

**Bruna Holstein Meireles**

**Trouble at the Limit**  
**Critiques of Sovereignty in International Relations Theories**

**Tese de Doutorado**

Thesis presented to the Programa de Pós-Graduação em Relações Internacionais of PUC-Rio in partial fulfillment of the requirements for the degree of Doutora em Relações Internacionais.

Advisor: Prof. Robert Brian James Walker

Co-advisor: Prof. James Casas Klausen

Rio de Janeiro  
May 2024

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To my family.

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## **Abstract**

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In this dissertation, I propose to re-cast the concept of sovereignty through a political diagnostic attitude. In order to articulate this alternative line of inquiry, I suggest that Georges Bataille's work on sovereignty and Immanuel Kant's critique of the limits of political representation share the problematic of modern political subjectivity in ways that remain poignantly relevant to our present. The analysis proceeds through close textual readings of critiques of international politics concerned with questions of political change. Jens Bartelson, Martti Koskenniemi and Nicholas Onuf provide us with sophisticated analyses about the relationship between politics and law in the knowledgeable production of the limits of political modernity. Lastly, I follow the diagnostic movements present in those texts up to the limit that enables them. I conclude by arguing that the nature of this limit demands a slight shift in problematization, otherwise we risk missing important nuances in how political authority authorizes itself under the contemporary conditions that inform the problem of sovereignty.

## **Key-words**

Sovereignty; Political Authority; International Politics; Critique.

## Resumo

Meireles, Bruna Holstein; Walker, Robert Brian James (Orientador), Klausen, James Casas (Co-orientador). **Tribulação no Limite: Críticas da Soberania em Teorias de Relações Internacionais**. Rio de Janeiro, 2024. 148p. Tese de Doutorado - Instituto de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro.

Nesta dissertação, proponho reformular o conceito de soberania através de uma atitude de diagnóstica política. Para articular esta linha alternativa de investigação, sugiro que o trabalho de Georges Bataille sobre soberania e a crítica de Immanuel Kant quanto aos limites da representação política partilham da problemática da política moderna de subjetividade, de modo que permanecem especialmente relevantes para o nosso presente. A análise prossegue através de leituras de críticas à política internacional preocupadas com questões de mudança política. Jens Bartelson, Martti Koskeniemi e Nicholas Onuf nos fornecem análises sofisticadas sobre a relação entre política e direito nos processos produtivos dos limites da modernidade política. Por fim, acompanho os movimentos diagnósticos presentes nestes textos até o limite que os possibilita. Concluo argumentando que a natureza deste limite exige uma ligeira mudança na sua problematização, caso contrário corremos o risco de perder nuances importantes na forma como autoridade política autoriza a si própria sob as condições contemporâneas que informam o problema da soberania.

## Palavras-chave

Soberania; Autoridade Política; Política Internacional; Crítica.

## Table of Contents

|                                                            |     |
|------------------------------------------------------------|-----|
| Introduction .....                                         | 10  |
| 1. Revenant Sovereignities .....                           | 12  |
| 1.1. Critique .....                                        | 13  |
| 1.2. Sovereignty .....                                     | 21  |
| 1.3. Sacrifice .....                                       | 24  |
| 1.4. Plan of the Dissertation .....                        | 33  |
| 2. Sovereignty as Symbolic Form .....                      | 37  |
| 2.1. The Problem of Political Concepts .....               | 37  |
| 2.2. Sovereignty as Symbolic Form .....                    | 41  |
| 2.3. Between Political Authority and Territory .....       | 46  |
| 2.4. “Boundary Problems”: Freedom Beyond Sovereignty ..... | 53  |
| 3. The Critique of Legal Indeterminacy .....               | 57  |
| 3.1. From State to Regime Sovereignities .....             | 57  |
| 3.2. Legal Absolutism: The Critique of Indeterminacy ..... | 69  |
| 3.3. The Politics of Critical Universalism .....           | 76  |
| 4. The Mighty Frame of Modernity .....                     | 83  |
| 4.1. The Mightie Frame .....                               | 83  |
| 4.2. Liberal Modernity .....                               | 88  |
| 4.2.1. Liberalism .....                                    | 88  |
| 4.2.2. Modern and Modernist Internationals .....           | 90  |
| 4.3. Authority and Ethics .....                            | 98  |
| 5. Trouble at the Limit .....                              | 102 |
| 5.1. Sovereignities at the Frontier of Authorization ..... | 102 |
| 5.2. Hymn to War .....                                     | 110 |
| 5.3. Reverberating Sovereignities .....                    | 135 |
| Final Remarks .....                                        | 141 |
| References .....                                           | 143 |



*It is annihilators who set traps for the many and call them "state": they hang a sword and a hundred appetites over them. (...)*

*It will give you everything if you will adore it, this new idol: thus it buys the splendor of your virtues and the look of your proud eyes. It would use you as bait for the all-too-many.*

*Indeed, a hellish artifice was invented there, a horse of death, clattering in the finery of divine honors. Indeed, a dying for many was invented there, which praises itself as life: verily, a great service to all preachers of death!*

*State I call it where all drink poison, the good and the wicked; state, where all lose themselves, the good and the wicked; state, where the slow suicide of all is called "life".*

Friedrich Nietzsche, "On the New Idol", *Thus Spoke Zarathustra*

*Poets are the hierophants of an unapprehended inspiration; the mirrors of the gigantic shadows which futurity casts upon the present; the words which express what they understand not; the trumpets which sing to battle, and feel not what they inspire; the influence which is moved not, but moves.  
Poets are the unacknowledged legislators of the world.*

Percy Bysshe Shelley, "A Defence of Poetry"

## Introduction

This dissertation is driven by a decade-long interest in the problem of sovereignty. As many of those sharing this curiosity, the journey has been paved with elusiveness and frustration. Eventually I was able to realize that part of the reason of why I could not work my head around what exactly I was trying to know exactly is that exactness is part of this very problem. It took some time before I was able to understand that I was dealing with concepts of this concept that were not really addressing the same things. Today I can say without a shadow a of doubt that having fallen for sovereignty within the discipline of International Relations is as much a curse as it is a blessing.

The following pages are the culmination of the process of this long present. In them, I work out what was it about sovereignty as I was trained to know that left me in awe every time it would come up during these years of being a student. Curiously, I was able to swift though various theoretical and cultural resources until it hit me: the thing of sovereignty that wonders me is precisely the problem of wondering. It is hard to imagine living together with others in what we experience to be more or less peaceful and prosperous ways if we are not drawn to some common things. More difficult than this is to imagine that without the possibility of sharing the value that there are things that are valuable to us all. Yet how can that be represented and practiced if the principle of giving the value that there are universal values cannot produce anything that is not as valuable as the next? It is impossible. Things only become more complicated when subjectivity is brought into the picture and what is already impossible is now thrown at the storm that all of this is but belief, things that we give to ourselves. Still, for some reason, we go about as if they are not, while also going about proudly that we are free do as we wish.

Thought brought to the limit of its impossibility only to find itself possible *there* is what draws me to any particular conceptualization sovereignty, because as soon as we give it thought, we find in these problematizations that same thought, sometimes at the grace of the intention of the authors we are reading, but mostly

without conscious realization. At the same time, the delight I get from this conundrum is not separable from misery, just as the abstract playing of these imaginative ideas is not separable from the consequences of their concrete instantiations.

Having this part of my own discomfort somewhat settled enabled me to find the joy in having been trained as a theorist of international politics. IR can be many things, but no one can doubt its devotion to the problem of sovereignty. As I came to realize, it is impossible to speak of the so-called level of international or global politics without bringing forth the sense that one is at the outskirts of humanity itself, where the collective always seems to be holding on by a thread. That the end of the world has become the ends of worlds that are all *the* world is all the more inviting to the political diagnosis that argue for as the critique of modern conditions under which sovereignty is produced.

In this sense, the critiques that I read here are not necessarily critiques of sovereignty as I mean it, not in an overt sense. The texts I selected happen to be generous diagnoses of this problem, all of them premised on the desire to make sense of how that appearance of sovereignty as a barrier is produced from a conceptual as well as an empirical point of view. Jens Bartelson, Martti Koskeniemi and Nicholas Onuf propose that we think of political community as the effect of knowledgeable practices of political authorization of subjectivity that hinge on the surface of positive law to do the business of production and reproduction of the boundaries of community in time, and across the spaces and the times of the society of individual citizens within sovereign nation-states, the individual sovereign nation-states, and the society of states encompassing them. In different ways, they argue that modern sovereignty is an empirical object whose shape is symbolic. Political modernity would be culturally premised on a multifaceted politics of state sovereignty recognition whose spatial inscription is mediated by functionally differentiated transnational sites of government.

# 1

## Revenant Sovereignties

One of the positive effects that has sometimes been attributed to the “critical turn” in the analysis of international relations has been an increasing awareness of the importance and especially the complexity of the concept of sovereignty. Over the course of the past four decades, theorists of international politics have been exploring a rich world of practices, logics and rhetorical maneuvers that have enabled this seemingly placid concept to do a lot of unexpected work. Since then, sovereignty has been subjected to considerably more scrutiny. This is true not only regarding the state and the international system, but also in respect to the workings of such practices, logics and rhetorical moves in the disciplines claiming some privileged knowledge about the ways in which we have come to organize ourselves and the worlds we inhabit across the lines of the state.

My primary aim in this dissertation is to complicate what (some) of those scholars think that doing critique is all about. I believe that there is something at play in certain critical engagements with sovereignty that might enable us to think in a somewhat different fashion about what is of consequence in the proliferation of critical approaches to political phenomena, and in ways that may provoke more anxiety than is usually expected. The question that might follow from this desire of mine probably goes a bit deeper than just *why* the proliferation of critical aspirations matters. What matters, from a critical point of view that engages with the possibility of critique itself, is not merely the fact that critical analyses exist and have become increasingly fashionable, but *how* these analyses, and especially critiques of sovereignty, are put forward. The interest in critically interrogating critical analyses that connect sovereignty to questions of international politics is not gratuitous, nor is it random. It emerges, first of all, from the recognition of why and how these forms of scholarship are relevant not only for IR but also for the study of politics more generally. Furthermore, to question the specific ways in which critical analyses have proliferated also invites questions about what is consequential in the ways we engage in critical analysis.

One of the main consequences opened by this line of inquiry, I wish to argue, is the very critical standing of claims to critical thinking coming from disciplinary sites that are dependent upon spatializing practices that are as regulative as they are constitutive, as is the case of the study of the kind of political practice we call international. In this context, it is also my sense of the problem that some critiques of sovereignty are marked by a strong sense of resistance to the consequences of their own critiques, not least where the force of those analyses is well understood, as I believe is the case among a significant and influential array of scholars across disciplines addressing problems associated with political practices, however the latter might come to be understood.

## **1 Critique**

As a modern discipline dedicated to the study of social-political phenomena, international relations theory reproduces a well-rehearsed answer concerning the limits that ought to be left unproblematized for problematization to be possible. Kimberly Hutchings argues, for instance, that what unites otherwise disparate works under the banner of “critical” is the fact that “they are all engaged in tracing and challenging given limits” (2001, p. 80). In this respect, even “mainstream” theory is critical. This is mainly because modern thought in general cannot be unpossessed by the specter of Immanuel Kant’s transcendental critique. The “discovery” that the human being is the *cause* and the *author* of the worlds it inhabits, which necessarily includes itself as being so caused and authored by itself, is the standard formalization of the *immanent* limits that necessarily condition the conceptualization of empirical objects; that is, objects that exist in history, with man, which, by having found itself to be the limit of giving limits, becomes being *in* the world.

The subject becomes the activity of the representation of the totality it embodies as motion that is negativity<sup>1</sup>. As Hutchings further notes, “Kantian critique is premised on both the limitation of reason and the assumption of the capacity of reason to transcend that limitation in the process of critique” (2006, p. 18). Kant “wins”, so to speak, insofar as we cannot not bring every representation to collapse into subjectivity. The debate between Ernst Cassirer and Martin Heidegger is often considered a watershed in this respect, as the crux that brought them together and simultaneously apart is the question of this limit: does immanence mean that there ought to be no point from which to tell anything that is not always already caught up in a web of representations?; or does immanence mean that there ought to be the this point and discernment is possible, provided that it happens within limits that the subject is aware of? (Gordon, 2008). The first position dissolves the subject into nothing by temporizing it to the point of skepticism and no capacity of meaningful representation, including of itself as such. The second position dissolves the subject into nothing by spatializing it to the point of accepting dogmatism as the condition for being critical, thus also rendering its representation of itself meaningless, since one cannot tell the difference between the dogmatic and the critical.

Both positions are ultimately untenable – indeed, at every corner one is bound to find that subjectivity is collapsing, and that this is what the subject is, the activity of self-collapsing (Bennington, 2017). My own sense of *the* limit is informed by this understanding of the necessity of a point of indeterminacy that determines itself as indeterminate, therefore becoming determinate, and, as a result, indeterminate all over again. Hutchings notes that this is a tension is well known and explored in a modern theory in general. On the one hand, what is often considered critical scholarship tends to be opposed as being dangerously relativistic, but modern scientific epistemology is critical insofar as it is principled by the idea that knowledge ought to be a living thing, for the one claiming to know anything is a living thing. On the other hand, it also produces the field of critical

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<sup>1</sup> I do not mean G.W.F. Hegel’s concept of negativity. Instead, critique is an articulation of negative theology. For an overview of the history of negativity, see William Franke’s edited collection *On What Cannot Be Said: Apophatic Discourses in Philosophy, Religion, Literature, and the Arts: Classic Formulations* (2014[2007]); and the second volume *On What Cannot Be Said: Apophatic Discourses in Philosophy, Religion, Literature, and the Arts: Modern and Contemporary Transformations* (2007).

scholarship from within, as it is either ignored, and the effect is that authors are treated as “authorities” on a well-defined subject, or it is explored and authors are “failures” that keep the political economy of critique going for its own sake (Hutchings, 2006, p. 23).

In what sense, then, do I understand the connection between epistemology and critique, particularly in the problematization of political authority as an empirical object? To answer this question as clearly as possible, it might help to hold on to an exemplar. I believe that Kenneth Waltz’s *Man, the State and War* (2001) is a good, both conventional and controversial place to start. Whether one agrees or disagrees with Waltz’s argument in that book, it has marked an important moment of lasting impact for the discipline, since it set out the states system as the site of one type of political order (or “image”) in its own right. Sure, for Waltz, as has become characteristic of international theory ever since, this is *the* one site of politics that determines all the others – which he reduces to the “levels” of the individual state (government) and that of individual man (society) – in the context of their assumed universal interest in peace. This is a scalar nuance of the argument that points to a borderline hierarchical necessity that is just as important as the move that cuts apart politics into two distinctive kinds of practices connected to unproblematized assumptions about the limits that give man (humanity) its universal limit as negativity in the way I outlined above. Underpinned by the idea that we live a world of change, each “image” that coexists within this universal being is secluded to its respective practical and epistemological realms.

Furthermore, this double-move of slicing politics into two spatial-temporal halves (domestic and international) and giving priority to one (international) over the other (domestic) informs yet another generally accepted claim: that whatever one might say to be happening at the more encompassing scale of shared existence, it *is* and *should* be happening there, as the system provides the privileged point from which to represent what is experienced by actors as if it is not contingent at all, and what is and is not contingent about, all of this without succumbing to pure relativity or to an unreliable subject passing judgement. Note that what matters is not so much the content of what *is* or *should* be happening between states, though Waltz gave his own famous version of the content about two

decades later<sup>2</sup>, but the form of the general appreciation of international politics in such terms.

My point in bringing attention to this pattern is the following. When the totality implied by immanence is formalized as the concept of system, as it is in modern social thought, there needs to be the assumption about what is it that is being limited. This ought to be an actor defined as activity, and it ought to be an activity that is purposeful, as negativity ought to negate something. Even though this is assumed in the most abstract ways one can imagine to be conceivable within the bounds set by the empirical aspect of the problem, the actor will be there, and it will be “rational” in just this sense. Is not this line of reasoning – perhaps in too broad a sense as of this moment, I am ready to admit – pointing to things international as (supposedly) marking an important limitation to individual state practices? Is it not attributing priority to what comes from the (supposedly) all-encompassing, and because of that *higher*, site of the whole a way of saying that particular states’ actions, even when their hearts are in the right place, are by definition not “rational” enough? Is it not saying that, individually, their actions are not only ineffective but often dangerous to secure the universally assumed ends, such as peace and prosperity for man as a kind, and thus illegitimate from the vantage point of the whole – of the whole of the system of states, and, consequently, of the whole of men?

Sure, this is not the same as saying that scholars like Waltz were interested in the *concept of sovereignty*. He was not a critic of state sovereignty. Still, one might say that international relations theory, at least since the development of its empirical object as a system structured by relations of mutual constitution, was born out of a certain critique to sovereignty – taken, of course, as synonymous with the diagnosis, from the vantage point of international politics, of important limits (to individual state practices) when what is at stake is the assumed universal problematic of peace, and, consequently, of war. Regardless of substantial

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<sup>2</sup> His *magnum opus* and object of much disciplinary debate, *Theory of International Politics* (1979). For an overview that suggests how pivotal Waltz has been to the developments in the disciplinary identity of IR as a site of struggles over the final frontier of human activity understood as struggle rather than as discipline with a clear-cut object viewed from different angles, see the texts collected in the volume edited by Robert Keohane, *Neorealism and its Critics* (1986).



criticism, Waltz's hypothesis of a system within a system, and the actor in the middle, has become exemplary in the broader context of the study of political phenomena. This position, by its turn, is on the one side of the coin R. B. J. Walker has in mind when talking about the "(pre-Kantian, and largely dogmatic) forms of internality and externality" that have been "encouraging a tacit ground of radical statism, or nationalism, as the organizing principle of [modern social] scholarly inquiry" (2016, p. 68-69).

At least one question comes to mind considering Walker's argument about the possible dogmatic nature international relations theory as a sociological enterprise: does it also stand for claims to knowledge in the discipline that claim to be critical?

Perhaps I need to make my self-clearer. Social theory purports to explain phenomena structurally, and, in doing so, it undoes the idea that activity is primarily intentional. We do things for reasons we are not aware; we do things with certain intentions in mind, but because we do not know those conditions underlining what we do, those intentions may very well backfire instead of simply falling short of a regulative ideal. It is, in principle, a theory that purports to do away with the author – epistemologically, at least. But it only does away with the author insofar as it is the unproblematized assumption that enables whatever is said about how the author is not a sovereign author in the solipsistic sense of the term. The author remains sovereign as the regulative ideal determining the outline through which one is about to look at the world and pass judgment on it. That, however, is grounded on the assumption that activity is what actors do in a system thought which they mutually constraint and enable one another beyond original intentions.

When we turn to politics, that actor is the national sovereign state, or to be more specific, the governmental bodies acting as they are the frontier that brings the limits of the national sovereign state along with them as they act on behalf of their respective political communities. This is how it is within and without the idea that the sovereign state mediates these two domains of political order. Hence Walker's claim that critiques problematize political authority as socially mediated practices of authorization go back on the alleged internationalist and end up "encouraging a tacit ground of radical statism, or nationalism, as the organizing principle of scholarly inquiry" (2016, p. 68-69).

In a nutshell, the national sovereign state understood as *activity* is the subject of political authorization insofar as it is assumed to be institutional political authority. Even though the analysis is systemic, it is hard to imagine any theorist unwilling to acknowledge that the relations of antagonism that they are tracing and claiming to be the unconditional limit conditioning how institutional political authorities authorize the limits of their particular political communities is not itself conditioned by the need that they be mediated by these actors. Indeed, they would likely say that this is entirely the point. But something is amiss here. In order to grasp there, we need to understand what the national state political community is assumed to be alongside with the state as actor.

In this respect, the cover of Thomas Hobbes' *Leviathan* remains somewhat instructive: political community is the indivisible divided point. Or, to put it alternatively, and now in terms extrapolating Hobbes' model, the political community is a living organism: it is many moving parts that for some reason come to act in coordinated ways, so that, by being parts moving towards the same object, as if a whole. Systems theories argue that this coordination happens without a centralized coordinator because of the amongst the actors given the conditions under which they anticipate one another when acting in the world. But what are the institutional sovereigns in this context? They need to be functionally differentiated, and this functional need to be universal. One needs to define what a state is insofar as it is a type of activity.

John Mearsheimer's later clarifications about assumption that the purpose of every state is to survive are exemplary. The state is now the "political institutions" that are representative a social totality (the nation, which may be composite of more nations), and whose purpose is to ensure the survival of its particular political community in a world of relative uncertainty and change. As such, political institutions are "some person or body responsible for organizing and administering daily life", and, in this context, the survival of the whole is fundamental "because without it you cannot pursue any other goal" (Mearsheimer, 2018). In this sense, the political author mediates between limitations from inside and outside the political community that may jeopardize the existence of what is actually a dynamic whole standing between these two domains of political life. Its function is to read the times and anticipate all sorts of problems that would affect

the existence of the political community that they represent *qua* political community, and to devise the necessary courses of actions to reconcile those threats, either by assimilating or repelling them – that is, they are a machinery that stipulates limits for collective action. These problems can originate within the domestic society, they can stem from relations among states, they can even be transnational, and, in an integrated world such as ours, it is likely that in practice they are all of those things together.

This abstraction capable of including all sorts of conceptualizations about the general limits that governments acting on behalf national sovereign states may share internationally as to how they will go about doing what they do – as systems theories of international politics argue that they collectively do<sup>3</sup>. We still largely think about states as political actors engaging in orderly relations of struggle with one another in this way, only now the outline of war and peace proliferates into many conceptualizations sharing this language. Take, for instance, the idea that to “survive” is to “develop”. Still at the level of the abstraction is can encompass military, economic, social, and cultural formulations, all proliferating into subdivisions, and, considering that in practice things are far more complex and these abstractions are used to organize collective action, they often overlap as the many dimensions to be considered when problematizing how to use the state’s means of coercion to address a given limit-situation.

The literature on globalization and international regimes sheds light precisely on this multi-dimensional character the current concepts through which states pursue this function, which remains largely unproblematized. Even when this literature is “mainstream”, it can still be read as a site from which to inquire a new site of political struggle. Politics in the times of “globalization” would remain political in the sense that these coexisting principles are in principle in a relation of struggle to one another, as, for instance, in interests articulated as claims to the

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<sup>3</sup> The first generation of critical systems theories of international politics argue that these systemic dynamics shape the identities of state, thus leading to different structures of behaviors in the context of competition (Onuf, 2013[1989]; Wendt, 2003[1999]). Recent critical systems theories of international relations, as we shall see, claim that international dynamics shape the identity of states all the way to how government enacts its purpose in domestic society. In the context of the post-Cold War liberal international order and the ensuing nationalisms that have followed, Mearsheimer too made the conception that there is a more fundamental problem to political organization, and that it is about the inscription of the ideological constructs of the otherwise abstract concept that the purpose of political institutions is to serve the political community (2018).

limits necessary to the enactment of the limit (the collective purpose mediated by the state internationally) as, for instance, in composite ideas such as “sustainable development” (Koskeniemi, 2005; 2011). Under normal circumstances these principles may not be experienced as clashing, but in principle they always already are, and how they will be reconciled into a unified guide for collective action depends not on the principles themselves, but on those reading the times and passing the judgement as to how they translate before the particularities of the circumstances calling for their application. Politics comes in as the processes of determining the how these dimensions should be balanced to inform the policy or the legislation to be pursued; a policy may pursue environmental some concerns it deems necessary under the prism of the economic concerns it deems necessary, decision-makers can see this (or spin it, it does not matter) primarily as an environmental policy, or as an economic policy, or pursue as being both but privileging one framing more than another. That notwithstanding, in both “critical” and “mainstream” approaches there remains the idea that, in practice if not always in theory, modern sovereignty finds its beginning and end in state political institutions as the *locus* – as well as the *locus* of many *loci* – that is the home of practices of authorization that mediate the structural normativity into the world of things by giving shape to conflicts though it, and potentially affecting normativity the other way around as they are themselves contingent upon how states act collectively.

Thus, even in the context of “globalization”, few people would dispute that state political institutions are not “sovereign” at least in the sense that political changes, including through these arguable changing circumstances, cannot happen without them<sup>4</sup>. The understanding of political community remains fundamentally the same: the limits of political authority are authorized by governments acting on behalf of the state understood as the site from which the many moving parts (many

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<sup>4</sup> For various perspectives, see the works in the edited collections: Sohail H. Hashmi’s *State Sovereignty: Change and Persistence in International Relations* (1997); Thomas Blom Hansen’s and Finn Stepputat’s *Sovereign Bodies: Citizens, Migrants, and States in the Postcolonial World* (2005); Neil Walker’s *Sovereignty in Transition* (2006); Thomas J. Biersteke’s and Cynthia Weber’s *State Sovereignty as Social Construct* (1996); as well Christopher W. Morris’ *An Essay on the Modern State* (2002); Raia Prokhovnik’s *Sovereignities: Contemporary Theory and Practice* (2007) and *Sovereignty: History and Theory* (2008); Dieter Grimm’s *Sovereignty: The Origin and Future of a Political and Legal Concept* (2015[2009]); Hent Kalmo’s and Quentin Skinner’s edited collection *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (2010).

wills) ought to be brought together into an integrated whole that moves more or less together (one will) – domestically *and* internationally. Non-state actors may participate in these processes of authorisation<sup>4</sup>, possibly sharing the glory and burden with elected and non-elected state officials. But the general outline of the problem of political authorization remains determined by the assumption of what, where and how it is, given its purpose. Given how the phenomena is originally shaped as an object, and that the theory has proven sufficiently reasonable given its proposed scope of analysis, one can work its way backwards to retroactively assert that the practical production “must have been this way”. Nicholas Onuf has keenly surmised the prevailing attitude of the social theory in general, and of social theory of politics in particular: “that there is a considerable resemblance is a plausible conclusion on functional grounds: we get along in the world, so we must be equipped to do so” (2018, p. 23-24).

## **2 Sovereignty**

I would like to suggest that by candidly arriving at this limit, these theories invariably argue (or allow us to read them to argue) that the authorization of political community by the means of state political institutions is the primary collective problem of all. In order to see this, we need only to push the assumed function to its own limit, desiring it to the fullest. The concession that the regulative ideals are mediated by the state governmental apparatuses of rule cannot account for this one piece of the puzzle that, despite being left out, seems to be of utmost importance to enable these critical attitudes and the worlds that they diagnose.

In the end of the day, how do these national sovereign states that are entwined in those worlds of practices attain the self-subjection of their citizenry and thus get to do what it is assumed that they ought to do? Is obedience not a problem just because we largely live under the aegis of the rule of law? It is enough to assume how it happens just because it happens? Institutional political authority does not exist in a vacuum. To assume that government is a provider of services that produces and reproduces its own authority either by efficiently serving those

subjected to it, or by having its officials to trick its citizenries into subordination, it to return to the author that sociology was supposed to have beheaded: in both cases authority flows from the center, or many centers, to the margins of the nationalized and territorialized land, even though one may concede that this does not happen homogeneously, that the authorities doing this are limited by unacknowledged normativity. That it is somewhat commonsensical in critical scholarship today to acknowledge and study how the margins actually play a fundamental part in the process is a step in the direction of the limit the problem of which I am attempting to work through, but there lingers the idea – no doubt observable in practice – that the inclusion of some and exclusion of others on moralizing grounds is primarily a matter of “legislators” that authorize the political community in this manner when they address those threatening contingencies to the development of the whole.

This question is practical, as any critical framing of such problems ought to be after Kant, but I shall argue that this is a problem that resists conceptualization thought the paradigm of immanence as it has been inherited by the social sciences. Or to be more specific, it pierces through those problematizations and the empirical practices that the former accurately represent, interrupting them, and subordinating them to answer to it. The idea that the politics of modern subjectivity comes in through a point that is the womb of limits that determined by the normative limit at its margins is a response that presents us with the symptoms of the problem that have brought us here, at the problem of the limit. In a nutshell, any account that relies primarily on the actor as the condition of the possibility of its account of how collective mobilization comes into being ought to assume that there already are sovereign political communities prior to that.

Let me explain myself. If the function of institutional political authority is to ensure the “survival”, “progress”, “self-determination” or whatever name one may give to the “sovereignty” of the political community, is it not that its ultimate purpose ought to be to hang the “community of citizens” and the “state political institutions” together as one political community? In his historiography of the emergence of the concept of sovereignty in modernity in the context of the historical developments surrounding it, F. H. Hinsley argues that sovereignty is merely “a restatement of the permanent problem” of politics, which, according to him, is “deciding the basis of government and obligation within a political community”

(1986[1966], p. 26). Hinsley's formulation of the problem is fairly conventional, and, as we shall see, it is in line with the critiques of sovereignty in international relations that are read throughout this dissertation. Sovereignty, he maintains, is "neither the physical executive state nor the physical political community but a *notional* bearer of power which finds embodiment in whatever form may be appropriate in each case" (Hinsley, 1986, p. 157). Today, the abstraction that enables this mediation is positive law. It has been responsible to "merge the state and the community in a single abstract conception that was also personified as the highest judicial entity (Hinsley, 1986, p. 71). In the last stance, "its function in the history of politics has been either to strengthen the claims of power or to strengthen the ways by which political power may be called to account" (Hinsley, 1986, p. 25).

This is but another answer given to how it must have been that self-subjection is produced rather than an account of the conditions enabling that self-subjection be represented as if identification with the law. I would like to emphasize another aspect of Hinsley's account. First, state political institutions, or the governmental repositories of political power, are not the same thing as the "political community<sup>5</sup>". These two things exist in antagonism with one another, and the problem of politics is the production of this antagonism in ways that bring may bring them together as if they are one (Hinsley, 1986, p. 222-223). Note that the problem is no longer the same as the general will, where the political institutions are liminal and responsible for bringing the many parts to act as one. Here, the latter becomes joins the ballroom to play. The problem, therefore, is to produce the belief that "the political community and its government are judged to be necessary to each other and sufficient unto themselves" (Hinsley, 1986, p. 26). The sovereign political community (as I have been using the term) is the totality made in struggle that is determined internationally but is ultimately contingent on this predicament.

Sovereignty as the legal framework as the disposal of state institutions acting as if they are the means to realize a unified sovereignty that it shares with the community because it is abstract enough to accommodate transformations in these relations cannot possibly explain how these antagonisms are produced in the first place – at least not by itself. And these antagonisms ought to be produced for there to be self-subjection, as Hinsley notes. With something like this limit in mind, Raia Prokhovnik invites us to inquire into the "other functions that we ask it [the modern

understanding of sovereignty] to perform for us”, which, according to her, are “to do with political identity, the way political stability is underpinned, and the meaning and boundaries of political practices” (2007, p. 02). I agree with her that we should be posing precisely those questions. But I want to suggest that we move from here and pose the problem through Machiavelli: how is obedience produced under contemporary circumstances? One may read Machiavelli’s prince as a dictator that does whatever may be necessary to hold on to power. Or one may read it as the articulation of the problem that institutional political authority that is determined by the conditions under which it rules and to the extent that the ability to navigate those determinations in order to secure the obedience the ruled. The willingness of the ruled to obey is the primary condition for the possibility of the exercise of institutional political authority, and this is not given by the law nor merely by communicating the law through deceit<sup>6</sup>. Something else and prior ought to be mediated where and when the normative limits of the community are being mediated. At the limit, then, there is no sense of sovereignty as that which is unconditional beyond these conditions, as obedience pierces through the ruler and the ruled. But even then, it is not sovereignty in this sense, as the conditions it imposes are conditional upon them being so mediated.

### **3 Sacrifice**

In order to pursue the formulation of the problem of sovereignty, we need to outline the paradigm that provides the limits according to which the political authorization of sovereignty is unproblematically articulated. Only then, through working through this paradigm, we can find our way through the limit that calls upon us. Georges Bataille’s critique of what he called the fundamental predicament of contemporary life, “the problem of the sovereignty of present-day man<sup>7</sup>”, is particularly helpful to this purpose (1991<sup>5</sup>, p. 321).

