

# Political Theology and the Authenticity of Modern Experience

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In his book *Political Theology: Four New Chapters on the Concept of Sovereignty* Paul Kahn uses Schmitt's (1922) book of (almost) the same title as a springboard for discussions of sovereignty, the exception, sacrifice and the inadequacies of liberalism. Each of the four chapters in Schmitt's book is invoked and reflected upon in a corresponding chapter by Kahn. Kahn states convincingly that Schmitt's ideas have to be considered and judged outside the historical context in which they were developed. Moreover, Kahn suggests—wrongly in my view—that once Schmitt's historical association with fascism is left aside, no inherent, necessary link between Schmitt's ideas and fascism will reveal itself. According to Kahn, Schmitt's account of the existential and theological foundations of the political applies to liberal polities such as the USA as readily as it applies to totalitarian regimes. Kahn does a wonderful job in introducing Schmitt's ideas, blending them with his own and making them appear intuitive, plausible, and relevant to political life almost a century after they were formulated.

It would be an understatement to say that I am highly sympathetic to Kahn's project. Since my own recent work has dwelled upon the violent presence of the sovereign collective body in constitutional moments, I am fascinated and almost always convinced by Kahn's illuminating account of revolutions as moments of a sacred presence that exacts sacrifice.<sup>1</sup> I find Kahn's claims thought-provoking, insightful, and for the most part, eminently sound. This affinity of perspectives makes the task of locating disagreement both complicated and rewarding. The comments that I will make are internal to political theology, rather than forming a critique of it. Schmitt's theology, however, is

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<sup>1</sup> On constitutional moments, see Lior Barshack, *Constituent Power as Body: Outline of a Constitutional Theology*, 56 U. TORONTO L.J. 185–222 (Hart 2006). On sacrifice and the sovereign power of life and death, see *Between Ritual and Theatre: Judicial Performance as Paradox*, in PARADOXES AND INCONSISTENCIES IN THE LAW 145–66 (Oren Perez & Gunther Teubner eds., Hart 2006); *Time and the Constitution*, 7 INT'L J. CONST. L. 553–76 (2009); *Transcendence and Interpretation: Introductory Notes on the Theology of the Rule of Law*, in ISLAM, LAW AND IDENTITY 23–48 (Marinos Diadamantis & Adam Geary eds., Routledge 2012).

only one possible political theology and in my view not the most compelling. The political theology elaborated by Kahn in his book inherits from Schmitt's theology a few questionable assumptions and directions which I shall try to point out.

The following comments hardly count as criticisms because when they do not reflect a perspective very close to Kahn's, they rest on literature that is somewhat alien to Kahn's discussion. Prominent among my sources is Victor Turner's anthropology of *liminality*, *communitas*, and carnival, which has greatly influenced my work on constitutional moments. Insofar as my remarks on Kahn's book depart from different assumptions than his, they do not make very useful criticisms. Thus, the following remarks are merely intended to sketch a complementary or alternative point of view on the phenomena analyzed by Kahn, and to open a dialogue between different methodological perspectives in political theology.

### **The permanence of decision**

Perhaps the greatest weakness of Schmitt's political theology consists in its implicit but deeply entrenched denial of the difference between constitutional moments and normal politics. Schmitt offers an illuminating account of moments of crisis and transition, but in my view ultimately fails to distinguish politics of crisis from normal politics. Schmitt oscillated between democratic and Hobbesian images of the sovereign, ie images of the group and the individual leader as the natural subjects of sovereignty, but was consistent in regarding sovereignty—wherever it resides—as permanently present and active. It was always clear to Schmitt that “the legal order rests on a decision” (*Political Theology*) at any moment. Schmitt's views received their clearest formulation in his *Constitutional Theory* (1928). Here Schmitt distinguished between constituent (or “constitution-making”) power and sovereignty. Constituent power, which vests in the people, is the author of the founding decision about the political form of the state, while the sovereign is the supreme authority within the political form chosen by the people, and the supreme guardian of that form who may suspend the constitution at any moment in order to defend it. According to *Constitutional Theory*<sup>2</sup>, constituent power and sovereignty are exercised in an uninterrupted manner. The constitution emanates continuously from the will of the people, a will which always remains alive. The legal order is re-founded at any moment by the political community and cannot constrain the community.

Schmitt's idea of permanent immanence is politically dangerous because it licenses permanent ruthlessness, not to mention regular violation of human rights. In my view, the thesis of permanent presence can be reconciled neither

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<sup>2</sup> CARL SCHMITT, *CONSTITUTIONAL THEORY* 140 (Duke University Press 2008).

with liberal theory nor with the practices of liberal societies. It strongly binds Schmitt's constitutional thinking, from its very beginnings, to fascism, even though it has been endorsed by radical leftists such as Negri. It renders Schmitt's thought largely irrelevant to liberal regimes, because it occupies such a central place in his thinking. The idea of permanent sovereign immanence can be challenged not only on moral and political grounds, but also on various socio-theoretical grounds.<sup>3</sup>

Kahn seems to recognize the transitional character of sovereign presence, its dangers and the necessity to pacify it: "Sacrifice is the medium of sovereign presence. Permanent revolution is always a terrifying idea for just this reason. To succeed, revolution must transform itself into a regular political form, that is, it must produce a constitution." (p. 142) However, elsewhere Kahn repeatedly asserts the permanence of sovereign presence. Following Schmitt, he writes that the legal order always rests on a decision for or against the norm, and that the free act is "implicitly present at every moment." For Kahn, the permanence of decision for or against the norm is the essence of political freedom.

