prior beginning that would lie in a separate moment of extraordinary founding that, once accomplished, would govern subsequent normal political procedures, but rather the ongoing possibility of new beginnings:

There exists a solution for the perplexities of beginning which needs no absolute to break the vicious circle. . . . What saves the act of beginning from its own arbitrariness is that it carries its own principle within itself, or, to be more precise, that beginning and principle, *principium* and principle, . . . are coeval. The absolute from which the beginning is to derive its own validity and which must save it, as it were, from its inherent arbitrariness is the principle which, together with it, makes its appearance in the world. The way the beginner starts whatever he intends to do lays down the law of action for those who have joined him . . . and remains apparent as long as the action lasts. (OR 212-13)

*Contra* Kalyvas’s interpretation, free political action does not need “general, clear, and stable” principles to rein it in and tame it, even ones that can be “extracted and reconstructed from within the instituting action itself.”<sup>53</sup> *Contra* Arato, Arendt’s claim that “the act of beginning . . . carries its own principle within itself, . . . that beginning and principle . . . are coeval,” does not

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<sup>53</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 242, 250-52.

describe a “principle of public discussion” that was followed by the delegates to the constitutional conventions in the “way and manner in which [they] organized the process” and “is thus the source of the authority of the new system of power.”<sup>54</sup> The principle of beginning that Arendt discovers is, rather, the way of beginning itself; in the experience of those who partook in the American Revolution, it took the form of “mutual promise and common deliberation” (OR 214). In Arendt’s distinctly pre-Habermasian usage of this terminology, it describes several crucial aspects of the “way” of beginning which, in a world inhabited by “men in the plural,” cannot but be a “joint” endeavor: that is, the beginning enacted by the American founders—and its establishment of a “new order for the ages” beyond all possible anticipation—manifested all at once the inescapable dependence of all beginners on “others for help,” the indispensability of speech to such appearance before others and to the plural negotiation or “deliberation” that such reciprocal reception of and response to difference requires, and the extent to which the “action in concert” that may emerge “ex nihilo” in the very midst of such radical interdependence necessitates “promises” capable of binding one another to each other into a future in which action’s course is otherwise unpredictable. These characteristics of the “way” of beginning, “the principle which, together with [the beginning], makes its appearance in the world”—“remain[ing] apparent as long as the action lasts,” *continue* to apply so long as the new order that a beginning establishes is to be kept in existence.<sup>55</sup> This “absolute principle” that makes its appearance in the world in the midst of every, inevitably plural—hence, always “relative”—beginning starkly delineates the contrast between such joint endeavor and the “dictating violence . . . supposedly unavoidable in all revolutions” (OR 213). The reason that “laws,” “*rappports*,” in Montesquieu’s definition, continue to apply even in the midst of

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<sup>54</sup> Arato, “Forms of Constitution Making,” 209-10.

<sup>55</sup> Cf., e.g., *The Human Condition*, 178-80 and ff., 189.

revolution, is that “relations” necessarily persist in revolutions, and in fact make them possible—and at least in part, following Montesquieu, “a law is merely what relates two things and therefore is relative by definition” (OR 188). The “common deliberation” that is “carried in” this particular beginning is not Habermasian deliberation, because it is self-guiding, but not normatively so; the principle it manifests is not Wolin’s “norm,” because it is not a “means of stabilizing a way of life” through “ruling and being ruled.”<sup>56</sup> The “principled” acts of beginning that Arendt describes are, rather, self-stabilizing, providing for their own permanence for the price, only, of the necessarily abyssal character of freedom, on account of which only continuing augmentation—ongoing “binding back” to the beginning—may keep any given beginning alive, authoritative, a continuing foundation of freedom.