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<sup>5</sup> Bataille’s theory of the problem of sovereignty was articulated in many of his works throughout his life. Here, I work mainly with his book *The Accursed Share: An Essay on General Economy*.



According to Bataille, the idea that man is the sovereign *cause* and *author* of itself as negativity has been largely articulated in political thought and practice. Although modern sovereignty is premised on an all-encompassing, tolerant and fraternal understanding of communitarian bounds of ethical reciprocity, he maintains that this belief provides the means and the cover for the willful cultivation of ignorance about the nature of the political dilemmas in an internationalized world. In what follows, I will focus my reading on Bataille's reading of the political anthropology of F. H. Hegel (1991, p. 52-54). The attitude that Bataille reads out of Hegel's thought is as exemplary as the thought itself when it comes to the theory and the practice of the "the man of renounced sovereignty".

Hegel is widely known as the philosopher of negativity. Subjectivity, in this sense, becomes "necessarily temporal and finite" (Bataille, 1997b, p. 281). Furthermore, we read that his "philosophy is not only a philosophy of death", it is also "one of class struggle and work" (Bataille, 1997b, p. 285). Death, class struggle and work. There is a lot to unpack in this otherwise small grouping of words. I shall proceed in two parts. First, we will go over the general characteristics of the concept of modern sovereignty insofar as its normativity is concerned. Then we can go back to Hegel so as to bring out the political anthropology that brings death, class struggle and death together with the problem of the production and the authorization of political community.

Negativity inaugurates the idea of freedom as mobility by constituting man as caesura. Being temporal and finite means that man ought to be an animal and more than animal. The animal is said to experience time as the undifferentiated formlessness because all there is to it is the immediacy of what simply *is*. In this sense, the animal in man is man that is unconscious of its existence as a part that is related to other parts in the totality that is already all-encompassing over all (Bataille, 1997b, p. 279). Every time we speak of totality, we are also speaking of immanence. In principle, the human being would be more than animal to the extent that it possesses the power to be conscious the totality, and, as such, it would be able to reconstruct the totality anew by differentiating the parts, the animal and the

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(*Volume III The History of Eroticism; Volume III Sovereignty*), originally published in 1976. The subsequent discussion about sacrifice in his critique of G. W. F. Hegel is supplemented from "Hegel, Death and Sacrifice", originally published in 1955, and "The Torment", first published in 1943, then revised and published in another volume in 1947.

man, and bringing them together into an order whose spatiality is of its own possession – and which it would possess into the world by negating the world that is within the totality. But the totality is not merely the individual. The totality is all that there is and there is not, yet. It saturates humanity universally, and, by the principle of recognition, it brings every individual's existence to bear on the other's (Bataille, 1991, p. 248).

Sacrifice entails the willingness to do whatever may be deemed necessary *under the present circumstances* to come closer to the promise that always arrives a little too late. In order to negate the animal within, the presents found to be haunted by animality are negated in ways that constitute a spatial totality saturated by the contradictory experiences of necessity and liberty. As Bataille notes, the religious aspect of modern sovereignty is that it happens *in time* (1991, p. 249-251). It is partly in this way that the impossible becomes: the man of renounced sovereignty is summoned to give itself over to the future completely, but as long as the animal returns, and temporality ensures that it must, the conditions ought to be determined so as to reorient energy investments; enabling this is the fact that, being temporal, these boundaries are not only abstract but experienced as such by being shifting and proliferating in principle, energies thus being sent ablaze into the frantic motions, each pulling the redemptive totality into different directions and dimensions of transindividual lives.

According to Bataille, this produces a distinguished political space that is tantamount to the obliteration of desire. This is not merely the endless deferral of the loved object and the agony of anticipation. These dynamics that allow for the experience of the anticipation of futurity and the nurture of the imagination give way to a paradoxical condition of “ecstasy” at the rift a “‘yawning gap’ between the one and the other and, in the gap, the subject, the object are dissolved”. The totality becomes a formless mass: “there is passage, communication, but not from one to the other: *the one* and *the other* have lost their separate existence” (Bataille, 1997a, p. 89). At the same time, the idea that movement ought to be the renunciation of personal sovereignty for benefits greater than any individual or individual group of individuals purports that all activity are the consequences of choice and the personal responsibility of the consumer. For “even though religion consecrates persons, it does not necessarily have all their time at its disposal”, “and if someone

religiously gives the whole share to the sacred, in principle this is because he has chosen to do so, at the age when choice is possible: for choice is given only in time” (Bataille, 1991, p. 250). But this cannot be, as the curlicue proliferation of shocking spaces brings time to a halt by making time all there seems to be.

For Bataille, this comes from the necessary practical contradiction in the Hegelian edifice: “the man who negates nature could not in any way live outside of it”, for man is “the very thing he negates: he cannot therefore negate nature without negating himself” (Bataille, 1997b, p. 283). The fact that man is finite, that it has *limits*, prevents humanity from attaining the end that this definition of it purports to attain, however limited that promise may be. On this note, the historicism entailed in the construction renders it necessary that the rationality that commands the sublation of contingencies under necessary conditions in the present should interrupt itself by making contingencies necessary. The framework is developmental. It assumes the necessity of there being a pre-historical nothing (nature, animality) and a post-historical nothing (Nature, humanity). History would be between these two totalities. But this is the regulate ideal, as I noted above, because humanity ought to be at both places at once in order to be able to represent itself as change. The problem, however, is not merely a matter of logical contradictions.

In promising the end, the only thing of the end that can exist in finitude is the *perception* of there being many ends carrying a piece of the end within it. There is no knowledge from which to discern what is smoke and what is fire, as one is not without the other. At the same time, if there is no way to discern the ends from the end, the subject from the object, the two totalities standing opposite to one another become one totality, the pre-historical nothing and the post-historical nothing being the only thing that history so practiced can offer.

It would seem that without this *knowledge* finitude is bound to pluralism, and that would explain, for instance, the need for the state. In that case, we would revert to a conventional social contract theory of sovereignty. But this is not the problem in hand. Just as we are and are not at the end of history, we are always already in political community. This is not a theory about founding new states. The many wills, or many parts, to be reconciled into relations of whole are retroactively determined by the state institutional authorities that so happen enjoy the leeway

through which to reconcile conflicting claims between these forever transient totalities that would not be able to the total that encompasses them. At the same time, the idea of choice is also normatively reproduced here as the believe that man has renounced personal sovereignty in a “sovereign way”, “a possession that seems inalienable to them but that they renounce, rationally, for their own sake” (Bataille, 1991, 324-325).

Bataille takes us in a path somewhat similar to Weber’s in respect to the theme of miraculousness as “the problem of irrationality”, although this is only true up to a point. Given that the mightiness of man’s sovereignty is thought to be deposited in the political community, and that state political institutions represent it, this is much more than the prevailing “method of legitimation of the ruler and some pattern of accountability which the ruler observes” (Hinsley, 1986, p. 25). For man of renounced sovereignty is bound to experience the “omnipotent and good” upon which its faith has been placed to be in tormenting continuity with “an irrational world of unmerited suffering, unpunished injustice, and incorrigible stupidity” (Weber, 2004[1919], p. 86). That receptacle of faith may attempt to address these contingencies to provide the promised land as much as it can, with all its might, but it will ultimately be as if nothing happens except recurring torment. This becomes particularly poignant with modern sovereignty because the ethical outline of community deprives those it individualizes from finding the cause and the authorship of these experiences of malaise, so to speak, anywhere other than within themselves as a totality experienced as never-ending battles against the vengeful return of these feelings of “irrationality”.

Furthermore, I would like to the very first line of “Sovereignty”: “the sovereignty I speak of has little to do with the sovereignty of States, as international law defines it” (Bataille, 1991, p. 197). Read exclusively in the context of *The Accursed Share*, it may seem that Bataille has a resistant towards politics. Indeed, despite the political vocabularies he deploys there, we never get a clear sense about the connection between “sovereign man” and “institutional sovereignty”, as he calls them. This changes significantly when we consider some of his other texts, particularly “Hegel, Death and Sacrifice” (1997b [1955]). On the surface, this text has nothing political about it, at least in the senses we usually mean when we talk about politics. Nevertheless, Bataille builds up a certain “reading mood” that it is

almost as if Hegel and him are the same person – the intimacy, the admiration, the thin line between debauchery and an ironic solidarity, and the general feeling that Bataille is giving us a tragicomic eulogy about a long-gone friend that becomes alive as it seems that he knows Hegel better himself, baiting us into complicity with a secret. For that reason, I accepted the invitation that I gave to myself and went on to read between, through and across the proposed lines.

It seems that Bataille's problem is not the sovereign state nor the place of state political institutions in the production of this distinctive political scape. The qualification that his problem "has little to do" with how "international law" defines the sovereignty of states is an important hint. At various times throughout the text, he refers to Hegel as the Sage, in an allusion to the one who looks out at history, finds the absolute, and acts upon it (Bataille, 1991, p. 282; p. 284; p. 289; p. 292). Hegel the Sage symbolizes the conscious "surrendering to the implications of a knowledge which, in his own eyes, is absolute" (Bataille, 1997b, p. 286). It may seem that Bataille is mocking Hegel for believing he is seeing the totality that is not the totality. The opposite is the case. Hegel sees the Absolute as clearly as anyone could – as something that can only be perfect in an imperfect way from the point of view of practice. Not only does Hegel see the limit, but he also acknowledges and embraces it.

In *Philosophy of Right*, Hegel defines the developmental trinity of subjectivity moving dialectically from "abstract right" to "subjectivity", to "ethical life". The latter is composed by the "family", the "civil society", and the "state". Whereas ethical family relations are described by the concrete bounds of a traditional and reproductive love, civil society is described as the abstract domain of market-based individualized relations leading to functional differentiation along the lines of labor and the subordination of life to the pursuit of material needs. It is also where he goes through his theory of law, which includes a critique of the professionalization of law and the stratification it would be bound to produce in terms of the access of citizens to justice (Hegel, 2001[1820], §228, p. 182-183), as well as remarks about the proliferation of legal determinations in the judicial process of totalization of social relations (Hegel, 2001, §216, p. 174-174). As expected, the "state" is meant to be a synthesis of the other two domains of ethical life, reconciliation their contradictions and bringing into life a new form of

communal recognition premised on patriotism and a sense of duty towards the community as a whole, and the idea that the individualistic pursuit of individual interests ought to serve the development of the state political community (Hegel, 2001, §268, p. 204-205).

With that in mind, I present this humorous and slightly enigmatic passage about the Sage's awe before the Absolute then still in the process of self-dismemberment: "For Hegel, it is both fundamental and altogether worthy of astonishment that human understanding (that is, language, discourse) should have had the force (an incomparable force) to separate its constitutive elements from the totality. These elements (this tree, this bird, this stone) are in fact inseparable from the whole. They are 'bound together by spatial and temporal, indeed material, bonds which are indissoluble'. Their separation implies the human negativity toward nature of which I spoke, without pointing out its decisive consequences. For the man who negates nature could not in any way live outside of it" (Bataille, 1997b, p. 283).

We have "an incomparable force", something that is beyond measure, that is infinite or unconditional, a force that keeps on giving, pushing, forcing through. Language (and lawfulness in general) has this force. It comes from nowhere but itself. The force that is its limits, the limits of the modern representation of sovereignty. A force that by giving plenty, pushing ceaselessly, disjoining everything it passes through "separates its constitutive elements from the totality". By separating the totality from within the totality, there is nowhere to arrive that is not totality. The totality within the totality, perhaps – the force that keeps the other going, and vice versa, as they stand reciprocally to one another, unified by this transgression. The "elements" that constitute this re-encountered totality of modern sovereignty are not "this tree" and "this bird", but "this stone". Were negativity to be possible without its supplement, "then man is truly a man: he separates himself from the animal. Henceforth he is no longer, like a stone, an immutable given, he bears within him negativity" (Bataille, 1997b, p. 281). Modern man becomes sovereign insofar as it moves so much, that all it is activity, that there is no room for thought, it becomes a lifeless thing, the most rudimentary of the tools living animals have ever used to kill: a stone. Or perhaps the foundation of a building, which for Bataille amounts to the same time rigidity that cannot move so as to see

past itself into what it has become, so it cannot become anything else. Immutable, while moving ceaselessly.

But what is this movement? Ecstasy gave the clue: war. In the part of *Phenomenology of Spirit* dedicated to “Spirit”, Hegel goes on to discussion of the relation between Spirit and “ethical life”. There, the essence of negativity comes to the fore, it is by the means of this relation that “the negative essence shows itself to be *the real power* of the community and *the force* of its self-preservation” (Hegel, 1977 [1807], p. 271; 452; my emphasis). “The community, *the superior law whose validity is openly apparent*, has its real vitality in the government as that in which it has an individual form. Government is the reality of Spirit that is reflected into itself, the simple *self* of the entire ethical substance” (Hegel, p. 1977, p. 270; 452; my emphasis). Government as the embodiment of Spirit that becomes the real power and force of the totality of community is described to be in antagonism with the community, constituted by the reproductive forces of facility and civil society in a modernizing and bureaucratizing world. “The community may, on the one hand, organize itself into systems of personal independence and property of laws relating to persons and things; and, on the other hand, the various ways of working for Ends which are in the first instance particular Ends – those of gain and enjoyment – it may articulate into their own special and independent associations” (Hegel, p. 1977, p. 270; 452; my emphasis).

The function of government is clear enough: it ought to provide a balance to *govern* rather than *counter* the tendencies of the times. “The Spirit of universal assembly and association is the simple and negative essence of those systems which tend to isolate themselves. In order not to let them become rooted and set in this isolation, thereby breaking up the whole and letting the [communal] spirit evaporate, government has from time to time to shake them to their core by war” (Hegel, p. 1977, p. 271; 452; my emphasis). This is not a depiction of public administration serving the purpose of mediating conflicts to anticipate peace and prosperity. Indeed, Hegel sounds like a time traveler that is aware of the profoundly alienating consequences of history as it was unfolding before his eyes: “those systems which tend to isolate themselves”, “not to let them become rooted and set in this isolation”, “government has from time to time to shake them to their core by war”. This stone, this tree, this bird who sings the anthems of war.

The Sage seems to have pick up a few things from Machiavelli's warning that in sizzling times, rules he who rides the tides rather than resist them. We soon realize that whatever is meant by "government", and this is not yet clear, its function is not to appease alienation. It is not to *respond* to something that already is. It is rather to create it, to give shape to it, to govern it in this productive rather than merely reactive sense. "But Spirit is at the same time the power of the whole, which *brings these parts together again into a negative unity*, giving them the feeling of their lack of independence, and keeping them aware that they have their life only in the whole". This is a new unity, the parts are brought together again, and again, and again. "From time to time". Community is brought together as an integrated, self-subservient collectivity generalizing the feeling of deprivation of independence.

By totalizing life and incentivizing assimilation, the desired effected is unintendedly produced through the means of disorienting orientation. Activity is aroused to the point is acts so much, and pointlessly, that it acts to consume itself. Acting hastily, impelled by the urgency of the times, the injustices of the world, against the indifference of my neighbor, against a neighbor that is too nosy, a neighbor that is too happy, too sad, that looms over me, suffocating just by breathing. "Spirit, by thus throwing into the melting pot the stable existence of these systems, checks their tendency to fall away from the ethical order, and to be submerged in a [merely] natural existence; and it preserves and raises conscious self into freedom and its own power" (Hegel, p. 1977, p. 271; 452; my emphasis). Spirit is possessed to the purpose of dispossession. It dispossesses itself and, in so doing, it remains possessed and possessing, it lives on through civil war that is now pacified out of the will to sedition. "By this means the government upsets their established order; and violates their right to independence, while the individuals who, absorbed in their own way of life, break loose from the whole and strive after the inviolable independence and security of the person, are made to feel in the task laid on them their lord and master, death" (Hegel, p. 1977, p. 271; 452).

And what is, after all, what Hegel means by "government"? It is not governmental institutions, as in state political institutions. But rather a quality of them that, once attained, will move by itself, washed off by the currents of time, to do the work of creating wars while trying to reconcile struggles for the good of all. "State power, therefore, still lacks a will with which to oppose counsel, and the



power to decide which of the different opinions is best for the general good. It is not yet a *government*, and therefore not yet in truth an actual state power” (Hegel, 1977, p. 307; 506). Once it comes to life, “government” becomes the means and the purpose of struggle: “it is, moves, and maintains itself by consuming and absorbing into itself the separatism” (Hegel, 1977, p. 287-288; 475).

#### **4**

### **Plan of the Dissertation**

In what follows, I set my way to argue that there may be a further sense in which there is a politics to contemporary critiques of the politics of political authorization. This brief sketching out of the problem of sovereignty as sacrifice and war suggests that there may be a choreography in play that enables the production of political space into the pieces that we often find to be constitutive of it: what the rulers and the ruled depending on the scale in which the problem is conventionally posed, what the “intervening” actors that rule through rulers may be, and how we imagine that the relations bringing these parts together as identifiable parts must have taken place given our initial empirical observations and the assumptions that inform how we shape these observations. I shall be arguing that war is a constitutive feature of the temporal production of the *effect* of political space, which, in turn, affects these practices that enable it by enabling them back.

This cannot be done without sophisticated descriptions of the sociological conditions under which this production happens. This necessity informs the selection “critiques of sovereignty in international relations theory” that shall be read in the Chapters ahead. They are Jean Bartelson’s recent critique of sovereignty in *Sovereignty as Symbolic Form* (2014), Martti Koskeniemi’s *The Politics of International Law* (2011), and Nicholas Onuf’s *The Mightie Frame: Epochal Change and the Modern World* (2018).

I chose a small pool of texts with the intention of reading them as closely as possible. As I hope it will transpire, these are dense texts. Not only there is complex conceptual work in them, that work is also combined into detailed and riveting empirical diagnosis about what might be going on in our disorienting present

politically-wise. I should also note that is not so easy to find scholars engaging in systems analysis these days, let alone about politics, and in addition to doing that, these authors bring some rather unusual variables to the cutting table – or at least they do it in ways that make these variables unusual. In different ways, all three invites us to think about how the international, being the frontier of how we experience the international through various internationalized worlds, actively participates in the production of the entangled relations whose fabric we call political modernity. They live up in their own ways to the Kantian legacy of immanent critique totality, and the limit that these attitudes inevitably arrive at is yet another valuable resource for political analysis.

Moreover, I share with them the view that whatever may be said to be going on, however locally it is produced, it happens in relatively concerted ways and across large spatial and temporal scales that may not be so easy to perceive without the proper enhancing apparatuses. Thus another reason is that Bartelson, Onuf and Koskenniemi problematize the international politics of the modern national sovereign state in relatively similar ways. They share similar epistemological positions that sometimes also converge methodologically. They even arrive at similar diagnoses about the origins and points of inflection in the development of the international system as they theorize it. Related to this is the fact that the substance of their critique is also similar, and this is especially important to my purposes. At the same time, they bring in different nuances that, taken together, enrich the still frame of the present with unexpected textures.

In this sense, they argue overall that the international production of modern political space through law. Law is the medium through which the limits of the community are negotiated when iterations of those limits come to be challenged under different circumstances and localities because its abstract quality, a modern trait, according to them, can encompass any contingency in principle. In practice, however, these practices of mediation hinge on the necessity of excluding in order to include, and they do this by following a normative social script that allows us to find the common threads among seemingly disparate events. Ultimately, law is the language and the instrument *par excellence* of modern politics.

In addition to that, these critiques call attention to the role that the practitioners of law occupy in the modern world to the extent that they are speakers of the language through which the political community is coercively mediated into

existence. In this sense, and this is another reason, these authors bring the bureaucratization of society into their diagnosis, even though they do this to different extents. As a result, they point us in the direction that something of government is in play – perhaps it is the trenches within the intentional actors of authorization; of course, this is part of my argument, but as we shall see, they give us the food for this kind of thought.

Furthermore, Bartelson, Koskeniemi and Onuf encounter a limit during their diagnosis. Their normative sociologies arrive at an impasse when applied to phenomena, as it feels to them as if there is no way forward politically with these theoretical resources alone. All three present a rather gloomy and simultaneously optimistic picture about the present and what to expect from the future. For they show us that modern politics has proven to have become totalitarian and prone to instability and struggle instead of living up to the progressive promises that constitute it formally. And there is no way out of it, unfortunately.

Still, all three play Sisyphus' part and roll the rock back up to the hill in order to find a way out even if it would have to remain within. Through different sources, they re-cast the problem of the limits of modern political representation, this time giving it the shape of an ethical problem. In doing so, the *author* figure is invited back into analyses that were supposed to be structural. Yet the problem is not the author *per se*, but how the limit that compels one to conjure the author is being imagined. Ethics defers the problem once more, and in ways that may be dangerously misleading.

Without further due, Chapter 1 focuses on Bartelson's *Sovereignty as Symbolic Form* (2014). I chose this text specifically because it is a watershed in his thought. In it, Bartelson leaves his entire oeuvre behind and exhorts us to go back to theory in order to problematize sovereignty ontologically. There is not much to work with in this respect, and I, as I hope to show, this text as plenty for us to work with. In Chapter 2, I read Martti Koskeniemi's *The Politics of International Law* (2011). Although this is not his most famous nor more recent text, it is a perfect example between these two points. The book is a collection of "essays" that gathers the entire evolution of his critique of international law as politics and of politics as law. As such, it contains poignant analyses in which he applies his methodology to various contexts pertaining to the contemporary state of the fragmentation of international law into many international laws, and a more mature formulation of

what he envisions for the future in comparison to the similar step that we find in his famous *From Apology to Utopia* (2005 [1989]). Chapter 3 is dedicated to Nicholas Onuf's *The Mightie Frame: Epochal Change and the Modern World* (2018). My reasons for reading only this text are somewhat similar to the justification given for Koskenniemi. Although this is a book and not a collection, Onuf maintains a sustained engagement with his early constructivist theory of international politics in terms of law, language and rule, now complementing it with an anthropology and applying it in a thorough analysis of the evolution of this normative system of politics as it expands over five hundred years. Likewise, it is there that his ethical system is fully developed.

In Chapter 5, I articulate what I believe to be the limit conditioning the limit that these authors meet in their critiques of limits. I do so by picking up the problematic of sacrifice, war, and the Hegelian sense of "government" once again, now replaying these themes through an unorthodox reading of some of Kant's late texts. Namely, *Critique of Judgement* (1790), "Perpetual Peace: A Philosophical Sketch" (1795) and "The Contest of the Faculties" (1798). Kant is the figure that brings all the pieces being laid out here, including these international critiques of sovereignty, together, if only as if instruments clashing in a disorderly orderly orchestra. The reading I propose enables us to "find" traces of him inhabiting these works, including Bataille and Hegel, and, obviously, my own. But these encounters also extend to a certain critique of the relationship between government, law and war that can be read – if some playfulness is allowed – into and out of these three texts.

## 2

### **Sovereignty as Symbolic Form**

In this Chapter, I surmise the shift in Jens Bartelson's critique of sovereignty. Bartelson has recently argued that, in order to grasp the changes that have been taking place in the practices of international politics in the few decades, sovereignty needs to be theorized ontologically rather than being the given object of historicizations. *Sovereignty as Symbolic Form* (2014) is a watershed in this respect.

In order to unpack this turn of events, the Chapter is organized as follows. In section 1, I go over Bartelson's argument that most theories emphasizing contingency and social constructedness of political concepts are informed by a misinterpretation of the relationship between essentialist and nominalist understandings of conceptual representation. In section 2, I describe how Bartelson finds his systems theory framework in Ernst Cassirer's theory of symbolic forms, and how he applies it to conceptualize state sovereignty as an empirical object whose formative principle is cultural, or social, and grounded in law. Section 3 recounts Bartelson's main argument that sovereignty has become an object of international government that has led to a new structure of subjection. The section ends with the limit that Bartelson identifies in the current stage the international system of sovereignty political authority, and his turn to ethics to problematize it.

## 1

### **The Problem of Political Concepts**

*Sovereignty as Symbolic Form* is partly born out of what Bartelson describes as his personal realization that "how we understand political concepts has profound implications for how we understand the nature of sovereignty and which methods we deem appropriate for studying it" (2014, p. 11). In order to pose the problems surrounding how "we understand political concepts and their meaning", he describes the historical trajectories of the disputes according to which semantic and

nominalist approaches to representation are contradictory to one another (Bartelson, 2014, p. 08). Bartelson argues that the nature of political concepts is distinct from that of other empirical objects, and, because of this, they ought to be composed by both principles.

The first of these extreme positions maintains that universals would necessarily impose on empirical contingencies. “Those who subscribe to this view will be inclined to assume that the concept of sovereignty has a given meaning by virtue of referring to some given facts or norms of political life” (Bartelson, 2014, p. 10). “At the one extreme”, Bartelson observes, “we find those who still maintain that sovereignty has a given and sufficiently precise meaning that corresponds to immutable features of the political and legal worlds” (2014, p. 08-09). The main consequence of conceptual essentialism would be analysis ought to assume that the limits enabling it are inert givens. “Taking this view of concepts appears to be a necessary condition of all further inquiry, since in the absence of any fixed meaning and stable reference, we will simply not know what we are talking about, let alone that we are talking about the same thing when we are talking about sovereignty” (Bartelson, 2014, p. 10).

On the opposite end of the rope is “the linguistic turn in philosophy and the social sciences” (Bartelson, 2014, p. 10). The motto is a functional critique of the limits of representation<sup>6</sup>: “the meaning of concepts derives from their usage rather than from their referents” (Bartelson, 2014, p. 10). This is the basis of critical political and legal thought since the end of the twentieth century (Bartelson, 2014, p. 57). This approach can be surmised as follows: on the one hand, we give and ungive names to things, and “the resulting classificatory schemes are the means by which we literally create the world”; on the other hand, “the meaning of political concepts is wholly contingent upon the context of their usage and on the discourses in which they figure, and hence that meaning is bound to vary across time and space” (Bartelson, 2014, p. 57).

Bartelson also holds that the “methods” of historicization and deconstruction are the final stage in the development of nominalist social theory, holding as well to the treatment given to the concept of sovereignty. The trap of

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<sup>6</sup> Onuf also provides a critique of what he calls “modernist functionalism”, as we shall see in Chapter 4.

discursive approaches to political concepts consists in the belief that “concepts are neither words nor things”, the task of the critic being to “describe the organization of the field of statements where they appeared and circulated<sup>7</sup>” (Bartelson, 2014, p. 11). The problem, in this sense, is that, because political concepts become “nothing but the sum of their histories”, we have no position from which to pass judgement on those concepts as problems on their own right (Bartelson, 2014, p. 11). The fact that critiques of sovereignty purport to diagnose continuities and discontinuities would mean that they do have this referent ground but leave it unproblematized for some reason.

Furthermore, Bartelson argues that, so understood, “the modern concept of sovereignty is characterized by a fundamental ambiguity that derives from the tendency to attribute constitutive powers to sovereignty while trying to control its meaning through practices of definition and contextualization” (Bartelson, 2014, p. 40). He divides these conceptual movement back and forth between definition and contextualization into two classes of problematizations of sovereignty: they either construe it as mutability or contingency.

Scholarship advocating mutability holds that sovereignty cannot have definite predications because it is spatial yet subject to temporality<sup>8</sup>. In this context, these theories attempt to reconcile the observation of contradictions seen as immanent to the concept by taking the “factual and normative aspects of sovereignty to be mutually implicating and co-constitutive” (Bartelson, 2014, p. 49). The problem would stem from the fact that these theories do not dispute the assumption that sovereignty *is* bounded, even though it is acknowledged to be made of more than one principle. In this sense, “the sources of change are invariably located inside the state or inside the international system, thereby reinforcing the view that the former is self-contained and the latter is self-regulating” (Bartelson, 2014, p. 55).

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<sup>7</sup> Quoting from his past work, *A Genealogy of Sovereignty*, he hammers the misconception down to the idea that, because “the concept of sovereignty is epiphenomenal to statements produced within a given discourse, then there cannot be any such thing as sovereignty outside the confines of discourse” (Bartelson *apud* Bartelson, 2014, p. 11).

<sup>8</sup> Theories addressing the voluntary transfer of governing prerogatives from sovereign states to international institutions, or responses in state government to transnational challenge, are examples of this conceptual attitude. Some of the authors he places in this category are Philipp Philpott, Stephen Krasner, Peter Jackson, Susan Strange and Saskia Sassen.

The inevitable consequence, Bartelson notes, is picked up by the theorists of contingency: “sovereignty cannot be both constitutive and wholly mutable at the same time” (2014, p. 57). These are the functionalist approaches properly speaking. Bartelson divides them into two groups. The first one would oppose conceptual reification and is characterized by what he terms as calls for “debunking sovereignty” (Bartelson, 2014, p. 59). According to him, to critique reification is to call for the substitution of reified concepts for contingent ones<sup>9</sup>. Bartelson maintains that within this critique “there was little agreement as to the ultimate sources of conceptual meaning beyond the common point that they somehow depended on prevailing practices of power in international relations” (2014, p. 59). The second group are sociologies that have opened-up these reified concepts “to understand how these changes have legitimized practices of power within the international system<sup>10</sup>” (Bartelson, 2014, p. 70). Sovereignty was now “norms, facts and institutions”, and found to be practiced in other institutional contexts by other actors that went largely unnoticed in virtue of assumptions that there was a *there* to its locality” (Bartelson, 2014, p. 57).

According to Bartelson, these critiques inevitably collapse into a paradox that pregnant with political consequentiality: “despite the widespread attempt to debunk sovereignty, many of the above authors ended up reaffirming sovereignty as an inescapable condition of the modern political order” (2014, p. 60). The resilience of these limited problematizations is attributed to *fetishism*. Fetishism, the argument goes, “is based on the belief that by turning abstract concepts into objects, they become easier to manipulate and control, while allowing us to attribute causal powers to them” (Bartelson, 2014, p. 40). The more we would attribute causal power to the object, the more we would want to control it by defining it properly, to the effect that it could only become more elusive, calling for contextualization, and so on and so forth. Bartelson argues, therefore, that these critiques cannot see past the limit of “the lingering tension between different attitudes to concepts and the conflicting ontological sensibilities they engender within academic and political discourse” (Bartelson, 2014, p. 62-63). As a result, these theories would have moved from a radical subjectivism to realist empiricism.

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<sup>9</sup> The figures in this group are Richard Ashley, R. B. J. Walker and Bartelson himself.

<sup>10</sup> He discusses the works of Jeff Huysmans, Wouter G. Werner and de Jaap H. de Wilde, Stephane Beaulac, and Helle Malmvig.



In his words, “the fetishism of sovereignty has indeed done to this concept what any other fetishism has done to any other abstract concept: it has turned sovereignty into a thing in itself and rendered it inaccessible to analysis” (Bartelson, 2014, p. 62-63).

These conceptual practices would thus participate in the ideological reproduction that sovereignty is a marker of boundedness. On the one hand, “by taking sovereignty to be a constitutive attribute of states, these theories assume that states are more or less self-contained entities, and thus not dependent for their existence on anything outside themselves”. On the other hand, “by taking state sovereignty to be a constitutive feature of the modern international system, these theories assume that this system is essentially self-regulating, insofar as it caters to its own reproduction and contains the conditions of its own possible transformation” (Bartelson, 2014, p. 41). In Bartelson’s view, this way of posing the problem of the limits of representation cannot bring into the purview of problematization that by symbolizing sovereignty in this way we produce what we believe is producing us. Hence the final consequence of fetishization: “these theories imply that the international system is exhaustive of the possibilities of political order and therefore lacks an exterior” (Bartelson, 2014, p. 41).

## **2 Sovereignty as Symbolic Form**

Bartelson argues that we would be able to represent how this totalizing partition of worlds comes to be. For that to be possible, and thus for the representation of “an exterior” to be possible, we would need “to find a way out of this impasse” (2014, p. 08). Informed by the Ernst Cassirer’s Neo-Kantian theory of the immanent limits of representation, he holds that “although the claims of classical semantics and those of the linguistic turn appear incommensurable at first glance, they converge on the assumption that language and the world are separate domains that stand in a determinate relationship to each other” (Bartelson, 2014, p. 12).