We must conceive of our political order as the product of a free act – of a decision – if we are to understand politics as a product of the free will. That free act appears at the moment of origin and again at the moment of threat: it is implicitly present at every moment." (p. 52)

There is an unresolved tension in Kahn's book between his account of the *unique* and dangerous intensity of revolution, on the one hand, and a more explicit emphasis on the permanence of the free sovereign decision, on the other. The norm, for both Kahn and Schmitt, has to be *at any moment* re-validated by what Kahn terms a "decision for the norm." "...the norm does not determine the decision; rather the decision is for the norm." (p. 35) As I have very briefly indicated, I find Schmitt's idea of permanence flawed on several grounds, and Kahn too acknowledges the dangers of permanent revolution.

### **Authenticity, meaningfulness, and faith**

My principal divergence from Kahn concerns not the permanence of sovereign presence but the nature of the experience of sovereign presence, whether permanent or occasional and relatively short. In my view, Kahn offers a romanticized, idealized, and aestheticized account of the experience of popular sovereign action in the moment of beginning and other moments of sovereign decision. Kahn convincingly charges liberalism with an idealization of reality

<sup>3</sup> In my work on constitutional moments I argued that experiences of presence are essentially momentary because society, as various anthropological theories and considerations suggest, cannot survive for long in a *liminal* state.

and disingenuousness about embarrassing aspects of humanity, but outlines a view of sovereign presence that remains idealized. This is my main complaint about Kahn's approach. All the points that I will make in the remainder of this comment are illustrations and elaborations of the claim that Kahn's account of sovereign presence is romanticized and aestheticized.

For Kahn, the revolutionary experience of sovereign presence, of immediate participation in popular sovereignty, is the culmination of authenticity and freedom, and of love and faith, in the political realm. We are authentic when we are willing to sacrifice ourselves out of love for and faith in the sovereign. We are free when on that basis we take decisions rather than blindly follow pre-established norms. According to Kahn, in revolution and generally in moments of decision, ultimate meanings are actualized in action. The experience of revolution is one of total unity of meaning and being. It is an experience of freedom and authenticity that bestows legitimacy upon the political outcomes of the revolution and upon decisions taken in its name in its aftermath. Let me quote two of Kahn's statements on authenticity:

The postrevolutionary state maintains this narrative of direct action by the popular sovereign, the people. Belief in the popular sovereign sustains a faith in the revolution as a kind of sacred presence. Its authenticity remains separate from its justice. Authenticity can support an idea of legitimacy quite independent of justice. (p. 140)

Political authenticity, as it emerges in a study of political theology, is that experience of the unity of being and meaning that marks the presence of the sacred. It is the leap of faith in the possibility that we can give up the finite and take on the infinite. (p. 152)

Authenticity in the moment of sovereign presence is thus associated by Kahn with sacredness and sacrifice, with faith and love, and with a total experience of unity of meaning and being.<sup>4</sup> Kahn's account of authenticity shares certain general features with Charles Taylor's. Both Taylor and Kahn locate authenticity in our relation to ultimate "meanings" in which we have faith and which render our world and lives "meaningful" and guide our choices.<sup>5</sup>

As an act of political creation, the revolution is the culmination not only of authenticity but also of freedom. Freedom, for Kahn, is located in the will as opposed to reason. "Only as a product of the will can we understand the state as an expression of freedom." (p. 62) Political freedom originates in sovereign presence, "the locus of freedom within the conditions of the political." (p. 90) Free will "may begin in the exceptional act of sacrifice but extends from there to judgment and finally to discourse." (p. 152) Freedom, thus, inheres in the decision and, most evidently, in the decision for the exception. "But for the exception, we might be well ordered but not free." (p. 53) The decision is free

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<sup>4</sup> Kahn speaks of love in his discussion of the exception and in various other contexts in the book.

<sup>5</sup> CHARLES TAYLOR, *THE ETHICS OF AUTHENTICITY* (Harvard University Press 1992).

when it realizes an ultimate meaning: "At stake in our political life has been not our capacity to be reasonable, but our capacity to realize in and through our own lives an ultimate meaning. Where we find that meaning, we will find freedom." (p. 158)

Kahn likens the free political decision to the freedom of the artist. In both cases, decisions are neither arbitrary nor determined by norms. Kahn writes:

... a free act can be neither arbitrary nor determined. The free act must have some relationship to norms, or else it would be arbitrary. It cannot, however, be determined by the norms, in which case it would not be free... But if the free act is not determined by cause or norm, how does freedom not collapse into mere arbitrariness? To avoid this, we must hold on to the idea that the free act is "not without reason," although it does not follow from any prior reason. To get to this idea, we need to focus on the nature of the will. (p. 127)

According to Kahn, in art as well as politics, imagination is the faculty through which freedom is realized. Imagination is not bound by norms, legal or aesthetic, yet it is not arbitrary: it responds to established norms and precedents in a way that produces novelty without arbitrariness. (pp. 128, 129) Kahn's passages on the analogy between artistic and political imagination illustrate the general tendency in the book to aestheticize the political.

