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CRITICAL MODERNITIES: POLITICS AND LAW BEYOND THE
LIBERAL IMAGINATION

Transformations of Kinship and the Acceleration of History Thesis

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Departing from Durkheim's assertion of the primacy of public time, I argue that time is manufactured through the legal organization of society in the form of a corporate body. As a corporation, society enjoys fictive immortality, and it is this legal fiction that allows the flow of historical time. The institution of time, and of the corporate structure in general, is made possible through the political triumph over communal aspirations for timelessness, oneness and death: aspirations for an eternal present, to which I refer as the communal body. The passage from a founding, pre-historical experience of timelessness into historical time is accomplished through the construction of a perpetual corporate body in place of a communal body that lacks a temporal dimension. I will argue that the establishment of historical time and of the corporate organization of society necessitates the normative regulation of sexuality. Thus, the relaxation of the traditional structure of historical time and of sexual morality in contemporary society are closely intertwined.

I. TIME, SEXUALITY AND SOCIAL STRUCTURE: INTRODUCING THE THEORETICAL PERSPECTIVE

In the opening shot of Fellini's *Satyricon*, a hesitant, embarrassed camera reveals a wall covered in lewd graffiti of Roman times. The camera silently

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scans juvenile drawings and confessions of eternal love inscribed in stone. The shot induces an anguished experience of time because the graffiti, and the innocent thrills and agonies they betray, are history's leftovers. They can never be integrated into our record of the past, laying bare the abyss that lies between historical memory and time and the ardent subjectivity of the historical subject. In the movie's closing scene — the beginning and end of a piece may be particularly apt for reflection on time — the narrative stops abruptly as the camera turns to survey shattered Roman ruins covered by dilapidated portraits of the protagonists. The poignant experience of time is not generated here by the contrast between Roman grandeur and the state of the ruins. In fact, the ruins testify faithfully to the grandeur that was Rome. But the extravagant whims of these individuals, whom we have come to know intimately, cannot be salvaged from oblivion through enduring monuments, and evade all memorization.

Mythology and art amply document the discrepancy between Eros and historical time.¹ In *Satyricon*, erotic and political episodes alternate, occupying different temporal realms: the a-temporality, or timelessness, of erotic bliss and linear historical time inhabited by political action and record. Eros always remains at odds with the dictates of the calendar, aversive to the burdens of action and expectation which public time imposes. It disrupts and threatens to dissolve the temporal order in which economic and political action are embedded. In order to secure the flow of time, society regiments sexuality through law and morality. I shall argue that here, in society's concern for time, lies the origin of sexual morality. However, as much as the timelessness of sexuality subverts political and economic action, it saves social life from death and stagnation. It cannot be entirely dispelled, but only confined to the dark alcoves of the private sphere and to discrete moments of public life, such as revolutions and carnivals, in which time seems to stand still.

The following discussion looks at the roots of the incongruity — and interdependence — between sexuality and historical time, and at their simultaneous transformation in contemporary society. In order to identify these roots, I will begin by outlining a general conception of social structure, however briefly and schematically. The tension between historical time and

1 Pastoral literature evokes Edenic and paradisiacal realms that are external to historical time and governed by Eros. On the temporality of the pastoral, see ANDREW V. ETTIN, LITERATURE AND THE PASTORAL 141 (1984). In *Remembrance of Things Past* Proust explores the capacity of sensuality to disrupt public time. On "involuntary sensual memories" (Deleuze) in Proust, see GILLES DELEUZE, PROUST AND SIGNS (Richard Howard trans., Univ. of Minn. Press 2004) (1972).

the a-temporality of sexuality can be approached through Victor Turner's distinction between social structure and *communitas*. I will propose an enriched version of Turner's distinction in order to describe the fluctuations in private and social life between stretches of historical time and interludes of timelessness. Time and timelessness correspond to social structure and *communitas* respectively: history flows as long as social structure is intact, that is, until structure dissolves into *communitas*. In the course of *communitas*, the experience of timelessness that is familiar from the intimate sphere invades the social sphere. As we shall see, *communitas* suspends historical time by sexualizing the communal bond: in the course of *communitas* the confinement of sexuality to the private sphere is relaxed.

Part II outlines an account of the legal establishment of social structure and historical time. I shall argue that the law launches historical time by giving society the legal form of a corporate body. One of the defining characteristics of corporate bodies, such as the state and the family, is their fictional immortality: citizens and family members succeed each other but the body corporate retains its identity — its symbols and myths — through the generations. Calendrical time is premised on the cross-generational continuity of corporate identity: its flow is conditioned at any moment by the stability of that identity. The corporate personality of the group constitutes the solid bedrock on which historical change, movement, and repetition can take place. Thus, the passage from the timelessness of *communitas* to social structure and linear history is accomplished through the social endorsement of a corporate form. The "social structure" described by Turner should be understood as a corporate structure.

The passage from *communitas* to structure can be couched in terms of a transformation of society's *communal body* into a *corporate body*. By *communal body*, I refer to the social experience of merger and oneness that occurs in *communitas* as a result of the dissolution of interpersonal boundaries. The proposed notion of the communal body captures the social body at the moment of its most intense sexualization. The sexualization of the social bond precipitates the breakdown of historical time. It is through the social acceptance of law that the social bond is desexualized and historical time set in motion. By implementing standards of individual responsibility and entitlement, the law decrees interpersonal separation and drives the unity that is enacted by the group in the course of *communitas* into an external realm. Expelling social unity outside of the social, in transforms the group's communal body into a corporate body. As long as social structure is intact the group maintains its control over communal aspirations for unity, timelessness and immediacy, which have the upper hand in the course of *communitas*.

If the flow of time rests on the corporate organization of society, the social and public — even official — nature of time becomes apparent. The idea that time is grounded in the public calendar and in the permanence of the cult and symbols associated with the calendar goes back to the beginnings of modern sociology. For Durkheim, time is constituted through the cycles of labor and ritual codified in society's calendar. However, theorists who assert the primacy of public time have generally failed to identify corporate perpetuity as the condition for historical time and as the axis along which linear time unfolds.

In Part III I argue that the institution of historical time as part of social structure is bound up with the construction of a system of kinship. The corporate organization of society, in which historical time is anchored, postulates kinship relations: the corporate group is a kin group since the collective identity of its living and dead members is constructed by reference to shared, real or fictional, ancestors whose authority is accepted by successive generations. Corporate perpetuity consists in the immortality of ancestral authority. Thus, the flow of time depends on the social recognition of the fiction of descent from mythical ancestors whose immortality guarantees historical continuity.

Part IV and Part V look at the correspondence between transformations in the experience of historical time and the relaxation of sexual morality and kinship categories in contemporary society. Social theorists and historians have observed processes of acceleration in sexuality and history, but have rarely traced them to each other. The loosening of the traditional organization of time and of sexual morality reflect the dilution of the group's corporate identity — the marginalization of ancestral authority and the idea of descent — which is no longer taken to dictate a detailed and uniform form of life to all generations, past, present and future. Since the flow of time rests on the fiction of an immortal corporate identity, with the disintegration of corporate perpetuity, the horizons of past and future are largely colonized and engulfed by an ever expanding "eternal present." The a-temporality, immediacy and unbridled presence that characterize *communitas* are increasingly sought and actualized in various forms of *jouissance*. Sexual morality is no longer allowed to desexualize the communal body in the name of ancestral authority by confining sexuality to specified interpersonal relations. Sexuality is no longer harnessed to the goal of securing corporate perpetuity — to the values of reproduction, family, nation or any other enduring institution. Sexual morality seems to be replaced by a morality of consent. These transformations illustrate the interaction between the social institution of time and regulation of sexuality even if, as we shall see, they do not reach the radical conclusion anticipated by various commentators on postmodernity.