A truly reconciliation that could render these opposites co-constitutive needs to find what these positions share *before* the idea of their causal relationships. The incapacity of doing so, Bartelson goes on to say, “blinds us to the possibility that certain objects might exist independent of their linguistic and material instantiations and instead condition the possibility of both” (2014, p. 13). He acknowledges, for instance, that in the past he did intuit what would now become the project when he maintained “that sovereignty ought to be understood as a parergonal frame that constitutes the domestic and international as distinct yet mutually implicating realms” (2014, p. 02; p. 13). The metaphor of the “parergon” is borrowed from Jacques Derrida, who is quoted in the text to define that it: “is nevertheless a form which has traditionally been determined not by distinguishing itself, but by disappearing, sinking in, obliterating itself, dissolving just as it expends its greatest energy. A frame is in essence constructed and therefore fragile, this is the essence or the truth of the frame” (Derrida *apud* Bartelson, 2014, p. 13).

Unfortunately, he maintains, “Derrida himself had little to say about what such frames are and how they function” (Bartelson, 2014, p. 13). By picking up from the lack identified in Derrida’s definition, Bartelson sets himself to “try to expand on the framing function of sovereignty by suggesting that sovereignty is a *symbolic form* by means of which Westerners have perceived and organized their political world during the modern period” (2014, p. 13-14; emphasis in the original). (It is from Cassirer’s theory of symbolic forms that he derives the idea just mentioned that “objects exist independent of their linguistic and material instantiations and instead condition the possibility of both”).

Bartelson divides the theory of symbolic forms in two senses. In the general sense, “the concept of symbolic form refers to different general systems of meaning by way of the function of those systems” (Bartelson, 2014, p. 13). In a nutshell, it is that objectivates *systems* of “meaning” in terms of their *functions*. These relations of production typified into mythical, representative, and significative. In its second sense, “the concept of symbolic form refers to the specific structures used to organize what otherwise would be a disorderly experience into intelligible wholes”. Bartelson brings these two levels together by surmising this theory of form as “modes of objectivation that allow us to combine elements of experience according

to generic principles open to endless modification, while existing independently of their end results” (2014, p. 14).

Bartelson derives his theory of the outside of discourse from this passage from quoted from Cassirer: “the object of cognition is no doubt determined and formed in some way by cognition ... but it must nevertheless ... also be present and given as something independent outside of this relation to the fundamental categories of knowledge” (Cassirer *apud* Bartelson, 2014, p. 14; edited in the original). Working within the Kantian paradigm of the transcendental subject, Cassirer is also quoted to maintain that between idea and experience, “none of them can develop its appropriate and peculiar type of comprehension and configuration without ... creating a definitive sensuous substratum for itself. ... this substratum is so essential that it sometimes seems to constitute the entire content, the true ‘meaning’ of those forms” (Cassirer *apud* Bartelson, 2014, p. 14; edited in the original). Bartelson derives from this the conclusion that “the only way in which cultural objects become present to the human mind is through the use of language”, by which he means the *productive* rather than merely *reproductive* use of language (2014, p. 13). Another passage from Cassirer is referenced, one in which the attempt to distinguish the subject as *active* powers of making itself and worlds through itself is made by metaphorizing objects, which would be inanimate if radically opposed to the subject, as extensions through the living organism: “Symbolic forms are not imitations, but organs of reality since it is solely by their agency that anything real becomes an object for intellectual apprehension, and as such is made visible to us” (Cassirer *apud* Bartelson, 2014, p. 15).

Moreover, Bartelson also authoritatively invokes Cassirer to argue that the process of symbolization of symbolic forms entails the representation of “a given form of relation in its concrete application and concrete meaning”. This would entail the description of “its qualitative attributes as such, but also define the system in which it stands” (Cassirer *apud* Bartelson, 2014, p. 15). So understood, representation is subjective in the sense that it is always perspectival. Retroactively abstracted from given patterns of activities, the form would be instantiated in such objects as “a perspective taken of an object”, so that “in the case of man-made objects, the taking of such a perspective also becomes constitutive of the object in question” (Bartelson, 2014, p. 14-15). Taking a perspective would be a practice at

once reproductive and productive, for it is an expression of what already is, but which at the same time only is as if objectively because it is variously instantiated subjectively.

Bartelson thus proposes his model of mutual constitution. On the one hand, indeterminacy is not immanent to discourse, but to the subject. He brings Cassirer in to say that things in the world are “possible only because we ourselves create the fundamental elements of form” (Cassirer *apud* Bartelson, 2014, p. 41). On the other hand, to problematize political community as an object whose empirical limits are cultural would be “thus *objective*, not by virtue of existing outside time and space, but by virtue of being able to organize words and things into meaningful wholes and render these wholes accessible to knowledge” (Bartelson, 2014, p. 15; emphasis in the original). According to him, this objectivity founded within socially mediated subjectivity is enabled by “the use of symbols [that] brings things together and creates a sense of unity, thus making them accessible to human understanding and creative intervention” (Bartelson, 2014, p. 15).

The theory of symbolic forms is a theory of empirical objects as regulative ideals. As such, they are intangible, as if empty vessels, that need to be given tangibility so as to have the grip necessary for their structuring powers. Bartelson goes on to argue that “the modern state is a case in point” in this respect (2014, p. 15). In the general sense of the symbolic form, sovereignty would have encompassed all three functions of symbolization. Furthermore, “in the narrow sense of the ‘symbolic form’ described above, sovereignty is a mode of objectivation that has been allowed to structure the production of both meaning and experience” (Bartelson, 2014, p. 15). Under this light, problem of sovereignty becomes that of its embodiment.

Furthermore, Bartelson describes the process of the progressive functional differentiation immanent to the concept as follows: “while notions of supreme authority originated in myths of divine omnipotence, symbols of sovereignty were indispensable for representing royal authority during the sixteenth and seventeenth centuries, until sovereignty resurfaces as a core assumption of legal and political science during the twentieth century” (2014, p. 15). Law is significant to the extent that it is modeled after modern, geometrical causality, therefore enabling more encompassing and dynamic practices of abstraction of conflicting differences

in the processes of mediating community. Bartelson also agrees with Suganami, whom he quotes to argue that “while the normative and the factual views of sovereignty might seem far apart, they nevertheless converge on a social ontology within which the practice of sovereignty is the centerpiece” (Suganami *apud* Bartelson, 2014, p. 48). In this sense, the capacity of law to support these two opposite and equally necessary principles to the production of modern political communities has been paramount to the international organization of political spaces into the inside/outside of the domestic and international orders.

Sovereignty is thus the characteristically modern way of addressing the problem of spatial-temporal change, and, in so doing, it “structures our perception of political reality” while it “allows us to shape objects in rough conformity with this form”, being reproductive and productive simultaneously. Bartelson adds that the regulative ideal does this “by providing actors with the conceptual resources necessary for raising claims to sovereignty while putting effective constraints on *what* kind of actors raise such claims over *what* kind of entities, as well as *which* claims to sovereignty are likely to be recognized as legitimate by other actors” (2014, p. 15-16; emphasis in the original).

The limits of political community are authorized through a politics of sovereignty recognition, wherein conflicts are articulated, negotiated and sublated through the means, and in reference to, law. “The raising and recognizing of such claims in turn determine the factual and normative content of sovereignty, by telling us that certain kinds of actors are sovereign while others are not, and that the latter are entitled to act in ways that others are not” (Bartelson, 2014, p. 16). This has allowed for the assimilation of various principles of sovereignty recognition that, under changing historical circumstances, have given shape to the claims of state politics to self-determination for their own development and from determination by others, to the effect of producing and reproducing sovereign state’s universal semblance amidst disruptions.

According to Bartelson, the main purchase of problematizing sovereignty as a social would be in the move away from the unproductive questions that have animated the debate so far: whether sovereignty is relevant or not, whether it is (in the process of becoming) gone or here to stay, or whether it is real or constructed. Inquiry can now move in the direction of asking “how this symbolic form has been

used as a template for organizing political life” and “by what means it has been allowed to structure the political world” (Bartelson, 2014, p. 17). In other words, “answering such questions then becomes a matter of explaining how political authority has been centralized and territorially bounded, how populations have been homogenized into peoples, and on what grounds bounded political communities have granted each other recognition while excluding those entities that have failed to conform to this form from the purview of such recognition in the process” (Bartelson, 2014, p. 17).

### **3 Between Political Authority and Territory**

In general terms, “the symbolic form of sovereignty presupposes that political authority and territory are or ought to be congruent” in a relation of indivisibility (Bartelson, 2014, p. 29). Bartelson traces the invention of indivisible political authority to the geometrical solution given to the problem of spatial continuity in the interval between the death of the king and the coronation of its successor. Represented as indivisible, principles of political order could be ascribed to other concrete vessels other than the king’s body, as long as authorization managed to produce the effect of it having remained indivisible in the process. This has been a paramount shift in the production of space given the problem of temporality, for, back then, “in the absence of a determinate locus of sovereign authority, the state itself will lose its unity and dissolve into factions, divided along the lines of status or faith” (Bartelson, 2014, p. 17). Soon, law would come to be called upon to perform the function of abstracting differences into a unity of many.

Bartelson finds Hobbes’ nominalism to be exemplary of this turning point towards legal abstraction. By adding extension to indivisibility, Hobbes provides a conception of supreme political authority that is an undivided thing rather than merely indivisible. The cover of *Leviathan* expresses the problem: the state ought to be as if the composite of many points related by law given by the institutional sovereign representative of the invested desire in the unity. As a result, the whole can have parts differentiated across spaces and times, and liberty can encompass

various classifications of inequalities while retaining an identifiable sense of wholeness. In sum, “the state is an instantiation of a geometrical object, a unity-in-multitude whose intelligibility derives from its conformity with a universal and timeless form” (Bartelson, 2014, p. 24).

Modernity really beings, however, when the form becomes temporal. This would be the consequence of a contradiction that emerged from the Hobbesian state, for it found itself split between two principles of indivisible sovereignties: the prerogative of political authority to give legal limits being the demarcation of *the* unchanging limit of community, on the one hand; and the abstraction of land into territory as the vessel giving the sense of concreteness to that same claim of the continuity of space regardless.

Both principles were necessary for the experience of community problematized as a purposiveness that exists in time. The solution would be to totalize the law by bringing territory under it, as it would be made to accommodate both principles. According to Bartelson, modern geometry is responsible for the transformation in the representation of space that radically divorced the imagination of the limits of the former from its material instantiations (2014, p. 24). Through three-dimensional Euclidean space, political community could now be analogically defined as indivisible political authority exercised over a definite indivisible territory. Bartelson also emphasizes how the coordinate system provided the possibility of visualizing the otherwise intangible: “if sovereignty is taken to mean supreme authority *over* a given territory, this implies the possibility of locating that authority *vertically* in relation to an already bounded portion of space” (2014, p. 26; emphasis in the original).

Moreover, he traces this innovation to then contemporary “cartographical and geographical revolutions of the late sixteenth and early seventeenth centuries”, adding that “this was accomplished by conceptualizing the world as a spherical geometrical object, a *globe*”. From this, followed another unintended consequence that would bring us closer to modern law. The world became experienceable as an abstraction through which we could represent ourselves as parts integrating an all-encompassing totality premised on relations of distance and proximity. This and other technological developments inaugurated these limits within the limit of the world as being contingent and thus open to manipulation. And with them came the

“dreams of unbounded sovereignty” (Bartelson, 2014, p. 26; emphasis in the original).

Imperialism became the empirical “precondition of the subsequent division of that globe into distinct spatial portions by means of geometrical methods and for the subsequent subjection of these portions to exclusive sovereignty claims” (Bartelson, 2014, p. 26). This was to be achieved through law that internationalized the world *out* of the globe, Bartelson notes. “So when the whiff of incense that had surrounded the birth of sovereignty finally dissipated”, the argument goes on, “we were left with what somewhat paradoxically came to be seen as a self-evident yet empirically misguided presupposition of modern politics” (Bartelson, 2014, p. 25).

This self-evident yet empirically misguided belief is nothing other than the regulative ideal itself. In a nutshell, “the quintessentially modern fusion of authority and territory presupposes the possibility of bounding space” (Bartelson, 2014, p. 29). Only then “space is turned into a *precondition* and as well as a *limit* of sovereign authority, thereby being constituted into a *territory* in a recognizably modern sense of this term” (Bartelson, 2014, p. 28; emphasis in the original). According to Bartelson, this explains that “although the symbolic form of sovereignty presupposes that political authority and territory are or ought to be congruent, it remains highly malleable when it comes to its content, since it contains no strong commitment as to where sovereignty should be located within the state” (2014, p. 29). The result has been the capacity of international law and politics to accommodate into a single community “a wide array of authority structures and constitutional arrangements, as long as the ultimate source of sovereignty is held to be indivisible in principle” (Bartelson, 2014, p. 30).

Thus, the meanings and the functions performed by sovereignty are institutionally and normatively mediated by international law, having led to significant transformations in the concepts and related experiences of international order, and the reverberation of those to how political space is organized domestically. In order to make sense of how the meaning and the function of sovereignty play out today, Bartelson argues that although the international remains, we would gain insight by bringing the globe back in: “we should indeed situate sovereignty in a global context and then inquire into how the function of



sovereignty has changed as a consequence of its meaning being stretched to fit these circumstances” (Bartelson, 2014, p. 69).

There would be two reasons for doing so. First, it would be reasonable to do so given that sovereignty was born from the tension with the global: “if the prior construction of a global sociopolitical space was necessary for the emergence of the symbolic form of sovereignty, it follows that the order of inquiry should be reversed” (Bartelson, 2014, p. 74). Contemporary accounts of globalization, however, would be ultimately useless for this purpose, since they all take sovereignty and the international as givens. For this reason, they take the global as a given too, none of them providing “an understanding of the global as a *sui generis* category, referring to a larger social whole being something more than the sum total of its constituent parts” (Bartelson, 2014, p. 74). He argues that “it is possible and indeed necessary to make sense of this realm in independent terms by assuming that globality is a social fact”, thus preventing “any commitment to the existence of universals” (Bartelson, 2014, p. 72).

This underpins his argument that there has been change. Although political space remains international, transformations in relations of legal recognition have turned sovereignty into a global object of governmentality that is manipulated into being within the framework of international law (Bartelson, 2014, p. 75; p. 78). According to his “unorthodox” definition, governmentality seeks to explain “how the spaces within which such governmental activities take place are constituted in the first place” (Bartelson, 2014, p. 76; p. 77). Therefore, we should “inquire into how sovereignty is affected by changing governmental strategies”, especially because “sovereignty can nevertheless be seen as a manifestation of such relations” (Bartelson, 2014, p. 77). Bartelson’s hypothesis is that international legal recognition is “contingent upon governmental rationalities that operate by redrawing the distinction between inside and outside in order to secure the smooth functioning of both the sovereign state and the international system” (2014, p. 75).

The second reason for going global stems from what Bartelson considers the fact that the distinction between inside and outside has already been “blurred” empirically. This would suggest that the meaning of sovereignty that is constitutive of the international system today has already undergone change. So, the natural question, the argument goes, is “*where* does the ensuing conflict between different

universalistic viewpoints play itself out?” (Bartelson, 2014, p. 71; emphasis in the original). His answer is that the social fact of globality stems from the fact the persons in position of authority over the drawing of those boundaries act as if the global exists – it has become a collectively mediated subjective representation that attains objective consequences because it “works”, as *per* the definition of symbolic form (Bartelson, 2014, p. 72).

The global is thus inserted into the analytical framework to the extent that authoritative actors are now “embedded within a broader institutional arena concerned with the production of global public goods” (Bartelson, 2014, p. 73). Although it is the sovereign states that will ultimately produce themselves in this manner, they are not the actors in hand. “What looks like a quest for mastery of the global realm is perhaps better understood as the cumulative outcome of attempts to govern the global by an array of non-state actors, ranging from global governance institutions to non-governmental organizations” (Bartelson, 2014, p. 76). In turn, the coordination of these seemingly disparate actors with concerns multifaceted across different regimes is explained in virtue of them sharing “to the same governmental rationality”, the consequence being that they unintentionally “reinforce each other’s authority” (Bartelson, 2014, p. 79).

The new international political space is constituted by sophisticated practices of intervention, Bartelson points out. In contrast to being once perceived as blatant violations of international law, “recent strategies for interfering in the domestic affairs of states are justified on grounds that such interference is necessary to strengthen their sovereignty”. New principles for sovereignty recognition include “overarching values of domestic democracy and development, as well as to the imperatives of preserving international peace and security” (Bartelson, 2014, p. 80).

At the same time, it seems that the global is as if an outside *within* the international system. Bartelson leads us in this direction when he says, for instance, that “the universalistic visions invoked to justify the projection of such governmental strategies into the global realm today operate under the assumption that the international system of states is the only available medium for realizing such visions in the near future” (2014, p. 78). There would be the perception by these actors and the states subjecting to their authority that a limit has been reached in the politics of sovereignty, and they are doing what they to address that

insufficiency with what they have. The result is that, “while such interventions take away some traditional prerogatives of sovereignty, they carefully preserve the legal personality and territorial boundaries of the targeted state” (Bartelson, 2014, p. 84). For this reason, he argues that theories that account for these changes as a matter of globalization or the production of the neoliberal state risk missing the point that “the governmentalization of sovereignty is an inherently conservative project (Bartelson, 2014, p. 79).

For Bartelson, this would not be possible without abstract nature of sovereignty’s symbolic form nor without its further disaggregation by recent critiques of it. It is in this sense that he affirms that “such strategies are premised on the possibility that the factual and normative aspects of sovereignty can be brought to coincide through clever political and legal engineering, and that the mutability of sovereignty implies that domestic authority structures are open to modification through outside interference” (Bartelson, 20104, p. 69). The institutional settings of a bureaucratized and now functionally differentiated international law set the tune according to which states bring themselves to dance – and while some of them enact these reformed legislations and policies willingly, others so not.

“From being based on principles of dynastic succession, via the ideals of national self-determination and *de facto* control, to the more recent requirements that states should be democratically governed and protect the rights of their citizens, the changing practices of international recognition have been important in shaping domestic authority structures as well as the structure of the international system” (Bartelson, 2014, p. 29).

Bartelson surmises the international problem of government as follows: “it presupposes the existence of an international system, and then asks how this system can be more effectively governed in the interest of maintaining peace and order” (Bartelson, 20104, p. 69). As a result, the boundlessness once attribute to the globe would be back in internationalist and progressivist clothing: “theories that attempt to justify global political authority in democratic terms unwittingly plunge us back into a universalistic framework not very different from that which early-modern theorists of sovereignty struggled to escape, while disregarding the possibility that

universalistic authority claims might clash now as much as they did back then” (Bartelson, 2014, p. 30).

Gone are the days, he notes, when the states claiming sovereignty were primarily “understood as essentially self-contained and self-regulating entities” (2014, p. 69). The “ambition to turn the sovereign state into an object and instrument of governance” has turned the regulative ideal into a paradoxical will that homogenizes by splitting apart, and to the point that “sovereignty is no longer equated with supreme domestic authority” (Bartelson, 2014, p. 69; p. 84). The limit that informs the production of the boundaries of the political community “no longer is akin to virginity or pregnancy”; instead, the normativity expects that “it might vary along a continuum according to the relative compliance with universal standards of governance” (Bartelson, 2014, p. 83).

The fact these interventions are now sanctioned by the “international community” in routine ways means that states seldom experience them as interventions but rather as paths necessary and thus desired be taken on the many roads to universal peace and development. All the while the decisions over what counts as those necessary paths and ends would no longer be secured through international law, as states now produce themselves though the latter as owing to themselves to leave those decisions to the experts. This leads Bartelson to argue that the rationality of the international system has been inverted. Today, it would be the international order, through its many institutions of governance and overlapping strategies of governmentalization, that has become the subject claiming recognition on behalf not of itself as opposed to the state, but as the representatives of the latter governing for and through them.

The main principle of sovereignty recognition today would be the “modern democratic standards of legitimacy” (Bartelson, 2014, p. 100). Historically, the nation-state has been erected upon these standards, and, in this context, universalism within came with the self-limiting condition of territorially based regulations that inscribe the political space of the state as inclusions and exclusions across the lines of national citizenship. Today, however, the same principle is being mobilized to altogether different consequences while maintaining the semblance of continuity. For these theories and practices of politics “remain premised on the

notion that communities need to be bounded in order for a global political authority to be democratically legitimate” (Bartelson, 2014, p. 30).

Political change, in this sense, is claimed to be the result from the consolidation of this authority internationally, starting at the end of the Cold War. On the nature of these new practices of subjection, Bartelson notes that “when political authority is distributed among different kinds of actors and across different functional domains, subjection to authority becomes multiform and discontinuous in character”. By this he means that “although this mode of subjection largely is *indirect* since it almost invariably runs through states, legitimacy rather becomes a question of justifying the functional *scope* of political authority *within* different issue areas, as well as justifying the boundaries drawn between different domains of authority” (Bartelson, 2014, p. 100; emphasis in the original).

#### 4

#### **“Boundary Problems”: Freedom Beyond Sovereignty**

That “democratic standards of legitimacy have lost much of their emancipatory potential and instead been harnessed for governmental purposes” is the contemporary dilemma of the present that political and legal theorists have the duty to address in order to find a way out of it (Bartelson, 2014, p. 103). In this sense, Bartelson finds in the shift to this type of rule the reiteration of the “the boundary problems” that sovereignty itself creates given an internal inconsistency in the form. The path to the “outside” is really a move inward in the subject that passes judgement on these representations. In Bartelson’s words, the pernicious limiting-practices of contemporary sovereignty politics “must be addressed in terms of the *intrinsic limitations* of political authority, whether sovereign or not” (2014, p. 100; emphasis in the original).

Given that sovereignty is defined as the production of legally and territorially bounded communities, Bartelson needs to provide a concept of political authority that is broad enough to encompass sovereignty so defined without being exhausted by it, which then becomes the task of providing a concept of freedom meeting these criteria. This concept, we shall see, is primarily ethical. The general

call to action, for instance, is that “those who want to resist any further governmentalization while avoiding playing into the hands of authoritarian and revisionist states are therefore left with the option of reviving and revitalizing forms of human association that cannot be assimilated to the symbolic form of sovereignty” (Bartelson, 2014, p. 103).

Bartelson finds resources to articulate represent the limit of the form of sovereignty authority that would allow for that type of activity by engaging with the republican thought of Skinner and Pettit, on the one hand, and with Foucault’s notion of the power-freedom nexus. From the former, he takes the idea that political authority and law are defined as the means through which domination ought to be limited. By domination he means those instances wherein “an offer is made that you cannot refuse by an identifiable agent”, so this agent is “able to interfere on an arbitrary basis with the range of options available to the other, or with the payoffs that result from the choices available” (Bartelson, 2014, p. 101). The problem thus hinges on determining the unconditional limit in relation to which political authority can be performed by preemptively distinguishing itself from domination.

Bartelson also stresses the totalitarian nature of the politics of subjectivity that underlines rule by domination. For this is a “primitive but effective way of sustaining political order, simply because it destroys the capacity to think and act independently among those exposed to its whims. In a context in which domination prevails, people are likely to recognize political authority in the same way as slaves recognize their masters”. According to him, “the sheer awareness of the possibility of arbitrary interference is psychologically inhibiting” (Bartelson, 2014, p. 101). Domination would deprive the subject from presenting itself to itself as subject. Note how similar the reasoning is to his critique of fetishism, and with what Cassirer’s offers that is new in relation to the former: fetishism deprives us from presenting ourselves as makers of our worlds in a meaningful sense, as subjects endowed with the capacity to discern ourselves into our objects as creator *and* creature *simultaneously*.

The search for the subject becomes more apparent in the subsequent discussion of freedom. Bartelson notes, in this sense, that because sovereignty is freedom premised on legal-territorial boundedness, it is inevitably pulled towards domination. It has always needed to exclude in order to include, and now it can do

it in the totalizing manners just diagnosed: the new modality of sovereignty production “has turned the modern international system into an empire in its own right, based on claims to boundless authority backed by appeals to universal moral standards” (2014, p. 99).

Thus, we would need to find within sovereignty, at its frontier as a form of political authority, *the* limit that would enable its constraint into legitimate authority. Bartelson draws the concept of liberty from republicanism and sets it in tension with sovereignty. Liberty, he continues, is both “*a condition of possible legitimacy*” and “a means of resistance against those authority claims that fail on the above score” (Bartelson, 2014, p. 102; emphasis in the original). The problem primarily related to institutional political authority, as his reference to Pettit’s concept of the universal (though contingent) purpose of government shows: “a political authority should be *forced* to track the common and avowable interests of the citizens in order to avoid becoming an arbitrary sort of power... [while] the question of who is subjected ought to be determined in a way that is itself non-arbitrary, that is, with reference to the interests of those subjected” (Pettit *apud* Bartelson, 2014, p 101; my emphasis).

Bartelson complements this with Foucault’s notion that power cannot do its bidding without being able to assert subjection, therefore entailing that power is not merely imposed, but also given<sup>11</sup>. Since subjection would come logically before power, there is no institutionalization of political authority that cannot be resisted; that is, that cannot be collectively imagined and practiced otherwise (Bartelson, 2014, p. 102). Because we cannot count with political state and non-state actors that are caught in the loop of “justifying the functional scope of political authority within different issue areas, as well as justifying the boundaries drawn between different domains of authority”, the spell needs to be broken from its margins, by *forcing* an

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<sup>11</sup> The passages quoted from Foucault are the following: (1) “when one defines the exercise of power as a mode of action upon the actions of others, when one characterizes these actions by the government of men by other men . . . one includes an important element: freedom. Power is exercised only over free subjects, and only insofar as they are free”; (2) “at the heart of power relations and as a permanent condition of their existence there is an insubordination and a certain essential obstinacy on the part of the principles of freedom, then there is no relationship of power without the means of escape or possible flight” (Foucault *apud* Bartelson, 2014, p. 102). Both are from “Subject and Power”, one of the texts associated with Foucault’s turn to ethics.

ethical change in how the legal resources of coercive production enabled by sovereignty are employed (Bartelson, p. 100).

His theory of the ethical limit of political authorization is presented as “the refusal of recognition” as a “strategy of resistance”. Or, in other words, “we should require of political actors – state or non-state alike – that they recognize agents as bearers of rights, and create and uphold the social preconditions in which agents are free to recognize them as rightful in return” (Bartelson, 2014, p. 102; p. 101). Figuratively or literally, as he puts it, “in the present context, this means that in order for the refusal of recognition to be a successful strategy of resistance, it has to draw upon normative frameworks available to those subjected to illegitimate forms of authority” (Bartelson, 2014, p. 103).



### **3**

## **The Critique of Legal Indeterminacy**

In this Chapter, I surmise Martti Koskenniemi's "critique of legal indeterminacy". Its overarching argument is that practices of international legal argumentation are practices of international politics.

In order to foreground his diagnosis about the contemporary limits of international practices of political authorization, the Chapter is organized as follows. In section 1, I go over Koskenniemi's description of the main changes and continuities in contemporary international politics. Although formal international law remains in the context of global governance regimes, the founding "vocabularies" of formalism have been replaced by those of managerial functionalism informed by theories of international relations. Rather than being principled by state sovereignty, the present international would be characterized by the anarchic struggles of pure power between regime sovereignties. Section 2 outlines his critique of legal indeterminacy. I also follow Koskenniemi's discussion of Samuel Pufendorf's international theory of legal techniques of government as the paradigm of contemporary international (legal) politics. In section 3, the absolutist limits and critical possibilities that Koskenniemi finds for universality principled by indeterminacy are addressed.

### **1**

## **From State to Regime Sovereignties**

Martti Koskenniemi holds that the transformations in contemporary international political organization have been primarily about shifts in "the vocabularies of power" that inform international practices of legal argumentation about the limits of the political community. The conventional vocabularies of international formal law, composed by "sovereignty, diplomacy and foreign politics", he maintains, reigned relatively supreme since the end of nineteenth century Europe and its world-wide expansion until the recent present

(Koskenniemi, 2011, p. 318). Although Koskenniemi attributes this collapse to the triumph of managerial theories of international relations at the turn of the twentieth first century, he also points out these “idioms” had already been under attack from within the disciplinarity of international law. In this respect, managerialism and legal realism share the influence that behavioralist political science has had on legal and political thought since the 1960’s. In an important sense, then, the managerial rhetoric was not entirely foreign the international lawyer.

The juridical idiom of sovereignty is one of the sites through which Koskenniemi describes what this change has been about. For the “new”, “progressive”, “managerial mindset” sovereignty was the tenet of the “old”, insufficient and highly problematic way of enacting the rational boundaries of collective humanity unfolding at the scale of the world (Koskenniemi, 2011, p. 318). To the extent that the displacement has been successful, Koskenniemi is categorical that (legal) state sovereignty as we knew it is gone. What does he mean by this? Conventionally, he suggests, sovereignty was the problem to which the limits of legal formalism were supposed to be the solution. “Intellectual and legal histories often operate with an opposition between the vocabularies of ‘sovereignty’ and ‘law’, the former highlighting the prince’s freedom of action, the latter the ways of his being bound” (Koskenniemi, 2010, p. 224). According to him, the original project of the modern international found in the bindingness of law the turning point of the movement away from the subjective irrationalities of power politics and towards the rationalization not only of conflicts between states, but also of the exercise of state activity in general.

The idea is said to had inspired by the process of bureaucratization of public administration driven by law during the nineteenth century in Europe, and especially in (what is now) Germany. At the image of “the rule of law” within, states were “conceived as legal subjects in a system where their territorial possessions were like property, their treaties like contracts and their diplomacy like the administration of a legal system” (Koskenniemi, 2011, p. 331). The realization of the dream of having international politics limited by the “administration of legal rules and institutions” according to the “the view of international law as a complete, common law type of legal system with a single right answer to every problem” begins there, declared as a “progressive, liberal project” (Koskenniemi, 2011, p.

332). Koskenniemi highlights that, since these beginnings, sovereignty was never an easy topic for conversations involving international lawyers: “everybody agreed that although statehood was important, it was also problematic” (2011, p. 332). This tension remained throughout the following century, until it was altogether run-over by managerialism, becoming one of the main targets of the latter’s critique.

According to Koskenniemi, legal sovereignty made itself open to that attack in virtue of simply being itself. The very “vocabulary” would have been bound from the get-go to arrive at the limits expressing the general contradiction characteristic of the problem that animates international legal discourse – that of its own bindingness as the representation of universal limits that is just as empirically informed as it is a formal enterprise. For legal-realists and managerialists, he notes, the formalism of the principle made it a too ambiguous vocabulary that would now have grown out of its pointless contradictions to the point of having become a “positive obstacle for the natural development of social and economic life” (Koskenniemi, 2011, p. 318). While it was “too wide to encompass claims of human groups inside the state”, it was also “too narrow to respond to global threats and opportunities” (Koskenniemi, 2011, p. 318). Any problems could be inscribed under it, and when contradictory claims around problems are made in terms of this right, the only thing that the “vocabulary” of sovereignty is good for, these critics would say, is to leave us short of solutions to the problems it creates.

In this sense, Koskenniemi calls attention to how the problem of the bindingness of international law haunts and enables international legal practice to this day, from all sides imaginable, encompassing formalism, realism, managerialism, as well as the more recent constitutional and pluralistic attempts to address the fears around the deformalization and the fragmentation of international law. “The juridical vocabulary reaches its limit in the curious doctrine”, he goes on to say, “that states themselves are the origin of the ties that bind them, and that this is precisely why they are binding” (Koskenniemi, 2011, p. 227). When the limit that sovereignty is supposed to represent as the purpose of state political communities is articulated through the language of modern law, paradox is bound

to ensue: assuming (as lawyers often do, to Koskeniemi's frustration<sup>12</sup>) that states have consented to the limits of international law, the basic question of the conundrum would be how far can that boundedness claim to go.

