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"Sacred Precincts": Women's Sphere and the State of Exception

In 1968, the Supreme Court ruling *Griswold v. Connecticut* declared the "sacred precincts of the marital bedroom" a space outside the state's jurisdiction, in which a married couple might make childbearing choices privately. A conventional legal understanding of privacy, cobbled together through precedent into a right declared by the individual against the state, followed from this delineation.

The majority opinion in *Griswold* was, on its face, a feminist victory, enshrining one vision of reproductive autonomy that served as the basis of further juridical affirmation of state non-interference in sexual choice. This vision of privacy was interpreted in later decisions ever more broadly to include reproductive and non-reproductive sex, inside and outside of marriage. Through this ruling and those that would follow in this American legal genealogy, the marital bedroom was enacted *by* the law as a place *beyond* the law's reach, with this space of sexual intimacy existing as constitutive of and prior to the paradigm of the private liberal individual.

By returning to this ruling, however, we can recover a theoretical opening to consider a fundamental juridical paradox that has been largely untouched by feminist critique: how does the law declare its own limit? Put differently, how might we square the force of positive law displayed with the negative space it draws and places outside of the law in *Griswold*? How might we understand the domestic sphere through, instead, this image of the sacred precincts of the marital bedroom, its threshold at once created by the state and across which the state dares not tread?

In what follows, I rearticulate the preconditions of a deadlock in contemporary feminist discourse concerning the political—and anti-political—position of the domestic sphere and the role played by its distinction from the public realm in women's oppression. Guided by this paradox

of positive law, this paper re-examines the division between the public and the private by drawing connections to other politically-constitutive distinctions, that is, between nature and politics and between what Giorgio Agamben develops in *Homo Sacer* as bare and qualified life, *zoe* and *bios*.

Far from establishing what it has been taken to show—that is, an individual "right to privacy"—*Griswold,* and the cases for which it acted as controlling precedent, establishes instead a bounded space of intimacy outside of the state's reach, drawing on centuries of law and political practice that reinscribe the realm of sexual intimacy and biological necessity as beyond those very powers that define it. This act of exception, for Agamben, following Carl Schmitt, is definitional of sovereignty, as the force of law acts paradoxically to draw its own limits. The juridically-created privacy of the domestic is emblematic of a constitutive question, then, of political thought. The sovereign's capacity to draw its own limit has been the fundamental act of sovereignty and the essential precondition for politics, and it has been realized by the walling off of the domestic sphere, and women within it, from political life.

Against a view of Sarah Igo has described as the "odd, even accidental" fact of "the binding of marital sexuality and reproduction to the constitutional right to privacy,"[1] I argue here that is not at all incidental that the zone excepted by these rulings happens to be the marital bedroom. The position of reproduction within the law is constitutive of its broader understandings of privacy and what constitutes the boundaries of sovereign power. In this paper, I take the juridical genealogy of privacy, and the realms it places outside of the law's reach through the power of positive law, as a

[1] Sarah Igo, *The Known Citizen*, 155. Igo notes that "strikingly, *Griswold* and nearly all the Supreme Court cases that came on its heels crafted the constitutional right to privacy within the context of sexual intimacy and family life" (159), but comments that "the binding of marital sexuality and reproduction to the constitutional right to privacy should strike us as odd, even accidental" (155). In what follows, I explore the ways in which, far from odd or accidental, this connection between reproduction and privacy is constitutive of our understandings of the boundaries between the political and the anti-political as well as the juridical and the anti-juridical.

starting position to consider fundamental questions of women's exclusion from the realm of the political.

This image of the sacred precincts of the marital bedroom, a juridically constituted realm of bare life, grounds this paper. This realm could be understood as spatially distinct from the public realm of political life. But these sacred precincts can only be fully theorized by considering the temporality it contains as inextricably tied to its spatiality, as, indeed, a kind of spatial containment of divergent or anti-political *temporalities*. The spatial distinction seems to be at once predicated on and productive of distinctive temporalities, in which the cyclical time of *zoe,* the growth, decay, and maintenance of biological life within the household, stands in contrast to the linear movement of the political public, which articulates a linear departure from the natural.