II. TOWARD A THEORY OF CORPORATE BODIES

As a result of its failure to recognize corporate immortality as the institutional anchor of historical time, the sociology of time often underestimates law's role in the social construction of time. In this Part, I would like to outline a conception of the corporate organization of society which identifies law as the anchor of historical time. Anthropologists and historians of law have singled out two main features of corporate bodies: immortality and sovereignty. Corporations are immortal because their continuity is not hampered by the deaths of their individual organs. Like any family, the crown — or, in Kantorowicz's terms, the public body of the king — retains its identity across generations and is indifferent to the death of individual kings. As I have argued elsewhere, while Kantorowicz refrains from speculating on the nature of sovereignty, his analysis implies that sovereignty does not reside in the private body of the individual king but in his corporate, public body: the king is obliged to defend and augment the inalienable possessions of the realm — they are not his own — an obligation that receives its clearest expression in the coronation oath.² I would like to outline an enriched notion of corporate bodies, which supplements their classic characterization with the following claims:

The separate corporate personality of the family and the state is associated with the mythical person of their founding ancestors. The examples of the family and state suggest that the corporation is identified with the person of a founding ancestor of a descent group, such as the mythical, heroic founder of a Roman family, the founder of a royal dynasty, or the founding fathers of modern nation states. The symbols and names of descent groups often refer, directly or indirectly, to their real or fictional founding ancestors. The modern state came into being through a gradual appropriation of ancestral/corporate authority. The corporate family's role of postulating origins and stories of descent has been increasingly seized and almost monopolized by the state. It is arguable that the consolidation of civil religion at the expense of the different historical religions, its increased capacity to administer the most important rites of passage in the citizens' life-cycle and render death for the nation beautiful and exemplary, were largely made possible by the political colonization of ancestral authority.

The corporate-ancestral personality of the group is an absent,

² On corporate sovereignty, see Lior Barshack, *Constituent Power as Body: Outline of a Constitutional Theology*, 56(3) U. TORONTO L.J. 185 (2006).

transcendent object of worship. Through its corporate personality — its mythical ancestors and their multiple totemic representations — the group articulates itself for itself. According to Hegel and Durkheim, notwithstanding the differences between their theories of religion, society's self-representation is its object of worship. If the corporation is associated with ancestral figures — and ancestral law — and constitutes the self-representation of the group, it cannot fail to be sacred. Furthermore, corporations, like the gods, are transcendent: they are absent and act through representatives. The religious dimension of political systems and families inheres in their corporate structure. National and domestic totemic symbols designate corporate entities and authorities; civil and domestic religions worship the corporate bodies of the state and the family respectively.

The corporate body originates in the projection of sacredness outside of the group. Corporations come into being through the projection of sacredness from within the social onto a transcendent realm.³ Corporate formation secularizes the social: once sacredness is projected outside the group, a temporal realm of pragmatic interaction can be established. Thus, while the corporate body of the State is a sacred object of civic worship, its sacredness attests to the secularization of everyday politics. When sacredness is *immanent* to the group, ancestral-corporate authority and law are not recognized. Sovereignty then vests in the private body of a divine king, and is neither sanctioned nor constrained by a superimposed ancestral law. Divine kingship may be highly effective in periods of foundation but is hardly consistent with stable and continuous structures of rule. Thus, once foundation has been accomplished, the sacredness of divine kingship is projected onto the newly founded ancestral-corporate body.⁴ From this moment onwards, sovereignty vests in the corporate, as opposed to the private, body of the king, in the dynasty and the constitution. The king is seen as an ordinary mortal, an organ of a sovereign corporate order and his rights as grounded in ancestral law, rather than in personal charisma.

3 Contractarian foundation narratives, such as Hobbes's and Rousseau's, according to which the state originates in the voluntary transfer of natural rights and freedoms to the sovereign, capture the process of projection on which social structure is premised. As Hobbes's account suggests, the founding projection is not a single event but a constant process of refoundation of the polis by its individual members.

4 The pattern of evolution of law-bound authority out of the lawless, charismatic authority exercised in transitional periods is indicated by ample historical and anthropological evidence. For a classical analysis of a number of examples, see LUC DE HEUSCH, *Pour une dialectique de la sacralité du pouvoir*, in *ECRITS SUR LA ROYAUTE SACREE* 215 (1987).

It is the sacred communal body that is projected outside the group and transformed into its corporate body. By the notion of the *communal body*, I refer to the group as a simple, inarticulate, immanent unity, generated through the dissolution of interpersonal boundaries. The communal body is the sacred fusion of group members, which occurs in rites of passage, carnivals, natural disasters, fascist régimes, wars, and political rituals such as revolutions, referenda and elections. During these episodes, the group, permeated by its unity, enacts sovereignty. While it is doubtful whether the communal body, as the enactment of total, formless unity, can be fully materialized, it designates a powerful, idealized pole towards which the group is constantly drawn, and which it realizes in varying degrees of intensity. The concept of social structure and the corporate body, too, refers to the group as a single, sacred, collective body, but one that dwells outside the social.

The projection of sacred communal fusion outside of the group and its transformation into a transcendent corporate body allow for an advanced degree of interpersonal separation and individual autonomy within the group and for the emergence of a *temporal*, secular sphere of interaction. It amounts to a social acceptance of division and absence, plurality and autonomy. The presence of communal unity cannot be tolerated for long because it thwarts economic and productive activity, which assumes an advanced degree of separation and autonomy, and because of its tendency to bring about lawless violence. In order to keep the communal body away from the group, numerous divisions and subdivisions — between groups, classes, spheres of interaction, branches of government, individuals — are enforced by the law. Through the implementation of individual rights and duties, the law checks the expansionist aspirations of the communal body. Similarly, the principal purpose of the constitutional separation of powers is the expulsion of sacred omnipotence — of the collective body, or constituent power — outside of the group.

*The corporate body and the communal body correspond to social structure and *communitas* respectively.* In earlier work, I proposed to read into Turner's distinction between social structure and *communitas* two sub-distinctions which Turner himself did not consider.⁵ The first is the basic psychoanalytic distinction between relations of mutual recognition

5 For more elaborate accounts of the proposed theory of social structure and the corporate body, see Lior Barshack, *The Communal Body, the Clerical Body and the Corporate Body: An Anthropological Reading of the Gregorian Reform*, in *SACRED AND SECULAR IN MEDIEVAL AND EARLY MODERN CULTURES: NEW ESSAYS* (Lawrence Besserman ed., 2005). On the distinction between structure and *communitas*, the *locus classicus* is VICTOR TURNER, *THE RITUAL PROCESS* (1971).

among separate individuals and relations of violent fusion.⁶ Enhanced interpersonal separation is characteristic of social structure, violent fusion — of *communitas*. Another distinction that can be read into Turner's dichotomy is that between absence and presence. Social structure can be seen as a state of absence, *communitas* — as one of presence. The combination of these two characterizations entails an account of *communitas* as *presence of violent fusion* — namely, as a communal body — and an account of social structure as the *absence of fusion*, that is, as a corporate structure.

The distinction between social structure and *communitas* corresponds, then, to the distinction between corporate and communal bodies. During *communitas*, the group enacts its communal body by dissolving interpersonal boundaries, whereas in the course of social structure, the group's collective body is projected, transformed into a corporate body, and worshiped from afar by separate and autonomous individuals. Interaction in social structures takes place between separate individuals and is mediated by their differentiated normative social roles. Structures place their individual members in a network of categories and boundaries through which individual identities are defined, and which vanish during *communitas*.

During *communitas*, every individual participates in the communal body and is thereby consecrated. Absence and promise give way to excess and immediacy. No boundaries are recognized between self and other, life and death, sacred and profane, or between different spheres of interaction such as family, civil society and state. Social stratification, legal mediation and conflicts of status and interest, which in social structure enhance individual autonomy and the alienation of the subject from his own and other selves, give way to an experience of universal twinship. The personal self expands and coincides with the collective self. The union of the individual and the communal body is a sexual relation, perhaps the most total and uninhibited. It leaves no room for the competing demands for individual commitment made by the private sphere. Interpersonal commitments, which buttress individual identity and autonomy, dissolve as a result of the expansion of

6 In Melanie Klein's terms, symbiotic object relations among group members reenact primary relations of violent fusion with the maternal body. For Fromm's account of authoritarianism as a state of violent communal fusion, see, for example, ERICH FROMM, *ESCAPE FROM FREEDOM* 141 (Farrar & Rinehart 1941) (1941); ERICH FROMM, *MAN FOR HIMSELF* 151 (Fawcett 1947) (1947). According to Fromm, the weakly individuated self seeks empowerment simultaneously through fusion with powerful figures and through assertion of violence, whether as the perpetrator of violence or as a victim who is empowered by becoming a passive extension of violent aggressors.

the communal body. The communal body drains interpersonal attachments of the libido which sustains them and which now fuels a boundless, ecstatic communal bond.⁷ Totalitarian regimes are aversive to the couple because it detracts from the libidinal investment of the individual in the communal bond. The propagation of family values by such regimes conceals a general animosity to sexuality, within marriage or without, that is due to the plurality and conflict of loyalties sexuality enhances.