It seems significant that in revolutions "art" typically gives way to an abundance of spontaneous, untutored, popular forms of expression from graffiti to street theater. The decline of artistic creativity in revolutions suggests that the revolutionary experience of "political creation" is different from artistic creativity. While art offers access to the absolute through contemplation, in revolution the sacred becomes immediately present. At the height of revolutionary fervor, representation and imagination give way to the intensity of presence. There is no place for art when artists and their publics are gripped by presence. The fate of political imagination in revolutions is similar to that of artistic imagination. There is hardly room for political imagination before sovereign presence is exhausted. In the course of the revolution, political imagination and representation collapse into action. The revolutionaries of the Arab Spring, to take the most recent example, probably entertained in the midst of the revolutionary turmoil only a vague image of the political alternative for which they were (and in several countries still are) fighting.

Kahn's account of sovereign presence as the highest expression of political freedom and authenticity and of political love and faith describes in positive terms a moment of utter negativity: of destructiveness, death, and meaninglessness. Rather than an ultimate union of being and meaning, sovereign presence entails the seizure of human experience by nothingness. In *The Jargon of Authenticity*,<sup>6</sup> Adorno argued that the discourse of authenticity leaves no room

<sup>6</sup> THEODOR ADORNO, *THE JARGON OF AUTHENTICITY* (Knut Tarnowski & Frederic Will trans., Routledge 2002).

for the negative in its portrayal of the human condition. The terms of this jargon—such as, decision, immediacy, commission, commitment, faith, rootedness, encounter, concern, and genuine dialogue—reify, according to Adorno, certain states that are taken to embody the essence of “Man.” These revered states are reified in that they are isolated, abstracted, and detached from living historical experience and reflection. The terms of the jargon purport to encapsulate an ahistorical, pristine, timeless essence of Man.<sup>7</sup> Each of the terms of the jargon posits Man’s being in the world as ultimately simple, self-identical, unified<sup>8</sup> and, most importantly, positive.<sup>9</sup> Everyday existence is sanctified.<sup>10</sup> Moreover, death, suffering, nothingness, and unreason are rendered positive. “As it runs in the jargon: suffering, evil, and death are to be accepted, not to be changed.”<sup>11</sup> Adorno speaks of “the jargon’s reinterpretation of complete negativity into what is positive.”<sup>12</sup> Adorno criticizes the jargon’s attempt to re-enchant modern experience by postulating its “meaningfulness.” In addition to being forced and mystifying, re-enchantment is according to Adorno politically dangerous. Since the essence of Man is taken to be untouched by history, the jargon silences criticism of changing political and economic relations. I think that there is in Kahn’s account of authenticity and faith in the realm of politics a tendency to re-enchant political experience and, in Adorno’s terms, to reinterpret the negative as positive. In his thought-provoking essay ‘The Reenchantment of Law’ Yishai Blank seems to suggest that all accounts of law in religious or theological terms involve re-enchantment. Contrary to Blank’s view, it seems to me that political theologies that avoid the jargon of authenticity and recognize the negativity inherent in law’s religious dimensions cannot be accused of re-enchantment.<sup>13</sup>

Whatever may be Kahn’s philosophical understanding of authenticity, it seems that one of the conditions or components of authenticity is some sense of individuality, of being true to one’s individual self.<sup>14</sup> However, the presence of the collective body in revolutions—I will refer to the collective body when it is enacted by the group in constitutional moments as the *communal body*—leaves little room for individuality. The communal body dissolves individual identities and generates an experience of anonymity, loss of self, and

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<sup>7</sup> *Id.* at 29, 45, 48.

<sup>8</sup> *Id.* at 54–58.

<sup>9</sup> Adorno writes: “Simply to be there becomes the merit of a thing. It is guaranteed in the protection of the double sense of the positive: as something existent, given, and as something worthy of being affirmed. Positive and negative are reified prior to living experience, as though they were valid prior to all living experience of them; as though it was not thought that first of all determined what is positive or negative; and as though the course of such determination were not itself the course of negation.” (15).

<sup>10</sup> Adorno, *supra* note 6, at 20, 26.

<sup>11</sup> *Id.* at 53, see also *id.* at 21.

<sup>12</sup> *Id.* at 27.

<sup>13</sup> See Yishai Blank, *The Reenchantment of Law*, 96 *Cornell Law Review* 633 (2011).

<sup>14</sup> The term “authentic” is also applied to a traditional collective way of life, but such use of the term is removed from Kahn’s and from the philosophical traditions Kahn seems to draw upon. Kahn’s phenomenology of decision and of the readiness for sacrifice centers on the individual soul and the individual act.

merger with the environment. Once engulfed by the inexorable communal body, the individual hardly recognizes himself. The social roles that defined the individual prior to the moment of political communion, including the statuses of citizenship and family membership, are cast aside. The experience of one's own and others' anonymity has been described in different accounts of carnival and, more generally, *communitas*. Anonymity, the emptying of inwardness and the dissolution of individual identity characterize *liminal* states and experiences. In many of his writings, Turner described the anonymity of *liminal* initiands. In *The Ritual Process*, for example, he writes:

... attributes of sexlessness and anonymity are highly characteristic of liminality. In many kinds of initiation where the neophytes are of both sexes, males and females are dressed alike and referred to by the same term... Symbolically, all attributes that distinguish categories and groups in the structured social order are here in abeyance the neophytes are merely entities in transition, as yet without a place or position.<sup>15</sup>

The modern revolution has its historical roots in carnival. Insofar as authenticity presumes individuality and is incompatible with anonymity, it is unattainable in carnival and revolution. Freedom too is incompatible with the revolutionary experience of the communal body. If freedom is a quality of the individual will, as it is for Kahn, then there is no room for it in revolution because the individual will fades away as the individual disappears in the communal body. Freedom in revolution and carnival is freedom from the will, not of the will. Furthermore, insofar as freedom is an attribute of the imagination, as it is for Kahn, it vanishes together with the imagination in the presence of the sacred.