Whereas Kalyvas’s temporality of extraordinary constitution, even if carried out by “the people” (which for him cannot but do its democratic constituting in the form of a “sovereign constituent will”—a lesson to be drawn from Schmitt and his account of the “*verfassunggebende Gewalt*”) remains caught in the institution of rule, Arendt’s extraordinary temporality of constitution as ongoing new beginning undoes it.<sup>57</sup> Whereas Negri’s constituent power as absolute process demands that all objective, instituted constitution dissolve itself in “omnilateral,” subjective innovation, Arendt’s theory of relative, absolute beginning denies that absolute newness must dismantle established relations in order to “absolutely” generate itself *and* insists on the need for all action to be nourished by self-surprising occurrences that befall the subjects who carry them out. The promising novelty in Arendt’s account is her insistence that to separate ordinary and extraordinary, constituted *constitution* and *constituting* constitution, to see them as opposed, is to misunderstand both, and also revolution and everyday politics, beginning,

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<sup>56</sup> Wolin, “Norm and Form,” 47.

<sup>57</sup> Kalyvas, *Democracy and the Politics of the Extraordinary*, 300.

freedom, and political action. This misunderstanding, insinuating itself into contemporary democratic theory, is likely to inaugurate the slide into the mistaken conception of politics in terms of *Herrschaft*, in which stable institutions would be secured only at the price of new beginnings, and of politics and political freedom, themselves. Arendt, in contrast, eludes this paradox—through an account of the interrelationship of revolution and constitution, law and politics, foundation and new beginning, in which these, and other related binaries, are not opposites. Hers is an account not of *the* politics of the extraordinary (in its opposition to the ordinary), but of multiple, ongoing times of extraordinary beginning(s) occurring in the midst of ordinary life, an account not of the revolutionary constitution of *a* constitution, but of *revolutionary constitution* that *may* continue to constitute a popularly governed political order so long as it continues to retain its authority by making new beginnings possible on its legal ground.

Arendt concludes *On Revolution* with an observation in this “revolutionary spirit,” recalling, through the words of Sophocles, what she takes to have been a (surprising) lesson of *Oedipus at Colonus*: “what it was that enabled *ordinary* men, young and old, to bear life’s burden: it was the *polis*, the space of men’s free deeds and living words, which could endow life with splendor” (OR 281, emphasis added). This “polis,” for Arendt, in the case of the political foundings discussed in *On Revolution*, is not the ancient Greek polis, or any other mere physical and legal construction; it is not a source of authority lying in a distant past, though there are resources for contemporary politics to be found in the records that have endured of that polis’s experiences. As she explained in *The Human Condition*,

the *polis*, properly speaking, is not the city-state in its physical location; it is the organization of the people as it arises out of acting and speaking together. . . . “Wherever you go, you will be a *polis*”: these famous words became not merely the watchword of Greek colonization, they expressed the conviction that action and speech create a space between the participants which can find its proper location almost anytime and anywhere. It is the space of appearance in the widest sense of the word. . . . The space of appearance

comes into being wherever men are together in the manner of speech and action, and therefore predates and precedes all formal constitution of the public realm. . . . [And it] disappears . . . with the disappearance or arrest of the activities themselves.<sup>58</sup>

In Arendt's understanding of the entirely new beginning that is enacted in the extraordinary framing of a constitution and founding of freedom—and, potentially, in the practices of contemporary democratic politics we might let this understanding inspire—the revolution will have happened both before and after the revolution, in everyday experiences of freedom, and the measure of every revolution's success will lie in new beginnings to come, which is to say, potentially “almost anytime and anywhere.”

### A “Principled” Political Theology

That human beings have so consistently failed to remain true to this principle of beginning, sacrificing practices of freedom to the pursuit of sovereignty and rule, displacing (plural) action with (self-centered) making, led Arendt to return over and over again, before and after *On Revolution*, to consider the implications of the Genesis account of the Creation, and its interpretation as a *creatio ex nihilo*, for the human “problem of the new.” And again and again she returns to Augustine as the sole thinker who offered an explanation of the Creation adequate to the human capacity for beginning: one which neither recoils in embarrassment from the “abyss of pure spontaneity” nor attempts to deny its radicality by transforming action, which always sets something loose in the world that cannot be controlled by its initiator(s), into a creativity over which the maker might hope to retain control. As Arendt put it in 1951 in a *Denktagebuch* entry contemplating the apparently overwhelming temptation to resort to either causal or cyclical explanations of history as means of avoiding the confrontation with the new: “Lost was the theologically bound insight: ‘ut initium esset, homo creatus est.’ And with it, generally, the

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<sup>58</sup> *The Human Condition*, 198-99.