Koskeniemi tries to bring out the predicament by engaging us in a thought exercise. Once the train of international legal administration has been set and is on the move, as soon as we have something like the United Nations Charter, can the principles expressed in that convention and ratified by states members be used to impose standards for action beyond the continuing volition of states to abide to them? If the answer is no, then the problem is that there would be nothing international law except politics grounded on the subjective disposition of states. Short of an externally constraining principle, there would be no whole exceeding the sum of its parts and contingent relations. In case the answer is yes, the problem becomes how can that international whole be at all if the assumed reason of its being, the consent of states, is no longer there, for it will have been superseded by the higher rationality of international legal rulings. If "to renounce 'sovereignty rights' is not to give up 'sovereignty'", he proceeds to ask, "how serious is this point?" (Koskeniemi, 2010, p. 226). "The problem-setting seems as frustrating as a little boys 'quarrel over whether God's omnipotence might mean that He is able to create a stone so heavy that He Himself could not lift it up" (Koskeniemi, 2011, p. 227).

He adds, in this sense, that the limits of legal sovereignty "can be almost seen as a founding argument for modern international law" (Koskeniemi, 2010, p. 226). Personifying the "native speaker" (his term) of legal sovereignty, he goes on to say: "we respect it inasmuch as it enables us to reach valuable purposes, such as *pax et tranquillitas*, happiness and security of the population", for "if it is the point of sovereignty to provide all this, then surely it cannot be invoked to undermine it".

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<sup>12</sup> "For – and this is the crux of my 15-year experience at the legal department of a European foreign ministry and then in the academy – despite their constant use of a vocabulary of interdependence and occasional recourse to sociological generalisation about 'real interests', lawyers never took these very seriously or examined them in any depth. They were adopted as articles of faith rather than matters of argument or proof – or if not really faith, then at least as professional mannerisms reflecting the lawyers' self-deprecatory assumption that the only respectable modern vocabulary of 'theory' was some kind of sociology and that by deferring to the assumed regularities of international life they could avoid two mortal dangers: to be branded either as 'moralists' or 'formalists'. To be viewed in such terms, they would assume, would be to condemn oneself to complete marginalization" (Koskeniemi, 2011, p. 317).

“Surely sovereignty should not hinder action if lives of thousands were at stake” (Koskenniemi, 2011, p. 318). Neither taken at face-value nor eschewed entirely, sovereignty was found tolerable by most international lawyers because it was useful.

For the realist-managerial opposition, however, it would appear that formalism was guilty of being too open and ambiguous, all the while being too tight and strict. Koskenniemi notes that, considering this critique of lack of flexibility and fluidity, one would have reasons to expect that a novel understanding of sovereignty should proceed from these blows, yet nothing followed. Instead, he asserts that the default position has become to pretend that the problem does not exist. Worrying about sovereignty would be to remain captive to it, in which case the risk would be to accept that there is nothing to be done about the ambivalences except navigate them, pointlessly struggling to get to the bottom of *it*, a thing that is bottomless by design. Tactically, the managerial way of desiring the coexistence of the alienability and inalienability of formal principles of right would hinge on pretending that the problem of the bindingness of international law was exclusive to legal sovereignty, as if it would not be enabling of contemporary practices of international rule in general. By doing so, Koskenniemi suggests that managerialism has been able to defer from further engagement with the contradiction that seemed to be the very point of the questions being raised.

Moreover, he brings attention to the very structure of the debate as a reenactment of the move expressed in that problem (Koskenniemi, 2011, p. 318). In the place of state sovereignty came the claims for the necessity of fluidity in order to keep up with the challenges that had come with globalization, which included new problems and the consequences ensuing from the transcendence of territorial-national boundaries that were already a reality. Sovereignty was now part of the distracting appearances that inadvertently lead us into self-imposed irrational constraints that would only become all the more dangerous the more interconnected and interdependent the world becomes past the territorial sovereign state as the principle of political organization (Koskenniemi, 2011, p. 318-319). In theory, the functional-managerial orientation was supposed to take anything concerning formalism to be “external manifestations” of “the objects or values ‘behind them’”, which would be “far more real and important” to produce public goods such as

peace, security, and happiness at the scale of the globe. Its commandments, in Koskenniemi's words, are to "not remain enchanted by the legal form". Instead, one ought to "look behind rules and institutions" in order to be ever-vigilant about the opportunities to "assess costs and benefits". "Streamline, balance, optimize, calculate" (Koskenniemi, 2007, p. 13). Paradoxically, this is how "a complex managerial vocabulary emerged that spoke neither about sovereignty nor about rules" (Koskenniemi, 2011, p. 318).

Although the discontinuities are not to be ignored, Koskenniemi argues that it is even more unwarranted to privilege them at the cost of rigorously exploring what appears to remain between these seemingly opposite positions. Throughout his critique of indeterminacy, he encircles this desire to become "technical" as opposed to "political" as well as to come "unified" as opposed to "fragmented" through the history of what he calls the intellectual, political and professional liberal project of international law, of which the latest "vocabularies of power" would be a relatively discontinuous continuation rather than the transcendence of (Koskenniemi, 2011, p. 332). Koskenniemi maintains that these argumentative positions virtually share the same ground – a ground that he traces all the way back to the seventeenth, whose paradigm is the legal thought of Samuel Pufendorf. Furthermore, it would be misleading to believe that managerialism has displaced international law altogether, especially when it comes to formalism. It is integral to his diagnosis that there is continuity between the two also at the practical level. While managerialism claims that binding international law should be but a means to reaching optimal, punctual changes in targeted behavior, flexed or tightened as much as it would be deemed necessary by the specialized experts on the ground, such beliefs would still be articulated through international law, enabled by formalism – and therefore enabled by what enables formalism (Koskenniemi, 2007).

Still on the transition to the present and the continuities holding it together, Koskenniemi notes that the boom in the specialization of international law into many international laws between 1990's and the 2000's was largely due to this shared utilitarian horizon, for it enabled the managerial reformulation of core aspects of public international law while not doing away with them entirely. International institutions and their correspondent specialized laws, such as trade,

environmental, and human rights laws, are reformulated through the “idiolect of transnational regimes”, as he calls them, but they nonetheless remain law. As such, law was now used to “enforce the most varied kinds of guidelines, directives, *de facto* standards, and expectations, so as to guarantee optimal effects”. Similar moves would also be seen in the shift from “government” to “governance”. At the same time, the hitherto taken for granted bindingness through which “responsibility” could be enforceable as legal obligation was now “transformed into assessments of ‘compliance’”, while “‘disputes’ become ‘management problems’”, and the question of lawfulness is replaced by that of ‘legitimacy’” (Koskenniemi, 2007, p. 14).

In addition to a shift in vocabulary, Koskenniemi also maintains that state sovereignty is practically gone, and that it should remain gone for good. One of the reasons suggested for this is that the functional differentiation of international bureaucracies would be the tip of the deep iceberg of domestic bureaucratization it was originally intended to be the image of. For managerialism did not start internationally. In his words, “even though this process was often organized through intergovernmental organizations, the governmental delegations were composed of technical (economic, environmental, legal) experts in a way that transposed the functional differentiation at the national level onto the international plane” (Koskenniemi, 2011, p. 334). From this, Koskenniemi concludes that “even if the way back to sovereign states were open it would lead nowhere as the State itself has been functionally fragmented”. His evidence for this comes from a thought experiment he dares the reader to perform with him: “try to find out the national position on a matter and you will hear a different answer depending on whom you ask: the policy of the Ministry of Finance, declared in Washington, is not identical with that of the Ministry of the Environment, declared in Geneva. The official position cannot be distinguished from the position of the national representative of some ‘international’ (truth) regime or other” (Koskenniemi, 2011, p. 359).

Be it as it may, Koskenniemi is interested in the aftermath of the complete bureaucratic fragmentation of state sovereignty. Now “we are stuck in the ‘international’, with no guarantee that this would be beneficial” (Koskenniemi 2011, p. 359). That he is calling this international poses the question of what he means by it given that state sovereignty is gone. In what sense this can be said to

be akin to state-nationally bounded things in relations with one another? In addressing such questions, Koskeniemi not only refers to sovereignty, but, more importantly, he does so by detaching it from the nation-state in the legal and empirical registers mentioned so far, while re-attaching to it metaphorically – and with the aid of other “vocabularies” beyond those of law. His main claim, in this sense, is that international political conflict today is best described and critiqued in terms of the principle of regime sovereignty. This metaphorization takes place in the two simultaneous and mutually enabling fronts in relation to state and national sovereignty.

Koskeniemi draws the sovereignty comparison from Niklas Luhmann’s functionalist sociology of pluralist international law of. The underlying premise allowing this play is that the legal vocabulary of sovereignty is but one of several idioms of it. Given this polyphony, he points out that the *political* vocabulary of sovereignty has been integral to the account of “politics” and “struggle” running through both the descriptive and normative dimensions of his critique of the indeterminacy of law, even though he does not usually address the issue by calling it as such (Koskeniemi, 2010, p. 223). In this context, the move from the state to the regime is informed by the *sociological* vocabulary of sovereignty.

When sovereignty is deployed in this register, he argues, the analyst goes on “a search for the group of human beings whom present theory and practice lift into the position of the ‘ultimate’ decision-makers” (Koskeniemi, 2010, p. 229). More specifically, and in contrast to accounts of sovereignty in other registers, “what sociology has had to offer is the theory of the functional differentiation that suggests that instead of homogeneous structures of social hierarchy we find autonomous social and epistemic systems that create something like limited or mini-sovereignties within themselves”. These “autonomous and social wholes”, called “mini-sovereignties”, are also described as “‘autopoietic’ structures”, law being an example, which exist “within and beyond the constitutional semantic of the state” (Koskeniemi, 2010, p. 230).

This definition of the boundaries enabling the exercise of decision is central to the way he uses the notions of “political decisionism” and “political conflict” in his description of the techniques of international legal argumentation. For Koskeniemi, this sociological vocabulary approximates these “autonomous”,



“‘autopoietic’ structures” to “the expression ‘sovereignty’, which he calls ‘systems’, insofar as they are found “often presenting themselves in cognitive terms, as political projects akin to the nation-states at least in the sense of being both solipsistic and imperialistic”. It is in the context of this vocabulary-descriptive tool that he goes on to describe the international of regime sovereignty. In his words: “the ‘transnational’ (including the juridical monstrosity of ‘transnational law’) would not be very different from the old ‘international’ inasmuch as both would now appear as carriers of particular kinds of agency (the nation or the ‘regime’), engaged in hegemonic struggles in the sense of seeking to make the particular it represents seem the universal” (Koskenniemi, 2010, p. 230). Furthermore, the contemporary international is composed by a myriad of “not only openly normative but also scientific, technological and economic regimes”. And each of these sovereignties, according to Koskenniemi’s reading of Luhmann, “possesses the resources for explaining the whole world from its perspective, and an inbuilt tendency to maximize its proper rationality” (2011, p. 352).

This means a few things for Koskenniemi. First, state sovereignty has been substituted by the much worse, though structurally analogous, problem of regime sovereignty. Still through Luhmann, he suggests that “legal globalization means the globalization of the functional differentiation that has taken place in national society”. “Far from unifying the world”, the dissolution of the state “would intensify the clash of legal regimes, each internally hierarchical, some more central than others”. He maintains that, in the context of many international laws as is the case today, “if legal principles that emerge in certain fields may be inapplicable in others, the crucial question will be to determine under which regime they should be decided” (Koskenniemi, 2011, p. 335).

The particularities of the discretionary dynamic being described vary. For instance, it may be that a given case is being judged by the International Court of Justice, a formal institution for dispute resolution, which technically means it should stand above any regime as it stands above any state – for every state. Instead, he notes, judgement will have to be passed on which out of two equally applicable regimes will be preferred to orient the activities of the parties subject to that decision. In determining which should be which, decision informed by managerial vocabularies in formal contexts can either claim that the more specific or relevant

regime should apply, or to argue that instead of zero-sum choices one ought to look behind the appearances in order to find the relevant interests of the actors and strike a balance between them. “Such characterisations are not intrinsic to the relevant problem, but emerge from the interest or preference from which it is examined” (Koskenniemi, 2011, p. 338).

The issue here is the way managerial argumentation would contraband what are ultimately subjective, political preferences in order to reconcile contradictions, lending from the seeming objectivity of these knowledgeable claims that this discretionary power is not discretionary at all; or, if recognized as such, it would be given the semblance of having been somehow legal in the sense of rational and objective (Koskenniemi, 2005, p. 571). Koskenniemi contends that this as an absurdity. “To decide on such questions in some rational way, there ought to be a superior system, a regime of regimes – a ‘constitution’ in the legal idiom. There is none, however” (Koskenniemi, 2011, p. 320). There is “no meta-regime, directive or rule” (Koskenniemi, 2011, p. 336). As a result, “in such (and other) ways, traditional international law is pushed aside by a mosaic of particular rules and institutions, each following its embedded preferences” (Koskenniemi, 2011, p. 339).

Furthermore, and still in analogy with sovereignty, Koskenniemi concludes that the new international is characterized by “the anarchy of autonomous functional systems”. Anarchy is meant to describe the condition that, in the absence of a “truth superior to that provided by each such system or vocabulary, each will re-create within itself the sovereignty lost from the nation-state” (Koskenniemi, 2011, p. 324). This characterization of anarchy as pure power struggle is not new to Koskenniemi’s thought, though. In the critique of legal indeterminacy, *politics* is always diagnosed as hegemonial struggles. As I noted in an excerpt above, Koskenniemi sees this as the struggle to universalize what is overall a particular judgement, thus ruling to the effect that it is as if that which cannot be anything other than subjective is objective – actors do not need to believe in this objectivity for the effect to be produced. The present is a variation of the same limit that constrained (while also enabling) formal legal argumentation. The difference is that in the context of the pluralization of law, “fragmentation becomes struggle for institutional hegemony” (Koskenniemi, 2011, p. 338). More specifically, he means

that, given the conflicting positions in the pool regimes before which the international lawyer ought to decide on the question of collectively mediated limits, “in the end, that regime will win whose application will, for whatever reason, no longer be challenged” (Koskenniemi, 2011, p. 220).

The problem seems to be that formalism can no longer mediate the problem of boundless freedom as it could, however limitedly, when public international law was unifiable by the principle of state sovereignty and its inner contradictions. Although most of his descriptions pay attention to exceptional cases, Koskenniemi is especially (though not exclusively) concerned with the consequences of these novel dynamics of sovereignty and anarchy to the government of global problems. In the context of multilateral instruments of coordination, he notes that the consequence of functional differentiation has been the surreptitious emptying of international conventions as the means for addressing collective problems. “Any rule with a global scope will almost automatically appear as either over-inclusive or under-inclusive, covering cases the law-maker would not wish to cover, and excluding cases that would need to be covered but were not known of at the time when the rule was made” (Koskenniemi, 2011, p. 339). The suggestion is that these problems are considered so complex and ridden with particularities that it would be unjust to propose any substantive rule that should universalize obligations in that context. The only rational way to respond in ways befitting a world of change would be refrain from any generalization whatsoever – except for generalization that generalization of the limit is off-limits.

Koskenniemi notes, in this sense, that “to forestall this, most law with a universal scope refrains from rule-setting and instead calls for ‘balancing’ the interests with a view of attaining ‘optimal’ results to be calculated on a case-by-case basis”. As a result, “to agree to a treaty is to agree on a continued negotiation with the reference to contextual deal-striking, stressing the role of technical experts, and lifting functional interests to decisive position” (Koskenniemi, 2011, p. 339; p. 341). When obligations are stipulated, they would likely be followed by secondary rules explicitly meant to counter formalism, all of this argued to be necessary on the rationally valid basis of tolerance for differences. Those vocabularies of management introduced abstractly at the beginning of this section would translate practically, for instance, in that violations of the commitments

seemingly expressed in the form of binding rules cease to be practiced as breach of contract, the parts that will have subjected themselves to the agreement sharing no expectation of owing to one another the responsibility of keeping their word. If there is violation, as we see, for instance, with every passing year in respect to targets in the reduction of emissions of greenhouse gases, they unbound to universally established consequences, except that there should be no such consequences, just more negotiations.

From that predicament, one could reach the conclusion that the crux of anarchy is that states give themselves blank checks to apply the general rule as they see fit (Koskenniemi, 2011, p. 340). The reality of the crux, however, is in that it is not states that are free to make such calls, not in the traditional sense of nationally-informed decision-making. Practically “the door is open to the unilateral assumption of jurisdiction by experts who feel themselves powerful enough to have the last word” (Koskenniemi, 2011, p. 338).

These sovereignty struggles are, quite literally for Koskenniemi, a politics of world domination: “political conflict is waged on the description and re-description of aspects of the world so as to make them fall under the jurisdiction of particular institutions” (2011, p. 337-338). The new sovereignties of this politics are not really regimes, but the functional experts aided by legal experts whose authority to pass judgement would be based on these limits being regarded as if technical and not political. “Hence managerialism turns into absolutism: the absolutism of this or that regime, this or that system of preferences” (Koskenniemi, 2011, p. 320; p. 324).

The resort to sovereignty is useful to Koskenniemi, though only up to a point. Taken at face-value, this analogy asserts that regimes rule by being “autonomous social and epistemic wholes”. Koskenniemi contends that although it is as if they are, this value is not absolute: “the good news’ is that the epistemic sovereignty now claimed by the various universally inclined expert-regimes (‘trade’, ‘environment’, ‘finance’, ‘development’, ‘security’, ‘human rights’, etc.) is equally undermined by the irreducible indeterminacy of the knowledge systems they represent” (2011, p. 230-231). In foregrounding the structural indeterminacy of these new sovereignties, Koskenniemi repeatedly indulges in the second analogy with state sovereignty, this time bringing the attention of the audience to the limited

nature of nationality. Just as the nation became problematic pretty much from the moment it was born, the political community becoming the battlefield of disputes over whose nation was the Nation that the principle of state sovereignty was meant to be servile to, the international of functional regime rationality too would be bound to be captive to the indeterminacy it desires to captivate. For “a regime is as indeterminate as the nation”, the argument continues, “its founding principles contradictory and amenable for conflicting interpretations and its boundaries constantly penetrated by adjoining rationales” (Koskenniemi, 2011, p. 356).

What would bring these two spheres of the “between” and the “within” regimes is the principle of indeterminacy and the hegemonial struggles that ensue from it. Koskenniemi’s position is that “the managerial view has, however, exactly the difficulty of nineteenth century nationalism”, for it cannot refrain from “showing itself conflictual, indeterminate, open” (2011, p. 356). He sees in intra-regime anthropophagy the only hope that regime sovereignty can offer to prevent global absolutism from being practically operative. Just like the sovereignty of the state and the sovereignty of the nation, “each is a platform of disagreement, in-fighting between factions and constantly pointing outside itself as the source of its constitutional power” (Koskenniemi, 2011, p. 231).

## **2**

### **Legal Absolutism: The Critique of Indeterminacy**

Koskenniemi is mainly known for his critique of legal indeterminacy. Its general premise is that legal practices are political by definition and that this is immanent to the way that the problem of the rule of law has been historically posed (Koskenniemi, 2011, p. 133-152). By indeterminacy, Koskenniemi means that international legal argumentation ought to pass judgement on the application of a general rule, yet it always finds itself at the rift between two principles standing in a condition of radical equality. Not only are they contradictory, but they are equally necessary for passing judgement on the general rule. Since they are equal in principle, even if one tries to argue one’s way out of the contradiction,

indeterminacy makes sure that they will be simultaneously held throughout the course of argumentation<sup>13</sup>.

In this sense, indeterminacy would make it so that determination is never a simple yes or no question. The answer is always yes. The real problem would be *how* and most importantly *why* it happens. In order to be able to grasp this, Koskenniemi argues that we need to render visible the contradictions that enable any prevailing practices of the legal determination of the limits of international community. For Koskenniemi, this is essential if we want to address the distinctive place of the international rule of law and of the practices of international lawyers in the present. As essential to this would be the need to situate modern international law as a project that is at once intellectual, political, and professional, and which strives, beyond the intentions of its actors, to world domination.

Indeterminacy is the liberal rule of law. In Koskenniemi's words: "if we wish to stay within modern discourse – that is, if we continue to deny the existence of natural justice – the crucial question we shall face will be this: What basis is there to impose a balance, some conception of equity, "reasonableness" or good faith, on a State which has not accepted it?" (2005, p. 269). His answer is that this answer has been the same at least since the seventeenth century, and it would be anchored in nothing other than *belief*. The bindingness of international law is founded on the assumption of the social contract, and the consequence of this, according to him, is the invention of positive law as a social practice whose inevitable political foundations are seldom part of the sphere of problematization (Koskenniemi, 2011, p. 317). In order to demonstrate the origins of the principle of indeterminacy and the totalitarian nature of modern law as politics, Koskenniemi takes Samuel Pufendorf's theory "government by law" to be exemplary of how we have come to practice it in modernity (2011, p. 309).

He maintains, in this sense, that "for early liberals, constraint was initially received from an autonomous 'reason' (naturalism) that delimited the sphere of individual freedom as against the social order in a universally homogenous way,

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<sup>13</sup> He calls these positions ascending and descending patterns of international juridical argumentation (Koskenniemi, 2005, p. 58-57). The thought exercise on the problem of bindingness in the case of legal sovereignty in section 1 exemplifies the structure of legal indeterminacy between these two necessary patterns. Bartelson's "factual" and "normative" limits of sovereignty are another example. Koskenniemi also refers to them as the "apologetic" and "utopian" positions, respectively.

and provided apolitical principles that constrained those in administrative positions without relying on anybody's political preferences" (Koskenniemi, 2011, p. 135). Koskenniemi argues that Pufendorf knew that "the mere statement of this – however reasonable – was insufficient" (2011, p. 311). For law to universally constrain politics, the lawyer must *somehow* be able to maintain the difference between ruler and ruled, while also maintaining the difference between legal and political practice. He emphasizes how the historical and cultural specificities of Pufendorf's upbringing help explain the ambivalence of the times in the confidence in reason that would be deposited not in humanity, but in a particular kind of human being – the secular sovereign (Koskenniemi, 2011, p. 311-312). What appears to make modern (international) law modern is that it is positive rather than natural law. Pufendorf's modern genius, Koskenniemi maintains, is how he inscribes natural law into positive law in order to make it functional.

This would lie in the assertion that the principle enabling legal limitation is its validity. For Pufendorf, validity had nothing to do with enforceability by the organized means of violence, not directly anyway. What attracts Koskenniemi is that Pufendorf's argues that law ought to obtain validity from its purpose. Purpose, however, is the staple of natural, not positive law. Furthermore, the Pufendorfean supplement would perform the role of enabling the distinction between the legal and the political by placing it in the distinction that *sovereignty* is supposed to embody. In principle, it would seem that sovereignty and legislation would be political, and government and administration would be legal (Koskenniemi, 2011, p. 135). The heterogeneity of sovereignty, his reading continues, would not be that it should answer to no limits. Things would only seem so to the extent we would be looking for those limits in the wrong place, through the wrong visually enhancing apparatus. Sovereigns, those who decide on change by deciding on the boundaries between continuities and discontinuities – Pufendorf thought that they could and should respond to legal limitations. Only those limits would be of the order of morality and thus of natural law, while positive law would be binding on the sphere of government only, valid for rational administration.

The liberal formulation of the problem of moving from "tradition" to "modernity" is re-cast to be less about putting natural law in the past of the medieval fair of irrationalities, and more about finding a way to inscribe it properly, under

the conditions that would be in accordance the principles of human reason. Koskenniemi traces this in Pufendorf's articulation of the belief that all that is beyond "natural" individualism ought to be "artificial, human creations". Rather than seeing in the ensuing "arbitrariness" the negation of reason, liberalism would instead find in this starting point of a seeming limitation the evidence for "the application of reason on empirical data" (Koskenniemi, 2011, p. 310). The idea is that reason could be incarnated, with varying degrees of control, through the process of its own development and incarnation.

Armed with the belief in empirical hypothesis, law would sacralize "society" as its purpose through the conceptualization of lawfulness as "social phenomenon". In this sense, Koskenniemi stresses that the new vocabulary of the "social" at the frontier between law and politics has universalized a particular "notion of 'civil society'" whose universality is premised on the rhetoric of private property, subjective interest, and on the will to survive, and it is believed to be "ruled by principles reasonably analogous to the ones natural sciences operated to govern the physical world" (Koskenniemi, 2011, p. 309-10). Thought in terms of purpose, the binding of politics by law came to be articulated by Pufendorf in terms of "the safety of the people", which he elevated to the condition of being "the supreme law" (Pufendorf *apud* Koskenniemi, 2011, p. 312). "This view of social relations was accompanied by Pufendorf with an image of the modern state – the state of the Westphalia system – as a moral person, whose ruler was expected to achieve two things: (a) *pax et tranquillitas*, peace and security; as well as (b) *conservatio status*, the protection and strengthening of government and the accumulation of the welfare of the people. In domestic as well as in international law, this would be attained by sovereign commands whose binding force was received from, and limited by, natural law" (Koskenniemi, 2011, p. 310).

Having unpacked natural law and given purpose to lie in the duty to the survival and development of society, Pufendorf would have yet to reconcile this necessary heterogeneity to positive law. As Koskenniemi notes, Pufendorf was not speaking of two legal systems, one natural and another positive, one operating at the level of legislation and politics, and the other at the level of government and bureaucratic administration. For what is, or should be, "are only moral situations, 'offices', which respond to different social needs" (Koskenniemi, 2011, p. 312).



Although Koskenniemi's focus is on international legal theory and argumentation, it is surprising how the more generalizable aspects of this "new language" recall scholarship that would be on the politics-side of the division of the intellectual labor around the problem of political community. This is, in a sense, the very point Koskenniemi is trying to make, and he is verbal about it<sup>14</sup>. And this becomes more prevalent as we move into his discussion of the political aspect of the liberal project of domination. Koskenniemi describes the political project as the need "to find a technique for the maintenance of social peace on a durable basis" (2011, p. 311).

Koskenniemi argues that for Pufendorf's purpose entails the idea that politics should be servile to society, and that this is always thought as a universal, and hence international principle. The regulative ideal is that the state (and possibly international) apparatuses of rule ought to be the means for anticipating the general will of society through rational government – the anticipation of the ideal reason of man embodied by government. Koskenniemi also suggests that the principle of responsible rule is connected to this, for the basic tenet here is the obligation of those in office "to govern wisely – including to rule wisely on the magistrates" (Koskenniemi, 2011, p. 312). The image we get from purpose so defined seems to be the hope that the particularist, irrational subjectivism of rule by political-ideological preferences can be purified by rational incentives stemming from rulership mediated by the individualized, bureaucratized society (and its members) interested in its own survival – an idea largely justified on the account that it would already have been so purified to some comparatively determinable degree, now representable by empirical knowledge of different societies (Koskenniemi, 2011, p. 316-317). In this sense, the political project of the rule of law read through Pufendorf posits that reason needs to be actively produced by the secular sovereigns and "articulated by a science of government" the pillars of which should "the techniques of peace, security and welfare" (Koskenniemi, 2011, p. 312).

For Koskenniemi, this is the point we are at: "the modern view is a social conception of law. For it, law is not a natural but an artificial creation, a reflection of social circumstances" (2011, p. 33). Furthermore, the value of society is

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<sup>14</sup> See, for instance, "The Fate of Public International Law: Between Technique and Politics", in his *The Politics of International Law* (2011).

suspended in the abstract, hinging on interpretations of how to furnish the general principles with the contents that, judged from above, would determine what is best for the “all” that it creates through such decisions. Koskenniemi thus concludes that law cannot be anything other than politics itself. “Such a decision would, under the social conception of law and the principle of the subjectivity of value, be one which would seem to have no claim for objective correctness at all. It would be a political decision” (Koskenniemi, 2011, p. 44). Problems ensue from the fact that “we can decide on the meaning of a social process only after we have decided whether to interpret it in terms of justice or consent”, or in the terms of this or that specialized regime of law, and “if we insist that the law be normative, then we must rely on some non-consensual standard – if we persist in demanding that it be concrete, then we have nothing but the State’s [and now the Regime’s] own view on which to rely” (Koskenniemi, 2005, p. 514).

Koskenniemi argues, moreover, that the discretionary universalism of natural law dressed in the progressivist universalism of positive law is not to be dismissed as ill-founded irrationality, for it is the ground upon which law – and the professional lawyer as the operator of law – has been given its functionally differentiated place in society as technique of government (Koskenniemi, 2005, p. 555). As such, this spatial yet temporally contingent limit within the limits of the political community would be continuously routinised in the everyday practices of lawyers that derive the very distinctiveness of their profession from it. It lives on, as Koskenniemi put it, “in the daily routine of our institutions – neither ‘absolute’ not ‘perpetual’ in any meaningful sense” (2010, p. 224). Lawyers may perform as “legal adviser, judge, arbitrator, professor, diplomat”, all these professionals largely seen to integrate a class of beings in the world that is not merely differentiated but elevated to a higher status in relation to others in the society that is their object. Koskenniemi notes, in this sense, that “traditionally, this has been a role of the impartial technician – the ‘judge’ – whose identity lies in his objectivity”. It conveys the belief that “the lawyer is needed because only he possesses this particular technique” that he exercises with “full devotion to the role, humility in face of political conflict, moderation and impartiality” (Koskenniemi, 2005, p. 550).

At the same time, he stresses that this is not exactly how things are seen from within the profession. The very construction of the corporate self through the

problematization of the relation between the boundedness of space and the contingency of time as technique would have made sure that the “specifically legal tools” grounding this claim to expertise and the expert production of “society” would time and again remove the international lawyer “from the privileged terrain of objective law, into discretion which seemed just another name for subjective politics”. Limited to technique, legal practice would often be experienced by the lawyer as a trap, so that “even when he did not overtly use discretion, he used rules and principles and interpreted them in ways which seemed to involve contested political assumptions” (Koskenniemi, 2005, p. 551).

This the sense in which Koskenniemi argues that the knowledgeable routines of law are structurally determined by the principle of indeterminacy. Ultimately, the capacity of holding on to purpose lies in the institutionalized horizon under which, in the wake of the abyssal, the lawyer would perceive itself unable to escape from being torn into a movement that feels so urgent that they would seem unable to contain themselves from proceeding in any other way while being overtaken with hesitation (Koskenniemi, 2010, p. 224-225). So entrapped, the only option before the contestation of an otherwise more or less stable institutional embodiments of this sovereign purpose would be to proceed in the search for its next substitute, for “a justification or a theory that enables the re-founding of routine as the relative (and non-threatening) truth of what we do” (Koskenniemi, 2010, p. 224-225).

One of the conclusions that he draws from this is that “the ideal of integrity has seemed to involve a self-justifying illusion”. Rather than the technical, impartial decision-maker, the international lawyer would be “much more thought of as the ‘adviser’” (Koskenniemi, 2005, p. 551). As a special class of “advisers”, international lawyers would reenact that condition of embodying a claim universality that is fundamentally torn within itself. Compelled to be servile to both the dreamed objectivity of law and the subjectivity of institutionally mediated preferences without which law seems to be impossible. These patterns of contradiction would also be reproduced as the antagonism between zealotry for universal purposes at the level of international law and zealotry for universal purposes at the level of private affiliation – to state, to infra-state bureaucratic governmental bodies, to interstate bureaucratic governmental bodies unified

through formalism, or to state *and* interstate bureaucratic governmental bodies unified into transnational regimes of government.

### 3 The Politics of Critical Universalism

For Koskenniemi, the beginning of indeterminacy is the universalizing desire for *the* world that produces and reproduces the privileged place of law as the technical medium for the government of difference, all the while the occupation of this position would make sure to produce and reproduce the appearance of that world that would justify the need for such techniques in the first place. Koskenniemi holds that although indeterminacy seems dogmatic, it remains nonetheless critical insofar as it is pivoted by struggle. He sees in the principle of indetermination that renders international law a practical office the very command to produce another legal practice that is possible. Koskenniemi calls this *the politics of critical universalism*. In order to make sense of this doublet of indeterminacy as causality and possibility, we need to consider of Koskenniemi means by politics. The *political* vocabulary of sovereignty is particularly useful.