Studies by Turner and other anthropologists suggest that *liminal* states are characterized by an experience of nothingness and senselessness, not by the supreme unity of meaning and being that Kahn finds in revolution. An experience of wholeness and merging is gained in *liminal* experiences, but the dissolution of the social roles that define everyday individual identities is accompanied by a sense of futility and emptiness. The breakdown of individuality in *liminal* states, of the individual's inner, private world, implies the destruction of the outer "objective" world. *Liminal* events like carnivals and revolutions are characterized by an apocalyptic experience: they involve the destruction of social space and social time. Social space is destroyed as the normative boundaries between individuals and between different spheres of life dissolve. Social time melts away as the normative boundaries between the generations—the dead, the living, and the yet unborn—collapse. The point is not only that the world inhabited by humanity, that is, the ordinary normative structure of space and time, collapses in revolution, but that it is replaced by

<sup>15</sup> VICTOR TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* 102–103 (Cornell University Press 1969), see also 106.

an apocalyptic sense of nothingness. Pre-modern society conceived of carnival as the end of the humanized, ordered world, the moment in social life where society surrenders itself to the inhuman. The collapse of transcendence into presence, the advent of the sovereign and violent communal body, and the destruction of social space and social time, result in an apocalyptic experience of meaninglessness and nothingness. The apocalyptic experience that is inherent in *liminality* calls into question Kahn's account of revolution as the ultimate union of meaning and being.

The nature of sovereign presence casts doubt on the view of revolution as the highest realization of authenticity and meaningfulness. Kahn associates the authenticity and meaningfulness of the revolutionary experience with the realization of faith in and love for something infinite. However, the very idea of sovereign presence seems to exclude the possibility of love and faith. Love and faith assume a certain distance from their object. Commitments and loyalties to distant objects count among the building blocks of the individuated self. Once these objects become present, love and commitment dissolve together with the individuated self itself. With regard to romantic love, it has often been noted that it assumes a degree of distance from the object, and that excessively symbiotic tendencies in the love relation are destructive of the relation and of the parties to it.<sup>16</sup> The same is probably true of political love. The absolute political unity that Schmitt demands, and the total absorption in the political which may occur in revolution, do not leave room for individuality. They are too suffocating to allow for political love and too immediate to make room for political faith.

The most climactic moments of a revolution are those in which faith, love, and commitment become impossible. The immersion in the communal body empties the self of faith and of constitutive attachments and aspirations. As a result of the collapse of time in *liminal* experiences, long-term commitments and attachments, such as faith and love, give way to ephemeral relations. The union of the individual and the communal body is in itself such an ephemeral sexual relation, perhaps the most total and uninhibited. It is a total communion that engulfs everything in the here-and-now. It collapses social space and time, the web of interpersonal and temporal boundaries which make love and faith possible. Furthermore, it is improbable that the faith and love of citizens and family members reach their culmination in the moment of the exception for the simple reason that the institutions of citizenship and family membership dissolve in such moments, as instances of *liminality*. Love, faith, and commitment become possible after the revolution.

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<sup>16</sup> See, for example, Kernberg's writings on love: Otto F. Kernberg, *Boundaries and Structure in Love Relations*, 25 J. AM. PSYCHOANAL. ASS'N 81-114 (1977); *Aggression and Love in the Relationship of the Couple*, 39 J. AM. PSYCHOANAL. ASS'N 45-70 (1991); *LOVE RELATIONS: NORMALITY AND PATHOLOGY* (Yale University Press 1998).



## Sacrifice

In Kahn's theory of revolution, the most significant and dramatic manifestation of sacred presence is sacrifice. Like Kahn's account of authenticity, his account of sacrifice is silent about the place of the negative in revolution.<sup>17</sup> Kahn uses the notion of sacrifice to capture the violence that inheres in sovereign presence. Sacrifice thus occupies a central place in his political theology. For Kahn, "Sacrifice is the medium of sovereign presence." (p. 142) It consists in "the dissolution of the finite in the presence of the infinite." (p. 158)

According to Kahn, revolutions derive their legitimacy and the legitimacy of the ensuing constitutions from the willingness of participants to die for a common cause. Kahn writes: "Revolutions begin with an experience of the sacred in and through the political, for no revolution begins until there is a willingness to sacrifice for some meaning greater than the finite self." (p. 22) Sacrifice is a source of meaningfulness presumably because it demonstrates the total subordination of every finite thing to something absolute and ultimate. "The sacrificial moment appears as a kind of sacred violence: a force that realizes a transcendent meaning." (p. 121) Kahn notes convincingly that this transcendent meaning always refers, in the end, to the sovereign community itself: "Sacrifice occurs for the particular community – the sovereign presence – even as that community strives to put in place a universal idea of justice." (p. 155)

Sacrifice, according to Kahn, is rooted in faith. It is the ultimate expression of commitment, faith, and love. The archetypal sacrifice that is grounded in unconditional faith is Abraham's willingness to sacrifice Isaac. The same relation between sacrifice and faith exists in politics. Politics "begins with an act of willing self-destruction that rests on faith, not reason." (p. 154) Here are some of Kahn's statements on sacrifice as a manifestation of faith:

A politics of the exception is one that relies on revelation and faith rather than argument and reason. (p. 157)

There is no discourse on the field of battle; there is only the affirmation of faith and the brutality of the act. (p. 157)

Sacrifice is the appearance of the sacred as a historical phenomenon. Its domain is silent faith, not reasoned discourse. We can talk forever and never reach a position of faith. This is the faith that connects the transcendent experience of revolution to the jurisprudential moment of judicial decision, and both to the state of exception in defense of the nation. (p. 155)

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<sup>17</sup> In his essay "Hegel, Death and Sacrifice" Bataille developed, on the basis of Kojève's reading of Hegel, an account of sacrifice as an instance of pure negativity. Such a general characterization of sacrifice is compelling even if one does not accept Hegel's account of the role of the negativity of death in the emergence of self-consciousness. See Georges Bataille, *Hegel, Death and Sacrifice*, 78 *YALE FR. STUD.* 9–28 (1990).