insight into the event-character of history.”<sup>59</sup> Indeed, Arendt would end all subsequent editions of *Origins* (all editions except for the first English-language one) with this Augustine quotation, which recurs incessantly in her work and lends that book’s conclusion an improbably optimistic note.<sup>60</sup> Arendt likewise closed the long final section of the “Willing” volume of *The Life of the Mind*, “The abyss of freedom and the novus ordo seclorum,” with yet one more interpretation of this passage. There she took a much less admiring stance toward the “men of action” whom she had investigated in *On Revolution*, concluding that they too had “covered up” the abyss of spontaneity by “understanding the *new* as an improved re-statement of the old”—so that “in its original integrity, freedom survived in political theory . . . only in utopian and unfounded promises of a final ‘realm of freedom’ that . . . would indeed spell ‘the end of all things,’ a sempiternal peace in which all specifically human activities would wither away.”<sup>61</sup>

In contrast, Arendt argued, Augustine’s answer to the problem of the Will represented the “only one tentative alternative to [this disavowal of freedom] in our entire history of political thought”:

According to [Augustine] . . . God created man as a temporal creature, *homo temporalis*; time and man were created together, and this temporality was affirmed by the fact that each man owed his life . . . to birth, the entry of a novel creature who *as* something entirely new appears in the midst of the time continuum of the world. The purpose of the creation of man was to make possible a *beginning*: “That there be a beginning man was created, before whom nobody was”—“*Initium . . . ergo ut esset, creatus est homo, ante quem nullus fuit.*” The very capacity for beginning is rooted in *natality*, and by no means in creativity, not in a gift but in the fact that human beings, new men, again and again appear in the world by virtue of birth.<sup>62</sup>

<sup>59</sup> *Denktagebuch*, July 1951, 114-15.

<sup>60</sup> The 1955 first German edition was the first one in which the essay “Ideology and Terror” was substituted for the original “Concluding Remarks,” which never appeared in German. Thus, from 1955 on, the book closed: “Beginning, before it becomes a historical event, is the supreme capacity of man; politically, it is identical with man’s freedom. *Initium ut esset homo creatus est*—‘that a beginning be made man was created’ said Augustine. This beginning is guaranteed by each new birth; it is indeed every man” (*Origins of Totalitarianism*, 3rd edn., 479).

<sup>61</sup> *Willing*, vol. 2 of *The Life of the Mind*, 216. (Arendt adds, characteristically: “in its Marxian version at any rate.”)

<sup>62</sup> *Willing*, vol. 2 of *The Life of the Mind*, 216-17; cf. also 108.



The distinctly “theologically bound” insight into politics that Augustine provides with his alternative interpretation of the Creation, Arendt argues, the insight that exclusively preserves the “event character of history,” has nothing to do with man’s being created in God’s image and even less with his being granted a human power of creation analogous to God’s.<sup>63</sup> That is, in stark contrast to Schmitt’s political theology, it lies, rather, in the understanding, bound up closely with the ability to conceive human plurality, that every singular human being changes the world—a world that precedes her—simply by being born *into* it, by appearing in it and thereby soliciting a response. To be born is to not be the creator of oneself; being born attests to the possibility of a revolutionary beginning that defies the expectation that the new must be (violently) made. Such birth, following Augustine, affirms the event of Creation; it does not occur *ex nihilo* and yet cannot but appear *ex nihilo* once it has happened, a given difference unlike anything that had come before.

As Arendt’s investigations of willing in *The Life of the Mind* demonstrate, this is a lesson that has eluded the philosophers of the tradition, however, who have consistently avoided the problem of the new and, accordingly, shied away from formulating an account of beginning adequate to the political world. Kant is the best example of this embarrassment; “what is so very troublesome [to him] is the notion of an *absolute* beginning, for ‘a series occurring in the world can have only a relatively first beginning, being always preceded by some other state of things.’”<sup>64</sup> Among philosophers only Augustine—and only Augustine the distinctly political theologian of *The City of God*—managed to formulate a glimpse of the possibility of spontaneously beginning a series in and into a world that always pre-exists the beginner but

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<sup>63</sup> Cf. also *Willing*, 135: “The hallmark of this creature, obviously closer to God than any other, is by no means creativity; in that case the creature would indeed have been something like a ‘mortal God.’”