We read, in this sense, that “the register of the political is that of sovereignty *par excellence*”. “Politics” so understood “is about projection [also called desire] and struggle”, “the openness and closure of the *polis*” (Koskenniemi, 2010, p. 231). Sovereignty would be politically distinctive because it is projective purposiveness to universalization. When sovereignties are in relations of “politics”, the goal “is not to register aspects of the world but to achieve them: to preserve or change a *status quo*, to support or oppose particular contestants” (Koskenniemi, 2011, p. 232). This descriptive tool is applied in order to supplement the limitations of the sociological question of sovereignty – that which asks what class of human beings is legitimized to be the ultimate institutional subject of decision on the necessities surrounding the inscription of contingencies. In the political register, we would ask “the question about present power”. Analysis would start from some phenomena already described in terms of the norm and proceed to “try to find out on what that

normality depends”. When push comes to shove, politics is about locating “who should send in the police” (Koskeniemi, 2011, p. 235).

This conceptualization of politics is informed by Ernesto Laclau’s theory of hegemony. Like the definition I mentioned above, “the category of ‘hegemony’ used here is purely descriptive and covers the technique whereby something particular (an interest, a preference) is presented as something universal (‘the law’, ‘the universal human right’, ‘community value’, etc.)” (Koskeniemi, 2011, p. 219). By claiming that international legal practices are political, Koskeniemi means that “however universal the terms in which international law is invoked ... it always appears through the positions of political actors, as a way of dressing political claims in a specialized technical idiom in the conditions of *hegemonic contestation*” (2011, p. 221-222, emphasis in the original). So not only is international legal argumentation “always a genuinely political act” because it is underpinned by “a choice between alternatives never fully dictated by external criteria”, it is political also, and more importantly, because this genuinely political act is “a hegemonic act in the precise sense that though it is partial and subjective, it claims to be universal and objective” (Koskeniemi, 2011, p. 260).

Koskeniemi sees virtue in political authorization, for it is “this very partiality and political nature of the decision that ensures that it is an aspect of, or even a creative moment of, a political community” (2011, p. 260). But of which political community is he speaking? Koskeniemi is certainly concerned with “the society upheld by international law” through indeterminacy, especially when it comes to the possible “beyond” to technocratic absolutism. But in order to get there, it seems inevitable to raise the question of politics pertaining to the very political community of international legal expertise. This encompasses the sense that the role of doing law is the craft of mediation, as well as the sovereignty of the preferences that would ultimately render law indistinguishable from politics.

This appears to explain, at least partly, his choice for emphasizing contestation when speaking of political authorization, therefore foregrounding contingency. “By ‘hegemonic contestation’ I mean the process by which international actors routinely challenge each other by invoking legal rules and principles on which they have projected meanings that support their preferences and counteract those of their opponents” (Koskeniemi, 2011, p. 222). The point

Koskenniemi is trying to make, though, is that, consumed by hegemonial politics, indeterminacy condemns law to the absolutist conditions he is trying to find the limit in order to limit it. Although he addresses hegemonial struggle in terms of politics, it is also very clear that, for Koskenniemi, this politics is profoundly apolitical. He suggests this, for instance, when the predicament of the lawyer is given the contours of the problem of freedom: “there is this dilemma: to participate in routine, one needs to do this through a role. But the more one immerses oneself in one’s role, the less one is actually participating as a conscious agent at all” (Koskenniemi, 2005, p. 550). One produces, yet what is being produced is the reproduction of the same – from formalism, to realism, to managerialism, the same apolitical desire towards the negation of politics that only begets more politics.

From this point of inflection, we start to see the movement towards the qualification of two different senses of politics. Koskenniemi asserts that “utilitarianism is the political constitution of a de-politicised world” (2011, p. 359). Yet from this impoverished practice of setting the problem of law there also stems the direction for the alternative constitution of politicized world to come.

The technical production of the world technical expertise fighting to corporate death and rebirth, we should not think of it as being “in competition with politics as in the domestic realm, but as a *substitute* for it” (Koskenniemi, 2011, p. 359, emphasis in the original). As a result of this victory, “what we now see is an international realm where law is everywhere – the law of this or that regime – but no politics at all; no parties with projects to rule, no division of powers, and no aspiration of self-government beyond the aspiration of statehood [by regime sovereignties]”. These formal differentiations making up the political institutions of foregone government, though also informed by liberal sensibilities, would be relatively distinct to the extent they were meant to limit political power. Managerial politics, on the contrary, depicts this “precisely as what we should escape from” (Koskenniemi, 2011, p. 359).

For all these reasons, Koskenniemi maintains that “today the ‘international’ is no longer a meaningful space for progressive politics” (2011, p. 358). The very phrasing entails there was a time that the international was such a space, possibly at least, and more importantly, that it can become so again. “There is reason to reconceive international law today” (Koskenniemi, 2011, p. 360). He describes this

as the work of reimagining the international by reimagining the role of international law – and therefore the very profession – beyond the temptation of substituting one architectonic vocabulary of governance with another blueprint. More than anything, “it must be redeemed as a political project” (Koskenniemi, 2011, p. 360). To achieve this would entail “thinking of constitutionalism as a mindset instead of as architecture”, demanding a shift so great towards practice that it “implies a kind of Copernican turn in legal theory” (Koskenniemi, 2007, p. 310).

The argument proceeds by finding hope in the assertion that “international law may often appear as the only available surface over which managerial governance may be challenged, the sole vocabulary with a horizon of transcendence – even if, or perhaps precisely because, that horizon is not easily translated into another institutional project” (Koskenniemi, 2011, p. 360-361). The critical and political purchase of international law would lie in its capacity to offer a vocabulary for change in terms of the development towards universalism through which humanity could be reimagined as the type of movement that leaves no one behind. “International law appears here less as this rule or that institution than as a placeholder for the vocabularies of justice and goodness, solidarity, responsibility and – faith ... a kind of secular faith” (Koskenniemi, 2011, p. 361).

Koskenniemi’s project has the form of a two-way enclosed roundabout, where international law sets in motion the mutual dynamics of the moralization of politics and of the politicization of moralism. He draws the resources for this political redemption of law from Kant’s theory of the rule of law. “Whereas early modern natural lawyers thought of constitutions as mechanisms of control and of constitutional debates as discourses of power”, he notes that “Kant sought to articulate their historical specificity against such dogmatisms” (Koskenniemi, 2007, p. 31). The limit that should enable the limitation of the technocratic absolutism of modern politics, as we shall see, is problematized ethically, therefore placing the ethical subject of political judgement at the center of political authorization.

Koskenniemi highlights the possibility of two types of attitudes to imagine the exercise of law differently. The first “unfolds within the act of judgment located in the institutional process of applying the law in one way rather than another”. He calls this the “mindset of the moral politician”, which, he argues, was the position that Kant had in mind when distinguishing between it and that of the “political

moralist” in “Perpetual Peace: A Philosophical Sketch”. While, according to his reading, Kant associates the latter with the instrumentalization of reason and the misconception of the problem of humanity under empirical hypothesis (and empiricism by extension), the former would be “the actor conscious that the right judgment cannot be reduced to the use of instrumental reason and who, in judging, aims to act as a ‘genuine republican’ encompassing the perspective of the whole” (Koskenniemi, 2007, p. 32). Koskenniemi then proceeds to complement his reading by turning to Kant’s aesthetics<sup>15</sup>. The problem of political decisionism could be re-cast through these two fronts. In his words: “The nature of the aesthetic judgment – neither rational subsumption under a rule, nor fully subjective expression of emotion – captures also the plight of the moral politician as the law-applier, approaching a particular situation in a way which, although undetermined by any rule still claims general assent – the difference between saying ‘this is good’ and ‘this is valid’, the distance between nature and freedom, a closed particular and a horizon of universality” (Koskenniemi, 2007, p. 328).

The universalism foreclosed by hegemony now becomes possible, the demand being that “to expand toward universality, one must penetrate deeper into subjectivity”. By diving deeper into subjectivity, Koskenniemi means that those ruling through law should value the subjective nature of their decisions “as a crystallization of personal *virtue* rather than in opposition to it” (2007, p. 338; my emphasis). At the same time, he draws from the subjective objectivity characteristic of disputes about the beauty of an object that what would move us towards universality in the claim to taste is that it also “seeks more general validity”. Koskenniemi argues, in this sense, that the ruler’s authority ought to ultimately derive from the external validation sought from the community of aesthetic subjects over which it rules. In his words, this is “the paradigm of (Kantian) constitutionalism: the search for validity beyond the inclinations of the speaker<sup>16</sup>” (Koskenniemi, 2007, p. 32-33).

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<sup>15</sup> Koskenniemi’s interpretation of the politics conveyed in Kant’s work on aesthetics is highly influenced by Hannah Arendt’s “Lectures on Kant’s Political Philosophy” (1982) (2011, p. 328, footnote 90). And hers is a primarily an *ethical* reading of his arguably political philosophy.

<sup>16</sup> This *verbatim* to Hannah Arendt’s interpretation of Kant’s theory of the relationship between the artist and the community in *Critique of Judgement* (2007 [1790]).



Koskenniemi sees in Kant's archetype of the moral politician the same political decisionism in the tradition of Max Weber's political ethics of responsibility: "the contemplative, somewhat outer-worldly search for the independence and impartiality needed to carry out the work of judgment so as to use power in a responsible way" (Koskenniemi, 2007, p. 33). According to him, to oppose the absolutist tendencies of political modernity responsibly requires "giving up the dogmatic illusion of total control", aiming instead for "the responsible political choice as a judgment in contingency" (Koskenniemi, 2007, p. 33). He affirms that "if the critical project has one political consequence, it is pointing to the limits of the power of cognitive vocabularies and to the irreducibility of a (free) decision to any (natural or rational) structure" (Koskenniemi, 2007, p. 33-34).

The second critical encounter with law speaks to politicization as strategy of political contestation that re-defines cosmopolitanism. "Instead of bringing law to bear on politics", Koskenniemi asserts that "it is time to re-describe managerial governance as politics with a particular bias" (2011, p. 360). In this sense, the constitutional vocabularies of "'self-determination,' 'fundamental rights,' 'division and accountability of power,' and so forth, with all their historical thickness" are a privileged site from which "to contest the structural biases of present institutions and politicize what otherwise appears as routine administration" (Koskenniemi, 2007 p. 34). For Koskenniemi, "what is important" in going to Kant from the perspective of our present is that we would have already entered the age in which the "politics of the regulative idea of universality" is possible, that is, "a qualitatively novel form of political order" which has "set as its horizon the liberation of humanity itself" (2007, p. 34-35). This regulative idea would command "the development of a professional sensibility that should feel at home in all regimes, yet is imprisoned in none of them". In his words: "this would be what cosmopolitanism can be today: the ability to break out and connect, participate in the politics of regime definition by narrating regimes anew, giving voice to those not represented in the regime's institutions". It would be imperative "to re-think the activity of expert institutions" not only in the fashion of the moral politician bound to responsible decision, but also as the exercise of "choices by well-placed men and women at various spots where power happens: not only in diplomacy or intergovernmental organizations but transnational corporations, interest-groups,

banks, armies, development agencies, universities and so on” (Koskeniemi, 2011, p. 360; see also 2005, p. 555).

Koskeniemi also invites us to reimagine that function of international law in virtue of the “aesthetic effect” of this critical vocabulary of universal freedom. “The virtue of constitutionalism in the international is in allowing extreme inequality in the world to be not only shown but also condemned” (Koskeniemi, 2007, p. 35). This, the argument goes, should be achieved through and for the purposes of an aesthetics of moral scandalization regarding global inequalities produced by the excesses of legal techniques of government that “violate the equal dignity and autonomy of human beings” (Koskeniemi, 2007, p. 35). Putting these vocabularies to use aesthetically “transforms individual suffering into an objective wrong that concerns not just the victim, but everyone”. An international politics of critical universalism would be purposed by the practical command issuing as if from the world itself “to endow such events with sacredness or with a symbolic meaning that lifts them beyond their individuality” (Koskeniemi, 2007, p. 35).

The new categorical imperative goes as follows: “if calculation is needed, then ‘all’ must be counted as the cost” (Koskeniemi, 2007, p. 35).

## 4

### The Mighty Frame of Modernity

In *The Mightie Frame: Epochal Change and the Modern World* (2018), Nicholas Onuf takes his constructivist social theory of international politics to the task of making sense of a present arguably characterized by political change. Many seem to be so certain to be one of political change, yet none can agree as to what would be and not be changing. In this Chapter, I offer an overview of his theory of international political modernity problematized in terms of law and speech, and the diagnosis it offers about the limits of contemporary politics.

In order to do so, the Chapter is organized as follows. In section 1, I go over this theoretical framework of international politics. Attention is paid to the argument that politics should be theorized in reference to law, as well as his theory of framing as third-order spatial representations that provide the model for how modern political space is produced. In section 2, I discuss the modern epoch of the normative framework during the nineteenth century. After recounting the relationship between modernity's mighty frame and liberal political economy and law, we move to the institutionalization of the tripartite scheme of domestic and international, with the state in-between, and the birth of functional government and the professionalization of law. Section 3 focuses on the modernist epoch starting in the twentieth century. I portray Onuf's discussion of the shift in conditions of knowledge and how those have translated as a totalitarian nuance in the exercise of government. Section four explores Onuf's encounter with the limit of political modernity and how he proposes we imagine it.

## 1

### The Mightie Frame

*The Mightie Frame* is a book dedicated to the analysis of "the modern world". Onuf describes this world as "a society reaching across most of western

Europe four hundred years ago and now across the globe” (2018, p. 29). This is, furthermore, “an ‘international society,’ understood as a political society constituting the nominally independent political societies constituting it (constituting in both senses). Metaphorically speaking, this society necessarily reaches across and down into its constituent political societies” (Onuf, 2018, p. 29-30).

Speech is a key concept in Onuf’s social theory of politics. Paramount to is the problem of the transcendental subject and its founding question of the limits of knowledge. This question is posed as that of what is possible and impossible to think and to know, which Onuf poses in a two-fold manner. On the one hand, he argues that “the limits on what we can know pervasively condition social relations and thus materialize, if broadly and indirectly, as conditions of rule in the modern world”. Social world-building ought to be dynamic, though. It would be paramount, in this sense, to account for how change is possible if the rules according to which we give rules to ourselves and others is founded on our very subjectivity. Therefore, he adds, on the other hand, that “conditions of rule and rupture will set limits on what we can know in no less subtle ways. By implication, these two sets of conditions, and their disjunctures, run in parallel as an unfolding co-constitutive relation” (Onuf, 2018, p. 30).

What would make us human, in this sense, is that we can pass judgement while cultivating the distance necessary from the world that makes it feel that action ought to be taken. In this sense, speech is would add to this the condition “enabling us to work together to achieve ends that are good for us all” (Onuf, 2019, p. 19-20). As social beings, Onuf suggests the world that “impresses” us to act and pass judgements is made from the things of our own creation, things which, once conventionalized and out in the world, enjoy the capacity of mobilizing activity. A social theory interested in some manifestation of these processes would need to be able to aid us in looking past the appearances of these conventionalized dynamics without which we would not be able to *function* as wholes as we do, and which, for this very reason, are things we would take routinely as givens (2018, p. 15).

In light of this, “representation always kicks in as we experience the world’s resistance – a world that includes our embodied selves, even our powers of mind as sources of resistance” (Onuf, 2018, p. 23). His theory works at the level of a special

type of representation, or *form*. They entail the faculty that would enable us to symbolize those conventionalized relations experienced as unmovable causes as causes that we give to ourselves, socially and thus in limited ways. This is not necessarily a conscious process, though. And it entails the contingency of the world of objects forcing us to recalibrate categorizations. Onuf speaks of this capacity as rescaling, a term that appears later in the book in the discussion of hegemony and social positioning. “From any given perspective, objects and their relations may seem to be readily discernible. When they do not – when they appear to be too diffuse, motile, unstable, or evanescent to be fixed as objects in relation to other objects – then we adjust their ‘apparent size’ ... and change our perspective in relations to them” (Onuf, 2018, p. 26-27).

In this sense, to give form is to give shape by abstraction of contingencies in a state of dynamism. It is, in other words, to give space: “I move and my perspective changes. Yet I can produce a stable arrangement of re-scaled objects and relations – a model – in my mind such that those elements do not change in relation to each other even as I move about. This is a *frame* – in the first instance, a frame for an ensemble of complex impressions or, as we often say, a frame of reference” (Onuf, 2018, p. 27-28). Hence the qualification that by giving concepts to empirical objects, “we give shape to resistance, form to matter, and then form to the relations of the objects thus formed”. Moreover, he adds, that “thanks to speech (a sequence of deliberately patterned, rule-guided auditory resistance enhanced by intonation and gesture), we do it more or less together” (Onuf, 2018, p. 26)

This capacity of relating by abstracting would explain the different types of rules according to which things could be organized spatially *as if* horizontally or vertically. The *as if* that Onuf borrows from Kant is essential to his social theory because it addresses this capacity of make belief as an essential feature of the production of space to take place in a world that has given to it the concept of time as change. As Onuf puts it, the mighty frame is a “a working model of *social* relations” (2018, p. 226; emphasis in the original). His definition of such models, or systems, is functional. Form, in this sense, ought to “serve ends”, parts moving meaningfully across space and across time, in discernible direction. The difference of his critical functionalism would be in that these forms, or systems, are thought to be purposeful to the extent that human beings give these ends to themselves, as

if according to their usefulness, or, as the term implies, in virtue of their functionality (Onuf, 2018, p. 90).

On the one hand, this means that “all such models work by giving form without necessitating a belief in cause, whether material, proximate, or final” (Onuf, 2018, p. 90). On the other hand, framing the frames “*works* by fixing on how people make a world that makes them who and what they are” (Onuf, 2018, p. 226; emphasis in the original). Mutual constitution, in turn, is explained as resistances pulling each other, or, as Onuf notes by analogy with coordinate systems: he is “deploying a Cartesian model with artificial causation operating in two directions” (2018, p. 90). Moreover, the concept of frame would provide the distance necessary for us to be able to map changing conditions on what is possible to think, and therefore to know, at the points of inflection in the development of form, or onto an alternative form (Onuf, 2018, 13).

Furthermore, modernity’s frame is mighty because of its distinctive conditions of political rule running on par with the conditions of knowledge enabling the former – and then being enabled by it, and so on and so forth. In order to be able to trace the patterns that would make up the mighty frame of political modernity, he stresses that it is essential to define “politics by reference to law” (Onuf, 2018, p. 43). Thinking with and *contra* Foucault, Onuf argues that “law is an instrument of control”, provided that this claim be qualified with the fact that “a defining feature of law is its normativity (and any social mechanism, no matter how informal, that relies on normativity for its causal efficacy falls within the domain of law)”. Normativity, in this sense, “refers to all those social relations about which it is appropriate”. That these two things go together because “what everyone does ends up being what everyone should do in the end” (Onuf, 2018, p. 45).

More specifically, Onuf argues that “the domain of law has been the *locus*, the home, for political knowledge in the West ever since antiquity” (Onuf, 2018, p. 46). The main idea substantiating this claim is the centrality of law in the historical process of the coming about of the human being as we have come to produce ourselves to be the center of the world. The suggestion, in this sense, is that there would be no way of making sense of our present without considering “the fully transcendental position and unifying force of law in an otherwise fragmented medieval world” (Onuf, 2018, p. 43). Historically, he traces the shift to have

embryonically started in the Middle Ages with “the recovery of Roman law as a body of rules potentially adaptable or analogically relevant to any political society, and the other was the recovery of Aristotle’s major works”, for “both events challenged Christians to rethink the meaning of human striving in a God-given world” (Onuf, 2018, p. 70). That notwithstanding, the actual beginning of the shift towards the frame is attributed to the Renaissance to the extent that it brought “law into the discursive foreground” (Onuf, 2018, p. 44).

Having defined politics in relation to law, Onuf maintains that the relationship between conditions of knowledge and conditions of rule is key not only to the definition of modernity, but also to its development across “successive epochs”. In his words, “each set of conditions makes the other possible. Inseparable, they give the modern world its mighty frame” (Onuf, 2018, p. 117-118). Law is essential for the frame to resist the many resistances in its processes, functioning, therefore, as the medium through which recalibration of differences and non-differences have made it possible that the “frame survived a series of ruptures and periodically recast the limits of knowledge about power and politics, rules, and rule” (Onuf, 2018, p. 47).

Epochs within the frame are differentiated to the extent that “each epoch adds a new frame to a growing stack (as metaphors, frame and stack are perhaps too orderly, too classical), in the process giving some features of older frames a renewed efficacy” (Onuf, 2018, p. 130). As such they are the very frame put to work through law as the medium for the “political knowledge” necessary to give an “epochally constitutive, conceptually innovative event” the “semblance of epistemic unity”, so that changes come to be experienced as if developing in relatively orderly manners (Onuf, 2018, p. 109; p. 126; p. 124).

If modernity started its course with the Renaissance, it effectively “transformed when writers abandoned natural law in favor of a fully secular law befitting the age of ‘man’”. Far from exemplifying the transcendence of law as the means for an achieved end, the modern epoch of the frame would have consolidated the practically irresistible place of law in our lives. Not only has it remained key to theories and practices of political community, “the domain of law insists on its quasi-transcendental status and progressively invades every aspect of modern life” (Onuf, 2018, p. 47).

## 2 Liberal Modernity

### 2.1 Liberalism

Liberalism, he argues, is the “ideological scaffolding” of modernity (Onuf, 2018, p. 130). Generally, liberal ideology would ascribe powers to bodies, conceived of as natural and/or social, to the extent that these would be distinctively (as if) human. Onuf warns, however, that we should not “conclude that liberalism *as such* constitutes a mighty frame for the modern age”. The “emphasis on powers” is functional, and the interest in it is contingent upon how it can be read to work to anticipate the frame. In this sense, Onuf defines it as a social practice, the intention being merely “to show how economic, political, and cultural conceptions of liberalism fit together” in the context of the development of political modernity (Onuf, 2018, p. 129). So understood, liberalism would be “operationalized in the quasi-transcendental domain of law and conjoined with the quasi-transcendental domain of language” (Onuf, 2018, p. 108). In this sense, the practice encompasses the representations of liberalism as causalities of economic, political and cultural order standing in a relation of whole that is premised on mutual constitution: none of these dimensions is the foundational starting (and end) point of the other. While this helps us to understand the sense in which “liberalism is not merely an ensemble of ideas about human powers”, Onuf also notes that it should not be confounded with the idea that it is necessarily exchangeable with the rule of law (heteronomy in his terminology), for “even less is it a bare-bones claim about individual rights and duties” (2018, p. 130).

Liberalism would operate at two interconnected levels. On the one hand, “liberals make four overlapping judgments about the relations between persons and their powers” (Onuf, 2018, p. 129). All four categories speak to the sense that development so conceptualized and socially inscribed is both present *and* absent, what Onuf describes in terms of it always being experienced as “potential” in need of “actualization”. In this sense, liberal categorization of personhood operates on the simultaneous and mutually enabling beliefs of the following necessities that ought to be experienced as collectively binding obligations: to enjoy “a degree of autonomy sufficient for their full development” by claiming the right to do so; to



“contribute to the development of the bodies to which they are attached” dynamically, as needed under varying circumstances; to experience the need of paying such tributes by exercising for oneself the rationally bounded choice of calculating between the necessary and the contingent practices of self-subjection resulting from instrumentation; and to actualize development so understood through “the production of ideas, skills, and material *goods*” (Onuf, 2018, p. 129; emphasis in the original). Furthermore, those four overlapping processes of enacting an abstractly reciprocal understanding of freedom *and* equality conjoined under the idea of development would “depend in turn on the circulation of valued things – on *exchange*” (Onuf, 2018, p. 129; emphasis in the original). Onuf sees in exchange one of the two ways of experiencing what he now formulates as the fundamental problem of social activity: that of giving.

Jacques Derrida’s work on hospitality is credited with bringing his attention to the centrality of this problem. In doing so, Onuf also takes the opportunity to leave for Derrida the task of thinking the temporal consequentiality of giving, while reserving to himself the prerogative of attending to its unfolding in space. When it comes to the work of giving space, Onuf builds his own argument upon the categories offered by Derrida: on the one hand, “the living environment is governed by fixed principles of respect and donation”, while on the other, this happens by principles of “exchange, proportion, a norm etc.” (Derrida *apud* Onuf, 20018, p. 57). In Onuf’s framework, these become the *regime of exchange and proportionality* and the *regime of respect and donation*, the EP and RP regimes respectively. He also takes the opportunity to translate Derrida’s vocabulary of “regime” to his own, thus maintaining that “regimes are ensembles of institutions, themselves ensembles of rules identifiable as such by their principles, or general and conspicuous rules” (Onuf, 2018, p. 57).

A mighty frame is, in this sense, a composite of regimes. Modernity’s mighty frame, Onuf argues, has the outer shape of the regime of exchange and proportionality. “Insofar as reciprocity implies that parties to any transaction both give and take, as equals, for the purpose of that transaction”, the argument continues, “I accept its normative function in an EP regime” (Onuf, 2018, p. 58). He also underscores that equality here is not necessarily the formal equality of the rule of law (heteronomy), although formal equality is ordered by it. For this to

become liberalism, rules would have to be “providing for exchange among autonomous individuals freely putting their faculties to productive use”, while also assuming “that rewards for doing [so] are roughly proportionate to the effort expended” (Onuf, 2018, p. 62). Although liberal constitutionalism checks all the boxes, Onuf stresses that so does liberal political economy, which can take place alongside conditions of legal formal reciprocity as well as with those of national recognition. This relative distinction allows Onuf to argue, for instance, that even non-liberal national societies can partake in liberal relations of exchange within state boundaries in the form of national markets, thus remaining in sufficient continuity with the liberalism experienced in the juridical relations among states.

## **2.2**

### **Modern and Modernist Internationals**

Onuf’s account of the modern age can be divided into three processes. First, the consolidation of what we have come to know as the national state through practices of recognition. These would be modern rather than liberal, even though enabled by liberalism operating at the level of international society that enabled liberal political economy relations within national societies. Second, and resulting from the first, the institutional stratification of the framework of political modernity into the levels of individual human beings in various relations with one another within (national) society, the individual national state, and the liberal international society. From the nineteenth century onwards, each would have come to be thought of as a self-containing and self-regulating sphere vertically contiguous with the next -- with society at the bottom, the state in the middle, and the international system at the top. Third, the process of functional differentiation, aided by the invention of statistics and the professionalization of law, that brought about the state apparatus of government as a virtually indispensable feature of global life.

One of the main advents that led to the beginning of the effectively modern epoch of the mighty frame, according to Onuf, was the nationalization of reciprocity within the state. He argues that until then, the “nation” state was represented as bounded portion of geographical space and historical time, the insides of which

were meaningful only from the perspective of the relations among states, and primarily in Europe. The metaphor offered for visual aid is a lump of dough, a play on the Newtonian abstraction of space a mass that provided the geometrical resources for conceiving of space and time up before the nineteenth century<sup>17</sup> (Onuf, 2018, p. 99-100). As he further comments about the transformation, “earlier writers thought of the nation (*gens*, people) as a loose equivalent to the state as an apparatus of rule and container for people thus ruled” (Onuf, 2018, p. 128). In the classical age, bounded linear space allowed for *mechanic* metaphors in the attempt to bring the parts in struggle together as a coordinated whole, Onuf proceeds. The Newtonian concept of mass abstracts social relations into lifeless beings. Historically, and from the international outline of the frame, temporality would come only with the invention of the modern concept of the nation.

Everything changed, the argument continues, with *recognition*. Contemporary political theories of recognition, Onuf points out, all stem from readings of the work of G. W. F. Hegel, and so does his. The Hegel that is particularly helpful to the description of modern epochal rule, however, would be the one that discusses not exactly recognition, but rather the relations between the state as an individual thing and the individuals within it, and of this now composite political community with other such individual states made of individuals. *The Philosophy of Right* rather than *Phenomenology of Spirit*. “Central to Hegel’s social theory”, Onuf notes, is the idea that “will is subjective self-determination, or freedom, nevertheless effectuated from a position in society” (2018, p. 128). In this sense, and here I quote directly from Onuf, Hegel held that “since the state is objective spirit, it is only through being a member of the state that the individual [*Individuum*] himself has objectivity, truth, and ethical life. ... Without relations [*Verhältnis*] with other states, the state can no more be an actual individual [*Individuum*] than an individual [*der Einzelne*] can be an actual person without a relationship [Relation] with other persons” (2018, p. 128-129, bracketing in translation and maintained by Onuf). Enabled by his formulation of *das Volk als Staat*, Onuf maintains that nineteenth century modernity was characterized by “the revolutionary step of merging people as a collective singular with state as an

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<sup>17</sup> A wordplay that makes sense only to speakers of romance languages; or if entrance is allowed into the pun, which Onuf does by explaining that mass comes from the Latin word *massa*, translated to dough in English.

apparatus, thereby granting the state-nation the agency of an ‘actual individual’” (2018, p. 129). That would have established the belief that states are states insofar as they are the ongoing process of becoming as if authentic persons, with historical and geographical moorings given in analogical substitution with those taken to be expressive of the manifold forms of being and relating to another now given under the regulative ideal of the people so contained within its territorial and juridical boundaries, and in contiguity with it<sup>18</sup>.

From the container of a hard lump of dough, the regulative ideal of the sovereign state would have been split into two bounded, self-containing spheres contiguous with one another. In the modern episteme, the nation would give life to the state, which becomes state and nation. This, Onuf stresses, is the epochal shift that gives the mighty frame its name, for the institutional changes stemming from it are the hallmark of modern political life that believes that the only world possible for global humanity is necessarily an internationalized one. These would be levels of social activity, one on top of the other: “people as individuals in various arrangements”, “modern states as nations” (some of these societies also liberal, though not all of them, not then and not today), and the “liberal society of state-nations” (Onuf, 2018, p. 124). In sum, “the modern world operates at three levels [that are] framed and supported by the conditions of statehood” (Onuf, 2018, p. 130).

The regulative ideal of the amalgamation of the manifold into “the people” reflected in the nation-state, and the nation-state reflected in it, would add to this spatial scheme of extension the conditions for the causal categorization of growth in (spatialized) time. The historical robustness that the nation would give to the state the condition for the symbolization of the embodiment of collective development, as well as the notion that the rationalizing public administration ought to represent the rationalization of “the people” itself. In the modern age, this would center around the state as central planner, and on the individuals as relations of liberal

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<sup>18</sup> Onuf takes the French and American Revolutions to be exemplary exceptions to the rule that is experienced by most states as slower and longer processes of nationalization that are not necessarily evenly distributed. In his words, “exercises in popular sovereignty, marked by majestically formal declarations of intent, that we might conceptualize as acts of collective recognition in the strong sense of the term... the innumerable, mundane reciprocities of exchange among pairs of rights-bearing persons, both natural and compound, constituted an acknowledgment of a common status among all those involved in exchange, just as the innumerable many contestations over rights and duties substantiated equality ‘before the law’” (Onuf, 2018, p. 128).

political economy through which the manifold is individuated as “the national people”.

Furthermore, the distinctiveness of the modern epoch also entails the birth of statistics, on the one hand, and the functional differentiation of government bureaucratized through professionalized law. According to Onuf, the professionalization of law and its mediating role between government and society at that time exemplifies the consolidation of the role of legal practices of collective representation in the modern world as a strictly secular practice, entirely centered on “man”. Therefore, not statistics nor functionalism simply, but statistics as part of knowledgeable practices specialized in public administration and translated into being through the legal conceptualizations of lawful regularities and irregularities.

Moderns, as Onuf says, are “great fans of science and technology” (2018, p. 155). In this context, one would become a citizen insofar as one can be included in the state by being countable by it. Indeed, Onuf argues that the transformations in spatial representation that led to modernity were born out of the sense of the need of addressing the contingency characterized by the problem of “large numbers”. Until the nineteenth century, that was mainly articulated as the “control over large tracts of land and large numbers of bodies” by the state (Onuf, 2018, p. 92-93).