The meaning that sustains an ultimate faith, a faith that can sustain an act of sacrifice, is never a matter of discursive proof. The only proof that counts is the act itself. (p. 157)

These passages from Kahn's book offer a rather benign interpretation of sacrifice and its regenerative power. Or at least they can be easily interpreted as offering such an interpretation. Kahn seems to say that political membership is premised on the willingness of members to sacrifice their lives for the survival of their political community and its most important ideals, that is, for the elimination of an enemy who endangers these. The infinite object of faith for which the finite may be sacrificed, the transcendent meaning that exacts sacrifice, is the sovereign community and the causes with which that community identifies. If I understand Kahn correctly, it is by demanding sacrifice that the sovereign community confirms its ultimate, transcendent status and gains the capacity to infuse meaning into our world and render our lives meaningful.

Kahn's claims recall Schmitt's argument in *The Concept of the Political* (1927) that sovereignty comes into being whenever a group of people is willing to die for a common cause. Sovereignty then belongs to that group of people. The constitution derives its authority, at any moment, from the willingness of members of the group to risk their lives in defense of the principles enshrined in it.<sup>18</sup> According to a less charitable account, sacrifice does not express loyalty to one's political community. It is not based on faith in the nation and in the causes and myths that define it. The infinite, whose presence destroys the finite in the act of sacrifice, is neither the sovereign community nor any of its ideals. Rather, it is the infinite abyss of death itself, of nothingness and destructiveness. In sacrifice, death is not only a price that one is willing to pay for the sake of the highest causes. Death is affirmed in itself, *even if* the ultimate goal of sacrifice is the safeguarding of life through the appeasement of death (a widespread thesis to which Bataille objects in the quotation below). The affirmation of death itself that I have in mind does not alleviate the "negativity" of death because it does not reduce its otherness. Death is not affirmed and enacted by the human order. It is not fully integrated into culture or into the self but remains largely alien and "negative." The enactment of the otherness of death in *liminal* experiences is made possible by the momentary *dissolution* of the human order and the self. Thus, sacrifice is not called for by the ultimate ideals and entities in which we have faith and which form the foundation of every human culture. Sacrifice assumes the transitional disintegration of these entities and ideals and of culture at large. In "Hegel, Death and Sacrifice" Bataille argues that the sovereignty and negativity of sacrifice imply that it

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<sup>18</sup> On the power over life and death, see CARL SCHMITT, *THE CONCEPT OF THE POLITICAL* 45–53 (George Schwab trans., Chicago University Press 1995). Schmitt's discussion here suffers from the lack of a clear distinction between sovereignty and constituent power.

lacks external utility. Sacrifice realizes “Man’s link to annihilation” and should not be subjected to external ends. Bataille writes:

Only sacred, poetic words, limited to the level of impotent beauty, have retained the power to manifest full sovereignty. Sacrifice, consequently, is a *sovereign, autonomous* manner of being only to the extent that it is uninformed by *meaningful* discourse. To the extent that discourse informs it, what is *sovereign* is given in terms of *servitude*. Indeed by definition what is *sovereign* does not *serve*. But simple discourse must respond to the question that discursive thought asks concerning the meaning that each thing must have on the level of utility. In principle, each thing is there to *serve* some purpose or other. Thus the simple manifestation of Man’s link to annihilation, the pure revelation of Man to himself (at the moment when death transfixes his attention) passes from sovereignty to the primacy of servile ends. Myth, associated with ritual, had at first the impotent beauty of poetry, but discourse concerning sacrifice slipped into vulgar, self-serving interpretation. Starting with effects naively imagined on the level of poetry, such as the appeasing of a god or the purity of beings, the end of meaningful discourse became the abundance of rain or the city’s well-being.<sup>19</sup>

Anthropologists have noted that funerals and sacrifices are rituals in which death is often affirmed and celebrated. It is also sometimes eroticized. The fact that the sacrificial victim in many societies represents the entire community—a point which plays a role also in Bataille’s theory of sacrifice—indicates that sacrifice enacts *total destruction*. The general identification with the sacrificial victim has been noted by Freud in *Totem and Taboo* and repeatedly observed by anthropologists. According to Lienhardt’s oft-quoted account of sacrifice, for example, “. . . an important feature of sacrifice is that the people for whom it is made enact the death of a victim which in important respects represents themselves. . . .”<sup>20</sup> In other words, sacrifice is not merely about the destruction of the finite in the presence of something infinite, as Kahn takes it to be; it is about infinite destruction. It affirms infinite destruction.

It is arguable that all instances of *liminality* and *communitas*—all rituals, carnivals, and constitutional moments, not only funerals and sacrifices—involve a social affirmation of death and total destruction.<sup>21</sup> For Lacanians, the experience of presence or, in Lacanian terminology, of the *real* that occurs in rituals is catastrophic and unleashes murderous violence. Drawing on Bion’s discussion of groups, I view such violence as inherent in the communal body, that is, in

<sup>19</sup> Bataille, *supra* note 16, at 25–26.