<sup>64</sup> *Willing*, 29.

which is nonetheless absolute, a “*creatio ex nihilo* [which] abolishes the sequence of temporality”:<sup>65</sup>

The distinction between an ‘absolute’ and a ‘relative’ beginning points to the same phenomenon we find in Augustine’s distinction between the *principium* of the Heaven and the Earth and the *initium* of Man. And had Kant known of Augustine’s philosophy of natality he might have agreed that the freedom of a *relatively* absolute spontaneity is no more embarrassing to human reason than the fact that men are *born*—newcomers again and again in a world that preceded them in time.<sup>66</sup>

Indeed, only such an understanding could possibly do justice to the significance of “the event character of history,” namely, of those “events” that, as Arendt explained at the conclusion of “What Is Freedom?,” change everything not just in “extraordinary” moments of revolution and foundation but in their everyday, revolutionary impact in the space and time of politics, and—re-read in light of Arendt’s analysis in *On Revolution* of the possibility of a “revolutionary constitutionalism”—in the instances of founding that they may harbor:

*Every act*, seen from the perspective not of the agent but of the process in whose framework it occurs and whose automatism it interrupts, is a “miracle”—that is, something which could not be expected. . . . It is in the very nature of every new beginning that it breaks into the world as an “infinite improbability,” and yet it is precisely this infinitely improbable which actually *constitutes* the very texture of *everything that we call real*. . . . It is because of this element of the “miraculous” present in all reality that events, no matter how well anticipated in fear or hope, strike us with a shock of surprise once they have come to pass. . . . History . . . is full of events; here the miracle of accident and infinite improbability *occurs so frequently* that it seems strange to speak of miracles at all.<sup>67</sup>

Arendt’s revolutionary constitutionalism, in which *ex nihilo* (re-)foundings are an ongoing, everyday, plural affair, relative and absolute at once, is formulated on the basis of another political theology than the one that conceives political foundings in the form of a sovereign constituent power acting analogously to the divine act of creation, “making” a constitution and a political order that would rule as higher law over what follows. According to

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<sup>65</sup> *Willing*, 208.

<sup>66</sup> *Willing*, 110.

<sup>67</sup> *Between Past and Future*, 1968 edn., 169-70, emphasis added.

this other political theology, politics is a matter of encounter, and political new beginning takes place always in and into a pre-existing web of human relations, a given fabric that provides the material for acts of agonistic negotiation and contingent agreement, of the ongoing processing of difference into plurality, that, it will sometimes turn out, change everything. When they do, they reveal themselves, retrospectively, to have established anew, *ex nihilo*, a durable common world beyond every conceivable anticipation and human production: “a *novus ordo saeculorum*, a ‘new order of the ages’ with whose rise the world had structurally changed.”<sup>68</sup> In such a novelly organized body politic it might even become possible for new political beginnings to continue to occur, via continuing encounter with and political reception of and response to difference.

The new mode of constitution that Arendt correspondingly contemplates thus entails an effort to find a political alternative to states as we know them and their modes of founding and establishing power and authority, the potential for a “‘transformation of the State’” analogous to the “‘change in the form of government itself, and the constitution of a Republic as the only government . . . fit to rule in the land of the free’” that the American revolutionaries had been carried into, the ultimate shortcomings of which had made that much more evident the continuing need for “a new form of government that would permit every member of the modern egalitarian society to become a ‘participator’ in public affairs.”<sup>69</sup> It is in the face of this (especially post-totalitarian) need that Arendt’s interest in *On Revolution* settles finally on specifically institutional questions—questions of “form,” of founding, i.e., of founding a new order. What Arendt identifies there in the form of the councils that have emerged repeatedly in the midst of revolutions from the eighteenth century to the present is a spontaneous, unplanned, political, actively egalitarian form of self-organization and constitution that aims at responsibility

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<sup>68</sup> *Willing*, 204.