In the course of *communitas*, the group is pervaded by constituent, seemingly boundless power and claims freedom from superimposed laws and constraints. *Communitas* is a lawless form of interaction: the normative system that structures everyday life is in the course of *communitas* suspended, challenged, and sometimes modified. Fundamental interdictions are violated and law-bound authority, rational or traditional in Weber's terms, is replaced by charismatic leadership devoid of a constitutional sanction. In order to elucidate the relationship between structure, *communitas* and the law, I will sketch a rough and incomplete distinction between different categories of *communitas*. The first category comprises official state rituals and ceremonies, such as independence and memorial days, gratuitous wars and a variety of constitutional, parliamentary, judicial and administrative proceedings. These tame instances of *communitas* are fully integrated into social structure and consolidate structure by reinforcing the feeling of community challenged by the clashes of individual and sectarian interests that characterize everyday social life. The second category consists of popular, mildly anarchic rather than official rituals, which often involve harmless illegality. In contemporary society, these include rock concerts, the love parades of recent decades, Olympic games, and ecstatic rituals of popular religion. Like official rituals, the more popular and unruly ones reinforce structure by releasing anti-structural and anti-hegemonic aspirations in a generally peaceful manner. The third category comprises breakdowns of structure that are precipitated by external causes, such as natural disasters and unprovoked wars. The fourth category refers to suspensions of social structure that are intended to reform structure, such as revolutions and civil wars, rather than challenge the existing order in a way that eventually consolidates it. Finally, the fifth category covers the most extreme instances of *communitas*. These are neither meant to suspend

7 I construe Freud's remarks in the postscript to Group Psychology as suggesting that normative sexuality is premised on the desexualization of the social bond. See SIGMUND FREUD, GROUP PSYCHOLOGY AND THE ANALYSIS OF THE EGO 67, 140 (James Strachey et al. eds., James Strachey et al. trans., Hogarth Press 1955) (1921).

nor to reform structure, but to perpetuate lawless *communitas* and eradicate structure once and for all. The Nazi regime provides an obvious and extreme example of this category of *communitas*.⁸

Historical time is instituted through the corporate organization of society. The presence of the communal body during *communitas* produces a temporal experience to which anthropologists refer as *mythical time*. The term is revealingly inapposite since *communitas* allows for neither mythology nor time. Mythical time designates the a-temporal experience of transitional moments, not the ordinary historical temporality that unfolds between the mythical time of origins and the mythical construct of an ever-postponed salvation. As much as synchronic relations among social positions in social structure give rise to the diachronic, historical dimension of social life, the presence of the communal body in *communitas* generates an a-temporal experience of an eternal present. Mythical time is carefree, ignorant of past and future, a permanent immediacy released from the burdens of action and expectation. The exuberance of the founding episode coincides here and now with the promised bliss of salvation.

Together with the burdens of historical time, *communitas* repudiates myth, as a superior realm to which the living are subordinate. Myth remains in force only as long as the corporate order — social structure — is intact. Then it provides the group with prototypical representations of its absent corporate body and story of foundation. History is launched in the passage from *communitas* to social structure through the relegation of founding events and figures to mythical memory and representation. Sharing a mythology indicates membership in a single corporate group, since myth postulates a collective identity by means of reference to common ancestors and founding episodes. It constitutes a super-narrative on which the other narratives that can be formed in social structure — historical, biographical and literary — are modeled, consolidating and perpetuating absence by seducing the subject to rest content with the pleasures of fiction. Through myth, ancestral/corporate authority exercises its sovereignty over the present and leads society toward a promised future. Myth sets history in motion by infusing individual actors with a historical consciousness that prescribes individual and collective goals. History stretches between, and is driven by, the meta-historical poles posited by myth: the founding moment in which

⁸ For this distinction between different types of *communitas*, see Lior Barshack, *Democratic Citizenship According to the Supreme Court*, 32 MISHPATIM 217, 234 (2001) (Hebrew).

the ideals to be unavailingly pursued by society were set, and the moment of final redemption in which they will be fully realized.

The corporate structure as a legal order. In the passage from *communitas* to social structure, from divine to constitutional kingship, the law steps forward. The group secularizes and structures itself by transforming its sacred communal body into a superimposed, sacred ancestral law. The law is generally conceived as prescribed by the corporate/ancestral authority of the group, and hence withers away in the course of *communitas* when the corporate body dissolves into a communal body.⁹ Law-giving is the predominant function of corporate/ancestral authority: the more transcendent an authority is, the more its function is reduced to that of law-giving.

The corporate structure begins to crystallize with the recognition of law and persists by its enforcement. Legal categories divide society into independent institutions and alienated groups and individuals in order to prevent it from embodying its own unity, which finds refuge in the corporate realm. Corporate structures are premised on the complementary principles of separation of powers and rule of law: separation of powers guarantees the absence of ultimate, constituent power and the consequent subjection of all living members of the corporate group to the rule of a superimposed ancestral law. Insofar as the law divides the group, it also becomes the source of its unity. As the agent of division, the law functions as a common reference for the different segments of social structure. It is in relation to the law, for example, that the different branches of government are defined — one formulates the law, another interprets it, the third executes it — and thus it is in the realm of law that the unity behind the separation of powers resides. Furthermore, the unity of a corporate group resides in the unity of the law because the group's corporate-ancestral authority manifests itself primarily through its laws.¹⁰ Contrary to Schmitt's view, the law constitutes

9 According to Fortes, "ancestors are projected as figures of authority to whom powers of life and death are attributed — judicial figures . . . rather than bountiful deities." Meyer Fortes, *An Introductory Commentary*, in *ANCESTORS* 1, 14 (William H. Newell ed., 1976).

10 The function of representing the unity of the group, and its externality to the group, is performed by legal symbols of corporate-ancestral authority, such as the Crown, the Seal and the Constitution. Grey describes the totemic status of the constitutional text in America as follows: "Virtually from the moment of its ratification, Americans have treated the United States Constitution not only as a legal instrument but also as a sacred symbol. Along with the flag, it is one of the totems of our tribe." Thomas C. Grey, *The Constitution as Scripture*, 37 *STAN. L. REV.* 1, 17 (1984).

the unity of the group to which it applies, rather than being freely endorsed by a pre-existing sovereign group.

III. THE CORPORATE STRUCTURE AND THE INSTITUTION OF TIME

A. The Religious, Legal and Social Realms as Sites of Distinct Temporal Experiences

The preceding account of corporate bodies suggests that the flow of historical time is sustained by the corporate organization of society. The corporate and communal bodies, I have argued, are modes of social existence that give rise to historical and mythical time respectively. With the founding transformation of the communal body into a corporate structure, society institutes historical time and embraces the burdens of temporal finitude, the toils of living and dying. The proposed view of corporate bodies as originating in the projection of communal oneness outside the group entails a distinction between three temporal realms into which social structures are divided: the religious realm of projected, sacred *timelessness*, the social spheres of production and reproduction, and the legal-political realm of fictional corporate *perpetuity*.

First, there is the realm of religion to which sacredness is relegated with the inauguration of historical time. While in *communitas*, timelessness pervades the social, the spheres of pragmatic everyday action that form part of social structure are founded through the confinement of the sacred and the timeless to enclosed pockets of sanctity. Timelessness is relegated to ritual and myth: to the *liminal* phase of civic and religious rituals and to the mythical realms of pre-historical origins and post-historical salvation, which bracket historical time. The a-temporality of mythical time gives way to mythical memory: the memory of the founding timelessness that makes up historical consciousness and propels the unfolding of history, leading humans forward in time.

The second mode of temporal experience in social structure is located in spheres of profane, everyday social action. In these spheres, individual members of society struggle to meet socially defined needs in socially prescribed ways. Insofar as economic and administrative action is prescribed by the norms of social structure, its temporal structure is that of normative repetition. While governed by established concepts and categories of social structure, economic and political action is at the same time galvanized by the freedom, anonymity and utter subjectivity of *communitas*, in a way that

introduces unpredictability into social life.¹¹ The spheres of everyday social action combine renewal and repetition, production and reproduction. These spheres come into being once society is severed from its sacred oneness in the passage from *communitas* to structure. No longer present, the group's unity — now its Other — becomes the subject of collective representations. The collective images of projected oneness form the third temporal realm: the realm of political representation of an absent unity, in whose name power is exercised. Between the timeless and the ephemeral, the sacred and the quotidian, lies the legal-political realm of fictional corporate immortality, of *Roma Aeterna*. It consists of spectacles of an everlasting corporate identity: of the nation's founders and eternal sovereignty.