<sup>20</sup> GODFREY LIENHARDT, *The Control of Experience: Symbolic Action*, in *DIVINITY AND EXPERIENCE: THE RELIGION OF THE DINKA* 282–97 (Clarendon Press 1961). ARTHOLD VAN GENNEP noted in his account of funerals as rites of passage that all members of society pass through death; ARNOLD VAN GENNEP, *THE RITES OF PASSAGE* 147 (The University of Chicago Press 1960). It is often claimed that sacrificial rites originated in funerary rites.

<sup>21</sup> Two general features of rituals that are related to the affirmation of death are the reversal of oppositions and the thematization of the passage of time. Turner writes: “. . . liminal initiands . . . are associated with such general oppositions as life and death, male and female, food and excrement, simultaneously, since they are at once dying from or dead to their former status and life, and being born and growing into new ones. . . .” [V. TURNER, *FROM RITUAL TO THEATRE* 26 (Performing Arts Journal Publications 1982)].

the communal presence that is realized in rituals.<sup>22</sup> Whatever may be the theoretical explanation for the implacable recurrence of society's celebrations of death, it would challenge Schmitt's and Kahn's "charitable" account of political sacrifice. First, contrary to Schmitt and Kahn, sacrifice is not primarily rooted in faith in political (or other) entities and ideals. The logic of political sacrifice is independent of the causes that are consciously pursued by the political community. Political sacrifice, as a general phenomenon, does not possess greater nobility than the ritual sacrifices of the Aztecs or the arena games in ancient Rome. The systematization and standardization of killing in the French and other revolutions is as indicative of the nature of political sacrifice as the heroic willingness of some revolutionaries to die for the cause of freedom. Second, the timing of sacrifice is independent of the occurrence of external threats to the community or to any of the causes cherished by the community. In a controversial passage in the *Philosophy of Right*, Hegel remarked that war rejuvenates the state "just as the blowing of the winds preserves the sea from foulness."<sup>23</sup> War, for Hegel, is not conducted only for the elimination of external threats. As repetitive, ritualized bloodshed, sacrifice has its inherent economy and dynamics, which are independent of the political circumstances heroes find appropriate for self-sacrifice.

Official and other celebratory discourses of sacrifice typically portray sacrifice as an act of self-renunciation for noble causes. Such portrayals of sacrifice betray an attempt on the part of human culture to deny its occasional worship of the sovereignty of death. It is an attempt to domesticate and integrate the otherness of death by representing death as a mere means for the triumph of life over death, of time over timelessness, of culture over nature. In ancient Greece, the mythical figure of Thanatos celebrated sacrifice as heroic death exacted by the cause of life. For the Greeks, as Jean-Pierre Vernant has shown, heroic death for the sake of family or state (that is, in the name of corporate perpetuity) was not only meaningful but also beautiful. The Greeks, Vernant explains, distinguished the figure of Thanatos which represented the beautiful death of the Greek hero from the monstrous figure of Gorgo, which stood for death as an undomesticated, prepolitical force that seeks to eradicate the human order altogether.<sup>24</sup> The two figures of death in Greek mythology correspond to the distinction between death as means and death as end-in-itself. The

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<sup>22</sup> In the terminology of object-relations theory, the communal body contains persecutory and retaliatory "objects" that become dominant in symbiotic relations. Bion writes: "...the group...arouses fears of an extremely primitive kind. My impression is that the group approximates too closely, in the minds of the individuals composing it, to very primitive phantasies about the contents of the mother's body. The attempt to make a rational investigation of the dynamics of the group is therefore perturbed by fears, and mechanisms for dealing with them, that are characteristic of the paranoid-schizoid position." [W. R. BION, *EXPERIENCES IN GROUPS* 162 (Tavistock 1961)].

<sup>23</sup> G. W. F. HEGEL, *PHILOSOPHY OF RIGHT*, (T. M. Knox trans., Oxford University Press 1942) § 234.

<sup>24</sup> JEAN PIERRE VERANT, *Feminine Figures of Death in Greece*, in *MORTALS AND IMMORTALS* 95-97 (Princeton University Press 1991). See also Verant, *Death in the Eyes Gorgo, Figure of the Other*, in *MORTALS AND IMMORTALS* 111-140 (Princeton University Press 1991).

rationalization of sacrifice as means—the aestheticized and eroticized figure of Thanatos—domesticates the infinite brutality of death by concealing society's occasional veneration of the sovereignty of death, namely, of Gorgo. However, a critical point of view cannot accept the figure of Thanatos—of death as means—as an adequate representation of the practice of political sacrifice.

It is perhaps not surprising that in Heidegger's writings and addresses from the Nazi period we find the recognition that sacrifice has no end other than death itself. Heidegger asserts that the authentic, free sacrifice has no external goal. In the postscript to "What is Metaphysics?" Heidegger writes:

Freed from all constraint, because born of the abyss of freedom... sacrifice is the expense of our human being for the preservation of the truth of Being in respect of what-is. In sacrifice there is expressed that hidden *thanking* which alone does homage to the grace wherewith Being has endowed the nature of man, in order that he may take over in his relationship to Being the guardianship of Being.<sup>25</sup>

In *The Jargon of Authenticity*, Adorno ridicules this passage by Heidegger.<sup>26</sup> In my view, Heidegger tells us something important in his insistence on the purposelessness of sacrifice, whether one accepts his notion of Being-toward-death or not. At the same time, it seems to me correct to reject the jargon of authenticity in this (and probably any other) context. I cannot even start in the present discussion to do justice to these complex controversies; I just wish to draw attention to theoretical positions that differ from Kahn's on the questions of the purpose and authenticity of sacrifice. Kahn believes that sacrifice is anchored in purpose and authenticity; I have tried to show there are reasons to believe it lacks both.

