THE JUSTICE OF THE PIECES:
LIBERALISM, DEMOCRACY, AND THE
GLOBALIZATION OF THE NATION-STATE

ANNA MUDDE

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LIBERALISM, DEMOCRACY, AND THE GLOBALIZATION
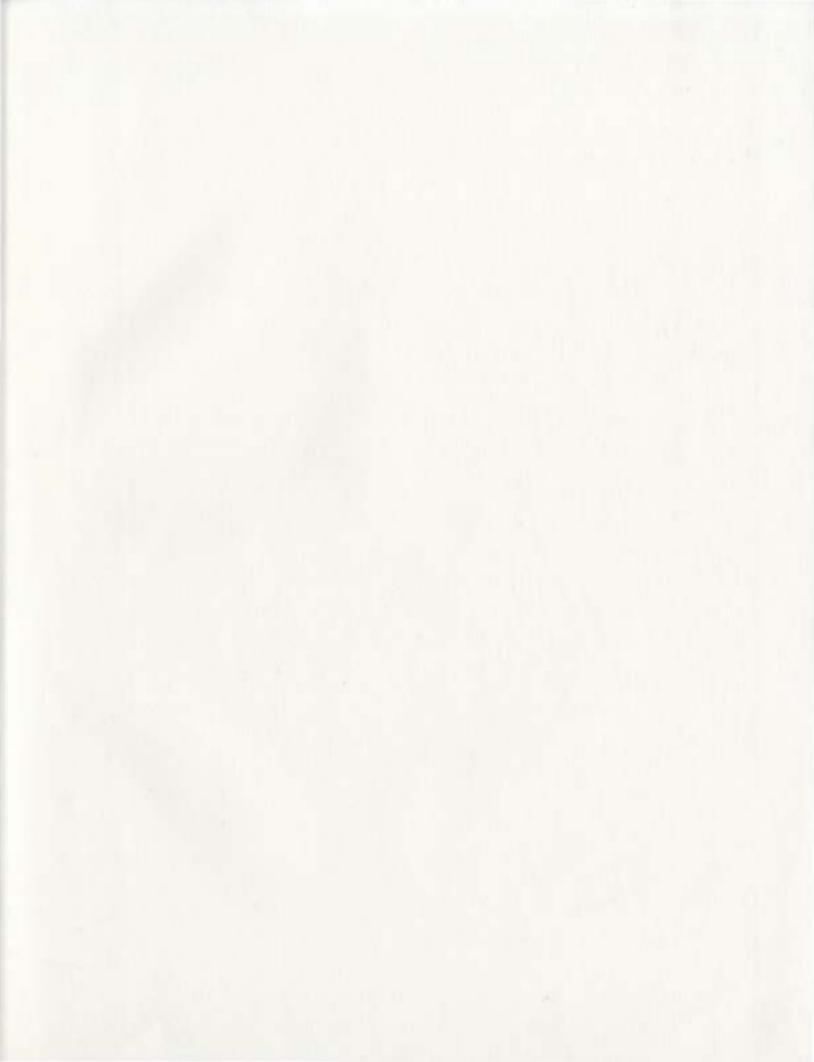OF THE NATION-STATE

by

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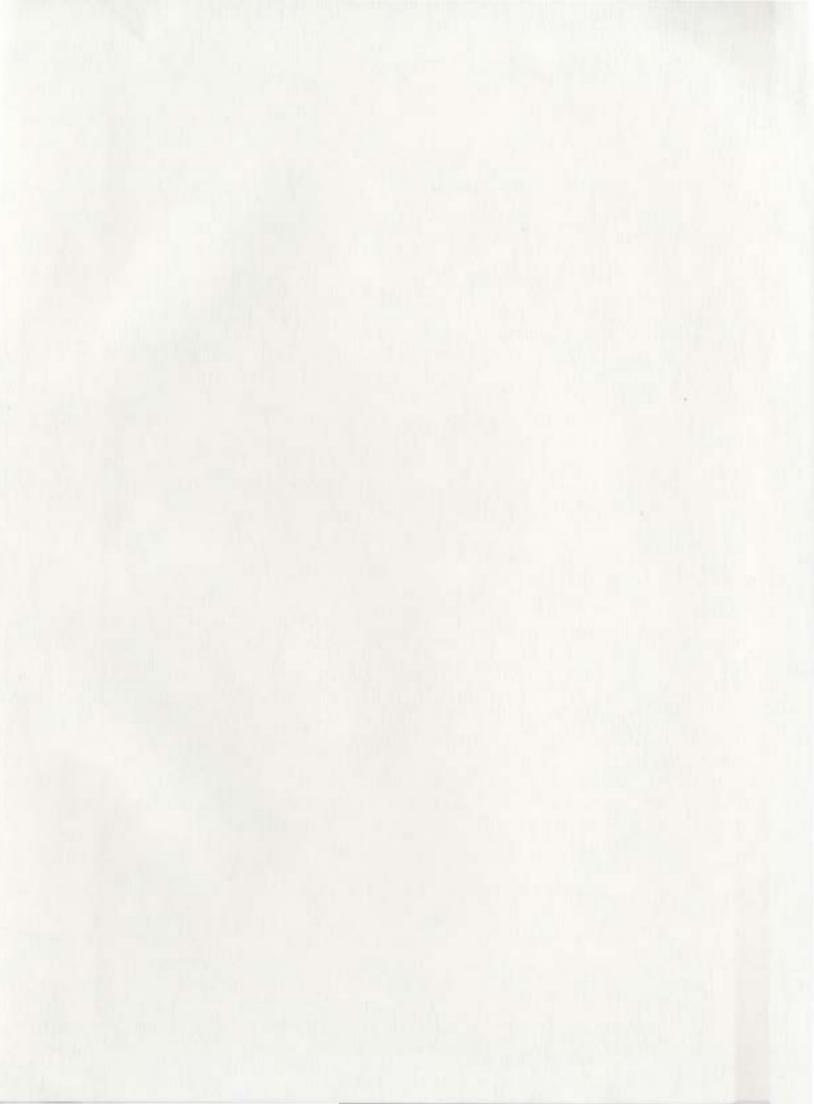A thesis submitted to the