I argue that women's relegation to the realm of the *anti-political* is predicated on an understanding of politics as that which has dominated and transcended nature, tracing the connections between a spatial understanding of the realm of necessity and a temporal understanding of a pre-political and overcome state of nature. I will first gloss Agamben's distinctions between bare and qualified life and the juridical basis of his understanding of the state of exception, to show the basis of sovereignty in this distinction between bare and qualified life. I then employ these categories to understand the juridical concept of *coverture,* returning to *Griswold v Connecticut,* to consider this structure of simultaneous legal abandonment and construction of intimate space and its implications for our understandings of sovereignty. I close with a discussion of the social contract tradition and the way it derives sovereignty out of, and against, pre-political nature, positioning women within a divergent and chaotic temporality through the exclusion of reproduction from the time of politics.

What I argue here is that the apparently intractable problem of women's position, between the domestic and the political, rests upon an understanding of time, and of nature's time more particularly, that has been undertheorized by feminist theorists despite its continued relevance to accounts of the origins of the political. The state of nature, far from merely an abstract thought experiment or a Romantic anthropological notion, instead represents the fundamental pre-condition of capitalist-democracy: the domination and transcendence of nature. Its position within even feminist critiques of liberalism has been left curiously untroubled; Carole Pateman, for example, assumes that the mythologeme of the social contract announces a decisive temporal break with the state of nature.[2] Even more curiously, feminist theorists of the essential role of the appropriation and domination of nature and the natural world rarely, if ever, address the concept of the "state of nature," failing to see this origin of women's oppression that lies at the heart of inherited modern understandings of the preconditions of politics.[3]

I suggest throughout this paper that neither liberal democracy nor the evolving forms of capitalist production that have underpinned it theorize a decisive break with the state of nature, despite the position of nature and the pre-political as the constitutive exclusion of these political and economic forms. Rather, this realm of chaotic anti-political nature, with its cyclic temporality of metabolic growth and decay so at odds with the linear progression of time in a rationalized world, has been incorporated into the "post-contract" order as an instantiated state of nature within civil society, or a state of exception. The work of what Hannah Arendt might call "labor" or Simone de Beauvoir "immanence" represents both a precondition and the fundamental antithesis

[2] See Carole Pateman, *The Sexual Contract* (Redwood City, CA: Stanford University Press, 2018).
[3] Relevant texts here include Val Plumwood, *Feminism and the Mastery of Nature* (Philadelphia: Routledge, 1994); Carolyn Merchant, *The Death of Nature* (New York: HarperOne, 1990); Silvia Federici, *Caliban and the Witch* (New York: Autonomedia, 2004); and Maria Mies, *Patriarchy and Accumulation on a World Scale* (London: Zed Books, 1999).

of public life, in which the logics of liberal democracy and capitalism demand the total overcoming of the natural by the rationalized, the human, the man.

This article seeks to theoretically position women's present and historical political oppression within the privatization of the domestic sphere in liberal theory and legal precedent, examining the ways in which the institution of the family has been, and is still, used to justify masculine domination within the excepted sphere of the family. Here, I tell a genealogical story, providing a framework in which to think about the social and political structures of our present day as the products of a fundamental binary and domination at the center of our political system, one which Agamben identifies but does not fully understand. While I situate my analysis within feminist critical legal theory and political-theoretical feminist critiques of liberalism, the implications contest the liberal feminisms articulated elsewhere by Susan Moller Okin and by Martha Nussbaum, who seek to recover within the privacy of the domestic sphere a form of the privacy of the *individual* conducive to women's social and political liberation.[4] I argue that this privacy is fundamentally constituted through the exception of women as bare life and of the domestic sphere as a state of nature within civil society. This "privacy" is fundamentally public, created by and in service of the state and the liberal order.