### Sovereign arbitrariness

In the chapter on prerogative in the *Second Treatise*, Locke argues that the prince's power to act "without the prescription of the law, and sometimes even against it" does not amount to an "arbitrary" power. My final example of the tendency in Kahn's discussion to idealize sovereign presence and ignore its negative, ruthless, undomesticated aspects is Kahn's insistence that the free sovereign decision is not arbitrary. For Kahn, freedom is fully manifested at the

<sup>25</sup> MARTIN HEIDEGGER, *What is Metaphysics?*, in *EXISTENCE AND BEING* 389 (R. F. C. Hull & Alan Crick trans., Vision, 1949). In an interview given many years after the Nazi period, Marcuse noted that Heidegger's notion of Being-toward-death "serves well to justify the emphasis of fascism and Nazism on sacrifice, sacrifice per se, as an end-in-itself. . . Heidegger's notion recalls the battle cry of the fascist Futurists: *Evoiva la morte*." See FREDERICK OLAFSON, *Heidegger's Politics: An Interview*, in *MARCUSE AND THE PROMISE OF CRITICAL THEORY* 101 (Robert Pippin et al. eds., Bergin and Garvey 1988). The interview with Marcuse is discussed in RICHARD WOLIN, *HEIDEGGER'S CHILDREN* 164, 260 (Princeton University Press 2001).

<sup>26</sup> Adorno's translators re-translated the passage from Heidegger's postscript: "Sacrifice is the expenditure of human nature for the purpose of preserving the truth of Being for the existent. It is free from necessity because it rises from the abyss of freedom. In Sacrifice there arises the hidden thanks, which alone validates that grace – in the form of which Being has in thought turned itself over to the essence of man; that in his relation to Being he might take over the guarding of Being." (Adorno, *supra* note 6, at 108)

moment of sovereign presence. Kahn argues that the free sovereign decision, whether for the exception or for the norm, is neither arbitrary nor determined by norms. The free will that finds expression in decision—most clearly in a decision for the exception—“acts in response to the norm without being determined by the norm.” (p. 97) “. . . a free act can be neither arbitrary nor determined. The free act must have some relationship to norms, or else it would be arbitrary.” (p. 127) The sovereign will responds freely but not arbitrarily to the norm, in the same way that the artist responds to artistic conventions and precedents: “A conversation is a reciprocal series of responsive surprises. The work of aesthetic creation is exactly the same. It is always a new beginning, but one that is responsive to what has come before. Absent the element of response, it would be arbitrary.” (p. 128) Freedom involves the interaction of reason and will: “Neither reason nor will alone but the interaction of both explains the human condition – including politics. Behind this concept of the sovereign is an idea of freedom of the will in its political form. But for the exception, we might be well ordered but not free.” (p. 53) Elsewhere, Kahn minimizes the role of reason: “A politics of the exception is one that relies on revelation and faith rather than argument and reason.” (p. 157) But it seems that for Kahn, reason does play some role in the free decision insofar as it is negotiated and synthesized with human commitments, such as love and faith.

Kahn eliminates from his political theology the idea of an arbitrary sovereign will. Contrary to Kahn, it seems to me that the actual or *potential* manifestation of sovereign arbitrariness is integral to revolutions and other constitutional moments. The *liminal* experience of arrest of time in the moment of decision implies the collapse of all *long-term* commitments and attachments, such as faith and love, which according to Kahn guide the free, non-arbitrary decision. If *liminal* experiences involve the suspension of reason *as well as* of faith and love, decision becomes essentially arbitrary. In its extremity, the idea of temporal presence implies that any decision is as good as another because there are no enduring criteria for decisions to satisfy. Neither reason nor faith sets a standard. Sexuality provides the supreme metaphor for the arbitrariness and unaccountability generated by temporal presence. The freedom of carnival is the freedom of arbitrariness, not the freedom of artistic creativity which Kahn finds in revolution. Artworks are created within traditions; carnival and revolution imply the arrest of time and the momentary breakdown of tradition. While the complete arrest of time and suspension of reason and faith can occur, if ever, only in very intense *liminal* experiences, the potential and aspiration for arbitrariness are inherent in *liminality*.

Furthermore, the power of arbitrary decision forms part, perhaps a crucial and inevitable part, of prevalent images of executive power. The image of arbitrariness places highest executive power in a *liminal* position between constituent (lawless) and constituted powers. Rituals, mythologies, legal doctrines, political philosophies, and other media through which sovereignty had always

been and still is represented often accentuate the arbitrary nature of the sovereign decision. The Hobbesian monarch, like the unbridled, lawless primal father in Freud's *Totem and Taboo*, capriciously violates the restrictions imposed on his subjects and devotes his life to voracious enjoyment. The traditional association of sovereignty with sexual promiscuity and perversion expresses the whimsical nature of sovereign power.<sup>27</sup> In two areas where sovereignty comes to the fore—pardon and sacrifice—the arbitrariness of sovereign decision had been often ritually underlined. In different societies, a variety of rules suggested the miraculous, and hence somewhat arbitrary, nature of pardon. In ancient Rome, to take one among many examples, the life of an accused or condemned prisoner was spared if a Vestal virgin saw him by chance when he was brought to trial or to the scaffold.<sup>28</sup> Kahn, following Schmitt, invokes miracle as metaphor for sovereign presence, but does not acknowledge the arbitrariness of the will that finds expression in miracles. I believe that the pardoning power retains today this component of sacred arbitrariness.