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The Justice of the Pieces:
Liberalism, Democracy, and the Globalization of the Nation-State

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Abstract

For Carl Schmitt, sovereign rule and the nature of sovereign power are conceptions of what makes a state political. The sovereign nation is legitimated by its conceptualized (or real) democratic foundation, but is maintained by the absolutist nature of its sovereign power. Similarly, Hobbesian sovereignty presupposes the notion of state as that body by which sovereign power governs. I argue that the international community is formulated on a Hobbesian conception of nation-state sovereignty, which embodies a contradiction: the political value of nations as (state) individuals, and the liberal value of a common humanity. This contradiction is mirrored in the tension that exists within the state between democracy and liberalism, and is central to Western international political theory and policy. The validity of Hobbesian-based conceptions of nation-state sovereignty are being pulled into question. Nation-states, I argue, are increasingly required to use the sovereign decision in order to justify their sovereignty, as defined by the 'nation'. I attempt to show why the present international system, as a contributor to the forces of liberal globalization, naturally leads us to question state sovereignty, which ensures the continued use of violent sovereign power.

Introduction

Many of the more concrete normative problems in international social and political theory "implicate relatively abstract issues about the significance of sovereignty" (Beitz, 1991: 237). Arguments about human rights, international humanitarian and distributive justice, economic permeability, and so forth, are able to proceed only so far before being faced with the question of the foundations and significance of state sovereignty as a norm of international conduct. The nature of sovereignty and its location in the nation are far from clear in its real-life manifestations. As a highly conceptual entity, sovereignty's resistance to precise definition is magnified when each existing (or previously existing) nation is contrasted with another, when each state's sovereignty is compared to another's. My first goal is to illuminate the theoretical basis on which these manifestations are founded. The persistence of the questions of sovereignty, both theoretical and practical, and their resistance to simple resolution, drive what I present here.

For Thomas Hobbes, sovereignty is the condition of societal relations and is the absolute power of one over others. Sovereign rule is theoretically legitimated, for Hobbes, by its instituted power through the social contract between individuals. Men fear one another and lay down the power of their wills in exchange for sovereign protection; the power of the sovereign results from the (complete) submission of his subjects (Hobbes, *De Cive*: II, 6, II). Sovereign rule protects one subject from another and protects the sovereign domain (the city, the subjects) from external threat. Hobbes' sovereign is "the final

authority within the political community, and his authority is unlimited, either by law or by religion or by conventional morality: he is at once the source of law and above the law" (Berent, 2000: 2). He may do whatever he chooses, for or to the people; the legal sovereign is the "legislative will which is omnipotent, supreme and absolute, issuing positive law overriding all other forms of obligation ... of the citizens" (Lee, 1990:8). Hobbesian sovereignty is predominantly what Carl Schmitt would call political sovereignty.

Schmitt argues that there is a fundamental contradiction between the political and the liberal. Liberalism is unable to be political. Politics requires the establishment of a bordered society in which 'the people' are distinguished from 'the foreigners' (respectively, the 'friends' from the 'enemies').[1] He writes, "[t]he specific political distinction to which political actions and motives can be reduced is that between friend and enemy".[2] Liberalism, by contrast, values universality, the equality of 'humanity', and the private domain; it is, Schmitt concludes, anti-political by nature. Furthermore, this contradiction between the political and the liberal is witnessed in the increased tension between sovereignty through the nation and the 'universalization' of ideas and values through globalization.

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[1] Carl Schmitt, *The Crisis of Parliamentary Democracy* (1923) (Ellen Kennedy, trans.) (Cambridge, MA: MIT Press, 1985), hereafter cited in the text as (Schmitt, CPD: page).
[2] Carl Schmitt, *Concept of the Political* (1932) (George Schwab, trans.) (New Brunswick, N.J.: Rutgers University Press, 1976), hereafter cited in the text as (Schmitt, COP: page).

Post-Hobbesian sovereignty presupposes the notion of state (of a structure which monopolizes the use of legitimate, coercive violence) as that body by which sovereign power governs. Insofar as Hobbes' conception of sovereignty values the individual as fundamental (and equal to others in a state of nature and under sovereign rule) and paves the way for the legal 'state', he is rightly seen as a founder of liberal thought. Insofar as his sovereign holds power by representing the collective will of his subjects, whom he determines, Hobbes' sovereignty may be understood as a (Schmittian) political concept. The nature of Hobbesian sovereignty, which persists in present theories of state and the predominant working models of international relations, is political. It therefore readily defies the liberal value placed on 'humanity'/human equality. Furthermore, it exists at a macro-level in theories of international organization of sovereign states and is played out through claims to 'nationhood'.

This type of sovereignty, Hobbesian sovereignty, is being challenged by the forces of globalization, under the system's thrust toward a neo-liberal humanity of consumers. At the same time, claims to 'nationhood' and nationalist movements (as demonstrative of Schmitt's 'the political') continue to rise. I argue that nation-states, under such a tension, are increasingly required to justify their existence through the exercise of their sovereign power, through the formation of the 'nation'. Furthermore, I argue that the international community is formulated on a Hobbesian conception of nation-state sovereignty.