It would, of course, hardly be groundbreaking feminist scholarship to suggest that there might be something amiss in the liberal distinction between public and domestic, between family and market, between state and society. What I hope to introduce is a new way of thinking about the private within liberal democracy as itself constitutive of women's oppression, of conceptualizing

[4] See Susan Moller Okin, *Justice, Gender and the Family*, and Martha Nussbaum, *Sex and Social Justice*. American jurisprudence established the right to privacy through a series of cases concerned not with the private *as such* (that is, of the individual *contra omnes*), but by establishing the privacy of familial and, particularly, sexual intimacy. From *Griswold* through *Roe v. Wade* (1973) to *Obergefell v. Hodges* (2015), the due process clause of the 14th Amendment (along with other rights guaranteed in the 5th and 9th Amendments), American privacy has been established by the courts as the right to intimate, natural spaces in which the state cannot interfere, paradoxically creating, through positive law, realms in which the law cannot tread.

"privatization" as "legal abandonment," rather than insufficient inclusion in democratic publics, and of urging feminist theorists to tread cautiously in their discussion of the social contract, at risk of reifying the temporal distinction between "state of nature" and "civil society." If the state of nature has been, as I argue, incorporated into the civil order as the domestic sphere, therefore analogous to the state of exception, then affirming a temporal break with the state of nature obscures the theoretical function of the "separate spheres." We may set up a logical equivalency: the public is to civil society as the domestic is to the state of nature. Just as the domestic is problematically incorporated within and set apart from civil society through the distinction between bare and qualified life, the state of nature is not left behind by the creation of civil society, but instead brought fully into political society within the state of exception. As I will show, we can hardly begin to imagine our way out of one dichotomy without questioning our inheritance of the other.

Refiguring Agamben

By turning to the work of Giorgio Agamben, I mean to at once criticize and to refigure his analysis of sovereignty. The distinction between modes of living, distinguished not merely spatially but through their temporality, is at the heart of Agamben's theory of sovereignty and offers both an addendum to and foil for feminist criticism of the distinction between the public and the private and its position within political life. I here present the division between the public and domestic spheres as both emblematic of and, crucially, also the *source* of the division between his concepts of bare and qualified life.

This distinction between bare and qualified life maps onto and redraws distinctions between the domestic sphere and the public sphere, between women and men, and between the state of nature and civil society**.** By understanding these distinctions as referring to similar

concepts, by understanding the slippage that has occurred between them in historical political and legal thought, we can understand the particular form of oppression permitted by the privatized domestic sphere and the liberal distinction between the private and the political more generally. I intend here to stress the connection between the state of nature and the state of exception, to thereby underline the ways in which the domestic sphere, in the ways in which it is analogous to the state of exception, challenges the temporal division between the state of nature and civil society at the heart of contract theory.

In *Homo Sacer* and *State of Exception*, Agamben understands the problem of sovereignty to exist in the boundary between and conflation of two forms of life. *Zoē*, or bare life, is "the simple fact of living common to all living beings (animals, men, or gods)."[5] It is the "simply natural" and "merely reproductive" form of human life, which is "excluded from the polis in the strict sense, and remains confined" within the "sphere of the oikos, 'home.'"[6] It is distinguished from qualified, and truly human, life, *bios*, which is "the form or way of living proper to an individual or a group."[7] The fundamental biopolitical problem—the fundamental problem, indeed, of modernity—presents itself as "the entry of *zoē* into the sphere of *the polis*—the politicization of bare life as such," which "signals a radical transformation of the political-philosophical categories of classical thought."[8] This transformation, what Hannah Arendt might tantalizingly call the rise of "housekeeping" politics, would see all politics devoted to the production and reproduction of desirable forms of human life and the discipling and exclusion of the undesireable.