The legal-political realm of eternal corporate sovereignty interacts with the realms of profane social action and of sacred timelessness, which do not interact with each other directly. It separates and then mediates between the social and the sacred, the multitude and its absent unity.¹² In civic rituals, legal-political perpetuity grounds itself in the timelessness of the sacred. The everlasting vestal flame illustrates how corporate perpetuity is produced from the a-temporality of the sacred. Through the flame that must never be extinguished, sacred timelessness is magically translated into eternity, into time that can be occupied by human action.¹³ Another illustration is provided by collective dynastic shrines and the pantheons of modern nation

11 Even if from a Freudian perspective, and *insofar as the operations of the drives are concerned*, the moment of *communitas* appears as the culmination of repetition.

12 Like everyday social action, the corporate body extends in time, yet like the sacred communal body, it knows no change. Hornung captures the intermediate position of ancestral (corporate) authority between repetition and timelessness:

For the Egyptians death did not mean a step out of time into eternity. The deceased remained within time; as noted already, they experienced new lifetimes in the underworld and thereby participated in the daily orbit of the sun, a temporal and spatial link between this life and the hereafter. And yet by entering into the afterlife they also enjoyed a divine existence in which different temporal standards or guidelines applied. From this divine perspective, an *overview* of time extending in many directions was possible; such an overview encompassed the past as well as the future.

ERIK HORNUNG, *Time and Eternity*, in *IDEA INTO IMAGE: ESSAYS ON ANCIENT EGYPTIAN THOUGHT* 57, 66 (Elizabeth Bredeck trans., Timken Publishers 1992) (1989) (emphasis added).

13 In the *Fasti*, Ovid perceptively associated the eternity of the vestal flame with that of the Emperor — not the immortality of an Augustus but of imperial authority, the perpetuity of the body corporate. See OVID, *FASTI* 151 (James George Frazer trans., Harvard Univ. Press 1996) (III.421): "Over the eternal fire the divinity of Caesar, no less eternal, doth preside: the pledges of empire thou seest side by side."

states. Situated between timelessness and change, between the hollow oneness of death and the plurality of successive generations, they keep apart the sacred and the temporal while holding them together as complementary realms in a single social structure.

Much as political perpetuity grounds itself in the timelessness of the sacred, it interacts with social life, orienting everyday action through ancestral law and myth. History consists in "repetition of the ancestral,"¹⁴ in a perpetual reenactment of divinely pre-ordained examples. Ancestral law is incessantly cited and recited, individual life-stories untiringly reproduce exemplary mythical narratives.¹⁵ The historicity of action consists not merely in being conditioned by unique historical circumstances, but at the same time in staging a mythical narrative which is regarded as binding on all generations — a narrative that is recognized as descending from the past and as forming the biography of the corporate subject. Myth provides everyday action with reason, setting goals to be pursued within time. By grounding action and chaining the subject to a regime of fiction and absence, myth continually regenerates time out of timelessness.¹⁶

The constancy of the group's corporate identity sustains the flow of calendrical time. Myth, law, the built monuments of the political center, and other instances of the immortal corporate body, form the bedrock of historical repetition and change. Claiming to have been bequeathed by prehistory and to govern time until an ever-postponed posthistory, they embody permanence within any continuous stretch of history. Time depends at any moment on the stability of the group's corporate structure because it is this structure that checks communal aspirations for presence. The idea that time is grounded in fixed and sacred collective representations is familiar to the sociology of time since its beginnings. For Durkheim, temporality is collective, public and calendrical. It is constituted through a social rhythm that is codified in society's calendar.¹⁷ However, theorists who assert the primacy of public

14 Pierre Nora, *Between Memory and History*, in 1 REALMS OF MEMORY 1 (Pierre Nora ed., 1996).

15 On historical repetition, see MIRCEA ELIADE, *THE MYTH OF THE ETERNAL RETURN: COSMOS AND HISTORY* 34 (Willard R. Trask trans., Harper Torchbooks 1959) (1954); MIRCEA ELIADE, *PATTERNS IN COMPARATIVE RELIGION* 396 (Rosemary Sheed trans., World Publ'g 1958) (1949).

16 Through their mutual resonance, individual actions and life-stories and the mythical biography of the corporate sovereign animate each other. In the vein of Mead's non-metaphysical Hegelianism, ordinary social actions can be considered as moments in the laborious process of Spirit's — the generalized Other's, the corporate subject's — self-actualization, self-disclosure and self-narration.

17 Contrary to Heidegger's position, temporality — care and being-towards-death —

time have generally failed to identify corporate perpetuity as the axis along which historical time unfolds. They should have further recognized that the public institution of time attests to a social achievement, namely, to a collective triumph over communal aspirations for oneness, timelessness and immediacy, which are realized in the course of *communitas*.

In order to institute time, and found the social spheres of everyday pragmatic action, corporate authority and the political center that represents it claim to be not only stable and unchanging but also everlasting. The passage from *communitas* to social structure, from mythical to historical time, would not have been tolerable had it doomed society to temporal finitude. Through corporate immortality, the group as a whole, and indirectly each of its individual organs, embrace time yet transcend temporal finitude. In the passage to social structure, the immortal corporate body comes to stand in the place of the timeless communal body, enabling humans to resist the allure of timelessness — the temptations of immanence and imminence — through the promise of ancestral immortality. Myth, law, enduring monuments and other specters of the immortal corporate body offer humans a vicarious access to the sacred, an access that is indirect, tame and within time.

B. Kinship and Historical Time

In the passage from *communitas* to social structure, the institution of time is intertwined with the organization of kinship relations. The realms of sacred timelessness, legal-political perpetuity and everyday social action are mapped out together with the elemental categories underlying kinship: incest (and tabooed sexuality generally), descent and filiation. The timelessness of the communal body corresponds to the category of forbidden, incestual union. The allure of the communal body, we have seen, is sexual: through its expulsion, society rids itself of sanctity, timelessness and uninhibited sexuality, replacing the *jouissance* of *communitas* with love for corporate-ancestral law and authority.¹⁸ In the a-temporal realm of the

is not built into Dasein's thrownness into the world. It is an institutional achievement. On time as a social institution, see EMILE DURKHEIM, *THE ELEMENTARY FORMS OF RELIGIOUS LIFE* 10 (Karen E. Fields trans., Free Press 1995) (1912); HENRI HUBERT & MARCEL MAUSS, *Étude sommaire de la représentation du temps dans la religion et la magie*, in *MÉLANGES D'HISTOIRE DES RELIGIONS* § V (2d ed. 1929).

18 In one of the letters to Fliess, Freud famously characterized the holy as a repository of the relinquished "liberty to indulge in perversions." SIGMUND FREUD, *THE COMPLETE LETTERS OF SIGMUND FREUD TO WILHELM FLIESS* 252 (Jeffrey Moussaieff Masson ed., Jeffrey Moussaieff Masson trans., 1985). If, as Bion suggested, the group is

sacred, incest is thinkable and even imperative. It is obligatory for the divine king, setting him apart from the rest of humanity.¹⁹ Implicated in incest, gods and divine kings do not inhabit historical time. The reign of the divine king precedes time and anticipates its beginning. The divine king is the mythical ancestor whose descendants will succeed each other within history as organs of an immortal corporate body. With his death and the passage to law-bound kingship, the sacred is projected outside of the social, history is launched and incest is tabooed. The ostentatious propagation of family values on the part of fascist regimes should not conceal their underlying libertinism, as instances of *communitas* and breakdowns of historical time. In Adorno's apt term, the fascist advocacy of family values and sexual morality is "pseudoconservative." It is not an expression of a genuine concern for the stability and prosperity of social structure but an attempt to gain bourgeois respectability and subordinate the family to the communal body.²⁰

While the realm of the sacred corresponds to tabooed sexuality, the repetitiveness and vitality of social action correspond to the plurality of successive generations. Intestate "universal succession," in which the legal status of a deceased person is transferred in its entirety to a specified member of the same descent group, can be regarded as the prototype of historical repetition.²¹ It illustrates how social action in general combines change and

unconsciously identified by group members with the maternal body in the primary and violent state of oneness, then the spell of *communitas* derives from the fantasy of uninhibited, incestual union. W.R. BION, *EXPERIENCES IN GROUPS* 162 (1961).