In the first chapter, "Democracy and Exclusion in Hobbes", I examine Thomas Hobbes' theory of sovereign power: its formation, its end, and its content. I then turn to Carl Schmitt's conception of sovereign rule and the nature of sovereign power as that which makes a state political. I outline his critique of the liberal constitutional state and will present his conclusions about a properly political state entity. In this way, I argue that the 'democracy' he desires is another mode of conceptually representational but practically authoritarian rule, much like Hobbesian sovereignty. Schmitt's 'democracy' is not republican representationalism, but absolutist sovereignty justified by its establishment through the constituent power of the people. I will argue that, although he criticizes Hobbes' slide (back) into liberalism, and although Hobbes says that he favours a monarchical system of rule, the 'democracy' Schmitt writes of is the best way to understand the Hobbesian sovereign state. In other words, I will show that not only is Hobbes' sovereign power properly 'political', as Schmitt would have it, it is also properly political in Schmittian democratic terms, that is, representational, absolutist, and exclusionary.

In the next chapter, "The Nation, The People, and Absolutist Democracy", I establish the nation as a creation of the state and argue that this is always the case, even though the nation, a conceptual embodiment of the people, must always be (pre-philosophically) understood to pre-exist the state. I take up Schmitt's notion of a 'people' and Hobbes' notion of 'the city' to assert the democratic (political) nature of the present conception of the 'nation'. I will characterize the sovereignty of a people through the 'nation' as based

on the sovereignty of the 'civil person' (Hobbes), but as privileging the sovereign power of the group, which must be defined. The sovereign nation is legitimated by its conceptualized (or real) democratic foundation, but is maintained by the absolutist nature of its sovereign power. I will examine the shift from a sovereign man as the representative of the state to a sovereign 'people' as represented by the nation (symbolically) and the leader (practically). I will assert that the nation can and must be understood as a location of the sovereign decision (of inclusion in 'the people' or exclusion from it), and as the creation of the sovereign decision.

The model of international relations imagined in the Western (non-Arabic) world assumes an initial state of nature between nations, then contracted to one another to maintain peace and economic stability for all parties. The basis of this conception presently embodies a contradiction: the political value of nations as (state) individuals, and the liberal value of a common humanity. This contradiction is therefore central to Western international political theory and policy, in which the validity of Hobbesian-based conceptions of nation-state sovereignty are being pulled into question. I argue, in the final chapter, "State Legitimation and the International Order", that this is the case because of the power of globalizing forces[3] together with the incompatibility of politics and liberalism. Nation-states, I will argue, are increasingly required to use the sovereign decision in order to justify their sovereignty, as defined by the 'nation'. The increasing

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[3] I'm thinking here of the market, the United Nations, the World Bank and International Monetary Fund, and so forth.

tension between the thrust of globalization and the pull of the nation is visible in intellectual discourse (i.e., cosmopolitan vs. communitarian citizenship theories), in localized social movements (i.e., various state nationalisms), as well as in state policy (i.e., on immigration, on refugees, on funding for those most vulnerable).

I hope to show why the present international system, as a contributor to the forces of globalization, naturally leads us to question state sovereignty. If we understand the system to be based on a conception of (Hobbesian) sovereign nation-states, and if we understand such states to be legitimated by their (Schmittian) political nature, then it becomes easier to see why their sovereignty might be questioned, given the strength of the 'universalizing' forces of globalization. The ability of the sovereign forces of globalization to assert their rule remains to be seen.

Chapter I

Democracy and Exclusion in Hobbes

Representation means to render something invisible publicly visible and hence present.
     -- Carl Schmitt, *Verfassungslehre*[4]

In his lectures on Thomas Hobbes' *Leviathan*, Carl Schmitt accuses Hobbes of properly describing the theoretical justification for a political state, but negating it by allowing the 'voices' of the citizens to be heard – that is, he accuses him of negating the political with liberal values.[5] He holds that Hobbes' conception of sovereign power is correctly formulated and that Hobbes' preference for a monarchical rule is sound and politically justified. But his 'thoughtfulness', says Schmitt, leads him to accept the liberal value of individualism, and thus parliamentary constitutionalism, by which the political state negates itself.

These lectures were delivered in 1938 and they echo the conception of sovereignty presented in his *Political Theology* (1922).[6] *Political Theology* is a primary reference for those studying Schmitt's theory of sovereignty, but in the period between 1922 and 1938,

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[4] Carl Schmitt. *Verfassungslehre* (Constitutional Theory) (1928) (Berlin: Duncker & Humblot, 1957), hereafter cited in the text as (Schmitt, CT: page).
[5] Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and failure of a political symbol* (1938) (George Schwab and Erna Hilfstein, trans.), (Westport, Conn: Greenwood Press, 1996).

Schmitt's tune had changed significantly. In his *The Crisis of Parliamentary Democracy* (1923) (Schmitt, CPD: 9), he is still concerned with the dismantling and systematic criticism of liberalism and, more specifically, of liberal constitutionalism as a mode of state governance. Liberal constitutionalism, he holds, is anti-political, because it refuses a conception of sovereign rule and sovereign power (the ultimate concrete moment of the political). As Ernst-Wolfgang Böckenförde notes: "the political [for Schmitt] does not consist in a determined sphere of objects, but rather is a public relationship between people, a relationship marked by a specific degree of association or dissociation which can potentially be linked to the distinction between friend and enemy" (Böckenförde, 1998: 38). Schmitt's view of liberal constitutionalism, which I will detail below, asserts that a conception of sovereignty reflective of the political cannot be maintained by liberal forms of government.

For Schmitt, the sovereign is whoever has the capacity to violate the legal order because any absolute form of government, monarchic or democratic, implies a sovereign prince or people who stands above the law (Schmitt, CT: 227).[7] This is in stark contrast to the

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[6] Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (1922) (George Schwab, trans.) (Cambridge, MA: MIT Press, 1985), hereafter cited in the text as (Schmitt, PT: page).