<sup>69</sup> OR 264-65; *Willing*, 206.

for a common world, in which plural human beings can come together in joint action. Their formation is notable for the non-anarchical, non-lawless absence of constraint (of law *in force*) that characterized it, as well as for their fundamentally federal character—federalism (combined with “community councils”) having been, namely, at least since Arendt’s writings on the Palestine question from the 1940s, for her the most promising institutional arrangement for diffusing sovereignty into plural, joint practices of co-governance (and political new beginning, according to what Arendt in *On Revolution* calls “the intimate connection between the spirit of revolution and the principle of federation” [OR 174]) and thereby overcoming the nation-state model and the “homogeneity of past and origin” that is, as Schmitt would have agreed, *its* “decisive principle” (OR 266).<sup>70</sup> Although the councils that emerged in the midst of revolutions were, as Arendt notes, in each instance subsequently overwhelmed by a state and party apparatus, it is the lessons of Arendt’s joined reading of the longer-lasting (i.e., ultimately failed success of) the American experiment in revolutionary constitution(making)—which is to say, above all, its indication of the necessity of its ongoingness, of sustaining continuing new beginning—that makes it possible to contemplate the eventual successful endurance of a council system, or of something similar and yet to be discovered, perhaps even out of our interactions with and performative reworkings of existing political institutions, as a political form adequate to a revolutionary constitutionalism.

As such, Arendt’s intervention into the contested, mid-twentieth-century (re-)narration of the American founding<sup>71</sup> is also, it turns out, an intervention into the similarly contested *Gründungstheorie* of the Weimar Republic, amidst which Schmitt had offered his theory of the popular sovereign giving of the constitution through a constituent power, or *verfassunggebende*

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<sup>70</sup> See Arendt, *Jewish Writings*, 193-98, 220, 336, 371, 400, 446-50.

<sup>71</sup> See Patchen Markell, “The Experience of Action,” in *Thinking in Dark Times*, ed. Roger Berkowitz et al. (2010), 95-102, for a consideration of this context.

*Gewalt*, in the context of an already existing state, as one possible political remanifestation of the divine *Schöpfungsakt*. Whereas Schmitt's political theology of the constituent power, and the constitutional theory that accompanies it, "secularizes" God's powers by ascribing them to man, undergirding a proclaimed human power of absolute, sovereign self-creation, Arendt draws upon a political theology of plural encounter to formulate a theory of constitution as the perpetuation of new beginnings that are simultaneously entirely new, absolute, and relative. Such beginnings acquire their ex nihilo character only retrospectively, only once the transformations they have effected have become evident, but they never emerge out of nothingness. Rather, they arise in the midst of the everyday political activity of plural encounter and the negotiation of action in concert—activities that themselves challenge already existing political orders to confront the ever-present possibility of their wholesale transformation without viewing this necessary possibility as a violent break or rupture. Such prospective transformation, Arendt argues, needs to be comprehended—though it cannot be anticipated—as an everyday possibility, as an aspect of the "theologically bound insight into the event character of history," as manifestation of the political non-opposition between "the concern with stability and the spirit of the new." Ongoing political new beginnings, which sustain both political interaction and constitutions, Arendt maintains, are themselves only possible in the context of established, common worlds and politically and legally instituted modes of organization; it is the function of a theory of constitutionalism—a revolutionary constitutionalism—to show how this can be so.

Read in these multiple contexts, it becomes possible to make new sense of Arendt's appeal, via her unorthodox reading of Montesquieu, to political "principle" as a "solution for the otherwise unsolvable problem of an absolute in the realm of human affairs which is relative by definition" (OR 213). Arendt's readers have continually sought to find an identification of

specific, concrete, normative principles in this invocation—she seems, after all, to offer some such principles when she speaks of the “mutual promise and common deliberation” that animated the American founding<sup>72</sup>—and when these readers inevitably find Arendt’s proposed principles lacking, they often propose their own.<sup>73</sup> But this evident lack should perhaps instead give us pause before embarking on such a path, for we might also take it as a signal that something else is at work: the principle that Arendt discovers in beginning is, indeed, the principle of beginning.