19 Portrayals of divine kingship rarely neglect the theme of royal incest. According to De-Heusch, for example,

Les Kuba du Zaïre soulignent que le roi est hors clan. Il est projeté au sommet de la société dans une solitude qui évoque celle des sorciers. Dans plusieurs Etats africains le Roi est censé réaliser au moment de son intronisation un acte sacré qui, dans la perspective clanique, est un acte de sorcellerie maléfique, un acte monstrueux: un inceste. Cet acte rituel est manifestement, au niveau de l'Etat, un acte magique de fondation, l'affirmation d'un ordre nouveau fondé sur la négation (partielle) de l'ordre familial ancien avec lequel il faut composer.

DE HEUSCH, *supra* note 4, at 223.

20 On pseudoconservatism, see Adorno's contribution to THEODOR W. ADORNO ET AL., *THE AUTHORITARIAN PERSONALITY* 683-85 (1950).

21 On universal succession, see HENRY SUMNER MAINE, *ANCIENT LAW* 179, 207 (London, J. Murray 1866). Commenting on Maine, Fortes stresses that succession implies social repetition and continuity in the widest sense:

In corporate groups recruited by credentials of filiation or descent, it is easy to see, as Maine explained, how its members can be thought of as replicating and perpetuating their parents and ancestors, as well as in their turn being the source of identical continuity in their offspring . . . the living are thus decreed by custom

repetition. In her remarks on natality in *The Human Condition*, Arendt intuited the analogy between action and birth.²² Arendt stresses action's potential for renewal and novelty: like birth, action is a miracle which kindles humanity's hopes for a better future, expressed in the gospel's words "a child has been born unto us."²³ Arendt understates the repetitive aspect of birth and action generally. It is only the birth of a hero, a divine king, a son of God, to which the gospel's words apply and which amounts to a new beginning. Only the hero is born to unknown parents, outside the sequence of succession, free from inherited burdens and privileges.²⁴ The birth of the hero antedates historical time. Indeed, it marks the beginning of a new calendar.

Finally, the realm of corporate perpetuity corresponds to the category of ancestors, the dead members of the group. The immortal corporate body, we have seen, is personified by ancestral authority. In terms associated with classic British anthropology, corporate perpetuity corresponds to the category of *descent* while the temporality of everyday action to relations of *filiation*. I shall follow a general, basic characterization of descent, according to which "descent refers to a relation mediated by a parent between himself and an ancestor, defined as any genealogical predecessor of the grandparental or earlier generation" whereas "filiation is the relation that exists between a person and his parents only"²⁵ Corporate groups are defined by reference to shared ancestors from whom they derive their identity, unity and immortality: having already died, ancestors are immortal. The world of the ancestors is characteristically depicted as bereft of change and renewal.²⁶ By being static and immortal, ancestors furnish a solid bedrock for succession.

to be, and see themselves to be, their progenitors incarnate

MEYER FORTES, *KINSHIP AND THE SOCIAL ORDER* 305 (1969).

22 HANNAH ARENDT, *THE HUMAN CONDITION* 9, 177 (1958).

23 *Id.* at 247.

24 His destiny may have been determined in the past but he is unaware of it. OTTO RANK, *The Myth of the Birth of the Hero*, in *IN QUEST OF THE HERO* 57 (Robert Segal ed., 1990). On the nebulous pedigrees of divine kings, see also DE HEUSCH, *supra* note 4.

25 Meyer Fortes, *Descent, Filiation and Affinity: A Rejoinder to Dr. Leach*, 59 *MAN* 207 (1959).

26 In *An African Aristocracy*, Kuper notes that the activities of ancestors "are similar to those of the living, but the spirits do not marry or reproduce. It is a static life." HILDA KUPER, *AN AFRICAN ARISTOCRACY* 186 (1947). On the eventlessness of ancestral life, see JEFFREY BURTON RUSSELL, *A HISTORY OF HEAVEN: THE SINGING SILENCE* 57, 81 (1997). Anthropologists have recognized the role of ancestors as representatives of continuous collective existence. *See, e.g.*, MAURICE E.F. BLOCH, *THE WAY WE THINK THEY THINK* 78-79 (1998). My argument has been that ancestors not only represent the durable identity of the group within given temporal horizons

The unrivalled monumentality of funerary architecture, the grandeur of ancestral dwellings, embodies and guarantees corporate perpetuity. Ancestors guard humanity from the spell of timelessness by exhibiting the group's capacity to transcend temporal finitude within historical time. Furthermore, they transmit to the living the love of life and the command to embrace the burdens of time, such as the burden of producing future generations which will bear the ancestors' names and remember them.

A typically perceptive remark of Fortes' lends support to the proposed view of ancestral authority as the anchor of historical time. Ancestors do not preside only over the horizon of the past. As the emblems and guardians of corporate perpetuity, they show the way into the future. Ancestral worship is oriented towards the future because ancestors have a vested interest in reproduction. Fortes writes:

[C]orporate groups . . . are kept in existence by mobilizing the succession of generations regulated by the principle of filiation The dead are . . . thought of as having a stake in the continuity, i.e. in the future persistence of the society to which they belonged in life. In ancestor worship this is accepted as just and natural; it is this that, paradoxical as it may sound, gives ancestor worship a future orientation, rather than, as might superficially be thought to be the case, a fixation on the past.²⁷

The unfolding of time depends on the constant renewal of a mutually-beneficial contract between the generations, according to which ancestral protection of the living is exchanged for obedience and perpetual memorization of the dead on the part of the living.²⁸ The memorization of ancestors combines cooperation between the living and the dead with a social affirmation of the separation between the living and the dead — a collective

but *constitute* time — the past and future occupied by human action — by severing the group from the timelessness of *communitas*.

²⁷ Fortes, *supra* note 9, at 6.

²⁸ I borrow the idea of a contract between the generations from Assmann's reconstruction of Egyptian conceptions of death. According to the ancient Egyptian view,

father and son are interdependent and lend support to one another. The father needs the son to "stand up for him." What is meant is the entire spectrum of activities aimed at restoring the dignity, honor, and social status of the deceased, from revenge on his assassin down to care for his tomb and the preservation of his reputation. The son, for his part, needs the father to speak up for him to the gods and obtain their needed blessing on his activities on earth

JAN ASSMANN, DEATH AND SALVATION IN ANCIENT EGYPT 52 (2005).

repudiation of death and the communal body. At any moment, the flow of time depends on the complementary conditions of separation and cooperation. Thus, ancestors are remembered not only in periodical rituals that suspend and resume time but throughout calendrical time. Names of months invoke founding figures and episodes, and in some cultures many days of the year are dedicated to saints and other ancestors.

The institution of time consists then in the establishment of a certain configuration of intergenerational relations. Humans are introduced to historical time through the recognition that the relationship between generations is not reversible, that is, through elementary hierarchies of kinship. Papageno's role as the embodiment of a lawless and ahistorical state of nature in *The Magic Flute* is established beyond all doubt when he professes a happy ignorance of the identity of his parents. Such ignorance always portends incest, a suspicion confirmed by the first appearances of Papagena in the guise of an old woman. While according to Levi-Strauss the incest barrier conditions access to culture and language,²⁹ it firstly — and more evidently — institutes time by drawing up the line and laying down the hierarchy between generations. Pathological cases of *communitas*, such as the Nazi regime, originate in repudiation of the temporal and normative hierarchy inherent in filiation.³⁰ The temporal and normative relations between successive generations are set up by means of reference to a third party, an immortal ancestral authority which continually regenerates calendrical time and thus establishes the normative and temporal priority of parents over children.³¹ In other words, the normative structure of relations of filiation is premised on notions of descent. Not only the hierarchy but also the reciprocal love between successive generations is mediated by ancestral authority: by the love of corporate bodies, such as love of nation.³² The love

29 CLAUDE LEVI-STRAUSS, *THE ELEMENTARY STRUCTURES OF KINSHIP* 485-96 (rev. ed. 1969).

30 On pathological reversals of temporal and normative intergenerational relations, see JANINE CHASSEGUET SMIRGEL, *THE EGO IDEAL: A PSYCHOANALYTIC ESSAY ON THE MALADY OF THE IDEAL* 15-18 (Paul Borrowes trans., Norton 1984) (1975).