[7] Democracy is, for Schmitt, a mode of legitimating power, in this case, through 'the people'. The power of the people is absolute, conceptually speaking, so long as it is understood to retain sovereignty – the power to decide. Absolute democracy is therefore a system of governance which retains its foundation, legitimation, and sovereignty through the people, but which, practically speaking, is absolutist in the nature of its rule. That is, sovereignty is exercised by a representative of the people, over the people who are its conceptual foundation.

liberal ideal of state as the subjection of state power to the rule of law, which expels,

Schmitt holds, sovereignty from its proper domain, ridding itself of sovereign power

(Cristi, 1998: 191). For Schmitt, constitutional democracy (liberal democracy) is the

combination of two mutually negating components: liberal constitutionalism (rule of

law) and political democracy (absolutism). It is, therefore, a self-undermining, self-

contradictory project (Cristi, 1998: 191). For Schmitt, the absolute normativity of the

liberal rule of law constitutes an untenable fiction of state. Liberalism tries to erase the

political and the state through legal maneuvers and avoidance. In truth, acts of

sovereignty (violations of the legal order by the sovereign) will inevitably occur, but

these are more justifiable when they are conceived as grounded in the constituent power

of the people (Cristi, 1998: 192). By 1923, Schmitt has, it seems, faced the 1919

Weimar Constitution in Germany, and has dealt not only with its liberal overtones, but

also with its formation as the result of a more or less democratic movement of the

German people. What he concludes is that democracy is another way for a state to be

understood as an instance of 'the political'.[8]

Schmitt's "aversion to democracy" is not, however, forfeited by the recognition of

democratic sovereignty; we should not understand him to have undergone a "democratic

conversion" (Cristi, 1998: 191). Instead, we ought to understand him as having his 'back

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[8] For a detailed discussion of the Weimar Constitution and its influence on Schmitt's
thought, see Renato Critsi, "Carl Schmitt on Sovereignty and Constituent Power", in
David Dyzenhaus, ed. *Politics as Law: Carl Schmitt's Critique of Liberalism*. (Durham:
Duke University Press, 1998), pp. 179-195.

against a wall'. The Weimar Constitution could not be ignored, and Schmitt responds by allowing a notion of democratic sovereignty into his theory. But faced with a possible (theoretical) democratic revolution willing to appeal to the constituent power (of the people), Schmitt tries to disarm this power. He ties the doctrine of constituent power (that the power of the public will constitutes the foundation of the state) to the principle of representation to ensure that established sovereignty is able to restrain democracy, rather than enhance it. This, then, is not a liberal democracy (a term which he still strongly opposes as consisting of two mutually negating parts). What he favours in *The Crisis of Parliamentary Democracy* is an "authoritarian version of democracy" (Bielefeldt, 1998: 23) in which he employs the notion of 'representation' to maintain a dictatorial authority within the state. This will be spelled out more carefully in what follows.

In this chapter, I will review, in detail, Thomas Hobbes' theory of sovereign power: its formation, its end, and its content. I will then turn to Schmitt's conception of sovereign rule and the nature of sovereign power as that which makes a state political. I will outline his critique of the liberal constitutional state and will present his conclusions about a properly political state entity. This will include an examination of the necessity of 'political unity' and 'substantive homogeneity', as well as a close reading of what is meant by 'representation'. The 'democracy' he desires is another mode of conceptually representational but practically dictatorial rule. What I want to show is that, although he criticizes Hobbes' slide into liberalism, and although Hobbes says that he favours a

monarchical system of rule, the 'democracy' Schmitt writes of is the best way to understand the Hobbesian sovereign state. In other words, I will show that not only is Hobbes' sovereign power properly 'political', as Schmitt would have it, it is also properly political in Schmittian democratic terms, that is, representational, absolutist, and exclusionary.

1.1   Hobbes

Thomas Hobbes' political work (*Leviathan; De Cive*) is concerned with asking how political order is possible, given the disintegration of traditional justifications for the legitimacy of supreme political power. He is prompted largely by the condition of civil war, in part the result of one political faction's refusal to accept the king's view of legal order as right. In his famous Chapter 13 of the *Leviathan*,[9] Hobbes addresses, with his description of the "state of nature", an imaginary state of emergency, in which sovereign power has failed and societal order has collapsed. His work is, for the most part, the prescription of sovereign mechanisms to preserve state order. In what follows, I detail the formation, end, and power of sovereign rule.

1.1.1   The State of Nature

Hobbes begins with an analysis of the individual because he acknowledges the impossibility of conceiving of society at all without first understanding the nature of its

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[9] Thomas Hobbes, *Leviathan* (1651) (J.C.A. Gaskin, ed.) (Oxford: Oxford University Press, 1996), hereafter cited in the text as (Hobbes, *Levia.*: Part, Chapter, Section).

most fundamental parts. As such, human individuals are first analyzed in abstraction

from any specific social context (King, 1974: 165). Because the condition of man

without society, Hobbes holds, is one of war of "every one against every one" (Hobbes,

Levia.: I, XIV, 4), each person is governed by his[10] own reason. In this state, there is

nothing he cannot use to preserve his life against his enemies (who are just about

everyone) – everyone has the right or liberty (power) to everything, including another's

body. So long as this 'right to everything' continues, there is no security for any one to

live out their full lives. It is from this fact that Hobbes derives the "Fundamental Law of

Nature", namely, "that every man, ought to endeavour peace, as far as he has hope of

obtaining it; and when he cannot obtain it, that he may seek, and use, all helps, and

advantages of war" (Hobbes, *Levia.*: I, XIV, 4). We are thus to understand the first and

fundamental law of nature to read "seek peace and follow it", and its subsidiary branch,

the sum of the right of nature, to read "by all means ... defend [yourself]" (Hobbes,

Levia.: I, XIV, 4).[11] But there is, therefore, a second law of nature, "that a man be

willing, when others are so too, as far-forth, as for peace, and defense of himself he shall

think it necessary, to lay down this right to all things; and be contented with so much

liberty against other men, as he would allow other men against himself" (Hobbes, *Levia.*:

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[10] I will use 'he', 'his', 'him', etc., when discussing the sovereign, his subjects, and
people in general when referring to Hobbes' work because I suspect that he did not mean
for these concepts to be inclusive, although women were clearly subject, for him, to
sovereign rule. My use of exclusive language in this context is deliberate and not a
function of insensitivity.