The state of exception is the realm of bare life. This, the basis of Agamben's theory of sovereignty in *Homo Sacer* and *State of Exception*, is a juridical structure whose nature resists

[5] Giorgio Agamben, *Homo Sacer*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), 9.
[6] Ibid.
[7] Ibid.
[8] Agamben, *Homo Sacer*, 10.

simple geometric or geographic description, as evidenced by the following description: "the state of exception is neither external nor internal to the juridical order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other. The suspension of the norm does not mean its abolition, and the zone of anomie that it establishes is not (or at least claims not to be) unrelated to the juridical order."[9] The state of exception is that "juridically empty" space in which "everything that the sovereign deem[s] de facto necessary could happen."[10] This is the paradox of the state of exception: it exists "outside" of the law but is the fundamental constitutive principle of sovereignty and, therefore, of the law. The state of exception is, Agamben writes, "a kenomatic state, an emptiness of law, and the idea of an originary indistinction and fullness of power must be considered a legal mythologeme analogous to the idea of a state of nature."[11] The state of exception is thereby the *foundational myth* that holds together the legal system, an emptiness and disorder that is order-creating and is, in this way, an instantiated state of nature within the civil order. It is this definition to which I will return, again and again, throughout this discussion.

Homo sacer is man legally reduced to bare life as a form of legal punishment, such that he may be killed with impunity, but not murdered (that is, *qua* homicide, which entails legal consequences) or sacrificed (an honor withheld). In his legal *ban* from political life, he occupies a position analogous to that of women within the household, directed towards the mere reproduction of life. And yet Agamben does not draw this comparison: throughout *Homo Sacer*, this figure remains necessarily the man who loses rights he at one time possessed, never, despite the foundational domestic definition of bare life, the woman in the classical world who was born without them. I

[9] Giorgio Agamben, *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005), 23.
[10] Agamben, *Homo Sacer*, 28.
[11] Agamben, *State of Exception*, 6.

propose an understanding of *femina sacer* as the position of women with modern liberal and democratic thought, using Agamben's theory of the state of nature and the state of exception to think through the division between the domestic and the public as, conceptually, the division between the state of nature and civil society.

I take as my theoretical point of departure the description within *Homo Sacer* of the state of exception as an instantiated state of nature *within civil society*. Agamben writes: "sovereignty thus presents itself as an incorporation of the state of nature in society, or, if one prefers, as a state of indistinction between nature and culture, between violence and law, and this very indistinction constitutes specifically sovereign violence. The state of nature is therefore not truly external to nomos but rather contains its virtuality."[12] In what follows, I track the ways in which this way of thinking of the state of nature can render the position of the domestic sphere within civil society, and of women within the domestic sphere, clearer to feminist critique, by reorienting critique around several of the distinctions that most interest Agamben: "outside and inside, exclusion and inclusion, nomos and physis."[13] I add to or modify these dichotomies by introducing several others, which are the locus of my critical intervention, drawing connections between civil society/state of nature, woman/man, and public/domestic. .

Despite its central role in his articulation of the division between bare and qualified life, Agamben does not recognize this foundational distinction of the household from the realm of the public to be an act of sovereignty or a political act at all. Far from it: the *oikos* remains untroubled within this analysis along with the force that distinguishes it; the problems of modernity emerge when bare life overtakes its bulwarks and enters the public realm, or when men are reduced to the category of bare life within the camps. This is a puzzling tendency within analyses of biopolitics

[12] Agamben, *Homo Sacer*, 27.
[13] Agamben, *Homo Sacer*, 23.

more generally. Miguel Vatter, for example, describes *zoe* as "encountered in the sphere of prepolitical or familial life (Greek: *oikos*) that governs the sexual reproduction of life, and then in the economy that governs living labor."[14] Without engagement with feminist thought—or with much concern for women at all—these analyses end up reifying the sovereign creation of the family as the realm fitting bare life.

What does it mean when the realm of bare life is *naturalized* as the household and only *pathologized* as the state of exception? What understandings of the essential bases of political life are imported into this assumption? That is, if political life only becomes "pathologized," or subject to Agamben's critique, when the life of the household escapes its confines and becomes the essential biopolitical concern of state mechanisms and power, what are we to think of the prior mechanisms through which bare life is cordoned off in the household, certain *types* of humans assigned to this sphere, and political life defined against this realm as its constitutive exclusion? How do these serve as the unexamined bases for political sovereignty, left unexamined even by sovereignty's critics?