31 Godelier's following statement conveys with particular felicity the interdependence of filiation and descent:

nulle part, dans aucune société, un homme et une femme ne suffisent à eux seuls pour faire un enfant. Ce qu'ils fabriquent ensemble, dans des proportions qui varient de société à société et avec des substances diverses (sperme, sang menstruel, graisse, souffle, etc.), c'est un fœtus mais jamais un enfant humain, complet, viable. D'autres agents doivent pour cela intervenir . . . des défunts, des ancêtres, des esprits, des divinités.

MAURICE GODELIER, *MÉTAMORPHOSES DE LA PARENTÉ* 325 (2004).

32 The corporate body is loved by members of corporate groups as a representation

for one's descent group translates into an active concern for the continuity and plenitude of intergenerational transmission, and into love of individual kinsmen which are taken to embody corporate identity.³³ If interpersonal attachments are mediated by a collective corporate identity, then they are bound to be affected by the erosion of that identity due to processes of acceleration. In the two remaining Parts I turn to consider, in general terms, the interplay between the acceleration of history and that of sexuality. After introducing the acceleration thesis in general, I will sketch some of its possible bearings on contemporary intimacy and sexual morality.

IV. ACCELERATION

The organization of time described in the preceding paragraphs is widely regarded today as obsolete. Sociologists of time observe that the constructs of pre-historical and post-historical time have eroded in contemporary society, as has the sense of cross-generational continuity and repetition. The general notion of acceleration is frequently employed to refer to the unity behind myriad shifts in the organization and experience of time. In the following paragraphs, I shall briefly consider how these shifts affect, or might affect, the realms of mythical time, corporate perpetuity and everyday social action.

The demythologization of beginnings and ends, or the disenchantment of history. It has been often argued that contemporary societies no longer appeal to mythical origins as a source of legitimacy. Society is said to either have overcome its dependence on myth or, as Blumenberg and other authors propose, to have forged a distinctly modern mythology that is

within time of pre-temporal oneness. Love is always *eternal* because its prototypical object — the corporate body — is an immortal object that mediates between human finitude and the timelessness of the communal body. The reciprocal bond of love with corporate-ancestral authority and law chains humans to time and sustains a subjectivity afflicted by the burdens of temporal existence. Communitarian and fascist preachings for political love envisage a total and consuming love for the communal body, an attachment that leaves no room for autonomy, plurality and difference and eventually leads to collective self-destruction. By contrast, republicanism propagates individual love for the corporate body: an attachment to the rule of law, which, however passionate, is conducive to separation and autonomy.

33 On the love for ancestral authority and the corporate body, and its role in mediating interpersonal relations, see Lior Barshack, . . . *that All Members Should Be Loved in the Same Way* . . . , in *RECOGNITION AND POWER IN CONTEMPORARY SOCIAL AND POLITICAL THEORY* (Bert van den Brink & David Owen eds., forthcoming 2007).

not preoccupied with origins.³⁴ Several authors claimed that the mythical construct of a post-historical paradise had also been discarded. According to Koselleck, for example, the blissful end of history is expected today to take place on earth, as a result of human endeavor, rather than involve a passage to a different realm of reality. The thoroughly secular conception of history, to which moderns allegedly subscribe, leaves no room for mythical realms in which everyday action gives way to beatific visions and other experiences of revelation.³⁵

The dilution of corporate identity. If the flow of history depends on the transmission of ancestral law and myth, then the crisis of reproduction — one of the favorite themes of sociology — threatens to undermine, or radically alter, historical time. As a result of the breakdown of transmission, society cannot identify its image in the societies of the past, or project that image onto the distant future.³⁶ As several authors have argued, contemporary temporality is characterized by the shortening of temporal horizons and by the resulting experience of an *extended present*.³⁷ Democracy and the market impoverish the group's corporate, fictionally perpetual identity by replacing structural, objective allocations of political and economic power with an open competition among abstract, insatiable subjects. In Zygmunt Bauman's metaphor, *solid* modernity gives way to an erratic, *liquid* modernity that dissolves traditional life-forms.³⁸ The solidity whose dissolution Bauman laments should be understood as referring to the institutional embodiments of corporate perpetuity. It melts away in a most literal manner: monumental architecture which had always buttressed political claims for perpetuity — and often outlived the political bodies which impressed their image in it — gives way to architectural ideals of lightness, modularity and disposability.³⁹

The death of narrative. Critiques of modernity have often argued that the

34 On myth today, see HANS BLUMENBERG, *WORK ON MYTH* 288 (Robert M. Wallace trans., MIT Press 1985) (1979).

35 REINHART KOSELLECK, *FUTURES PAST: ON THE SEMANTICS OF HISTORICAL TIME* 193, 266 (Keith Tribe trans., Columbia Univ. Press 2004) (1979); HANS BLUMENBERG, *THE LEGITIMACY OF THE MODERN AGE* 86 (Robert M. Wallace trans., MIT Press 1985) (1966).

36 Nora, *supra* note 14, at 12.

37 For a survey of literature, see HELGA NOWOTNY, *TIME: THE MODERN AND POSTMODERN EXPERIENCE* 45 (Neville Plaice trans., Polity Press 1994) (1989).

38 ZYGMUNT BAUMAN, *LIQUID MODERNITY* (2000). On contemporary culture as characterized by frantic and purposeless movement, see also GEORGES BALANDIER, *LE GRAND DÉRANGEMENT* (2005). According to Koselleck's acceleration thesis, the melting away of solidity assumes an ever increased rhythm. On acceleration, see KOSELLECK, *supra* note 35, at 263; Nora, *supra* note 14.

39 On the distaste for monumentality in modern architecture, see, for example,

dilution of transmitted collective identities undermines individual agency. The fragmentation of large-scale narratives in the process of acceleration allegedly results in the erosion of small-scale narratives authored and lived by individuals. Since lived narratives derive from master-narratives and depend on the fictional perpetuity of the latter, with the disintegration of myth, everyday action can hardly be grounded in fixed ethical identities. Furthermore, everyday interaction is less and less governed by objective categories of social structure which traditionally dictated individual roles and self-understandings, and is stimulated instead by anti-structural forces and aspirations. The crumbling of master-narratives and objective normative identities brings into existence a patchwork, anonymous, unencumbered self, increasingly driven by raw desire that is easily manipulated by social "systems." Contemporary sociology offers numerous formulations of this theme. For Bauman, for example, everyday action in liquid modernity is characterized by disengaged transience: a refusal to express any enduring ethical commitment or identity.⁴⁰

Contrary to the position of many, if not most, commentators on the current state of time, the structure of historical time which Koselleck deemed traditional remains largely intact despite the developments just outlined. The notions of mythical time, perpetuity and succession may have become somewhat blurred but continue to shape historical consciousness. Time remains bracketed by visions of mythical origins and future, which sometimes assume a decidedly modern form, such as science fiction. Genetic engineering is expected one day to fulfill the promise of human immortality, a promise that envisages an extra-historical realm of existence.

Like mythical beginnings and ends, corporate perpetuity survives the acceleration of time. While the contemporary Western family appears less and less as an immortal descent group as its temporal horizon is shortened, the nation has largely taken over the function of relating individuals to ancestral authority and law. By virtue of its adamant claim to immortality, the nation

ANTHONY VIDLER, *Transparency*, in *THE ARCHITECTURAL UNCANNY: ESSAYS IN THE MODERN UNHOMELY* 217 (1992).