I, XIV, 5). So long as all men have rights to all things, they live in a condition of war.

Natural law is fulfilled when a man is open to living in peace when possible (when the

right to war remains),[12] and when he is willing to lay down his right to all things to do so.

Lower-order creatures, Hobbes tells us, are naturally "political animals", and can live in

communal societies without the presence of a coercive power. Men, however, cannot

agree to live together without a covenant[13] (Hobbes, *Levia.*: II, XVII, 6-12). As

reasonable creatures, individuals must be understood to be unable, says Hobbes, in

general, to reach consensus on issues where all they have to base their decisions on are

their individual powers of reason. Endless and sometimes destructive disputes should be

expected in this state. It is not in man's nature to live together, and a "common power" is

therefore required to guide them and to act for the common good (Hobbes, *Levia.*: II,

XVII, 12). Hobbes holds that a coercive power is necessary to keep human society

secure. It is therefore necessary that the right of the Sword be possessed by the

man/counsel (sovereign) who has supreme power in the city. The right to punish (and to

coerce by the Sword) is the sovereign right to compel all men to do what the sovereign

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[11] For Hobbes, rights are liberties or 'powers' free of external impediments; laws are 'precepts', or general rules, "found out by nature". Much like liberty and obligation are inconsistent for Hobbes, so too are right and law. Thomas Hobbes, *Leviathan*, I, XIV, 2-3.

[12] Thomas Hobbes, *De Cive*. (1642) (Howard Warrender, ed.) (Oxford: Clarendon Press, 1983): Part II, Chapter 5, Section I. Hereafter cited in the text as (Hobbes, *De Cive*: Part, Chapter, Section).

wills. There is no greater power than the right of the Sword (*De Cive*, II, 6, VI), largely because it gives the power to coerce through the fear of death (as punishment).[14]

Still, individuals ought, even given their penchant for destructive dispute, to be understood to agree that peace and order are preferable modes of living to chaos and strife (Dyzenhaus, 1998: 6). Individual submission to a sovereign power is thus rational, regardless of the content of the sovereign judgment. Sovereign judgment should be expressed through the issuing of positive law. The nature of positive law is the nature of the sovereign; the sovereign is the law and is outside of the law as its creator. Positive law has a determined content and thus, for Hobbes, evades disputes as to what the law is, preserving the peace. He holds that order must be established by the sovereign for individual liberty to be possible (liberty being that freedom given to individuals in ordered society by the 'silence of the law').

Given individual agreement on the value of peace and order, the establishment of a common power is a rational endeavour. To erect such a power, Hobbes holds, it is therefore necessary for men to "confer all their power and strength upon one man, or assembly of men, to bear their person ... and therein to submit their wills, every one to

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[13] Hobbes defines a covenant as a contract in which one of the contractors delivers his contracted portion and trusts the other to perform/deliver his portion at some determinate time afterward. Alternately, both parts may contract now and deliver later (Hobbes, *Levia.*: I, XIV, 10).
[14] Correlative to this is the right to judge because the rights to judge and to execute punishment must be in one location (*De Cive*, II, 6, VIII).

his will, and their judgments, to his judgment" (Hobbes, *Levia.*: II, XVII, 13).[15] What

results is more than consent or concord of the people with the common power, "it is a real

unity of them all, in one and the same person" (Hobbes, *Levia.*: II, XVII, 13).[16] By

joining together in this manner, a commonwealth (*civitas*) is formed – 'the great

Leviathan'. The 'instituted' commonwealth, its essence and definition is, for Hobbes,

> ... one person, of whose acts a great multitude, by mutual covenant with one another,
> have made themselves every one the author, to the end he may use the strength and
> means of them all, as he shall think expedient, for their peace and common defense.[17]

The sovereign is at once the embodiment of the multitude, their creation, and the man

counsel) who rules them. Once one has submitted to the will of a man or counsel, the use

of one's strength and will cannot be denied him (them). Hobbes calls this mutual

submission of strengths and wills to one location a 'union', embodied in the sovereign

person. In a union, where all individual powers have been laid down before the leader,

the leader is sovereign.

1.1.2   The Sovereign

A 'union' or commonwealth formed by 'institution' (social contract) may equally be

called a 'city', a 'civil society', and a 'civil person'. As all rights of individuals have

been laid down before the leader, and as only he who 'stands for the will of all' is to be

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[15] Compare with Hobbes' *De Cive*: II, 5, VI.
[16] Compare with Hobbes' *De Cive*: II, 5, VII.
[17] Hobbes, *Levia.*: I, XVII, 13.

counted, a 'city' is therefore one person (or counsel) whose will is the will of each and every one (Hobbes, *De Cive*: II, 5, IX). The 'political' is thus linked, though not essentially so, to a formation of representation on the part of the sovereign power. It is this individual (or counsel) who can and must use the strength and faculty of each individual to maintain the peace and "common defense". As such, each man/counsel constituting the city (to which each individual will has been subjected) has supreme power, chief command, and dominion – that is, sovereignty. For Hobbes, sovereignty is the power to decide, on matters of law, on matters of right, on matters of justice, and so forth. The power of the sovereign makes the individual afraid to break from and spoil the integrity of the union (Hobbes, *De Cive*: II, 5, VII-VIII). The reason for sovereignty is the peace and protection of the subjects, and whoever has sovereign power has the right to any means to achieve their peace and protection. Sovereignty is thus also the power to decide the mode and content of the societal order. That all rights are contained in one location is the 'essence of sovereignty', and it is the concentration of rights that distinguishes the Hobbesian sovereign from the subjects and from other modes of power. That all rights are contained in the sovereign is necessary: a division of power (right) leads, Hobbes says, to civil war (Hobbes, *Levia.*: 2, XVIII, 16). A power able, by right, to acquire the complete submission of subjects is Hobbes' prescription for sustainable order. The sovereign-subject relation is therefore one of covenant – subjects submit completely to the sovereign and obey him in return for protection, if and when it is needed. The covenant is among (between) subjects, above which the sovereign stands with absolute power, outside of any obligation or covenant, save the laws of nature. In