In modernity, however, “state-nations have responded to the demand for new services by perpetually undergoing functional differentiation”. “Bureaucracies proliferate”, and through their proliferation “state-nations have made themselves indispensable for reasons not just of security”. “Applied to the conditions of rule”, Onuf continues, “functional differentiation accompanied the extraordinary growth of public administration, through which an ever-greater variety of services were to be provided” by “the state-nation’s several levels of administrative personnel, armed with specialized knowledge”. Through these knowledgeable practices, the clientele of those services -- the “state-nation’s population as a whole” as well as its “colonial peoples” -- would paradoxically become an arguably unified whole insofar as they become “endlessly classified and partitioned”. Onuf thus emphasizes that “*modern* administration subsumes both of these complementary developments

in an apparatus of rule”, so that it “shows over all spatial boundaries and infiltrates all manner of activity<sup>19</sup>” (2018, p. 155, emphasis in the original).

Modern government and capitalism would share liberal political economy as their paradigmatic social practice. Operating at those two fronts of spatial production, the modern international accrues in “the development of modern statistics, the law of large numbers, and (one might say) the normalization of normal distributions” (Onuf, 2018, p. 154). At the bottom, “at least in principle, people count individually because they can be counted and may have variously secured rights” (Onuf, 2018, p. 130). In the middle, “organs of states use the nation’s resources to meet their members’ needs and conduct relations with other nations in order to assure the nation’s well-being”. In-between national society and the state, contiguity would be ensured by the belief that “no nation can function without the state”, so that “the nation’s inhabitants can only relate to each other within the regulative sphere of the state”, for it is “through the apparatus of the state” that individuals would come to experience the idea “the nation exercises its powers” (Onuf, 2018, p. 130). And “whatever they are”, Onuf adds, “state-nations are only possible because every state-nation is itself a member of a liberal society” (Onuf, 2018, p. 130).

What we would expect to be functional differentiation, however, become so in name only, according to Onuf. Contrary to arguments that the functionalist takeover has either dismantled or made the sovereign nation-state analytically and/or politically irrelevant, he holds that function wins only secondarily to it. Rather than substituting the state, government becomes the privileged means through which the former is instantiated. “In short, modern sensibilities, not to mention modern technology, combined with classical conditions of rule and stopped a functionalist takeover in its tracks” (Onuf, 2018, p. 154). This resistance remains even in

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<sup>19</sup> Statistics, in his sense, is one of the hallmarks of modernity that lives on in modernism. It gives us a picture of “the modern age reflected in innumerable curves”. “With time as one coordinate and size of population as the other, the rate of growth plots an ascending curve” (Onuf, 2018, p. 159). “From beginning to end, growth rates always change. If the change is gradual, as we say, or arithmetic (and itself plots as a linear curve), then the curve of growth is normal”. Changing within the parameters set by deviation, a normal “geometric rate of change will result in an exponentially steeper growth phase set off from what happens at the beginning and the end by even more obvious inflections. How fast the growth rate changes, growth accelerates, and the curve steepens vary with circumstances”. “As a family, logistic curves, as they are called, differ in detail just as they all look alike” (Onuf, 2018, p. 160). Methods of counting are exchangeable among vast categorizations of such growing organisms, or “populations” of things.

modernism, where and when “functionally differentiated international administration has failed to dispatch sovereignty slice by slice ... and replace the state in providing for human needs”. The cause is the same “the enduring affective power of the nation” (Onuf, 2018, p. 153). What took-off instead, he notes, was law, and it never descended. In and beyond the modern epoch, “ever more professionalized lawyers performed their traditional function by reaffirming and thereby authenticating the mighty frame in their own distinctive language” (Onuf, 2018, p. 124).

In the wake of the contradictions of the deadly combination of nationalism and international liberal political economy the epochal shift to modernity took place in the context of malaise. Suddenly, before anyone had the chance to consciously process it, everything felt as if out of place. The perception of the immediacy of the present would come to the fore. *Here*, in the space and the time that Onuf claims is ours as well, the master-problematic of thought and rule becomes “how to get inside, or bring the inside out”. With it would have come the rationality obsessed with the rationalization of public dismemberment: “when innards are exposed, we see how they work, what is regulative in the works, why some ensembles seem to lack in structure or meaning, how wholes hang together” (Onuf, 2018, p. 137). He argues, in this sense, that this shift “shattered the epistemic unity of the modern age” all the while “many distinctive features of the modern age retained their importance”, and, more importantly, “only fulfilled their potential” because they were shattered.

Modernism would be a shift in doing space rather than a shift from one type of space to the next. This is central to understanding Onuf’s claim that through functional differentiation, particularly in its modernist modality, nation-state sovereignty has become as territorialized and juridically ascertained as it has ever been, law being paramount to this process. The era of “empty space” would be gone, replaced by the abstraction of “ensembles of relations, stable or shifting, linked by purpose”. In modernism, “form follows function”. Its creed is that “complexity induces differentiation along functional lines”, and “organic metaphors find themselves at home” (Onuf, 2018, p. 137). As a result, spatial and temporal hierarchies would come to feel as if disassembled, and those that do not feel as such are now given as open to be so disassembled. It is as if there is nothing that is not

constructed and thus destructible, and possibly reassembled in novel ways with ever-developing technical precision. “Tasks and their performance, not limitless causal sequences, natural laws, conscious deliberation, and positive modalities of control, make people what they are – within society” (Onuf, 2018, p. 137). All one could be, in whatever level of political modernity, would be determined by its functional worth in relation to the whole.

Onuf maintains that Edmund Husserl’s phenomenology is the paradigm of modernist spatiality. He quotes Husserl’s own summing up of the project: “constantly functioning in wakeful life, we also function together, in the manifold ways of considering, together, objects pre-given to us in common, thinking together, valuing, planning, acting together” (Husserl apud Onuf, 2018, p. 143). It is up to this “pre-given” that Onuf parts his way with modernist functionalism, which he does not consider to be functionalism proper, but continues to call it as such, retaining from it the resources needed to develop his own framework. Onuf argues that this belief in the need to ground the experience of predication an experience prior to it smuggles teleological empirical realism dressed in the clothing of subjectivism and contingency. Onuf argues that “pre-predicative directedness implies purpose”, consciousness moving towards pre-given ends and not humanly given objects (2018, p. 144). To the extent that ends are given, and experienced, as if pre-given, they are taken to import in the social world of human beings causally; as we shall see, Onuf argues that this becomes the idea that humanity has surpassed itself, having created its own technological exteriority, so to speak.

In this sense, modernist functionalism is premised on the belief that functional differentiation is self-determining (Onuf, 2018, p. 152). If that is deemed to be functionally necessary, it will be authorize as having pointed itself to be necessary, beyond the judgement of the subject making that decision. Onuf borrows the concept from David Mitrany and calls it “technical self-determination” (Mitrany apud Onuf, 2018, p. 155). Just as he claimed it in the modern epoch, Onuf holds that modernist functionalism is the rule only insofar as it enables the state to remain experienced as the main provider of the many services that it offers to is ever proliferating populations distributed along curves that grow and decay under manipulatable conditions. Rather than being “rendered a vestigial remnant”



preventing durable rational peace from becoming, the state would have become as if the embodiment of the last frontier where “peace will prevail”. Conventionally, this is what law is supposed to mean in modernity – the sublimation of struggle from the existential threshold of life and death. Onuf suggests that this imaginary has now integrated law and government to a point of no return.

In this respect, what would make government today different from its modern iteration is that “modernist administration takes on a life of its own”. To be more specific, “bureaucrats keep records, publish reports, and make plans on behalf their *bureaux* and for the people for whom these *bureaux* are responsible” (Onuf, 2018, p. 155). This *seeming* to be the case, Onuf cautions us not to “attribute rationality and other properties of consciousness to bureaucracies” (2018, p. 155). This, according to him, is the mistake that Koskenniemi makes and what would have prevented him from realizing that the seeming fragmentation of the state has made it the more powerful it has been (Onuf, 2018, p. 203). “State-nations have made themselves indispensable”, he continues, even if “they have done so at the cost of entanglement in functionally defined networks of expertise transcending national attachments and territorial boundaries” (Onuf, 2018, p. 154).

The contingency, therefore, lies in *planning*. “Not just a multiplicity of plans and projects”, Onuf notes, but the underlining notion that these manifold plans and projects are only to the extent they would be in continuity with “a plan for human betterment – a public plan, however multifaceted, for everyone within its many-tentacled grasp” (2018, p. 155). Planning coupled with the belief that functions do the work themselves construe the imaginary that we are in the process “to limit, and in due course to eliminate, the need for anyone to rule” (Onuf, 2018, p. 202).

While statistics remains modern, it would have been given modernist undertones by being represented as a living thing. “Once rendered in standard units and measured as precisely as available tools allow”, statistically given “appearances are (made) real” insofar as “they *count* as phenomena” (Onuf, 2018, p. 159, emphasis in the original). Statistical technologies saturate space: “we see them on the page or screen, we know they are notional, we treat them as real – more reliably so, less error-ridden, than whatever we have measured – and put them to work” (Onuf, 2018, p. 159; my emphasis). In this sense, these ways of counting persons

into becoming persons are the “mainstays of liberalism; they operationalize the EP regime” (Onuf, 2018, p. 159).

Modernist normativity would annul the subject, and, with it, judgement and responsibility, in just this sense. For Onuf, the desire for technological standardization has been a helpless hope, what he also calls a “complacency about the future” rooted in “complacent technological optimism” that reproduces “willful innocence of the worst sort” (Onuf, 2018, p. 192).

### **3 Authority and Ethics**

Onuf’s descriptions of the present border the catastrophic. Ours is a condition wherein “corruption runs deep and spreads everywhere, liberal pieties and ritualized democratic procedures bemuse the demos, discord paralyzes representative institutions, surliness swamps civility, violence begets violence” (Onuf, 2018, p. 223). Still describing the present, he adds to the predicament that “the material conditions of everyday life” are “showing themselves ever changing in detail but highly resistant to management” (Onuf, 2018, p. 148). Technological problematizations would be simply incapable of addressing contemporary global dilemmas in functionally adequate manners. Worse, these so-called solutions would seem to fail even within the parameters of their own “expertise”.

In addition to this, he attributes responsibility to experts for failing to realize that relationship between technological developments and government rationalities has been mostly unproductive for about a century now. If technology has done anything since then, Onuf argues, it has been to provide experts with the resources necessary to bring about a global revolution in technologies of social control, intendedly or not. Not only most of us would have “embraced these control technologies”, but this very embracing has also kept us too lost in awe to realize “that old technologies dominate our lives” (Onuf, 2018, p. 191).

In the wake of the utter failure of technology to address decline and the dilemmas ensuing from it, experts across all sides of the ideological spectrum and

the functional sites of labor would have been failing to offer anything other than zealous re-incantations. They would expound the belief that we are still living the endless expansion of modernity, always on the top of the curve the scale of which we could not experience but should trust to be in the process of self-realization. On the ground, reality would be gradually betraying these expectations, the malaise described above testifying to the fact there is “no resuming the long trajectory of material growth” prior to the modernist epoch (Onuf, 2018, p. 191).

Onuf proceeds to address this conundrum by shifting the spatial question of the possible and impossible to plane of ethics and doing so by emphasizing institutionalized inequalities in social positions regarding rulership, the differences of which he frames in terms of duty. Rather than being a self-perpetuating machine, he now brings into the picture the question of the authorization of the normativity of political modernity; that is, how it is has been produced, under which conditions, by whose practices. He now argues that hegemonial rule, or rule by *reverence*, has always been the condition of possibility of the mighty frame, and indeed of any frame. It would be merely that “modern government, technological wonders, and liberal prosperity have excused us from looking for it” (Onuf, 2018, p. 222).

To avert from looking, according to him, is no longer possible. We have reached the limit. The decline of capitalism means that the distribution of wealth across societies will become more unequal, and in the context of the many multifaced crises that we would be facing today, the increase in material inequality would be bound to be intensified by the status markers through which we already verticalize ourselves socially. In this respect, “status-ordering will prevail in every society”, and “in such a world, appearances will always matter; status-ordering will provide necessary framing, just as it always has” (Onuf, 2018, p. 223).

For Onuf, the only hope to produce political space in progressive ways under these circumstances is ethics; more specifically, he proposes his own system of “positional ethics” (Onuf, 2018, p. 223). In this sense, the question now is “how we might best conduct ourselves” in these times of turbulences (Onuf, 2018, p. 207). “We”, however, is determined by the position we occupy in the order of ethical-political things. In light of this, he argues that “those who have the highest positions in society have the most privilege as well as the greatest burden of duty”. “We (in all positions) hold those in the highest positions to the highest standards,

and we all know that this expectation is warranted” (Onuf, 2018, p. 220). With power comes responsibility, and so he goes on to remark that, in tension with this, is the problem that “privilege permits or creates opportunities for bad, vicious, or corrupt behavior arising from lack of self-control” (Onuf, 2018, p. 220).

Onuf’s audience is the experts that today rule indirectly through governments that summon them to action. Especially in the context of the modernist regulative ideal of modernity, wherein the expectation is that conventional political actors defer the prerogative to deliberate on the relation between the end and the ends being pursued (the purposive limit and the limits of community) to experts rather than counting on them for technical solution about the means of implementation only (Onuf, 2018, p. 205-206). “Indeed, the transition to a distinctively modernist modernity has meant, among many other things, the functional differentiation and valorization of expertise” (Onuf, 2018, p. 220).

Positional ethics should help us identify our place in the political community and to act according to the civil values that would be expected from us. This, Onuf adds, also entails the “conditions in which that society is obliged to operate” (Onuf, 2018, p. 221). Only by identifying the *ethical systemic limits* of the normative system we could map changes in the expectations about how to act dutifully and properly participating in the production of the regulative ideal of modernist modernity. Onuf argues that this limit that conditions its possibility by conditioning the authority of its vehicles varies according to contexts of stability and instability. In general, modernity that does not take the priority of authoritative rule into account would lead us to believe that “that wisdom (rationality) and justice are favored” in principle, whereas “courage and seamliness are seen as faintly irrational or atavistic” (Onuf, 2018, p. 220). That is, it purports that those passing judgement on the negotiation of dynamics of resistance before which political space is inscribed should always privilege reason and order, as in the application of rules valid for all beyond exception. It does not tolerate any contingent dynamic element that would afford it flexibility. And it eschews the events such as the contemporary nativist and nationalist politics on moral grounds.

In practice, however, and this is what needs to be seen, “when societies are stable, justice and seamliness prevail (even when seamliness is not recognized for what it is)” (Onuf, 2018, p. 220). Onuf seem to be suggesting that when resistances

are not experienced as claustrophobic and totalizing limit-situations, political space will have been produced by everyone acting as if they know their place in the order of things and act accordingly (seemliness), and we can expect the exercise of justice as the balanced correction of asymmetries as the function of modern and modernist government have been historically imagined to perform.

This change “when times are turbulent”, though, and “prudence and courage are valued more” (Onuf, 2018, p. 221). When resistances come to be experienced existentially at the aggregate level of the political community, rulers ought to proceed with caution in passing decisions, cultivating the discernment about the particularities of the situations in hand, and anticipating into the calculation the possible consequences of one’s actions (prudence). Furthermore, they ought to have the transgressive disposition to proceed accordingly even though normativity or external pressures, like society’s, would encourage them otherwise (courage). Only in this manner the situation in the passage above can be averted: that “privilege permits or creates opportunities” *against* “bad, vicious, or corrupt behavior arising from lack of self-control” (Onuf, 2018, p. 220).

## 5 Trouble at the Limit

### 1 Sovereignities at the Frontier of Authorization

Despite their differences, the international critiques that we have been reading pose the problem of sovereignty can be read to share an attitude. They assert that in order to fully make sense of the events that have been unfolding in the present, a *vital* piece of the puzzle is missing. In different ways, they come to argue that it is no longer enough to *assume* that political communities are the effect of the unproblematic political authorizations of their limits. They argue that we need to understand how these practices of authorization happen.

At the same time, these diagnoses start from elsewhere. They want to understand the general state of the normativity of the limits of modern political authority. They present us with patterns that suggest that the authorizations of state-national collective identity are shared internationally: the parts individuate themselves as parts insofar as they perceive themselves to be parts of a coherent whole, therefore moving in coordinated fashion towards the same end that they give to themselves collectively. Or so we can assume, given that the observed patterns and the explanation seem to match – we can proceed with the “as if”.

As I argued in Chapter 1, the problem of “order without an orderer”, as Waltz called it, is the staple of social theory and structuralist thought in many of its variants. Bartelson, Koskeniemi and Onuf pose it as a “cultural system”, turning the problem of modern political community into an empirical object that is empirical insofar as it is socially mediated by the assumed practices that bring it into existence. They follow Kant’s exhortation to immanence and to the problematization of freedom from the “point of view of practice”, which is concerned with the special type of representation that anticipates into the world that very thing it is representing. In this sense, these authors follow the paradigm of negativity that Bataille reads out from (or into) Hegel, according to which man is activity insofar as it is a finite being that gives to itself its existence as Being through

resistance that lead to positive effects at the aggregate level of history, or of the system – they subscribe to the model that represents motion as change brought forward towards ends that we would give to ourselves through the negation of prior incarnations of those ends that we have given to ourselves as soon as we feel resistance, and so on and so forth, endlessly.

They part ways with Hegel at the point that modern techniques of the representation of space have gifted us the power of actualizing abstraction to its highest form. They do not subscribe to the end of history, except that the end is the endless affirmation of the anthropological necessity to negate ends – but then again, it is not so clear that Hegel did subscribe to the end of history when we shift to his politics of war. Different from Kant, to whom, as we shall see, this endless motion happens laterally, these critiques pose the problem of motion as change that moves spirally. This problematization of political authorization follows from the principle that they ascribe to the “model” that informs the outline of the object of inquiry. Bartelson, Koskeniemi and Onuf begin with the desire to understand the changes in the social patterns of authorization, as it is only by understanding the *what* that has been enacted by changing itself, and the *what* that has led to the need of its advancement through the adjusting of the formula to assimilate the latter that we could be in the position to make sense of the *feeling* that important political transformations have been on the making at the scale of the world.

Onuf expounds more clearly the nature of the attitude that they share: they problematize political community as a normative object. “Normative models ascribe force or obligation to regularities in speech” (Onuf, 2018, p. 90). More specifically, they are concerned in tracing the normative model, or organizing principle, of a certain production of political space in different yet coherent and coordinated ways across its history. By approaching the problem of political authorization systemically, these theories argue that we should proceed by beheading the political author and thinking instead in terms of the relations of structural antagonism of mutual constitution. In this sense, the distinguished characteristic of Bartelson’s, Koskeniemi’s and Onuf’s social ontologies of modern politics is that they ask us to pretend that there is no precedence of author over structure or of the structure over the author. They do this while also

acknowledging that these mediations between the norm, the resistances to it, and the assimilation of the latter through adaptation by the former are not automatic.

As I hope it is clear, all three inevitably return to the author by the end of their analyses, when the encounter with the limit of the reality they are diagnosing in his manner demands them invite the subject back in and problematize political space as a matter of judgement that is limited primarily ethically. In this sense, the author is the condition of the possibility of these theories. These authors are very open about this. And the author, according to them, is government – or at least it is people that get to determine those that determine the general rules for communal activity in government offices that hold the socially recognized coercive means of legality through which the modern representation of the political space of the sovereign state is inscribed in our everyday lives.

When it comes to the normativity, we can surmise their findings as follows: national political authorities in government institutions authorize the boundaries of the political community as resilience to changes through the legal administrative apparatus of coercion, and they pass judgement on what those limits are by subjecting themselves to the authority of experts in many issue-areas, and for whom political space, in order to serve its purpose before its subjects, ought to be post-national in principle, even though circumstances are so that they need to be produced by the means of the former. Law is the means through which these limits are negotiated because it is the highest form of the distinctly modern technique of abstraction, as it affords the flexibility necessary to produce representations of the whole that can encompass those transformative conflicts in society that get to be experienced as a whole that is advanced, rather than negated, by those events. The latter become historical instances that manifest the contingent substance that humanity is, and through the manipulation of these limits by its cognitive capacities, humanity can produce itself as the end in itself (Being) as this very activity of authorship.

Being is thus “encountered” in these events by representing them as *activity* that is *negativity*: the rationality of modern sovereignty looks in those events for what in them will have expressed the human condition as that which negates being subordinated to the profit of another as long as it can perceive itself as being so subordinated. Since it is author to itself, it is within its hands to change that



situation. We would do this collectively by ascribing meaning to this as being just or unjust, legal or illegal, while being aware that what is just and unjust and legal and illegal today may not necessarily be so tomorrow if as changes in these meanings are for the benefit of the community as a whole.

The sense of “just” results from the “revelation” that an already sedimented distribution of just/unjust in given circumstances has become “unjust” – for the community as a whole or for a part or some parts of the community. The challenge that political authority faces is anticipating these events in ways they will be experienced as if always being just or unjust for *all*. This is the principle that stratifies institutional political authorities from the remainder of the citizenry that they are also a part of. It is as if they could do this with or without the populations that should be the objects of those “injustices” becoming somehow attuned to the predicament. Indeed, the exception provides the rule, so that the problem of sovereignty is how to get people to experience these shifting spatial representations of temporality that are not immediately available to them. They ought to subordinate to it by identifying themselves with it. This is the starting point of the empirical observation: we know that this happens because we can see that for most of the time most people subject to these determinations willingly. To be sure, I am not saying that Bartelson, Koskeniemi and Onuf are not aware of this. They are. They pose the problem as one of self-subjection. The question is rather what the object is, how it is formulated.

According to these authors, the normativity of the sovereignty of modern man (my terms, to be clear) tell us that obedience ought to be the consequence of identification with this process. In light of this, they argue that we can presume that in moments of stability political space is as if organized by the normative principle. Stability will have the aggregate condition of generalized trust in the rational organization of life and in the benefits of living for a cause higher than one’s circumstances, i.e., anticipating a condition of collectively mediated benefit that it would not be able to anticipate or come to enjoy otherwise. It would exemplify that man, at least in those moments, has been as if progressing away from the immediacy of animality towards the cultivation the capacity to think in the terms of the whole that, through the mediation of political authority, it discovers itself to be a part of.

Yet at a given point, these critiques acknowledge that understanding the languages of political space through which instability is turned into stability, and changes in institutional political organization are effected, is not enough to account for what now becomes the key aspect of the problem of self-subjection. How do individuals and groups of individuals self-subject and refuse self-subjection in the more or less coordinated ways that they do, beyond the artificial divide that the normative model has imposed between stability and instability? The question cannot be avoided because the present is described as chaotic, corrupt, backward, revisionist, dangerous, and so on. The threat of a “nationalist” or “nativist” reorganization of international collective identity seem imminent. The system is unstable in the sense that the normativity is being partly challenged -- it also remains somewhat stable in the sense that disputes have split it into two antagonistic ideological positions *within* the same framework without signs of “dialectical” resolve in the Hegelian sense of spiral change.

In order to understand that we need to understand *how* political modernity is mediated rather than merely knowing what is mediated and the assumed mechanics of change. This is when the practice of political authorization comes as a problem on its own right rather than the assumption that leads one to investigate what those practices convey. The problem remains the same in terms of finding the underlining principle of political organization that is shared by all, the becoming into totality retroactively assumed to have been because they must have shared it. It is by having arrived at this limit that it seems that the sense that these critiques have always problematized political authorization as an actor-centered enterprise. What is *the* limit that enables the limit that they just argued to be the limits enabling how we tend to make sense of the practice of producing the limits of political community?

Political authorities rule by reverence, as Onuf puts it, or by charisma in Weber’s terms. Bartelson and Koskenniemi also imply this when they acknowledge that it is a distinguished class of individuals that are collectively recognized and/or reasserted by the law that get to decide over change and implement it. The subordination to these decisions entails the recognition that these decisions are being made in accordance with that which only the person occupying the position

to pass the judgement can foresee of the law beyond the law (Bartelson, 2014, p. 97-104; Koskenniemi, 2010 p. 222-242).

What I want to bring attention to is that regardless of the particularities of the modern institutionalization of reverence (or rule by assertion), one inevitably comes across yet another wall, as the problem posed from the perspective of the author cannot but arrive at the conclusion that the authorization of the author happens negatively – they too suggest this in their turn to ethics. That is, the credentials that would account for the trust invested in the office by deference is a concept that we give after the fact to the activity that stands before us as the problem: institutional political authors authorize themselves in virtue of their capacity to *produce obedience*, not to themselves as individual rulers nor to themselves as an individual class socially recognized as competent to rule, but to the organizing principles of man's sovereignty that they come to embody into the world as being continuously in struggle, thus making the performance of the reconciliation of these struggles through legal coercion necessary under contemporary conditions.

On the surface it may seem that this is the problem that these critiques pose, but there is a significant difference. These theories seem to problematize the limits of representation as speech (Onuf does this overtly). People are actors in the sense that they communicate with others “to make the world what they think it is or should be”. To say that political authorities rule by assertion in this manner is to say that whatever the idea being communicated is, they “say these things forcefully – ought is implied – even when they make mere assertions: you should assume I am sincere and you should believe what I say about things” (Onuf, 2018, p. 181). Speech is primarily a bodily way of communicating ideas. No matter how rational the form and the content of the empirical object may be, the threshold is the capacity of the author to break through one's bodily defenses, and this is something that can only be done uninvitedly.

As Onuf stresses, speech is “a sequence of deliberately patterned, rule-guided auditory resistance enhanced by intonation and gesture” (Onuf, 2018, p. 26). In light of this, modern sovereignty would be the effect of the capacity of political authors to produce citizenry, themselves included, by communicating that they ought to identify themselves as people that “do things that have an effect on the

world, and they commit themselves to making the world what they say they want it to be” (Onuf, 2018, p. 181). Trickery is the rule of politics. Political authorities ought to be master in manipulating the “truth” to lure the audience in. With or without realizing it, this problematization of the limits of subjectivity has brought us into the domain of aesthetics.

The home of Bartelson’s critique is highly informed by aesthetic concerns, even though this appears in his work sparsely, the real concern being in Ernst Cassirer’s interpretation of Immanuel Kant’s conclusion that universal communication is political because it is aesthetic – it happens through “feelings” and “cham” (Kant, 2007 [1790]). The former’s interpretation is epistemological rather than political, and Bartelson limits himself to acknowledge that this entails that the regulative ideal (the concepts) ought to be embodied and that today they are embodied as empirical objects in and through law as an empirical object (2014, p. 15-17). Koskenniemi follows Hannah Arendt’s reading of Kant’s conclusion by framing politics as the art of persuasion, which bears an awful resemblance with the conclusion we have arrived at through Onuf’s model of speech, but which is also quite similar to how Bartelson will later refer to political authorization as the recognition of the right of subjects to resist “as a condition of possible legitimacy” (2014, p. 102). Even though Onuf argues that “aesthetic models attach causal power to the experience of beauty, the sublime, ecstasy, madness”, his own account of rule by assertion is a model composite of normative and aesthetic considerations (2018, p. 90)

All in all, Kant argues in *Critique of Judgement* (1790) that more than communicating feelings, symbolic representation principled by freedom ought to bait the audience into becoming complicit in the game and willing to participate in it. Those acting with the intention of making others act in ways that ought to be best for them, only they cannot see it yet, but hopefully will – sooner than later, hopefully, but we do not know for sure if it will at all, let alone when – do this by mischief, if this is indeed the only adequate way of thinking about how the author authors political space. To be sure, these are theoretical model. They merely state that, from the observed phenomena, it is as if it happens in this way.

But there is also a politics to this. At least this is how I will be arguing that Kant argued that politics performed in this way invariably is: activity moves with

the view to the consequence, even though we may try hard to act with the view to the means or to the end – yet he is hardly alone in this. Bartelson, Onuf and Koskenniemi also partake in the principle that politics is principled by indeterminacy, and that, when it comes to political authority in the sense deciding on the limits of community, things can go in ways unanticipated, and it is the duty of the ruler to foresee what is foreseeable about the consequences of believing that technical calculation can foresee everything.

I would like to argue that there is a further sense in which there is a politics to this. The problematization of political authorization that finds in the capacity of the author the need to lure the audience the condition for the possibility of political authorization cannot but arrive at the limit of the limit it has just encountered and embraced. The idea that political community is the effect of institutional political actors being able, or unable, to produce communion by communicating the concepts of communion through affective manipulation demands that there already be a community in place prior to this community that is to be established. Let me explain myself: subjects ought to have already been produced and willingly made themselves into a manipulatable community. Otherwise one is simply assuming that human beings are manipulatable in nature, and then there would be the problem of explaining how they get to be manipulated in such coordinated ways – is this a coincidence?; are the intentionally acting political authors these powerful? To be sure, one can reply to my claim by going back to the conceptualization of the normality/normativity of political modernity and say that the modern state has moved by regenerating from crisis after crisis, as if this alone explains the generalization of conditions that are ripe for political authors to thrive.

I do not disagree. The answer has to be something light that. Yet that is an assumption and not an explanation. This type of analysis is immensely helpful in tracing the conditions under which authorization happens. I learned a lot from reading these texts, and I am indebted to Bartelson, Koskenniemi and Onuf for this. Yet, from this another perspective, they give us descriptions of these conditions, not a political account of how they work. That notwithstanding, to acknowledge this much is to acknowledge that political community is not the consequence of political authorization so understood. I am not denying the political author, though. I am merely suggesting that something else may be necessary for that to happen.

This is quite a different understanding of the production of the limits of collective representation, not only from the perspective of epistemology, but especially because, as I shall be arguing, the politics ensuing from it is different. In his social typology of “models” through which political objects can be problematized, Onuf envisages four: they can be normative, ethical, aesthetic, or transcendental (2018, p. 90). I want to suggest that we call this limit of the limit *political* instead.

Since in addition to “city” the word *pólis* (πόλις) is a noun that also means “fortress” and “fortification”, I shall propose that we think of the limit as that which interrupts its existence as this noun. Politics, in this sense, would be practices of walling that produce this prior and ultimate experience of political community as the ties that bring us together as a community of mistrust. In order to sketch out how modernity has distinctively produced its own articulation of this sovereign principle by pushing it to its own limits, in what follows I draw the resources to do this from a figure that all of us share: Immanuel Kant.

## 2 Hymn to War

In his last political writing, “The Contest of the Faculties” (1798), Kant recasts the question of the universally limited nature of representing humanity as universal under the aegis of what is now called *history of the future*. To the question “what sort of knowledge are we looking for?”, he answered that “what we are seeking to know is a portion of human history. It is not a history of the past, however, but a history of future times, i.e., a *predictive* history” (Kant, 2005b, p. 177; emphasis in the original). The object of this knowledge is the human being – or, if we engage with Kant’s thought dynamically, it is what he had defined a few years prior, in *Critique of Judgement* (1790), as that part of “man” that is “a sovereignty in which reason alone shall have sway” (Kant, 2007, p. 262). That, he argues, “can only be learnt through additional insight into the future supplied by supernatural revelation”, and, for this very reason, “it must be termed *prognosticative* or *prophetic*” (Kant, p. 177; emphasis in the original).

I want to suggest that we play with the possibility of reading this intention as if Kant was a political diagnostician inviting us to become the same. This interpretation goes in a somewhat distinct direction than those that conjure Kant's spirit as a "speculative" or "political" philosopher, for whom the emphasis is given to either to epistemology, formal law or ethics, or combine these elements in a "complementary" fashion<sup>20</sup>. What could we find were we to approach his work at least partially as a call to the problematization of predicative histories?

My position is also distinct from Michel Foucault's seminal reading of Kant as the philosopher of ontologies of the present. I do not intend on engaging Foucault's social ontology point by point. I should merely confine myself to noting that perhaps the function of the transcendental in Kant's thought is not as clear cut as this position makes it seem to be. Foucault praises critique insofar as "criticism indeed consists of analyzing and reflecting upon limits", and he finds in Kant's political thought the "ethos" of the "limit attitude" that invites us to perform a shift in perspective when diagnosing an object bearing the form of an "inside-outside" that puts the diagnostician "at the frontiers" (1992, p. 45). I could not agree more.