40 ZYGMUNT BAUMAN, *LIQUID LOVE: ON THE FRAILTY OF HUMAN BONDS* 11-13 (2003). Several literary theorists have traced the death of literary narrative and of the narrating subject to social processes of acceleration. *See, e.g.*, ELIZABETH DEEDS ERMARTH, *SEQUEL TO HISTORY: POSTMODERNISM AND THE CRISIS OF REPRESENTATIONAL TIME* (1992); URSULA K. HEISE, *CHRONOSCHISM: TIME, NARRATIVE AND POSTMODERNISM* (1997). Contemporary trends in dance, music and the visual arts also attest to the disjointment and disintegration effectuated by acceleration.

continues to tame death and celebrate it in public: the withering of collective celebrations of death, recorded by historians such as Aries, has not occurred in the political realm.⁴¹ In fact, the state's claim to perpetuity, trumpeted in the rites and myths of civil religion and backed up by solid bureaucracy and advanced technology, may be more convincing today than ever before. The consolidation of the state's hold over time and over the community may have allowed social structure to contain the processes of acceleration witnessed by recent decades. In other words, the relaxation of repetition and the leeway given to presence and immediacy may have become possible by an enhanced confidence in institutional stability and permanence. But the family too has not renounced all claims to corporate immortality: as I have suggested elsewhere, the state's own fictional perpetuity is structurally dependent upon the family's since the solidity of any corporate body testifies to the simultaneous existence of competing corporate bodies.⁴² Fictional perpetuity remains a constitutive

41 If the fiction of corporate perpetuity has lost some of its symbolic vigor — which in the case of *political* perpetuity is improbable — it nevertheless continues to ground social structures. As Lefort writes, "Numerous signs testify to the persistence of the theologico-political vision of the immortal body." CLAUDE LEFORT, *The Death of Immortality?*, in *DEMOCRACY AND POLITICAL THEORY* 256, 274 (David Macey trans., Univ. of Minn. Press 1988) (1986). Lefort's critique of Arendt proceeds differently from the present argument. While I have claimed that the fiction of corporate perpetuity is a central building block of social structures, Lefort's claim is historical. According to Lefort, we cannot safely identify the death of immortality in the history of the West: neither with the advent of Christianity nor in contemporary society, two eras which, according to Arendt, saw the demise of immortality and the political. *Id.* at 268.

42 Without the division of society into families, the state would not have been able to expel the communal body and secure individual autonomy. The general laws of the state cannot on their own institute separation because they address all group members as identical abstract subjects. It is through the process of individuation, which takes place within the family, that the abstract subjects of the state can differentiate themselves from each other and attain autonomy. The hostility of totalitarian regimes to the family derives from an aversion to autonomy and refusal to relinquish the communal body. In *Democracy in America*, Tocqueville captured the dependence of freedom on the institution of descent:

As long as the spirit of the family lasted, the man who struggled against tyranny was never alone; he found clients around him, hereditary friends, relations. And if he lacked this support, he still felt sustained by his ancestors and animated by his descendants. But when patrimonies are divided, and when in a few years the races intermingle, where does one place the spirit of the family?

ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 300 (Harvey C. Mansfield & Delba Winthrop trans., Univ. of Chi. Press 2000) (1835). In the same way, the autonomy of the individual within the family fold depends on simultaneous membership in the state. Rivalry between corporate spheres and individual affiliation

claim of the family, even if more implicit and indeed more preposterous than ever before.

As proponents of the acceleration thesis have pointed out, the appeal to ancestral examples in modern spheres of everyday action has become less explicit, less immune to scholarly critique and less visible in the small details of everyday life, which indeed undergo accelerated changes. If the state's corporate perpetuity survives acceleration, the corporate identity of society is nevertheless diluted, since no detailed, uniform, fictionally immortal form of life devolves from generation to generation. At the same time, ancestral blessing and approval seem as indispensable as ever. Modern myths and rituals continue to invoke ancestral authorities, called on to legitimize contemporary practices, laws, wars. In the face of acceleration, Western culture is largely dynamized by the challenge of delineating a middle ground between the fantasy of a community unbound by the past and the future, by its ancestors and offspring, and the fundamentalist call for reinstating strict repetition, decreed by a pre-historical moment of revelation.

V. DIRECTIONS FOR FURTHER THOUGHT: THE ACCELERATION OF HISTORY AND TRANSFORMATIONS OF KINSHIP

In light of the interdependence between the institution of time and kinship, transformations that take place today in the private sphere are likely to reflect the acceleration of history. In the following remarks I shall attempt an initial unraveling of this correspondence. The traditional organization of temporality and kinship was premised on the attachment of family members to the fiction of an everlasting ancestral authority and law. While in pre-modern Western society, descent seems to have largely defined the identity of each family, as perceived by its own members and by other families and individuals, it plays an increasingly marginal role in the

to competing corporate groups are necessary for interpersonal separation and consolidate each of the competing corporate spheres *vis-a-vis* communal forces. For a more elaborate statement of this argument, see Lior Barshack, *The Holy Family and the Law*, 18(2) INT'L J.L. POL'Y & FAM. 214, 226 (2004). An analogous argument couched in different theoretical terminology is advanced by Gunther Teubner. For Teubner and other system theorists, freedom consists in the multiplicity of social systems. *See, e.g.*, Gunther Teubner, *In the Blind Spot: The Hybridization of Contracting*, 8 THEORETICAL INQUIRIES L. 51 (2007).

self-understanding of contemporary families and family members.⁴³ The marginalization of descent ties the more evident aspects of the acceleration of history, such as the erosion of intergenerational repetition, the dilution of corporate identity and the emergent sovereignty of the present, to processes of liberalization that occurred in the field of kinship and sexuality, such as the decline of notions of legitimacy, the proliferation of new family forms, and the ethical valorization of sexual pleasure.

The demise of legitimacy If rules of legitimacy are devised to delineate the boundaries of corporate groups, the categories of legitimacy and illegitimacy are relaxed where concern for descent decreases. The profusion of illegitimate births is not unique to contemporary society.⁴⁴ However, the erosion of the category of legitimacy itself characterizes modern kinship relations. Like the freedom — recognized by modern law — of each generation of family members to disperse the family's assets in their entirety, it reflects an indifference to the corporate perpetuity of the family. If the foregoing analysis of the institution of time is correct, the function of legitimacy — and of intestate "universal succession" — is not merely that of demarcating admissibility to the economic advantages that membership in corporate groups confers.⁴⁵ It is rather to secure corporate immortality on which society's organization of time and taming of death are premised.

The decline of the ethical function of the family. Insofar as the moral authority of parents depends on that of ancestors whom they are taken to represent, the devaluation of descent undermines parental authority. Parents are no longer taken to embody an everlasting ethos, which they are obliged to transmit to future generations. In a passing remark, Shorter intuited the link between the family's loss of the status of an everlasting ethical structure and the collapse of parental authority, as well as the novelty of these phenomena.

In the 1960s, relations between the generations started to undergo the same evolution that kinship had earlier undertaken: from function to friendship. In the heyday of the modern nuclear family, the prime burden of transmitting values and attitudes to teenage children fell

43 On the decline of descent in the passage from aristocratic to democratic society, see TOCQUEVILLE, *supra* note 42, at 98-99, 328.

44 On the history of illegitimacy, see, among many other studies, EDWARD SHORTER, *THE MAKING OF THE MODERN FAMILY* (1975); PETER LASLETT, *FAMILY LIFE AND ILLICIT LOVE IN EARLIER GENERATIONS* (1977).

45 For the economic argument, see Duran Bell, *Defining Marriage and Legitimacy*, 38(2) *CURRENT ANTHROPOLOGY* 237, 238 (1997). See also Fortes' critique of Goody's economic interpretation of corporate perpetuity. FORTES, *supra* note 21, at 296-97.

upon the parents, and the rules of the game were learned in the cloistered intimacy of countless evenings about the hearth. But as the post-modern family rushes down upon us, parents are losing their role as educators. The task passes instead to the peers, and with its transfer passes as well a sense of the family as an institution continuing over time, a chain of links across the generations. The parents become friends (an affective relationship), not representatives of the lineage (a functional relationship). If this is so, we are dealing with an unprecedented pattern.⁴⁶

Once the family is emptied of a fixed ethical content that is taken to descend from ancestral authority, new family forms proliferate and become as valuable as traditional ones. The new forms include, for example, parenthood without cohabitation, single parenthood, extended families with more than two parents, and same-sex families.⁴⁷ It seems that no uniform legal structure is allowed to impose itself and constrain biological and biotechnological possibilities. However, in line with the doubt expressed earlier about any radical version of the acceleration thesis, I think that novel family forms, against all odds, broadly retain a fictional corporate structure. None of these new forms can be entirely reduced to relations of contract or filiation. Each is held together by a fiction of a shared ancestral authority that confers upon its fictional descendants the status of family members.⁴⁸

The dissolution of sexual morality. While certain societies of the past enjoyed a degree of sexual freedom that the modern West is yet to attain, hardly any of them relaxed ethical hierarchies among sexual practices and tastes as radically as did contemporary society. The relaxation of sexual morality is implied by the erosion of intergenerational continuity

⁴⁶ SHORTER, *supra* note 44, at 276-77. In *Democracy in America*, Tocqueville described how the ethical authority of the father rested on the traditional complementarity of filiation and descent:

When men live in the remembrance of what has been rather than in the preoccupation with what is, when they worry much more about what their ancestors thought than they seek to think for themselves, the father is the natural and necessary bond between the past and the present, the link at which these two chains end and are joined. In aristocracies the father is therefore not only the political head of the family; he is the organ of tradition, the interpreter of custom, the arbiter of mores.