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the subject's submission consists his obligation and his liberty – there is no obligation, Hobbes holds, without some act of one's own: by saying (vocally or tacitly) "I authorize all his actions", or from the understood intention to submit to the sovereign power for protection. Obligation grows from the fact that without obedience, the city's right is destroyed, as is the city. The sovereign (who is the city) exists, by rights, through the obedience of the subjects, and the sovereign may and should use violent coercion to ensure this. Obligation to the sovereign lasts only so long as his power, by which he is able to protect the subjects, lasts.

The sovereign is, for Hobbes, the ultimate political power. But he is concerned that such a power in the wrong hands would have the opposite of the desired effect – the sovereign is only human, after all. His concern is primarily with the clash of public and private interest, and with the sovereign power to govern only in his own best interest. He concludes that it is in a monarchic rule that this problem is least troublesome: "Now in the monarchy, the private interest is the same with the public" (Hobbes, *Levia.*: 2, XIX, 4). In other governmental forms, public and private interests always conflict with one another. The wealth, power, and prestige of a monarchy, he holds, are only the wealth, strength, and reputation of his subjects. The spiritual nature of the connection between the monarchic sovereign and the people prevents this public/private conflict of interest.

"Sovereignty is the soul of the commonwealth", from which the body (the members) derives its motion (Hobbes, *Levia.*: 2, XXI, 21). The 'office', as Hobbes terms it, or

administration of the city or state, should be thought of as the mind. But the 'command', the city itself, is the soul of the *Leviathan*, the seat of its passions (Hobbes, *De Cive*: II, 6, XIX). The city, which is the sovereign, as composed of the subjects' wills, should ideally be represented by a monarch who, we are to understand, naturally embodies its soul.

The tension in Hobbes' work, however, between individualism and political absolutism, is never fully resolved (Dyzenhaus, 1998: 7). The sovereign is legally and politically unconstrained, subject only to the laws of nature. But these, too, have their content determined by the sovereign. Individual rights (powers), for Hobbes, are always already included in the laws of nature, are derived from the laws of nature, and these are always already included or immanent in sovereign decreed positive law. The sovereign determines how the laws of nature will be played out under his authority. Moreover, we are clearly to understand that Hobbes' sovereign power is the representation of the collective subjects' powers. While subjects must submit, he clearly wants their obligation to be conceived as the result of their will, in the form of sovereign authorization via the social contract. When the sovereign negate a subject's rights, it is the subject himself who has authorized this: "for all that is done by him in virtue of his power, is done by the authority of every subject" (Hobbes, *Levia.*: 2, XXI, 19).

1.2 Schmitt

Carl Schmitt's declared issues with liberalism are many[18]. His arguments include those

holding that liberalism negates the state by holding that human nature is good, thereby

directing itself against state intervention; that it does not deny the state, but holds a

doctrine of individual primacy which leaves it unable to advance a positive theory of state

or discover how to reform the state (Schmitt, COP: 61); that it has attempted to tie the

political to the ethical and then 'subjugate' it to the economic, that is, to hide the political

(Schmitt, COP: 61); that it uses the law as the legitimation of a specific status quo

(particularly of social or economic power); that it is incapable/unwilling to distinguish

between friend and enemy, which is a symptom of political end; that it destroys and is

destroyed by democracy; and that political entities must sometimes demand the sacrifice

of lives, which liberalism is unable to demand and remain consistent with its doctrine of

individualism (Schmitt, COP: 70-71). What these all essentially reduce to, however, are

permutations of a belief about human nature, a belief that simultaneously holds that

liberalism does not reflect this human nature. Much like Hobbes, Schmitt holds that

human beings are self-interested and, at least potentially, dangerous.[19] Unlike Hobbes, he

holds that this makes them instinctively political (Schmitt, COP: 61) – that is, they

understand social interaction to take place on a continuum between friends and enemies,

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[18] See Carl Schmitt, *Concept of the Political* (1932) (George Schwab, trans.) (New
Brunswick, N.J.: Rutgers University Press, 1976), for the most complete exposition of
these.
[19] See above.

the latter of which, in extreme cases, they consider killable, when necessary.[20] For

Schmitt, 'the political'[21] is the realm in which 'friends' and 'enemies' are distinguished; it

is a state of potential conflict. 'The political' distinguishes between concrete (not

abstract) 'friends' and concrete 'enemies'.[22] The enemy, for Schmitt, is not just a partner

in conflict; the enemy is not a private adversary "whom one hates" (Schmitt, COP: 28).

It (they) exists only when there is a potential fight/combat between two collectivities of

people. The enemy is only ever a public enemy – an enemy to a collectivity of people

and therefore public (Schmitt, COP: 28). "The high points of politics are simultaneously

the moments in which the enemy is, in concrete clarity, recognized as the enemy"

(Schmitt, COP: 67). The sovereign decision is the ultimate instance of this recognition

and delineation.

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[20] Since the sphere of the political is determined by the real possibility of an enemy, properly political ideas cannot start, Schmitt argues, from a point of "anthropological optimism" (Schmitt, COP: 64). Any genuine 'political' theory presupposes human nature to be evil – a problematic, dangerous, and dynamic being (Schmitt, COP: 61). "The political is a basic characteristic of human life; politics in this sense *is* destiny; therefore man cannot escape politics" (Strauss, NCOP: 94).