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<sup>20</sup> As I argued in Chapter 1, the epistemological inheritance is characteristic for a certain paradigm of social thought, and, in this sense, it includes the works of Bartelson, Koskeniemi and Onuf. I should note that out of the three, Onuf openly address the centrality of Kant's epistemology in his own theorization of social ontology, i.e., the general theory of empirical objects as social systems that he will then apply to modern political community. Bartelson does this overtly insofar as he theories the social system through Ernst Cassirer's. In Koskeniemi case, the presence is there in the sociological nature of the endeavor, even though he averts from doing this type of work by simultaneously affirming its necessity: "For, as I have later realized, international law is not a theoretical discipline. Its 'basis' or core does not lie in theory but in practice – it works – and, notwithstanding a few exceptions, seeking an abstract grounding has never been its strength, or even a characteristic part of it" (2005, p. 600). That things "work" is the ground of sociological immanent critique. Koskeniemi makes this claim in opposition to approaching law as domain that should be theorized as an object of "immanent critique", because, according to him, doing so would only find that "a practice does not live up to its justifying explanations has no force when the practitioners themselves do not take those explanations seriously" (2005, p. 600). But this only shows that he has a specific understanding of immanent critique in mind, very likely influenced by how it has been played out in the disciplines of law and international law to ground the objectivity of legal objects in legality. As Yamato and Hoffmann (2018) show, the critical turn to sociology developed only recently in law, and Koskeniemi was an inaugural figure in that context. The position he opposes is the second one I mentioned above. For a recent example of this latter way of thinking about limits as regulative ideals, see Claudio Corradetti's *Kant, Global Politics and Cosmopolitan Law: The World Republic as a Regulative Idea of Reason* (2021). In respect to the ethical framing of the problem of political limitation, we can point to the rather distinct readings that Hannah Arendt (1992) and Max Weber (1992) give to Kant. While Koskeniemi is highly influenced by Arendt's attention to aesthetics, Bartelson, Onuf and him share a Weberian outlook when it comes to political authorization as the activity of passing judgement by *anticipating* the future into the present responsibly.

Yet the idea that the “transcendental” ought to be abandoned because Kant the diagnostician calls upon us to inhabit the frontier “in the search for formal structures with universal value” that would stand for those historically given “limits knowledge has to renounce transgressing” in the circumstances is an interpretation that is highly disputable on grounds offered by the political writings themselves. I am not interested in the *why* of the matter. Instead, I would like to suggest that perhaps a different picture of what Kant may have been doing in calling his readers to arms and exhorting us to “think for ourselves” in the contexts of our presents may come to light if we think of his work in a more relational manner.

Foucault based his reading of the “negativity” that needed to be surpassed by a new critical attitude in “An Answer to the Question: What is Enlightenment?”, which he saw to exist in contrast with the analytical problematic of limits articulated in the Critiques. By emphasizing that we are the contingently determined fruits of our histories, he suggests that Kant’s historical conditions may have made it sensible to approach the critical project as the pursuit of the indeterminate that needs to be represented and subjected to as a “necessary limitation”. But ours, insofar as it is characterized by pastoral technocratic humanism, is an altogether different present from Kant’s, and it now demands that indeterminacy be desired in “the form of a possible transgression” (Foucault, 1992, p. 45).

In proposing that there are ambivalences that allow us to read Kant as a political diagnostician, my intention is to encircle the possibility of a critical attitude that is none of those things. Perhaps his present was not so different from our own, and that in seeking the limit underpinning the representation of limits that is so familiar to us as it was in the making. There may as well be a path for critique that has not been enticed to affirm or negate its object. My argument, in this sense, is that Kant was moved by the need to bring before the understanding the *political* conditions under which the future (our future) was *already*.

“The Contest of the Faculties” expands on the problem of the present articulated in “An Answer to the Question: What is Enlightenment?”. Let us see where this expansion leads us, and how it speaks with other writings from the same decade. In this context, the language of prophecy should not be taken lightly, nor should it be ignored that Kant is bringing the prophetic and the knowledgeable to bear on one another in this seemingly uneventful reference to the word *prognostic*



– a word that is conditioned by the eventful. Nor should we take lightly that this prophetic attitude resounds metaphorically with the arts of the uncertain, the medical and the military, in a time and a place where humanity had just found out that beyond death, the only thing that is certain is that nothing is certain. Except, perhaps, that even death may be uncertain were we to find, for instance, that what we thought was the organism awaiting death is not really an organism but the organ within the organism that, given the right *administration*, can live on as the organs come and go.

Still in the paragraph to inaugurate that text, Kant adds the political qualification that should bring coherence to the metaphorical chain and set it in play. He adds that, in posing this question, “we are not dealing with any *specific* conception of mankind (*singulorum*), but with the whole of humanity (*universorum*), united in earthly society and distributed in national groups<sup>21</sup>” (Kant, 2005b, p. 177; emphasis in the original). The qualifier is not the nation itself, as we might be tempted to assume. Note that the problem is posed as two competing formulations of the idea of totality. They are the same ones worked out exhaustively throughout the three Critiques, so clearly what is coming is a problematization of the limits of political representation, something that is reinforced by the emphasis on the national groups in the plural, as they are the *particularity* (the parts) that is missing to complete the transcendental triad of synthesis<sup>22</sup>.

Our problem, it seems, is the universal conditions of possibility that enable the organization of humanity into many national groups. But that is given yet another qualifier: “we are here not concerned with the natural history of mankind (as we should be if we asked, for example, whether new races of man might emerge in the future times), but with the *history of civilisation* (Kant, 2005b, p. 177;

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<sup>21</sup> In “Perpetual Peace”, nations are defined during the discussion of war in “First Supplement: On the Guarantee of a Perpetual Peace” (Kant, 2005a, p. 108-114). They are dynamic formations that simultaneously come together and apart through struggle, and that individuate themselves as linguistic and religious differences. Kant first describes them as wars of conquest, suggesting assimilation, and then as movements of cessation, indicating interruption. Following his dialectical method, we can assume that they are opposites of the same dynamic that produces these differences by giving them the shape. This shape is discussed below.

<sup>22</sup> See the entire “Transcendental Analytic” in *Critique of Pure Reason* (1976). Also note that this is the part of the first Critique that went through substantial reformulation between the first (1781) to the second (1787) edition, as Kant was already grappling with the limits of an epistemological and moral critique of the limits of epistemology and gravitating towards imagination. This would culminate in the limits of morality by the aesthetics and particularly by the sublime as we find them in 1790 in *Critique of Judgement* (2007).

emphasis in the original). After *Critique of Judgement*, it becomes clear that when Kant speaks of nature, he is speaking of freedom as the formative principle of subjectivity in its teleological sense – the principle of contingency that remains unchanged but is produced in historically contingent ways.

Considering this, the observation that this is not about “whether new races of man might emerge in the future times” suggests that there is nothing that interests Kant and critique except the present of the current “race of mankind”. This current “race of mankind” is the current “man” that collectively produces itself as the universal whole that conjures itself by the symbol “humanity”. We should also note that Kant is suggesting that our image of ourselves as a unified humanity (provided we are part of his audience) is empirically born from a certain representation that “we” have given to ourselves as a regulative ideal whose gap between idea and experience is anticipated as “the history of civilisation”. As we shall see, Kant seems to have thought that this “man” is always already *the last man*.

Moreover, this is a collectively mediated subjectivity that organizes itself as if it is *the* universal whole whose parts are not *the* nation, but “national groups”. The devil whispers to us by lurking in the details, and the absence to any reference to the state or to government in the moment where the problem is formulated is yet another thing to not pass by unnoticed. Reader under this light, the question seems to go as follows: what are the conditions under which “national groups” experience themselves as being parts of an integrated totality of civilized human relations while simultaneously experiencing themselves as parts that are not transcended by that totality? The answer, as I suggested above, is in the metaphorical play around prophecy and prognosis. But in order to be able to explore it, we need to circulate through this problematic by following the different ways that Kant played this same theme in his other works.

Let us turn for a moment to *Critique of Judgement* and “Perpetual Peace”. In the former, Kant puts resentment at the frontier that enables the experience of freedom and thus of subjectivity in the very subtle discussion of *wishes* in a footnote early in the text, and then resumed in the “Analytic of the Sublime”. Take, for instance, the following passage from “Perpetual Peace” about the genesis of political community in virtue of the limit of the representation of the general will (we arrive at political community by arriving at this limit): “all men *together* (i.e.

the *collective* unity of the combined will) must **desire** to attain this goal; only then can civil society exist as a **single** whole”; for this to happen, he adds, “an additional unifying cause must therefore **overrule** the differences in the particular **wishes** of all individuals before a common will can arise” (Kant, 2005a, p. 117; emphasis in the original; the bold highlights are mine).

Desiring together is not about desiring the same thing in a positive sense. Subjection, as a result, is not about the parts recognizing that they are different and that there is value in putting some of those differences aside and desiring common things together. Or, for those that accept that reality is mediated symbolically by regulative ideals, as the problem is being laid out here, authorization is not primarily about the *ought* understood in these terms either. This is the symbol that we give to this activity: “humanity”, “civilization” – although this does not mean that they have no part in the spectacle, as Kant called it. Instead, this “unifying cause” that makes the civilized political communities hang together as if they are a humane whole does this by *overruling* what is the otherwise disaggregate, or “distributive”, effect that these differences in wishing may have.

As such, political authorization concerns the altogether different problem of unifying by negating. The “unifying cause” merely needs to be able to steer these wishes in ways that they wish whatever it is that they wish in a coordinated matter. As long as the play continues, what may happen to the individual players, or to the individual teams, is immaterial, including whether they remain substantially the same throughout the game or not. Kant then proceeds to spell out our suspicions about the nature of this unifying cause: “the only conceivable way of executing the original idea *in practice*, and hence of inaugurating a state of right, is by *force*” (Kant, 2005a, p. 117; emphasis in the original). Yet this does not seem to be coercion in the way we usually think about the coercive nature of state political institutions. The hint for that is in his deliberate choice of referring to particularity as wishes.

Desire is fundamental to the synthetic experience that political community is, as this is what being in the world means for Kant: we are the collection of our desires, or rather our wishes; yet we are also more than that, otherwise we would not be one as we are also many, and, in the same vein, we would not be able to live in groups, as we clearly do. Even if what brings the group together is the possibility

that one part may subject the other to violence, the state of nature is still a *state*, and Kant is emphatic about this. It lives on as long as there are individual human beings or individual groups of human beings to tell the tale of the certainty that emerges from the uncertainty around the possibility of being subdued by another (Kant, 2005a, p. 98-99). I will get back to this in a moment, as things are not so simple as fearing to be subdued. At any rate, desire is “a faculty which by means of its representations is the cause of the actuality of the objects of those representations” (Kant, 2007, p. 13).

Technically speaking, wishes are a type of desire. But we soon realize that, when we consider that we need to think of these limits as conditions for “executing the original idea *in practice*”, desire is the objective representation of what we experience subjectively as wish. Wishes concern those desires where the author of the representations of the desired object “is ready to abandon all claim to being able by means of them alone to call their object into existence”, for the author “seeks the production of the object by means of his representation alone, without any hope of its being effectual” (Kant, 2007, p. 13). Humanity is a special type of “mankind” because it symbolizes itself, at the simultaneous scales of individual and the collective, as something that ought to be an end in itself and to itself. Modern man is the condition to its own conditions (limit to its limits) to the extent that it is *author* and *cause* of itself (Kant, 2007, p. 297-298; 2005b, p. 181). In principle, this ought to be the radical refusal to domestication: the refusal to be mastered by another individual human being, or by individual groups of human beings (recall the national groups). Kant accepts this both as the universal condition of man as “mankind”, and as the regulative ideal shaping the universality of the “modern mankind” whose *mechanics* of reciprocity informed by this ideal he is trying to figure out.

Freedom, in this sense, is something that produces positivity negatively, so to speak. It is experienced as something that is yearned. The prophetic with which brings us to the discussion of ideas of freedom as matters of faith and fact in *Critique of Judgement*. As such, it ought to be anticipated, but this cannot be done through mathematical calculation, for these concepts are empirical objects to which there can be no proof of in experience (2005b, p. 180-181). Yet the puzzle that Kant calls “credulity” in the third Critique and which is investigated in “The Contest of

the Faculties” is that these proofs are possible, nonetheless. They are the effect of events that, informed by representations of self-determination for which there ought to be proof, will be experienced by the parts desiring them as that which is being negated by another. This is the basic structure of the diagnosis of how modern subjectivity is premised on the trick through which it sustains its untenable representation of freedom as the actualization of desire, i.e., the transposing of the gulf between the desirer and the object of desire.

For to desire “to be able to annihilate the interval that, with intolerable delay, divides us from the wished-for moment”, Kant notes, is wishing rather than desiring, because one’s desire is tantamount to desiring to not desire (2007, p. 13). But we do this nonetheless, and we do this consciously of the “fantastic desires of the inefficiency of our representations”. The example that he gives is telling: “this is especially discernible where the wish, as longing, is an *affect allowed continually to relapse* and become languid upon recognition of the impossibility before it” (Kant, 2007, p. 13-14; my emphasis). Languidness should not mislead us into thinking this is the opposite of activity, as not only there is motion here, but it is a continual relapse. As Dostoyevsky would put it some fifty years later, proof of freedom so desired can only be found by having to have it negated, one proof after the next, many proofs negated at once: “Civilization develops in man only a many-sided sensitivity to sensations, and... definitely nothing more” (2002, p. 63). (It does not take too long before we find out by our unreliable narrator from the underground that there definitely is more to civilization that organizes itself in this manner. Kant will take us there soon enough).

Kant elevates affection to a general condition for collectively mediated activity that comes to be organized in a distinctive manner in modernity. It ought to be universally necessary because there cannot be the representation of what is impossible in a given order of things (of freedom, of change) if one cannot pierce through the empirical concepts that organize life. In this sense, freedom as affection “is an effort of one’s powers called forth by ideas which give to the mind an impetus of far stronger and more enduring efficacy than the stimulus afforded by sensible representations” (Kant, 2007, p. 102; my emphasis).

In *Critique of Judgement*, Kant us yet another dimension of how political community is produced forcefully. There, the community is formed by the author

and the audience. The function of the author is to *bait* the members of the audience into becoming unconsciously complicit in receiving a gift that they did not ask for (Kant, 2007, p. 137-138). The author summons the community into being by the violent trickery of affectively *leading* others into places that they believe they are going by themselves. The gift that is unasked for is consumed nonetheless, and it is consumed as if it is a subjective realization on the part of each member of the audience rather than as an experience that would not be if not aroused by another. The subject experiences itself as becoming subject insofar as it can imagine otherwise, but problematized in this manner, the subject ought to take everything and everyone that participates in the process, including the author, as mere resources to its own enlightenment.

Seen under this light, authority is authoritative because it authorizes itself in respect to its capacity to produce the community of which it is a part of. This, in turn, is only secondarily related to the content of the ideas that are mediating community into being, as the condition for those things to be meaningful is that the author is *never* caught<sup>23</sup>. Transposed back to modern subjectivity, one gets to experience oneself as a free being that will not be mastered around by another only insofar as that individual or community of individuals has already been mastered into a position from which it becomes possible to imagine oneself as having to be masterless.

I want to go back to that example: “this is especially discernible where the wish, as longing, is an *affect allowed continually to relapse* and become languid upon recognition of the impossibility before it” (Kant, 2007, p. 13-14; my emphasis). Kant argues that there are only two practical models through which freedom can be produced and organized in space in this manner: poetry and music, ranked in this order respectively order (2007, p. 155-157). Out of the two, it is music that is described in this manner. It moves the audience by producing antagonism in the form of “tension”, and it does this *in time*, so that, “like all enjoyment [without spatial restraint], it calls for constant change, and does not stand frequent repetition without inducing weariness” (Kant, 2007, p. 157). When political space is produced

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<sup>23</sup> This is another perspective from which to encounter Kant’s famous principle of publicity. It is the apex in both “Perpetual Peace” and “The Contest of the Faculties”. In the former, it is called the “transcendental formula of public right” (Kant, 2005a, 125-130). I will discuss its development in the former moving forward.

temporally in this manner, is it essentially boundless, and spatiality is effected by the ceaseless repetition that ought to sound innovative, while the productive rationality is unchanged every time.

In light of this, it seems that modern space also produces antagonism “harmonically” (or “melodically”), by which Kant means that activity gives “an expression to the aesthetic idea of an integral whole of an unutterable wealth of thought in accordance with a certain theme forming the dominant affect in the piece” (Kant, 2007, p. 157). This dominant affective theme, as can gather from the political writings as I am reading them, is the regulative ideal of modern humanity. As important as this is the fact music is described as having the same oppressive quality that Kant attributes to freedom as the organizing principle of political community. Once the instruments are set in motion in an enclosed space (and Kant’s is a politics of finitude), it affects *all*, regardless of the intention to listen to it or not, regardless of the meanings that may be attributed to the sensations that will pierce thorough everyone’s bodies indiscriminately and uninvitedly (Kant, 2007, p. 158).

In “Perpetual Peace”, for instance, he notes that this impetus to resist regardless, without any apparent reason for it, is universal, and it imposes on us “whether we are willing or it” (Kant, 2005a, p. 111). There, he is describing freedom as *war*. As is well known, Kant wrote extensively on war. It is the theme of his “Idea for a Universal History with a Cosmopolitan Purpose” (1784) and of “Perpetual Peace” (1795), and it even figures in *Critique of Judgement* (2007, p. 92-93). I want to propose a somewhat unorthodox interpretation of his theory of war. Indeed, my entire argument there being an alternative critical attitude for political diagnosis hinges on this. Kant wrote about war diagnostically: he was diagnosing the political organization of modern sovereignty as it was unfolding within his lifetime.

In order to navigate through the subtle usages that Kant makes of language in his treatises, we need to bear in mind that he witnessed what Fredrick The Great was for Prussia in particular and to Europe in general<sup>24</sup>. I do not want to overextend

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<sup>24</sup> Fredrick II sought to integrate Prussia through a series of administrative and economic reforms towards the modernization of government and society through its bureaucratization (Sainte-Beuve 1877, pp. 255–257). He abolished the indiscriminated recourse to torture and the death penalty, dismantled serfdom, implemented policies for the technological development of agriculture and

my stay on this matter. I should only stress that Fredrick II was not merely counselled by intellectuals and military strategists; he was one of them. A few months before ascending to the throne, the new Prussian king published a prophetic essay called *Anti-Machiavelli or Critical essay on the Prince of Machiavelli* (1740), edited by his then good friend Voltaire. In it, he expressed what he believed should be a humanist political community. In Fredrick II's words: "it turns out that the sovereign, far from being the absolute master of the peoples who are under his domination, is himself only the first *servant*<sup>25</sup>".

This is how obedience is to be attained now. Not through trickery and coercion, but by governing for what the people does not know it needs, gently and energetically. Furthermore, the magnitude of the social engineering across multiple domains of life to be taken over and/or invented demanded that the people committed to an idea of society that was completely foreign to most of them. Everyone, but especially the soon to be workers that would constitute the perpetually moving machinery of progress, needed to learn the benefits of an emancipation that they did not know they needed, and all of this as a *promise* being sold for future reward. This entails nothing short of a large-scale orchestration of energies into a single multifaceted goal. However, he did it, it worked: the man died revered by his people!

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livestock. This, for him, was a matter of taming nature, of conquest against animality. In his words, "whoever improves the soil, cultivates land lying waste and drains swamps, is making conquests from barbarism". Indeed, his entire reign can be seen as the project to contribute to lifting humanity out of barbarity by leading Prussia to do its part in its own affairs. Universal access to basic education was sought through a cross-country national policy. New fiscal policies were pursued to amass capital to enable the modernization. The judiciary was reformed towards universalization, unifying courts that were then distinguished for different social classes, making the system more efficient (Weil 1960, p. 240). This resulted in a new civil code with unprecedented powers "centralized" (through many magistracies) for state administration over life: there now was civil law, penal law, family law, public law, and administrative law. Law had become so central to Prussian society and government that it fostered a bureaucracy trained in it that grew to impose limits on the arguable sovereignty of the king, and through the means of his rule rather than in opposition to it, such is the flexibility that formal law thought as an empirical science, or at least in conjunction with it, allows for the manipulation of political space. See Herman Weil's "Judicial reform in eighteenth century Prussia: Samuel von Cocceji and the unification of the courts" (1960), Hermann Beck's "The Social Policies of Prussian Officials: The Bureaucracy in a New Light" (1992), John Toys's "Modern Bureaucracy" (2006), and David Blackburn's *The Conquest of Nature: Water, Landscape and the Making of Modern Germany* (2006).

<sup>25</sup> Published in Gottlieb Friedlaender's edition of *Anti-Machiavel ou Examen du prince 'De Machiavel': Corrigé pour la plus grande partie d'après le manuscrite original de Frédéric II* (1834). This edition revised the first one against the original manuscript written by the Fredrick II, which was heavily edited by Voltaire when it was first published. In the original French: "*Il se trouve que le souverain, bien loin d'être le maître absolu des peuples qui sont sous sa domination, n'en est en lui-même que le premier domestique*" (1834, p. 10).



Let us proceed with “Perpetual Peace” for a while longer. This is perhaps a counterintuitive choice, since it seems to be a piece laying out the conditions to oppose war. That is a misguided reading. I would like to show instead how grandiose the very opening of that essay is if we afford to it the playful imagination that Kant preaches, reserving my analysis to the introduction and the “six preliminary articles for perpetual peace between states”.

The text begins with a seemingly senseless remark about the Dutch innkeeper that hangs at the signboard the saying “perpetual peace” together with the picture of a graveyard (Kant, 2005a, p. 93). A Dutch imaginary person whose profession, for all appearances, is the service of hospitality. Someone who lives-off of encounters with strangers that it does not merely receive, as if it is a passive bystander being encountered. As everyone who has ever been a guest knows, we do not become guests simply because we want to. Hosts are guards that provide a service by imputing on those they receive the status of guests, so that those that subject to these conditions do not merely enter anywhere and stay there: they ought to reciprocate by continuously subjecting to the conditions requested. A Christian imaginary person, if we maintain the historical context metaphorically alive in the mind.

Moreover, the picture and the sign are placed as at the threshold of the architectural edifice, announcing the purpose and the conditions of the “hospitality” from what the frontier within the guest rather than merely a physical border. A space that is supposed to be fixed is now given though mobility. An inscription that, from the testimony Kant that gives us, was for all purposes placed there “satirically”. And ours is a solid unreliable narrator. He simply stops there, without telling us why, but certainly hoping that we find out by ourselves, at the risk of his own execution as author – for there is no finding out where the *comedy* comes from in the *tragedy* without killing him as author, and identifying with that death (the entire set up is a spectacle that pushes the drama the edges; with Kant it all comes down to movement and play, and so does the object he is construing<sup>26</sup>).

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<sup>26</sup> I highly recommend reading Aristotle’s *Poetics* in combination with Kant’s discussion of genius, poetry and music in *Critique of Judgement*. Aristotle saw tragedy as mimesis, as in art imitating life, while Kant reverses it to suggest that all there is to life is its artistic production. As I noted, however, the consequences do not stop there. Poetry is a theatrical organization of space. Not only is it the

The text proceeds to enumerate the six “preliminary articles of a perpetual peace between states”. Note that we have come moved from “groups of nations” to groups of states. Through those articles, Kant puts forward a subtle yet undeniable depiction of the object, as well as a sketch of the problem of the limit that enables it. The main theme being played throughout these six articles – and beyond them – is that, according to “‘enlightened’ notions of political expediency”, Kant notes, “*the true glory of a state<sup>27</sup> consists in the constant increase of its owner by any means whatsoever*” (2005a, p. 94; my emphasis). The disconcerting truth is partly revealed here, as least in respect to its underling productive rationality, which, in the context of these new temporal practices of political space, is “this ease in making war, coupled with the warlike inclination of *those in power* (which seems to be an integral feature of human nature)” (Kant, 2005a, p. 95; my emphasis).

And although this bears relation to political authority in the conventional sense of political institutions of sovereignty, the foundation is the ongoing organization of bodies in space that are individuated as soldiers, bands of soldiers, armies within and across armies. Freedom is resistance, but it is not the resistance to being conquered by another. That is the regulative ideal of modern sovereignty. Modern subjectivity is the *resistance to being resisted by another*. Or, as Kant jocosely put in *Critique of Judgement*, “even where civilization has reached a high pitch there remains this special reverence for the soldier; only that there is then further required of him that he should also exhibit all the virtues of peace – gentleness, sympathy and even proper care for his own person; and for the reason that in this we recognize that his mind is above the threats of danger” (Kant, 2007, p. 93). That is, “gentleness, sympathy and even proper care for his own person” in reducing others to nothingness, yet that cannot be without identifying with the prey.

This becomes plain in the theory of the state expounded in those preliminary six articles. It is truly remarkable. The political community is a composite form of three powers: “the power of the army, the power of alliance and the power of

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frontier between discourse and music, the function of the spaces it produces is primarily political. Aristotle is clearer about that than Kant is, perhaps because our theatrics has its specificities. For a short introduction to the function of theater in Ancient Greece, see Orlando Luiz de Araújo’s “society, politics, and religion: theater in classical greece” (2021).

<sup>27</sup> Kant refers to “the state” as “political community” rather than as state political institutions, which distinguishes as government. From now onwards, when I use the term state without any clarification, such as “government” or “sovereign”, it will be in the sense of political community.

money” (Kant, 2005a, p. 95). These three powers are brought together as one insofar as they are instruments for war, the holy trinity of death wherein each is necessary in its own way, but no one can be without the other. The distinctive trait of this new type of state is that violence is organized in a manner that accumulates resources that need to be at the continuous disposal of the “owner” of the polity, as they are continuously needed for the production and reproduction not of the particular “ownership” simply, but for the rationality of ownership that animates the predicament. The model of the modern political world as Kant sees it akin to the “standing reserve” (Heidegger, 1977).

The “power of alliances” describes the idea that subjects now identify themselves as if ruler(s) that own the state in the sense that it all its forces, including the political institutions, ought to strive for living under a single universal concept human integration. Even a pluralist conceptualization of the state principled by tolerance cannot escape the bounds of the form (his Prussia practiced religious tolerance). Kant maintains that any promise of inclusion will inevitably produce in others the desire to resist assimilation by assimilating others. But the problem goes far beyond policies of national integration, for instance. It concerns a certain social mentality that produces the idea of oneness a vessel onto which various views of the one are projected as the one that would put all the other ones by “them” that currently overwhelm “us”, each side seeing its own position as redeemer of the domestication of all, including the “them”. The consequences, of course, are a self-fulfilling promise, as Kant puts it in “The Contest of the Faculties”: a social fabric made of profound isolation and alienation (2005b, p. 177-178).

In this sense, Kant warns that the political problem is not whether welfare is or is not the valid end to be pursued by public administration. The issue is the world wherein that promise is issued, and energies are disposed to produce it: “for beings endowed with freedom cannot be content merely to enjoy the comforts of existence, which may well be provided by others (in this case, by government)”. Even if these goods are provided in reasonable fashion, in the end “welfare does not have any ruling principle, either for the recipient or for the one who provides it, for each individual will define it differently”; this conceptualization of universality “is empirical and thus incapable of becoming a universal rule” (Kant, 2005b, p. 183-184). As such, it becomes a weapon for war either way, as ways of producing,

distributing and consuming these comforts are disputed *beyond* the logic rational calculation, and as possible impositions to be averted.

Conquest becomes the unveiled relationality. One is enticed by the external political organization of bodies that reverberates within to believe its “neighborhood” (one of various biblical terms that Kant employs) holds that highest measure of the investment that all should be making in the whole: “the ruler as such (i.e., as one who already has another kingdom)” lives to “acquire the state” (Kant, 2005a, p. 93). In this sense, the political community is experienced as a universal object insofar as it proliferates into shifting objects to whom the unity and the sacrifice demanded mean different things (Kant, 2005b, p. 183-184). Community is the ongoing ganging up (the alliances) of contingencies that can be accommodated into acceptable conditions of assimilation, only on the condition that another object of conquest is immediately provided (Ashley, 1989).

Since we still live halfway between animality and humanity, “the history of civilization” means that tyranny ought to remain and be founded within. Every state is a state of neighboring nations moving laterally in struggle, experiencing these encircling and overlapping tensed variations of the same theme as if going forward and backward, upward and downward – and after Hegel progressing in time spirally, linearly *and* cyclically.

The “power of the army” concerns what is translated to English as “standing armies”. But the Latin reference that accompanies the term is far more telling<sup>28</sup>; *miles perpetuus*: perpetual, ongoing, continual, uninterrupted soldiers, or, if we think of it as man that has discovered it is activity, it concerns a perennial condition of soldiering, of becoming soldier by subjecting others to the violence that anticipates that everyone is potentially a soldier that is doing the same. Rather than refer merely to the new advent of standing armies – a Prussian invention from Frederick The Great’s predecessor –, Kant seems to be pointing to political subjectivity: “for they constantly threaten other states [each “national group” imagines itself as the state being contended] with war by the very fact that they are always prepared for it” (Kant, 2005a, p. 94). This is how we come recognize one

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<sup>28</sup> Kant’s use of Latin is no mere legalism on his part. He often smuggles additional meanings into the things he is saying, transfiguring the legalism he is critiquing by turning it into the literary device of “double entendre”, sometimes with multiple meanings at a time. I explore some of them in this text.

another as free and equal, everything often calm and civil on the surface, but boiling right underneath it, calmness enabled by it being always on the verge of exploding. Kant's premonition was that it would explode from time to time, as it had to, and seeming change would be reabsorbed into the same order of things as if it was new. "They [armies] *spur* on the states to outdo one another in arming unlimited members of soldiers" (Kant, 2005a, p. 95). Spur has a double meaning. It means to provide incentives, to entice, as well as to prune, to provide a limit in order to tame the direction of growth in the way seen fit by the one holding the scissors. The result, in this sense, is the exposure of oneself to one's own negativity, as Bataille put it, as one experiences freedom from domestication by anticipating that one is already being domesticated by another, more than one another even, to the effect that freedom becomes domestication and domestication becomes freedom.

Kant goes on to say that "it would be the same if wealth rather than soldiers were accumulated, for it would be seen by other states as a military threat" (2005a, p. 95). According to him, the "power of money" is "probably the more reliable instrument of war" (Kant, 2005a, p. 95). This is certainly another imaginative play with multiple meanings on his part. Kant is speaking about the primary invention of the inventions of his time: "a credit system [that], if *used* by the powers as an instrument of aggression against one another, shows the power of money in its most dangerous form" (2005a, p. 95; my emphasis). One can read this literally, as a system for lending money for some to rule over others, or even as accumulated wealth lent to be reinvested in society for infrastructure, education, private loans for entrepreneurs, etc. I believe that sense is there, and it should be kept in mind. But I would also like to raise the hypothesis of the structure of investment as a principle of political economy premised on faith.

A system of credit creates subjects as creditors and debtors. We can think of it as one side providing something based on a promise that something will be proportionally returned. It is true that the principle of the normal distribution of effort and reward fits the bill perfectly. But I should like to bring attention to how this speaks to the nature of work in the sense of debasement. The worker sells its life-energy – its time – for money. It is paid either before or after the delivery, and there remains the expectation of an *accord*. But when the credit system is "used for war", the accord is that there is no guarantee to accord. All we have is suspicion,

or, as he liked to say, man becomes sovereign by recognizing “treachery” in one another. As Kant will formulate just a few pages down the row, in a lengthy enlightening footnote, as they usually are in his works, a society that exhausts the possibility of social bonds to prohibition is first and foremost a society that entices the imaginary of permissiveness (Kant, 2005a, p. 98-99). When nothing is sacred, everything becomes sacred – as long as sacrifice is done within the limits of ritual, with “gentleness, sympathy and even proper care for his own person”.

But how is political space produced? We know that the that the purpose of the author, or its function, is to produce space through disorienting orientation, and we know that this happens through prognostic prophecy. But what is the author, where is it? Or perhaps the better question is another how, now moving in the opposite direction: under what the conditions of state institutional rule we can retroactively the activities that instigate the organization of political community as this trinitarian warpower.