TOCQUEVILLE, *supra* note 42, at 560.

⁴⁷ On new family forms, see Judith Butler, *Is Kinship Always Already Heterosexual?*, 13.1 DIFFERENCES 14 (2002).

⁴⁸ On the indispensability of the corporate organization of the family, see Barshack, *supra* note 42.

and repetition. Since sexual morality is devised to secure the attachment of individual group members to the corporate body by thwarting the aspiration for an immediate, unbridled enactment of the communal body, it seems to fall into disuse once the fiction of corporate perpetuity, or at least that aspect of corporate perpetuity which depends upon the regulation of sexuality, disappears from the social landscape. In its different instances, sexuality expresses and partly materializes the aspiration for universal and indiscriminate union and for the dissolution of calendrical time, an aspiration whose full realization is hampered by sexual morality. In traditional, solid social structures tabooed sexuality was expelled outside of the group in the form of a projected collective body. The renunciation of the sexualized communal body allowed society to set up corporate perpetuity and historical time.

The primary driving force behind the normative regulation of sexuality is not the will to supremacy of a sexual caste governing the patriarchy, nor reactive forces such as the vengefulness of the ascetic or the universal enjoyment of censure, but the love of time.⁴⁹ Ancestral authority is associated with censorship of sexuality because its very existence, as society's collective representation of its temporal organization, depends on the desexualization of the communal body. The elaborate ecclesiastical prescription of continence — the specification of periods, days and hours appropriate for conjugal sex — produced only the most literal dogmatic formulations of the struggle between sexuality and calendrical time.⁵⁰ There are two basic regulative strategies through which sexual morality hinders the realization of communal presence in order to protect time: the harnessing of sexuality to ethical values, such as reproduction, that consolidate social structure and corporate perpetuity, and the confinement of sexuality to specified social relations.

The first strategy consists in the subordination of sexuality to high ethical ends and its integration into the life-story of the virtuous citizen. Since the virtuous life is devoted to interests of the corporate structure — such as the safety and perpetuity of the body corporate (the state, the family), its material prosperity and the rule of law — the subordination of sexuality to virtue allows corporate perpetuity to prevail over the longing for timelessness inherent in sexuality. The socially carved and esteemed sexuality of the citizen no longer constitutes an external threat to the corporate order but

49 It seems that theories of sexual morality can be conveniently classified according to Nietzsche's distinction between active and reactive forces, however raw the distinction may be in itself.

50 On the development of the canonical theory of continence, see JEAN-LOUIS FLANDRIN, *UN TEMPS POUR EMBRASSER* (1983).

forms a part of it. In the process of its social domestication, sexuality is harnessed to such ends as reproduction, the well-being of the loyal citizen whose pleasure invigorates the body corporate, the cohesion of the family whose solidity counts among the pillars of the state, and romantic love. At first sight, the subordination of sexuality to romantic ideals of love may seem less instrumental to corporate perpetuity because of the otherworldly vein of these ideals. However, the romantic ideal of eternal love affirms historical time. It is premised on the legal fiction of corporate immortality, which not only conditions enduring love by guaranteeing the flow of time, but also serves as the prototype for all purportedly eternal attachments. These and other ethical construals of sexuality always entail a hierarchy between different sexual tastes and practices, determined by the extent to which each is thought to serve the stipulated ethical ends. Ethical systems may vary greatly in the degree of tolerance that they exhibit toward inferior forms of sexuality, but they always insist that some forms are lower than others. In contemporary society, the liberation of sexuality from ethical ends, which derived their validity from their capacity to bolster corporate perpetuity, facilitates the ascent of an eternal present over and above the horizons of past and future.

The second normative strategy, alongside ethical integration, which guards corporate perpetuity against the sexual allure of the communal body, consists in the demarcation of social relations that can be legitimately sexualized. By drawing distinctions between social relations that are sexualized and those that are inhibited, to use Freud's term, sexual morality *desexualizes the communal bond as such and sets up a desexualized public sphere*. The demarcation of sexualized social relations is accomplished through numerous restrictive and permissive concepts and institutions, from incest and adultery to concubinage and prostitution. The ban on sexual relations with kin of certain proximity is the kernel of an entire system of prohibitions over the sexualization of a wide range of social relations, devised to prevent the sexualization of the collective body itself. Freud noted that the sexualization of an inhibited social relationship — for example, between a teacher and a student, an employer and an employee — gives rise to an anxiety of incest.⁵¹ This anxiety may not derive only from the association of the teacher or the employer with a parent figure, but from the threat of the sexualization of the social bond as such, triggered by the conflation between intimate and professional relations, for example. It is not only the image of the sexualized

51 FREUD, *supra* note 7, at 138.

family but that of the communal body which comes to the fore as a result of such conflations.

The claim that traditional sexual morality harnessed sexuality to citizen virtue and drew distinctions between sexualized and inhibited social relations — whether or not strictly tabooed — conforms almost too easily to our enlightened, critical common sense. It is worth pointing out, however, that these two interrelated strategies are fundamental in that the norms which made up past sexual moralities — the multiple definitions of permissible sexual partners, practices and circumstances — can be derived from them. The ultimate purpose of the two normative schemes is the protection of the corporate order and its organization of time through the desexualization of the communal bond. Sociologists of intimacy have observed that contemporary society liberates sexuality from ethical ends such as monogamy. Bauman and Giddens have announced the death of relationships and their substitution by "connections" (Bauman) and "plastic sexuality" (Giddens).⁵² The regulatory strategies of traditional sexual morality seem to give way today to an ethics of connections that commends the sexualization of almost any social relation for the sake of sexual pleasure. Sexual liberation actualizes, to a certain extent, communal aspirations for immediacy, plenitude and oblivion, and privileges the temporal experience of the present over the authority of the past and the future.⁵³ Authors such as Aries and Gorer suggested that the modern denial of death goes hand in hand with sexual liberation. This correspondence, which on the whole was left unreckoned, can be comprehended if the proposed understanding of sexual morality is tenable: since the taming of death rested on the fiction of corporate perpetuity, it becomes impossible once this fiction gives way to a permanent celebration of an intensely sexualized communal body.

In the process of acceleration, sexual ethics was largely replaced by an overarching principle of consent. However, like the corporate organization of historical time and together with that structure, sexual morality could not have entirely evaporated. The acceleration of sexuality and history can be

52 ANTHONY GIDDENS, *THE TRANSFORMATION OF INTIMACY* 58-61 (1992); BAUMAN, *supra* note 40, at 11-13.

53 The correspondence between sexual license and the social experience of timelessness is familiar from revolutions and other instances of *communitas*. Seventeenth and eighteenth century libertinism, for example, is structurally linked to the revolutionary spirit of the age. Libertinism is not so much about the progressive liberation of the future from the yoke of the past as it is hostile to time as such. However, the struggle for progress must pass through interludes of lawless timelessness. For a nuanced general discussion, see PETER NAGY, *LIBERTINAGE ET RÉVOLUTION* (1975).

pushed to the extreme only at the cost of a complete dissolution of structure and an unqualified affirmation of timelessness and death. In *Antigone's Claim*, Judith Butler calls for greater tolerance towards certain forms of incest that were condemned in the past, such as relationships between step brothers and sisters, but stresses that she does not advocate a social acceptance of incest.⁵⁴ As the bar upon which human subjectivity is premised, the persistent taboo of incest, however reduced in scope and severity, secures the corporate organization of time. If the foregoing discussion has any operative import, it is only the very bland and general observation that contrary to reactionary predictions, contemporary social structures manage to contain accelerated time and sexuality within their broadly traditional organization of time. The discrepancy between sexuality and calendrical time evoked in *Satyricon* has not loosened in postmodernity as a result of the alleged triumph of sheer presence, or of the *real*. It continues to afflict and vitalize human subjectivity, caught in the grip of myth and repetition.

54 JUDITH BUTLER, *ANTIGONE'S CLAIM* 33, 69 (2000). For Marcuse's distinction between prohibitions that are "necessary for the perpetuation of the human race in civilization" and those "necessitated by social domination," see HERBERT MARCUSE, *EROS AND CIVILIZATION* 35 (1987).