[21] 'The political' is a type of phenomenological description, for Schmitt, the extremes of which are 'friend' and 'enemy'. As explained by Ernst-Wolfgang Böckenförde, the criterion of 'the political', as a phenomenon, is that is it can (possibly) lead to a concrete antagonism between 'friend' and 'enemy', which includes a readiness for actual conflict (war). See Ernst-Wolfgang Böckenförde, "The Concept of the Political: A Key to Understanding Carl Schmitt's Constitutional Theory", in David Dyzenhaus, ed. *Politics as Law: Carl Schmitt's Critique of Liberalism*. (Durham: Duke University Press, 1998), p.38.

[22] He is not referring to "politics", although this can be an instance of 'the political'. Politics is only political when it embodies the antagonism between 'friend' and 'enemy', which, at least in the majority of domestic (international) contexts, is not the case.

What Schmitt calls the "extreme case" is the situation in which the 'friend'-'enemy' antagonism leads to concrete war (not just its possibility). 'The political' requires the possibility of the extreme case becoming reality and the ultimate political moment is the decision upon whether this situation has arrived. The extreme case seems to be the exception, Schmitt writes, since we are not continually in a state of concrete war; but far from negating it, the exceptional nature of the extreme case confirms its decisiveness. "War is still today the most extreme possibility" (Schmitt, COP: 35). The exception is decisive in its ability to reveal the crux of the matter. Only in actual conflict, which Schmitt terms the 'state of exception',[23] can we see the extreme consequence of the political. If the focus of a state in normal circumstances is the assurance of total peace and security of the *demos* (people) within its territory, then the establishment of normal circumstances is the prerequisite for valid legal norms. Norms presuppose normal circumstances, and no norm can be valid in any situation of complete abnormality (Schmitt, COP: 46). That is, the validity of legal norms requires a situation of normalcy – in the case of a state, the total peace and security of the people and territory. The "extreme case" is the exception to such a norm, and the decision to suspend the set of normal circumstances is the ultimate political moment.

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[23] What is translated by Strauss from German as the 'state of exception' is often translated to English as the 'state of emergency'. I will, for the most part, use the 'state of exception/emergency' because it most completely reflects the nature of Schmitt's take on actual conflict – both an exception to the rule and a time of emergency, for the state and for individuals.

But while Schmitt accuses Hobbes of sliding back into liberalism by allowing for the 'silence of the law', that is, personal liberty, once the peaceful state is established, I think that Schmitt comes to many of the same conclusions Hobbes does about the nature of sovereign rule.

1.2.1 The Sovereign

For Schmitt, the commonly accepted view of sovereignty – that it is the highest original legal power of domination – is valid, but too abstract (Schmitt, PT: 5-6). It leaves aside the issue of the application of such a power in concrete terms: who decides the extreme case, when public peace and security are at risk? (Cristi, 1998: 181) It is here that we see the personalism and decisionism of Schmitt's sovereignty, as well as the unlimited power of sovereign rule in terms of the state of emergency/exception.

For Schmitt, the overt presence of the political is inevitable as the expression of our human nature. It is this human nature which liberalism tries to manipulate and hide, turning the antagonisms of the political into normatively negative forces: immorality, irrationality, and so forth. Schmitt wants to undermine the liberal principle of the rule of law systematically (some hold that he is successful), and replace it with an authoritarian version of 'democracy', based upon the substantive homogeneity of the collective unity of the people (and not on the principles of participatory republicanism) (Bielefeldt, 1998: 25). The 'rule of law', he holds, suggests that it is abstract normative principles and not concrete political positions/decisions which are primary. For Schmitt, normative

principles have no effect or relevance on human society without being interpreted by given agents and applied to given circumstances (Bielefeldt, 1998: 25). Particulars are always implicated in the implementation of normative principles, and this discredits, he holds, any claim to universal normative validity (Schmitt, PT: 10). This is most the case, or most clearly so, in the state of exception/emergency, in which the whole of a legal system is in jeopardy. The state of exception/emergency reveals the "factual primacy" (Bielefeldt, 1998: 25) of the 'rule of man' over the 'rule of law'. Hiener Bielefeldt holds that it is in Schmitt's state of emergency that political sovereignty breaks through "in the strong Hobbesian sense, that is, a sovereign decision uninhibited by any normative principles" (Bielefeldt, 1998: 26). Sovereign power, for Schmitt, is the ultimate instance of 'the political', as that which decides on the state of emergency/exception,[24] and this decision is always made by a person, not by the rule of law.[25] As Schmitt explains:

> The exception, which is not codified in the existing legal order, can at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed and made to conform to a preformed law.
> It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty. The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and how it is to be eliminated. The preconditions as well as the content of a jurisdictional competence in such a case must necessarily be unlimited ... [The sovereign] decides whether there is an extreme emergency as well as what must be done to eliminate it.[26]

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[24] "Sovereign is he who decides on the state of exception." Carl Schmitt, PT: 9 (George Schwab, trans.).

[25] Hobbes also understands sovereignty in terms of the decision of a person on the state of exception (emergency).

[26] Schmitt, PT: 6-7. (George Schwab, trans.)

The question of sovereignty reduces to the question of who decides. For Schmitt, the political does not reside in war itself, but in the "mode of behaviour which is determined by this possibility" (Schmitt, COP: 37). A human grouping is always political insofar as it orients itself toward the possibility of the state of exception. A grouping of this kind is, therefore, always a "decisive human grouping", a "political entity" (Schmitt, COP: 38). Such a grouping is sovereign insofar as the decision with regard to the state of exception is always, necessarily, its own to make. The sovereign decision is the decision which decides when a people will enter into the state of exception, the extreme case; the power of sovereignty is, for Schmitt, located in this decision – in the decision to suspend the law in favour of the political, the decision to require the lives of the people in war or not to. The sovereign decision is the decision upon who, of a people, will live and who will die, and reflects the monopoly of decisive power within the state. By deciding upon when (and whether) to suspend the normal situation, the sovereign not only decides upon the state of exception (its constitution, necessary precursors, and so forth), the sovereign also decides upon the normal situation (its constitution, necessary precursors, and so forth). Indeed, a good indicator of sovereignty, for Schmitt, is the power to prevent a war if war is contrary to the sovereign's interests or wishes (Schmitt, COP: 39). The unification of an entity is necessary for its political existence – in the orientation toward the possibility of the state of exception, a unified political entity is essential – in this, it is sovereign (Schmitt, COP: 39). The social entity which determines the friend-enemy grouping and which decides on the state of exception is the political entity, the decisive entity (Schmitt, COP: 43), the sovereign.