Following these questions, I can articulate an understanding of nature and necessity as that which has been dominated – subdued and contained, expropriated and pillaged – as the prerequisite condition for political life. The domestic sphere, the extra- and pre-political realm of necessity and as the realm properly fitting bare life by Agamben, acts to spatially contain the natural in order for the social and biological reproduction of life to take place and to temporally contain *nature* itself in order to meet the theoretical conditions for the social contract tradition: the decisive political break from nature.

[14] Miguel Vatter, *The Republic of the Living* (New York: Fordham University Press, 2014).

Agamben is clear that "the state of nature and the state of exception are nothing but two sides of a single topological process in which what was presupposed as external (the state of nature) now reappears, as in a Mobius strip or a Leyden jar, in the inside (as state of exception)."[15] The state of exception is the *non-* (and, indeed, even anti-) *juridical* that *constitutes the juridical*. This fundamental act that at once instantiates and displays sovereignty, the declaration of the exception, exists within theories of the social contract as the distinction of civil society from the state of nature, as civil society declares its origins, antithesis, and limit. In this way, to return to the legal formulation of privacy suggested at the beginning of this paper, the domestic sphere can rightly be understood as the "sacred precincts of the marital bedroom."

The Legal Basis of Men's Rule

We have seen within Agamben that the state of exception is a juridical construction, in and through which the law acts to draw its own limit. I argue in this section that we can understand the jurisprudence of privacy, predicated on intimacy, to function through this same paradox of positive law. Much like the exception, privacy is at once determined by and the grounds of sovereign power. I turn in this section to the simultaneous judicial construction and abandonment of the domestic as the constitutive exclusion of political space*,* cued by my earlier invocation of *Griswold v. Connecticut* and the phrase "the sacred precincts of the marital bedroom."

In Volume 1 of his *Commentaries on the Laws of England*, William Blackstone writes that, in English common law, "by marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs

[15] Agamben, *Homo Sacer*, 28.

everything."[16] Particularly salient within this formulation, for my appropriation of and comparison to Agamben's understanding of *homo sacer* as man reduced to bare life, is that a woman's legal existence has been *suspended* through entering marriage. We might amend Blackstone's tabulation of the modes of woman's subjection to her husband to include one more: she is under his wing, protection, cover, and *rule*. The husband and wife do not, it is clear, constitute a new person through marriage. Rather, the wife is subservient to, and subsumed by, the man who maintains his pre-marital legal *personhood*. The wife is at once within and without the political and legal system, technically represented in the form of her husband but only through the eradication of her own pre-marital self. This woman might, indeed, become *femina sacer*.

While coverture has lost its formal legal codification in the United States over the course of the last two centuries, through the Married Women's Property Act of 1848 and individual state legislation that followed in this vein throughout the twentieth century, we may see the juridical structure it established in cases, like *Griswold*, that draw a boundary between the political and the familial. The development of family law, and its increased separation from public law, would further the notion that the law's engagement with the family was intended to normatively draw individual family units in line with a sentimentalized vision of the "haven in a heartless world," rather than adjudicating harms within (or caused by) the family structure itself. The family was created in law as the space in which women lost any legal status they might have reasonably claimed as individuals within a democratic public and, indeed, as a quasi-state of nature within political society.

In "The Family and the Market," Elizabeth Olsen builds on a distinctive aspect of Blackstone's theory of coverture: a man may not enter into a contract with his wife, since this would "suppose

[16] William Blackstone, *Commentaries On the Laws of England, Vol. I* (1765), 442.

her separate existence; and to covenant with her, would be only to covenant with himself: and therefore it is also generally true, that all compacts made between husband and wife, when single, are voided by the intermarriage."[17] Olsen writes that "once a man and a woman were married, they could no longer enter enforceable contracts with each other. Within the family, privatization created a limited 'state of nature,' in which the state refused to protect one family member from the harmful acts of any other family member."[18] This is the major point that I wish to underline in my discussion of the legal privatization of the family, so it is here worth pausing in order to highlight its gravity.