The arbitrariness of pardon is preceded by corresponding arbitrariness in the process of singling out the sacrificial victim. According to Girard, for an effective, purifying sacrifice, the choice of the sacrificial victim must be arbitrary. There are constraints on the selection of the victim, but its final designation must be felt, if not consciously thought, to be arbitrary.<sup>29</sup> The fate of Agamben's *homo sacer* was decided by the arbitrary whim of Roman citizens.<sup>30</sup> In different societies, sovereign kings could be distinguished from ordinary mortals by a license to perform acts of arbitrary violence, a license which was often ritually exhibited and asserted.<sup>31</sup> Modern arch-murderers such as Hitler and Stalin pushed the inherent arbitrariness of the sovereign power of life and death to extremes. There can be different explanations for the political display of arbitrary violence and, more importantly, for the place that sovereign

<sup>27</sup> On sexual prowess as metaphor for imperial power, see CAROLINE VOUT, *POWER AND EROTICISM IN IMPERIAL ROME* (Cambridge University Press 2007). The libertine literature of the 17th and 18th centuries conjured up sexual exploits of Europe's sovereigns and dignitaries. Democratization can be seen as the process through which the people became sovereign by appropriating the aristocratic right to sexual promiscuity. On sexual freedom and sovereignty see, Lior Barshack, *The Sovereignty of Pleasure: Sexual and Political Freedom in the Operas of Mozart and Da Ponte*, 20 *LAW & LIT.* 47 (2008).

<sup>28</sup> PLUTARCH, *Numa in 1 PLUTARCH'S LIVES* 305, at 343 (Bernadotte Perrin trans., Harvard University Press 1967) (1914).

<sup>29</sup> GIRARD, *VIOLENCE AND THE SACRED* (Johns Hopkins 1977); *Generative Scapegoating*, in *VIOLENT ORIGINS* 73 (R. G. Hamerton-Kelly ed., Stanford 1987). For an account of political sacrifice that is based on Girard's theory, see Carolyn Marvin & David W. Ingle, *Blood Sacrifice and the Nation: Revisiting Civil Religion*, 64 *J. AM. ACAD. RELIGION* 767–80 (1996).

<sup>30</sup> GIORGIO AGAMBEN, *HOMO SACER* (Stanford University Press 1998).

<sup>31</sup> Ray's work on Buganda kingship offers one among numerous examples: During the enthronement of the Buganda king "[T]wo men were arbitrarily seized and brought before the king. The king wounded one of them slightly with his hunting spear. This man was called the 'fowl,' and he was then taken away and put to death. Another human 'fowl' was wounded by the king and killed at the conclusion of the installation ceremonies. . . . [T]he killing of the second human 'fowl' is followed by a series of subsequent kukuza murders, all of which are said to 'invigorate' and 'confirm' the king in his kingdom." [BENJAMIN RAY, *Death, Kingship, and Royal Ancestors in Buganda*, in *RELIGIOUS ENCOUNTERS WITH DEATH* 56, 60–61 (Frank E. Reynolds & Earle H. Waugh eds., Pennsylvania State University Press 1977)]. On the king's arbitrary power of life and death see also RAY, *MYTH, RITUAL, AND KINGSHIP IN BUGANDA* 108, 168 (Oxford University Press 1991).

arbitrariness occupies in our imagination. It seems that through the representation of sovereign arbitrariness the human order affirms that it had colonized and integrated within itself the arbitrariness and ferocity of nature. The human, political order asserts that its authority originates in a prepolitical undomesticated violence, and that its hold over that violence is ongoing and exclusive. It attempts to confirm beyond doubt that the constitutional order is not challenged by persistent unintegrated and undomesticated forces.

By way of conclusion, it should be noted that Kahn does in fact briefly refer to the view of revolution as an instance of negativity, emptiness, destructiveness, and arbitrariness. He does so when he summarizes the counterrevolutionary tradition's take on revolution as an expression of man's sinful nature. Kahn writes:

If revolution claims to be an experience of authenticity, then counterrevolutionary response is that such an experience cannot bear the weight of man's sinful nature. On this view, the experience of revolutionary authenticity is really one of sin – of pride – because without God man cannot overcome his fallen condition. The belief in the possibility of revolutionary self-creation is not just likely to lead to evil acts, it is the very nature of evil. Thinking ourselves the embodiment of the authentic voice of the people, we will find ourselves pursuing not the virtue of charity but the vice of terror. (p. 138)

Kahn's reference to the counterrevolutionary tradition constitutes in itself an answer to much of what I have said. It leaves the reader with a minor complaint, namely, that Kahn rids himself too easily of engagement with the substantial arguments of the counterrevolutionary view of revolution, and with modern versions of that view (such as psychoanalysis). Counterrevolutionary theology holds out a certain promise to us. It offers a basis for a future liberal political theology because it demystifies decision and sacrifice. It makes sense of liberalism's traditional suspicion toward authenticity and liberalism's endorsement of alienation. It invigorates the liberal faith in the law and love for the law.