If Arendt had begun her reflections on the possibility of a new mode of beginning adequate to found a post-totalitarian polity, a decade earlier, with the idea of a beginning “without violence, without *archein*” (DB 131), her conclusion now was that such a beginning was to be found instead in a rereading of the multiple meanings of the word *archê*, and thus precisely in a beginning *qua* “*archê*”: “For the Greek word for beginning is *archê*, and *archê* means both beginning and principle” (OR 213).<sup>74</sup> It was thus that she could now appeal with Plato—the political theologian—against Plato the philosopher, and against Schmitt, to a “god”

<sup>72</sup> Or when, earlier, in “What Is Freedom?,” explaining Montesquieu’s principles inspiring action, she offers: “Such principles are honor or glory, love of equality, . . . distinction or excellence, . . . fear or distrust or hatred” (*Between Past and Future*, 152).

<sup>73</sup> Kalyvas, e.g., turns to Habermas’s account of the necessary performative presuppositions of constitutional practice to supply the normative principles he claims Arendt failed to develop even as she saw the need for them, or for “a general norm of authorization as the main check against the illegality of extraordinary politics”—which would finally provide the sovereign constituent power with immanent limits (247, 250-51).

<sup>74</sup> By January 1952, as Arendt’s reading had moved on from Plato to Montesquieu, she had determined that the tradition’s misunderstanding of beginning in terms of rule was intimately bound up with its failure to comprehend the plural character of *power*—and hence also the interrelation of power and beginning:

Macht:

Der Grund, dass Politik im Bereich des Zwischen entsteht: Macht kommt zustande, wenn immer Menschen etwas zusammen unternehmen, ist gleichsam das Urphänomen der Pluralität. . . .

Macht entspringt im Zwischen der Pluralität. . . . Das »initium«, das der Mensch ist, verwirklicht sich nur in dieser Sphäre des Zwischen. Mit dem Ursprung der Macht im Zwischen entspringt der Anfang. Daher heisst ἀρχή Anfang und Herrschaft, nur das im Wort Herrschaft bereits eine Miss-Interpretation unterläuft. ἀρχή ist Anfang und Macht in Einem. (DB 160-61)

On the broader significance of Arendt’s reading of this traditional misinterpretation to her political theory, see Patchen Markell, “The Rule of the People: Arendt, *Archê*, and Democracy,” *American Political Science Review* 100, no. 1 (2006): 1-14.

whose power, in the political sphere, lay not in a divine violence but in the cultivation of a power potentially truly constituent, a plural, political power of ongoing beginning: “‘For the beginning, because it contains its own principle, is also a god who, as long as he dwells among men, as long as he inspires their deeds, saves everything’” (OR 213).<sup>75</sup> Such a beginning, transcendent and everyday at once, is not the work of a *verfassunggebende Gewalt* but it is not for that any less revolutionary. Indeed, such a “god dwelling among men” might just “save everything” by inspiring continuing human new beginning. Such a god, Arendt suggests, might even take the form of a *constitution* worthy of continuing worship but by no means immune to continuing radical (self-)transformation, and indeed, according to Arendt’s constitutionalism, rather, dependent upon it—true to its principle, the principle of beginning, again and again and again.<sup>76</sup>

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<sup>75</sup> Arendt here cites Plato, *Laws* 775e (“ἀρχὴ γὰρ καὶ θεὸς ἐν ἀνθρώποις ἰδρυμένη σώζει πάντα”)—translating freely. Arendt had puzzled over this citation since noting it in her *Denktagebuch* in October 1950, during the intensive study of Plato with which she followed the completion of the manuscript of *Origins*. There, she translated: “*denn der Anfang, der verweilt, und der Gott rettet (bewahrt auf) bei den Menschen alles.*” Arendt’s reading of the *Laws* was guided by the concern she noted in the preceding entry: “*Problem der Politik: Problem der Gründung* [the problem of politics: the problem of founding]” (DB 36).

<sup>76</sup> On the “‘undiscriminating and blind worship’ with which the people of the United States have looked upon their ‘constitution’” (citing Woodrow Wilson) and the “great measure of success the American founders could book for themselves [that] one is tempted to think, was decided the very moment when the Constitution began to be ‘worshipped,’ even though it had hardly begun to operate”—that is, through “the authority which the act of foundation carried within itself”—see OR 203-204, 198-99. As already noted, Arendt concluded that this worship, in the form it ultimately took, had not been sufficient to sustain that initial success.