The privatization of the family institutes a kind of state of nature from which the law has receded and against which civil society defines itself. A pivotal moment in American legal history is a "deformalist" trend, based on the ideology of the sentimental family, which accordingly focused on "making the family more like the ideal image of the family and enforcing an altruistic ethic. Generally, these reforms tend to widen the separation between the market and the family, and they frequently increase sexual hierarchy."[19] It is clear that it is this very separation that paradoxically closes off the marital bedroom as a realm in which all is permitted, as "the delegalized private family instituted a limited 'state of nature' in which the husband, if he was stronger or more powerful, could dominate his wife."[20]

It becomes clear that the *sentimentalization* of the family is no argument against the comparison to the state of exception, despite the superficial dissimilarity between the domestic sphere and the explicitly violent and debased concentration camp, on the very grounds of this

[17] William Blackstone, *Commentaries on the Laws of England, Vol. I* (1765), 442.
[18] Frances Olsen, "The Family and the Market: A Study of Ideology and Legal Reform," *Harvard Law Review* 96, no. 7 (1983), 1521.
[19] Olsen, "The Family and the Market," 1540.
[20] Olsen, "The Family and the Market," 1541.

comparison to the state of nature. What Susan Okin calls the "sentimental family" was indeed itself an ideology,[21] providing the *ex post facto* justification for the privatization of the family, removing it from the public sphere of legal intervention and of democratic norms and justification. It is on this point that I see the *exceptional*, that is, the "state of exceptional," nature of the privatized family within legal theory. Put another way, the family was not simply privatized and treated as the sentimental realm whose totalizing moral guidance negated any need for government interference in the relations within it. Rather, this abandonment either was justified by or resulted in a kind of state-of-nature rule of the strong, as the public democratic rule of the general will conceded, or delegated, its sovereignty in the public sphere to the male head of the house, acknowledging that the domestic sphere's status as state of nature permitted the rule of force within it. In other words, it authorized and constituted a form of rule: men's rule over women.

The erasure of the political personhood of women persisted even after the fall of coverture in a political and judicial understanding of the family, absorbed by later liberals like John Rawls, as a realm of pre-political sentiment prior to and beyond the adjudication of the state. To the same extent that the distinction of the domestic sphere, and the marital bedroom, from the realm of political life constitutes the sovereign declaration of the exception, so too have juridical articulations of privacy been predicated on the family itself. There is not, then, some freestanding value or status of "privacy" to which the family, and women within it, have been consigned; juridical understandings of what constitutes the region beyond state control have always already presupposed the family. Agamben's articulation of the state of exception takes as given the *oikos* as the realm of bare life; the legal genealogy of the concept of privacy similarly defines the private as that which takes place in these sacred precincts.

[21] Susan Moller Okin, "Women and the Making of the Sentimental Family," *Philosophy & Public Affairs* 11, no. 1 (1982).

The Temporality of the Social Contract

I have conceptualized the division between the domestic and the public as that between bare and qualified life, and between the state of nature and civil society, in order to redirect feminist criticism against the root cause of women's oppression. This will require us to rethink *nature* and *necessity* as constitutive exclusions, both temporally and spatially, throughout political thought. I have argued throughout this paper that the household and reproductive labor within it have constitutively shaped political and juridical understandings of both the state of exception and the concept of privacy itself. I turn in this section to the social contract, which simultaneously creates and excepts two realms of anti-political chaos on opposite sides of a temporal chasm: the "pre" of the state of nature and the "post" of the domestic sphere. The state of nature has, as Agamben suggests, indeed been preserved as the state of exception within the liberal order, but explicitly *as* the domestic sphere, constitutive of yet excepted from the political and juridical.

The theoretical groundwork that I have laid throughout now allows us to zoom out and consider the political structure with which we are left: a polity that requires the continual rejection of the state of nature that remains within it in order to posit the basis of its political rule. What are the political implications of the temporality of the social contract for women caught both within and without its story of linear progress? Far from transcending the state of nature, the social contract preserves this chaos, simultaneously pre- and anti-political, within the political order through the construction of the domestic sphere. There are two competing stories of temporality captured within the social contract: one of linear, rationalized progress, in which nature has been transcended and dominated, and a second of cyclical return, of natural growth and decay, of entropy. It is the walling off of the temporality of the domestic sphere that allows the myth of civil

society's own temporality to assert itself as reflective of empirical truths about the world and the foundations of political society.