In Chapter 1, I argued with (and a little beyond) Bataille that Hegel found this power in what he called “government”. I would like to bring this back for a moment, because, as we shall see, Kant defines this power in terms of its absolutist (also referred to as despotic and monarchical) capacity to unify by separating in virtue of the intention to unify. For Hegel, “government” is the attribute that allowed the state (government in the institutional sense) to produce the general will. By going out of its leeway, from time to time these institutions would shake up society with war by being perceived as a little too totalitarian in their attempts to administer those routine struggles over the boundaries of the political community with the good intentions of assimilating contingencies and, in this way, to expand the political community inwards<sup>29</sup>.

Kant develops this idea further and suggests that it is political authorities (in the plural) that produce the conditions for this politics of subjectivity. They are what he describes as the special type of office occupied by the “high magistracies” (Kant,

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<sup>29</sup> For a philosophical analysis of the self-interrupting logic of Hegel’s system, see Bennington’s Chapter “Finis” (2017). He demonstrates how contingency needs to be brought back for Spirit to be historically feasible, when, taken at face value, Hegel argues that contingencies ought to be sublated. As Bataille argues, there cannot be the “end of history” for there to be the “end of history” as anticipation, and he knows it.

2005a, p. 99-100). These offices differ from other offices<sup>30</sup> because they are possessed with “nobility”. Nobility is an attribute that is often associated with war, even when other words are used, such as “reverence” in the passage about the soldier that I quoted above. Furthermore, war is also often related to courage, which, for Kant, is the virtue of the warrior -- and this is always attributed to a positive description of the “savage” that is recurrently contrasted with the “civility” of contemporary man. Take, for instance, the passage about the “soldier” that I quote above, and that I reproduce now in full: “For what is it that, even to the savage, is the object of the greatest admiration? It is someone who is undaunted, who knows no fear, and who, therefore, does not give way to danger, but sets vigorously to work with full deliberation. Even where civilization has reached a high pitch there remains this special reverence for the soldier; only that there is then further required of him that he should also exhibit all the virtues of peace – gentleness, sympathy and even proper care for his own person; and for the reason that in this we recognize that his mind is above the threats of danger. And so, comparing the statesman and the general, men may argue as they please as to the pre-eminent respect which is due to either above the other; but the verdict of the aesthetic judgement is for the latter” (Kant, 2007, p. 93).

Following Kant’s dialectics, we have reasons to suspect that the “savage” and the “soldier” are doublets that, together, in a relation of struggle, symbolize modern subjectivity. Both encounter “danger”, i.e., freedom as indeterminacy that inspires wonder and terror, and that is the condition that enables them to “work”, to act, to live as endless struggle. That is, they enjoy discretionary powers to deliberate over death, figuratively and literally, and therefore to administer the limit that gives meaning to life. But only the “savage” does so with *full* deliberation; only one part of man is fully present in it, conscious of what they are and of what they do. (Recall

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<sup>30</sup> In “Perpetual Peace”, Kant is ambiguous enough to suggest that by “offices” he means government officials as well as office in the sense of vocational profession. This is another case in which a major statement is made in a footnote, and right after he had done the same with the state of nature one page before (Kant, 2005a, p. 99-100). He brings in the lateral discussion when he is about to move into the new thematic play on the theory of the state, now as formal sovereignty and formal institutions of government. These will be taken up again below. I merely want to stress the ambiguity. The note starts by asserting the indisputability of formal freedom and equality, until it moves to the conditions under which inequality is acceptable within formal equality in the regulative ideal considering *all* subjects to the political community. In “The Contest of the Faculties”, however, it is much more evident that his main concern is at the level of government understood as the public administration of the coercive means of the political community, as we shall see.

that the man who wishes is conscious of the fantasy, it ought to be, in principle at least). The jocose tone that Kant uses to describe the civility with which the “soldier” kills, administering violence with “gentleness” and “sympathy”, suggest something like the function that Bataille finds in normative representation in general, and in modern sovereignty specifically: it is the morbid satire of the Dutch innkeeper -- a collectively maintained delusion that has method and is maintained by the little *maestro* in every one of us, reading the truth of our world(s) through our wounds rather than with the eyes, as Franz Kafka put it<sup>31</sup>.

Likewise, Kant describes institutional political as a doublet between the “statesman” and the “general”. In order to understand the subtleties of this relation, it is helpful to go back to Fredrick the Great. Nearing the end of the “first definitive article for perpetual peace”, where Kant replays the theme of the theory of political community, he acknowledges that “Fredrick II at least *said* that he was merely the highest servant of the state” (Kant, 2005a, p. 101; emphasis in the original). Two things are noteworthy here. First, *Anti-Machiavelli* was heavily edited by Voltaire when it first came out, who changed the expression “first servant” to the state (*premier domestique*) to “first magistrate” to the state (*premier magistrat*).

The duty of magistrates is to administer justice, or, to put it alternatively, they exercise the judicial power to administer the law as they see fit. This is a special legislative capacity that gives the law from its margins. At that point in history, law was already a highly specialized field of empirical knowledge, and the power of the formal ruler to give anything and everything related to the law (in that case legislative and judicial powers) was increasingly limited by individuals within the governmental apparatus that were highly educated in the formal law adapted from Romans. I say a special legislative capacity because this limitation is not a straight negation of the former’s authority, and nor are these struggles formally articulated. In principle, they cannot be struggles, as the authority of the institutional sovereign is supposed to bring the manifold of spaces and times into one community by flowing from the center to the margins<sup>32</sup>. Weber

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<sup>31</sup> See Gustav Janouch’s *Conversations with Kafka* (2012[1968]). I am paraphrasing his 1919’s “In the Penal Colony” (Kafka, 2000, p. 239-282).

<sup>32</sup> As Lauren Bento argues in *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (2010), this regulative ideal was just that even during the times of imperial conquest, when formal law became an instrument for expansion and a tool to balance the ruler’s authority vis-



notes, for instance, that “Frederick the Great hated the jurists because they constantly applied in a formalistic sense his decrees which were based on material principles, and so turned them to ends with which he would have nothing to do” (1999, p. 118).

In the “first definitive article”, Kant officially proceeds to define political community again, now “according to the different persons that exercise supreme authority”, i.e., “form of sovereignty (*forma imperii*)”; and “according to the way in which the nation is government by its ruler, whoever he may be”, i.e., “form of government (*forma regiminis*)” (2005a, p. 101; p. 102). Kant’s use of Latin never disappoints in the perspectives it adds to what he is saying. In Roman law, *imperium* is the right that combines military and judicial prerogatives that are to higher ranking executive magistracies<sup>33</sup>. In sum, it is a right conferred by law (or by those with the legal authority to delegate it under a particular circumstance) to command the army to the purpose *extending* the political community. It indicates a frontier activity. Recall that Kant first defined the political community as the composite military powers of allegiance, army and money geared towards accumulation and described at every step of the way as a machinery of internal expansion. It seems that “supreme power” as it appears in this new definition of the state retains the same sense.

After having conveyed all of that in one sentence, he provides a typology, and one of the organizations of the “supreme power” of sovereignty is when it is exercised “by the power of a nobility” (Kant, 2005a, p. 101). When it comes to the political function that they perform, the “statesman”, i.e., the “high magistracies”, is the “general”. And what is a general? Generals are artists of strategy and masters in administration. They are responsible for setting strategic goals in large spatial and temporal scales, principled by the prophetic abilities to anticipate deception by the enemy. As important as this, “in times of war<sup>34</sup>” generals enjoy the legal prerogative to harness the entire military powers of the state (in the eighteenth

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à-vis that of the Papacy. Law was produced from the margins by the envoys through negotiation with syncretic elements on the ground.

<sup>33</sup> For an overview, see Jesse Sifuentes’s entry “Authority in Ancient Rome: Auctoritas, Potestas, Imperium, and the Paterfamilias” (2009). Available at: <<https://www.worldhistory.org/article/1472/authority-in-ancient-rome-auctoritas-potestas-impe/>>. Access Jan 2024.

<sup>34</sup>Kant uses the expression in 2005a, p. 111.

century these were soldiers) to organize the movement and the disposition of the troops as it sees fit, as in war there is no end apart from the figure of the strategist; there is no end, it is contingent by nature, and contingent on the enemy. They set things in motion according to the motion that they set.

Note the subtlety: Kant plays on the conventional allusion to sovereignty as legal authority, especially to law as the foundation for political space that would be arguably premised on the fixity of certain limits at least, and then this is immediately reversed by attaching it to the frontier activity of military authority, which is sublime, a faculty of death – it says no to limitation because it is the limit; it moves inwards because all it sees is the world that it anticipates as having already been it by right, there is no outside to it. This ambivalence is reinforced by the fact that, still in “Perpetual Peace”, Kant will refer to this new power as “the jurist”, and in a section of the text that is entitled “Second Supplement: Secret Article of a Perpetual Peace” (2005a, p. 114-115; my emphasis). So, we read, for instance, that “the jurist” is different from other modern prophets that seek to calculate the higher good on behalf of the state because it “represents the power of the state” (Kant, 2005a, p. 115).

The theme of secrecy and publicity is played several times from slightly different perspectives, creating textures that allow us into the nuances of the argument that lurks (does it?) right underneath the surface of these essays. In “The Contest of the Faculties”, for example, “our politicians”, he says, “so far as their influence extends, behave in exactly in the same way [as the Jewish prophets that he mentions just before, a community brought together by the abstraction provided by faith], and they are just as successful in their prophecies. One must take man as they are, they tell us ... But ‘as they are’ ought to read ‘as we *have made* them by unjust coercion, by treacherous designs which the government is in a good position to carry out’. For that is why they are intransigent and inclined to rebellion, and regrettable consequences ensue if discipline is relaxed in the slightest. In this way, the prophecy of the supposedly clever statesmen is fulfilled” (Kant, 2005b, p. 178; emphasis in the original).

What could Kant be meaning by “so far as their influence extends”? It seems that being in power is not enough. Authority is also necessary, and, just as the religious and military knowledgeable nature of their power, it is not given outside

of practice. That he says that “regrettable consequences ensue if discipline is relaxed in the slightest”, and “in this way, the prophecy of the supposedly clever statesmen is fulfilled”, is given a new perspective beyond the idea of the law being used to coerce discipline as in the enforcement of laws or regulations. For, as he goes on to eventually say in that same text, “another thing that is concealed (transparently enough) by legal measures *from a certain people* is the true nature of its constitution” (Kant, 2005b, p. 186). The coercion that bureaucracies invested with judiciary authority exercises is military in that sense of the theatrics of subjectivity in addition to its relation to the legal-coercive apparatuses of rule.

By the end of the “The Contest of the Faculties”, Kant makes a strong argument about the absolutist nature of modern sovereignty. But he seems to be playing another set of reversals on us. He uses the example of constitutional monarchy to exemplify his point that there is nothing secret about “secret article” and “legal measures”: “it is said that their constitution is one which limits the will of the monarch through the two houses of parliament, acting as representatives of the people. Yet everyone knows very well that the influence of the monarch upon these representatives is so great and so infallible that the aforesaid houses make no decisions except those which His Majesty wishes and recommends through his minister. Now and again, he latter will certainly recommend decisions wherein he knows and indeed ensures that he will meet with contradiction (as with the abolition of slave trade), simply in order to furnish ostensible proof of parliamentary freedom” (Kant, 2005b, p. 186).

There are at least three ways of reading this. The first is the literal one. The judiciary rules indirectly and by assertion insofar as they counsel the “houses of parliament” of government. Still, something does not add up. It is His Majesty (abstract, in the singular) that summons the “houses of parliament” (in the plural) through their “messengers” (in the plural), not the other way around. For Bartelson, Koskeniemi and Onuf, experts in global regimes rule because government seeks them on behalf of their respective states. Furthermore, Kant’s point is about the judiciary and not experts. Do judges and justices rule by assertion? Yes, but not altogether by that when affection comes into play. And even if we grant that judges and justices rule formal legislative powers assertively, Bartelson, Onuf and Koskeniemi do not pose the question in this way. At best, Koskeniemi imagines

lawyers as councilors, such as when the profession is exercised by public lawyers, diplomats, and by courts at best when they are international courts, as any decision depends on the consent of the sovereign states and ratification. But that does not really touch on the relation between legislation and the judiciary, and the resources they provide us with are not helpful in imagining what that might have to do with the mobilization of self-subjection by the community as a whole.

The second possible reading demands that we metaphorize the passage by militarizing it. What if the “houses of parliament” that “act as if representatives of the people” are also an allusion to the the guesthouse of our Dutch innkeeper? Imagine, the guesthouse whose condition to entry, and to remain within, is the perpetual peace of death. Kant’s theory of hospitality is just another one of the sites of this endless play of the same theme. I will not go into detail about it here because I believe the point has been articulated already. It suffices to remark that, according to Kant, the guest is of the order of inhospitality. The one who is granted the “right of guest” can only circulate through political space under conditions that bound it to nativity, but this nativity is at the same time impossible, for “the community of man is divided by uninhabitable parts of the earth’s surface such as oceans and deserts, but even then, the *ship* or the *camel* (the ship of the desert) make it possible for them to approach their fellows over these ownerless tracts, and to utilize as a means of social intercourse that *right to the earth’s surface* which the human race shares in common” (Kant, 2005a, p. 106; emphasis in the original). The “community of man” is divided by that which bring men together while remaining “ownerless tracts”; that is, it is divided by the uninhabitable parts that keep on moving, that keep on proliferating, by the limits that find no rest – by frontiers possessed into parts that keep on moving without rest.

Guests believe that they can approach “their fellows *over* these ownerless tracts” – to approach others by *extending* themselves and their right as visitors by anticipating the pieces of community of sovereign man that they encounter as guests in the house they bring with them. Still, there ultimately is no host here, because

there is no possibility of final ownership. The struggle is to not become guest to another, but one already becomes as if guest to another as soon as this is imagined<sup>35</sup>.

Guesthouses are armies – from the Proto-Indo-European root *\*ster-*, meaning “to spread, stretch out, extend”. But there is no out, all there is *in*. Houses, therefore, that “act as if representatives of the people”. We could think about political representation in the conventional sense of the term, or we could also think that this is a symbolic representation, as “the people” acts as if they are armies.

When Kant is explaining the intricacy of symbolic representation, his example is the following: “in this way a monarchical state is represented as a living body when it is governed by constitutional laws, but as a mere machine (like a hand-mill) when it is governed by an individual absolute will; but in both cases the representation is merely *symbolic*” (2007, p. 179-180; emphasis in the original). A living body moves by itself as long as it is nurtured. A hand-mill moves by being moved around in circles; it is a machine whose soul is tickled by another. Soldiers being moved around in circles clashing with circles, expanding by proliferating.

Also: “regrettable consequences ensue if discipline is relaxed in the slightest”; “in this way, the prophecy of the supposedly clever statesmen is fulfilled”, as said the passage quoted above. The same one that reads that the judiciary rules “so far as their influence extends”. Yet another play with extension, but this time with influence. Can we think of this musically? Influence that extends, as in reverberation? It extends in time by repetition and partition as it meets space, it vibrates, it disturbs, it keeps on moving until it stops; but it stops only when “things” are not themselves reverberations. How can we imagine the judiciary having this power? Kant is categorical: “the influence of the monarch upon these representatives is so great and so infallible that the aforesaid houses make no decisions except those which His Majesty wishes and recommends through his minister”.

Perhaps the messengers do not rule as we imagine political authority to rule, through decisions that communicate intentions that impose over the decisions over

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<sup>35</sup> Hospitality is the right of strangers to circulate without being subjected to death; they can be repelled as the other wishes, as long as it remains alive (Kant, 2005a, p. 106-107). For Kant, hospitality is the guarantee that the resistance to become guest to another subverts the possibility of there being guests. In principle, at least. The translation of this into practice is contingent on the problem of the constitution, to which we will revert now.

others rationally, in a positive manner. Take the remainder of the passage: “Now and again, he latter will certainly recommend decisions wherein he knows and indeed ensures that he will meet with contradiction (as with the abolition of slave trade), simply in order to furnish ostensible proof of parliamentary freedom”. For one, “he” is not a person, but the abstract idea of the power that the messengers embody. It is Spirit, and for Kant this is the principle that sets the “soul” into self-sustaining antagonistic motion (play): “now my proposition is that this principle is nothing else than the faculty of presenting ... without the possibility of any definite thought whatever, i.e., concept, being adequate to it, and which language, consequently, can never quite fully capture or render completely intelligible” (2007, p. 142).

Like Hegel, he seems to be imagining something that those invested with the power to pass judgement of limit-situations regarding the struggles over the political community do unintendedly<sup>36</sup>. “Thus a mendacious form of publicity deceives the people with the illusion that the monarchy is *limited* by a law which emanates from them, while their representatives, won over by bribery, secretly subject them to an absolute monarch” (Kant, 2005b, p. 186-187; emphasis in the original). And “what is an absolute monarch?”, Kant asks, “he is one at whose command war a once begins when he says it shall so” (2005b, p. 186-187). And what do the “jurists”, the privateers of enlightenment do? They *secretly* (but not so secretly) provide “instruction for the people upon their duties and rights towards the state to which they belong” (2005b, p. 186).

The living orchestra has the shape of a battlefield. Yet, Kant goes on to say, Europe does this in a special way: this “practice is unknown in other countries” (2005a, p. 94). It consciously produces political space temporally, but the effect is the generalization of the perpetual peace dead men that move everywhere because they are unaware, they are dead, so to speak<sup>37</sup>.

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<sup>36</sup> On the idea that freedom works politically thorough unintended consequences, see the lengthy footnote about *providence* in “Perpetual Peace” (Kant, 2005a, p. 108-109).

<sup>37</sup> Recall the problem as it is set in “The Contest of the Faculties”: there is only ever the man that is. Our reading moves us in the direction of arguing that, for Kant, modern man is the invention that makes itself the first and last of its kind. All there could be that is not what is, is bound to be brought into the world through what modern man offers, from within it. And the prospects are gnarly. On the idea of “the last man”, see Maurice Blanchot’s novel *The Last Man* (2007[1957]). For how his idea reverberates rather tortuously though Bataille’s thought, see “The Torment” (1997a).

### 3 Reverberating Sovereignities

There is yet a third possible interpretation of the influence that magistrates play on the “houses of parliament”, and that allow us to trace it back to a negative understanding of how authorization happens. This one maintains the traditional sense of “houses of parliament” as formal legislative power and asks in what sense we can imagine that irresistible influence of which Kant speaks.

Sovereignty is not a problem of government *per se*. Concepts of modern sovereignty and the state are the objects of ongoing struggles. But sovereignty struggles inevitably find their way back to law. Take, for instance, the diagnosis of Michael Lind. According to him, the political organization of sovereignty has been totalizing in terms similar to the ones that have been posed here. He argues that the amassing of “social power” into the hands of one “coalition” (in Kant’s sense of the term) of various shifting positions between the left and the right has nonetheless produced an informal uncoordinated “progressivist” horizon that explains the ascension of the “far rights” as a symptom of the “new class war<sup>38</sup>”. In his words, “social power exists in three realms – government, the economy, and the culture. Each of these three realms of social power is the site of class conflict – sometimes intense and sometimes contained by interclass compromises” (Lind, 2020, p. 12).

For the past century, one highly coordinated but decentralized set of struggling ideological positions would have managed to impose its views of society overall through the means of the government, but not by government alone, the argument goes. He calls this “the technocratic neoliberal revolution from above”, which has been “carried out in one Western nation after another by members of the ever more aggressive and powerful managerial elite [that] has provoked a populist backlash from below by the defensive and disempowered native working class, many of whom are nonwhite” (Lind, 2020, p. 15). He maps the contemporary sovereignty struggles between these two poles of political modernity to be over

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<sup>38</sup> For discussions about the nationalist critiques of contemporary politics, “From critique to reaction: The new right, critical theory and international relations” (Drolet and Williams, 2021) and the collective discussion “Confronting the International Political Sociology of the New Right” between Rita Abrahamsen, Jean-François Drolet, Alexandra Gheciu, Karin Narita, Srdjan Vucetic, Michael Williams, published in the journal *International Political Sociology* (2020).

areas such “environmental policy, trade, immigration, and other issues [that] reflect conflicting interests, values, lifestyles, and aspirations” (Lind, 2020, p. 63; p. 46).

Across the frontlines of sovereignty battles, Lind emphasizes the shift that political representation has taken in the past decades from the formally elected legislative powers to the non-elected judiciary. He quotes Ran Hirschl’s comparative study on the matter, calling attention to how “conflicts involving contentious political issues are treated as primarily legal questions rather than political ones, with the concomitant assumption that national high courts, instead of elected representatives, should resolve them” (Hirschl *apud* Lind, p. 124-125). The question of the influence of “expert regimes” and their relationship with “law” is posed under a new light from this perspective.

Lind himself is aware of the stakes: there ought to be a way out, for there not being is simply too much to bear. “The alternative – the triumph of one class over the other, be it the overclass led by neoliberal technocrats or the working class led by populist demagogues – would be calamitous. A West dominated by technocratic neoliberalism would be a high-tech caste society. A West dominated by demagogic populism would be stagnant and corrupt” (Lind, 2020, p. 312). Were nationalism to get the hold over our militarized worlds, we would witness a hybrid between a high-tech caste society and something else. I have my doubts that “stagnant” and “corrupt” do justice to the problem of imagining the outlines of whatever direction the apartheid may unfold to. Furthermore, Lind’s way out is by reinvesting legislation with the power it has lost so it can antagonize the judiciary. He hopes that we can return to a past when the negotiation of antagonistic working-class interests was possible through these means. But that assumes that the problem is rational and primarily about labor conditions. If those were solved, things should be contained. It is a position that is not that different from Onuf’s belief that a major cause of contemporary turmoil stems capitalism not being able to deliver its promises now that it is declining.

Pier Paolo Pasolini offers further some insight in this respect. A few months before his murder, he published a short article entitled “Il Vuoto del Potere in



Italia<sup>39</sup>” (1975; “The Power Void in Italy”), also known as “Disappearance of the Fireflies”. In that article, he argues that political thought and practice, particularly in the central left, but including the Italian communist party, had been unable to realize the situation they got themselves into. The rehabilitation of the bureaucratic state after Nazism and Fascism through a progressive developmental agenda premised on a consumer economy mediated by public administration needed to fabricate a tight enough apparatus of power (within and beyond government) to ensure self-subjection to these large-scale policies of social engineering. These structures, according to him, were already completely out of the hands of the formal apparatus of government by representative legislators and executive bureaucrats that were hitherto steering the reconstitution of the national political space and enabled by the moral polarization within society that ensued from those practices.

In this sense, the “void” is not really a void, but the saturation of political struggle to the point of its negation, fueling the “the violent recognition process of industrialization” against “the values of different specific cultures” (Pasolini, 1975). For Pasolini, something similar caused the “gigantic hordes” in Nazi Germany just decades before. His concern, and I want to stress this, is that the counter-culture “hordes” in Nazi Germany “were not ancient peasant or artisan roots or not even [of] a modern bourgeois background”. They amalgamated into something altogether different: “savage, abnormal and unpredictable bodies of Nazi troops” (Pasolini, 1975). Conditions of political authorization were different now. What he called the “Christian-Democrat new fascism<sup>40</sup>” was aware of the void that did not exist in the massacres of the past; and yet they “are keeping the void hidden behind their smiles and automated movements” (Pasolini, 1975). In doing so, they deny the “reality” of the new threshold of political organization. For “the *real* power works without them and they hold in their hands only a useless apparatus” (Pasolini, 1975;

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<sup>39</sup> “Disappearance of the fireflies”. Originally published as “Il vuoto del potere in Italia” (The Power Void in Italy) in ‘Corriere della sera’, 1 February 1975. Translated by Christopher Mott. Accessed Jan 2014. Available at: <<https://www.diagonalthoughts.com/?p=2107>>

<sup>40</sup> According to Davide Tarizzo, in Pasolini’s “view, both old and new fascisms undermine the fundamentals of modern democracy. Yet new fascism does not do this by absolutizing popular sovereignty at the expense of individual rights. New fascism celebrates our freedoms and absolutizes human rights to the detriment of our sense of belonging to a social-political community. Therefore, old and new fascisms strive to accomplish democracy—which is the restless ambition of fascism—via opposite routes. In the former case, the result is the birth of political subjects such as the master race, supported by revelatory political grammar. In the latter case, the result is the birth of an altogether different subject, which is no longer a political actor, properly speaking, but a passive, anonymous entity: the human population” (2021, p. 163).

my emphasis). On the questions of the need to imagine the impossible, he said: “we formulate abstract images of this real power, which are basically apocalyptic”. For the unimaginable horror is “what form it would take in directly replacing those who used it and took it for a simple modernization of techniques” (Pasolini, 1975).

The concrete form given to the imagination was already under development in his last film, “*Salò, or the 120 Days of Sodom*”, which was still being edited and was released just three weeks after his murder – whose brutality suggested the work of an angry mob. In “*Sàlo*”, the four horsemen of the apocalypse personify the powers of the judiciary, organized religion, the bourgeoisie, and the controllers of national economic policy. It is in this sense then that he notes that “the important thing is that the void is not of a legislative or executive nature, it is not a void in the power of governing or even in political power of any traditional description. It is a power void in itself” (Pasolini, 1975).

Pasolini was particularly haunted by how easy it was for the world that he was witnessing to fall in love with what was for him a spurious multifaceted model of homogenization that negated humanity by purporting to worship it. And despite all the violence and the humiliation through these endless trials of torture, on the other end of the production line there were coming out docile citizens rejoicing in pivoting against one another over anything but what the command to act to change the world prevented them from seeing about their actions<sup>41</sup>. Ultimately, his question was what would become of this unprecedented power at the disposal of government but out of its control when the inevitable insurgency happens. For him, it was a matter of time before groups overwhelmed by alienation and aroused by the climate of the times would respond to the oppressive present by calling for the new return to imagined traditions that have been lost as the way forward to the new iteration of civilized, formless humanity in struggle with many others but also standing reciprocally with them.

Recent events seem to have proven Pasolini right. I would like to focus on the horseman that is the object of this Chapter, and to the other sense in which we

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<sup>41</sup> The critique expounded in “*Salò*” is visceral. For those interested in a reading about it, and other of his works, in the context of his times, his upbringing, the evolution of his thought and art, his involvement in politics as an activist and artist, and his persecution for it, see Luigi Martinelli’s *Ritratto di Pasolini* (2015 [2006]). For the discussion about the period I am referring to, see especially Chapters XIX to XXIV.

can read Kant's critique of the politics of law. In his paper "Judicializing Politics, Politicizing Law" (2002), John Ferejohn argues that there has been mainly three ways in which legislative and executive prerogatives have been practically transferred to the judiciary power<sup>42</sup>. There is the more familiar, or public, one of these events, which is the fact that "courts have increasingly become places where substantive policy is made". And there is the issue that "courts have been increasingly able and willing to limit and regulate the exercise of parliamentary authority by imposing substantive limits on the power of legislative institutions"; and "judges have been increasingly willing to regulate the conduct of political activity itself – whether practiced in or around legislatures, agencies, or the electorate – by constructing and enforcing standards of acceptable behavior for interest groups, political parties, and both elected and appointed officials" (Ferejohn, 2002, p. 41).

Ferejohn stresses that the politicization of courts is "politically dangerous in various ways". On the one hand, there is the more obvious problem of the perception of the anti-democratic nature of judicial activism, which in turn delegitimizes these institutions in the eyes of the citizenry. In the age of social media, decisions over contentious issues have been highly publicized and courts have become an object of love and hate for all parts in antagonism and shifting alliances through political communities today (Ferejohn, 2000, p. 66). The association of judges and justices with politicians, political parties and other social actors with political influence provides good enough reasons that fuel political disputes across society.

That notwithstanding, Ferejohn also brings our attention to another way through which politics has been judicialized, a way that is far from being as perceptible and easy to transform into an object of commonsensical indignation. Courts also rule indirectly in virtue of the negative power that they hold in ensuring that legislation should or should not be passed on the grounds of being constitutional or unconstitutional. He points out that the fact that courts are already publicly active has led legislators to anticipate their activities and to conform with

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<sup>42</sup> See also Rafael B. Carvalhaes and Fernando G. Miranda's "Questioning our faith in the Judiciary: from institutional entrenchment to the monopoly of constitution" (2022), and José Eduardo Faria's "Judicialization of politics, judicial activism, and institutional tensions" (2021).

judicial expectations in advance (Ferejoh, 2002, p. 42). In this way, struggle continues to be fueled, only it is directed against the legislative and the executive, while the anonymity upon which political authorization is contingent on remains. Not the anonymity of the judiciary as an organized group acting to the intentional purpose of controlling society, but the idea that the inflamed and self-righteous reactions to these conditions of rule are primarily positive rather than negative.

## Final Remarks

Sovereignty is not a problem of government. Concepts of sovereignty and the sovereign state are the objects of ongoing struggles that encompass but exceed government. Under varying circumstances, cooptation runs more or less smoothly, and we barely feel it. Sometimes one powder-keg explodes, and a country turns upside down. Possibly several of them at a time, one inside the other even. Formal and informal political actors organize across society mobilizing their bases, and these and other forces may work in more or less orchestrated ways to exert pressure on the offices that come to be recognized as having the prerogative to pass judgement on these life and death situations. There may be overt charismatic leaders, many of them and not always seeing eye to eye even when they are allies. On other occasions, affective stirring can be covert so long as you know which buttons to press. At other times there may be none of these familiar orchestrating figures.

Be it at it may, sovereignty struggles inevitably find their way back to law. In light of this, my point is not against the policy framing as much as it is about the inclination to see bureaucracies through the ideal type of effective and efficient administration (or some gradation across these lines) once one's statements are no longer confined to academic research. This, I believe, is but another symptom of the underlining conditions of political society today. Upon the encounter with the limit, it is only natural at this point that we are spurred into meeting the sense of helplessness with the immediate call to action. Absurdity begets this type of response. The move from epistemology to ethics prevents us from taking a deeper look into this abyss.

Unless we come up with ways of imagining the abyss otherwise rather than running against time to transpose it, our diagnostic tools cannot help but bury us ever deeper into the grave of the "last man" -- the one who dies as if it were alive, capable of seeing only the totality that prevents it from seeing the totality that is only known as the tormenting feeling of not being able to stay still. The idea that ethics is the answer plays the dangerous game of the very thin line that separates

the experience of yearning for something other and the seamless return to piety. As Weber warned, the hallmark of the latter is not determined by one's good intentions. It is rather that "the man who embraces an ethics of conviction is unable to tolerate the ethical irrationality of the world" (Weber, 1992, p. 85). Only fratricidal wars can result from this -- either dressed as full-on rejections of difference beyond certain points, or in progressive rhetoric for tolerance and the appreciation of difference. The imminent danger of assimilation into guesthouses is the same.

Modern sovereignty is the effect of a temporal production of political space whose *modus operandi* provides the frame to produce rhythmic textures that enable the organization of energies around choreographies of mutual distrust, alienation and sacred antagonism. It may well be that they are more effective when government is perceived to be inefficient. This ongoing condition sets up the conditions for sovereignty struggles over the ethical-sacrificial boundaries of political community, which, upon finding the limit, are increasingly reverted to law in order to be settled, and the machinery fueled by these dynamics. Without this substratum, so to speak, we cannot pose questions about the limits of the capacity of social mobilization by the leaders that Weber both feared and hoped for, nor can we begin to re-think what (and who) is a political actor in the conventional senses of the term.

At the same time, I have no pretense that the diagnostic line of inquiry I am proposing should be deployed to bring back a solution from a past future. I am not sure it could, and if it could, then it would be missing its own point. If we do have reasons to believe that a significant part of the processes of the production of political space is theatrical and premised on the capacity of affection to reverberate through bodies in antagonism, it is important to know what keeps animates the revenant. Bataille was aware of this limit of which we are speaking, even though most of his work shows the hope for a positive sense of subjectivity to be carved through the negativity that negativity brings upon itself. Maybe this is the best that we can do as the last at the frontier of humanity to itself.

To be able to represent ourselves as such is a way to live through, even if only to bear witness: it may be true that today it is the members of the judiciary and not the poets that are the unacknowledged legislators of the world, but so is Hermes' flute, magical, fiery playing itself as though it were a pipe.

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