From Julia Kristeva, we can recover an understanding of cyclical time as being *women's time*, thinking with her work in the essay "Women's Time" in order to better understand how a spatial containment of reproductive labor within the domestic is also a containment of a divergent and, within rationalized time, a *chaotic* temporality. Sexual difference produces "a specific measure that essentially retains *repetition* and *eternity* from among the multiple modalities of time." Kristeva refers to those "cycles, gestations, the eternal recurrence of a biological rhythm which conforms to that of nature,"[22] reminiscent of Beauvoir's immanence. This cyclical temporality becomes "a problem with respect to a certain conception of time: time as project, teleology, linear and prospective unfolding; time as departure, progression, and arrival—in other words, the time of history."[23] This understanding of time, the rationalized linear time of the Enlightenment, is "part of the *logic of identification* with certain values [..] with the logical and ontological values of a rationality dominant in the nation-state."[24] Early suffragist feminism, as Kristeva puts it, "aspired to gain a place in linear time as the time of project and history,"[25] its demands understood through the logic of inclusion within, not against, the nation, supposing what I suggest to be structurally unattainable: the full inclusion of women, and the temporality with and by which they are created, within the post-contract order. To demand a place *within* the post-contract order, rather than troubling its presuppositions, would be an "*interiorization of the founding separation of the sociosymbolic contract*."[26]

[22] Kristeva, "Women's Time," 16.
[23] Kristeva, "Women's Time," 17.
[24] Kristeva, "Women's Time," 19.
[25] Kristeva, "Women's Time," 18.
[26] Kristeva, "Women's Time, 34.

To follow Kristeva, then, the logic of the nation-state is fundamentally imbricated in the exclusion and domination of women, in both content and form; decisive among its forms is the temporality it posits of the linearly-realized political, in which the moment of contract hinges a "before" of the natural and "after" of civil society. This distinction between cyclical and linear time, understood by Kristeva to be a product of an originary contract, positions the transcendence and dominance of nature as a precondition, both spatially and temporally, of politics. What may have been a merely spatial distinction between *oikos* and *polis* within Greek democracy, between necessity and politics, takes on new meaning with the rise of later social contract theories of sovereignty, in which a state of nature is overcome by the moment of contract in the progression of linear time.

Despite Agamben's blindness to the fundamental gendering of the division between bare and qualified life, it seems obvious that bare life can be mapped onto—and, indeed, draws from—other gendered divisions between realms of life and the temporalities that govern activities within them. Of particular note here are two distinctions that I will briefly gloss. One is Hannah Arendt's distinction between labor and action, the other Simone de Beauvoir's distinction between immanence and transcendence. Both divisions are concerned with the spatial and temporal distinction between activities and forms of human life; both understand reproductive labor within the household as the necessary pre-condition for political life and as the Other it transcends.

For Arendt, the temporality of labor is the temporality of nature, reliant on metabolic processes, feeding growth and consuming decay.[27] The opposition between labor and action

[27] I include here Arendt's description of this temporality in *The Human Condition* (Chicago: University of Chicago Press, 2013 [1958]): "Cyclical, too, is the movement of the living organism, the human body not excluded, as long as it can withstand the process that permeates its being and makes it alive. Life is a process that everywhere uses up durability, wears it down, makes it disappear, until eventually dead matter, the result of small, single, cyclical, life processes, returns into the over-all gigantic circle of nature herself, where no beginning and no end exist and where all natural things swing in changeless, deathless repetition. Nature and the cyclical movement into which she forces all living things know neither birth nor death as we understand them. The birth and death of human beings are not

mirrors the opposition between nature and politics. Action occurs as the *event*, breaking up the cyclical ebb and flow of nature, while labor is contained within the household, where natural necessity is attended to as a constitutive—and yet, if unleashed, threatening—antithesis of the political.[28] In this way, the containment of labor is also the containment of its temporality. Both the temporality of action and that of labor, however, can be distinguished from the rationalized time of the post-Enlightenment social contract. The logic of linear time, a post-*polis* invention, necessitated the removal of natural temporality, and women with whom it is associated, from political life, in order to maintain the fiction of progress and transcendence.

But not only, as Arendt shows us, is politics *necessarily* predicated on the overcoming of necessity through something "more than," and only *contingently* predicated on the association of women with this life sustaining labor. Rather, from Beauvoir, women are *consigned* to this immanence. By drawing out the connection between *labor* and *immanence*, I suggest here that this pathologizing of the temporality of labor by later political theorists is predicated upon its association with nature, as the transcendence, domination, and containment of nature becomes a temporal precondition of the political. Women, for Beauvoir, have been "biologically destined for the repetition of life," reduced to what I describe here as the position of *femina sacer*. Man, on the other hand, "has set himself as master over woman; man's project is not to repeat himself in time: it is to reign over the instant and to forge the future." Beauvoir is clear that "male activity" "has prevailed over the indistinct forces of life; and it has subjugated Nature and Woman." This

simple natural occurrences, but are related to a world into which single individuals, unique, unexchangeable, and unrepeatable entities, appear and from which they depart. Birth and death presuppose a world which is not in constant movement, but whose durability and relative permanence makes appearance and disappearance possible, which existed before any one individual appeared into it and will survive his eventual departure. Without a world into which men are born and from which they die, there would be nothing but changeless eternal recurrence, the deathless everlastingness of the human as of all other animal species" (96-97).

[28] See Arendt, *The Human Condition*, 2013. "Without mastering the necessities of life in the household, neither life nor the 'good life' is possible, but politics is never for the sake of life. As far as the members of the polis are concerned, household life exists for the sake of the 'good life' in the polis" (37).

temporality of immanence, of cyclical repetitive time is contained within the home and through the activity of housework. Beauvoir writes of woman that "she is condemned to domestic labor, which locks her into repetition and immanence; day after day it repeats itself in identical form from century to century; it produces nothing new." This, then, is the shared activity and the temporality of labor.

What Arendt is taken to be the precondition of, if beneath, political life, namely the labor of reproduction, is radically reinterpreted by Beauvoir. On this view, it is precisely this hierarchy of values and, crucially, of temporalities, that has structured masculine dominance. What I want to suggest, then, with this invocation of the temporality of labor and of immanence, is that the domestic sphere, and women within it, pose a threat to vision of politics predicated on the distinction between nature and human, the natural and the civil. Necessity may serve as the precondition of politics, but *nature* is its constitutive antagonist, a vision of chaotic cyclical life, of growth and decay, of the triumph of the material over the abstract.

I follow Agamben in positing that the Hobbesian sense of the state of nature as something always-threatening, lurking behind the city walls, is, in fact, inherited by those theorists of the state of nature who understand temporality after the rationalization of time in the Enlightenment. These are theorists with an understanding of history and progress, like Rousseau, in whose theory true return to the state of nature was unattainable. That is, the state of nature remains *ever present* even in later theories of the state of nature that nonetheless claim a certain historicized time, retained insofar as these theories incorporate the domestic sphere as an instantiated state of nature, or as a state of exception. By understanding the domestic sphere as a containment of cyclical time, as a walling off of the temporality of labor or immanence from the rationalized world of masculine politics, we can better understand the ways in which politics are predicated on the constitutive

exclusion of nature, whether by relying in theory on a temporal state of nature or by spatially requiring the necessities of life to be performed and maintained outside of the realm of political life.

Patriarchal power therefore does not simply *resemble* the sovereign power of the state but is, at once, predicated upon, constitutive of, and delegated by this power. In order to imagine our ways out of the distinction between nature and politics, between domestic and public, and, thereby, between bare and qualified life, we must return to the power that draws these distinctions and is fundamentally defined by its capacity *to* distinguish. As *Griswold v. Connecticut* lays bare, women's political life has always existed within and without the bounds of law, defined always as the constitutive other. The sacred precincts of the marital bedroom, created by the state's sovereignty but excepted outside of it, must be properly understood as this constitutive zone of indistinction, the tenuously incorporated state of nature, to render legible women's position in the domestic sphere.