The authority to decide on life and death is held, in monopoly, by the sovereign. Other non-political groups within the political entity (i.e., families), Schmitt holds, may have verdict over such matters, but only so long as the state of exception has not been decided upon by the sovereign; in such cases, any wars between family or "kinsfolk" would require suspension (Schmitt, COP: 47). Human groups which deny this as a consequence of being part of a political entity cease to be political groups by 'renouncing' the possibility of deciding upon the public enemy and its treatment: "By virtue of this power over the physical life of men, the political community transcends all other associations or societies" (Schmitt, COP: 47). The state, as the political entity of decision thus possesses an "enormous power" – the possibility of waging war and "thereby publicly disposing of the lives of men", through both the right to demand the readiness of its people to die and by the right to "unhesitatingly" kill enemies (Schmitt, COP: 46).

1.2.2   The State

As a political unity (a unity of power, i.e., decision), the state is factually given in Schmitt's political thought (Böckenförde, 1998: 42), first as a concentration of power, but also as the relative homogeneity of the people. The latter is the foundation and precondition of the unity of peace and the application of state power, which must first be accepted by the people.

Schmitt tells us, in the introduction to his *Concept of the Political*, that the state is the political unity of a people (Schmitt, CP: 19). The state, therefore, as a political unity, is

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the presupposition of constitutional validity. But the constitution is not a contract; rather, it is a sovereign decision regarding the type of form the political unity will take (Böckenförde, 1998: 43). We may understand that the state is a political unity, given his idea of 'the political', to mean that it is a pacified unity encompassing 'the political' (Böckenförde, 1998: 38), a unity of 'friends'. But the integration of the political into the order of the state can come into question; once a political unity is established, it cannot be taken for granted, but must continually preserve and reconfirm itself through the actual cooperation of the people, otherwise the dictatorial nature of sovereignty must preside. Open or concealed civil war, for example, would dissolve state unity as a political unity. One must therefore stabilize the domestic order and rid it of potential or existing tensions and conflicts (Böckenförde, 1998: 40), as well as potential and existing 'enemies'. Political unity is constituted and preserved by superseding tensions, antagonisms, and conflicting interests. For unity to be maintained, there needs to be the possibility of a final decision beyond further appeal.[27] Sovereignty, as understood by Schmitt (as the ultimate decision on the exception) is, therefore, a necessary authority for the political state as a unity of peace. Furthermore, because the sovereign has an interest in the preservation of state unity and peace, any threat to these would require the use of sovereign dictatorial authority – unity would require artificial re-establishment or maintenance. But indeed, while we seem bid by Schmitt to understand the state as a

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[27] Recall that Schmitt holds that sovereignty is not a monopoly of force, but of decision. Carl Schmitt, PT: 20 (George Schwab, trans.).

representation of a natural unity based upon some 'substantive homogeneity', he goes to great length to lay the sovereign at the foundation of the unified 'people'.

Schmitt knows that his concept of sovereignty is an accurate depiction of an absolutist monarchy which, he says, "made the decision in the struggle of conflicting interests and coalitions and thereby founded the unity of the state" (Schmitt, PT: 62). He also knows that this conception runs contrary to normal conditions for democracy. This problem is resolved, however, in 1923 with *The Crisis of Parliamentary Democracy*, which can be understood as an attempt to reconcile the "unity that a people represents" with the "decisionist character" of sovereignty (Schmitt, PT: 62). This requires two things: the construction of a concrete unitary subject, 'the people', and "the elimination or eradication of heterogeneity" (Schmitt, CPD: 9). What characterizes democracy then, as I will develop further, is a mode of political rule in which the sovereign has the active role of declaring the nature of homogeneity and performing the task of concrete homogenization.

1.2.3 The Political Community

By defining sovereignty in terms of deciding the 'concrete exception', Schmitt posits its 'content' as dependent upon the existence of the opponent or 'enemy' it must eliminate. The identity of such an enemy is always, for Schmitt, concrete – it is not specifiable juridically, but only as a function of 'the political'. That is, identifying the 'enemy' is not a mode of legal exercise; the 'enemy' need not be legally defined 'crime', 'deviance', or

'inequity' as manifest in individuals or organizations. The enemy must be s/he or they who the sovereign deems to exist outside the homogeneity of the 'people'. The sovereign decision is not subject to the law; it *is* the law (and is thus outside of it, creating and directing it). Schmitt's approach to constitutional order does not hold it to be independent of what is 'outside' its boundaries. Proper constitutionalism is political – it reigns without thought for what is outside of it, save that it has designated the 'outside' space. Liberal constitutionalism is thus an attempt to maintain borders without 'political' distinctions. For Schmitt, the idea of liberal constitutionalism is flawed foremost in its attempt to excise the political by regulating the opponents to a given constitutional order and respecting them as citizens (i.e., by criminalization of citizen acts) as opposed to eliminating them as enemies. The "politics" of liberalism, insofar as it has any, focuses inward, Schmitt says, on the internal struggle of individuals against state power (Schmitt, COP: 70). Liberalism's incapacity/unwillingness to distinguish between friend and enemy is a symptom of political end (Schmitt, COP: 70). In addition, Schmitt holds that political entities must sometimes demand the sacrifice of lives. Liberalism is unable to demand this and remain consistent with its doctrine. The political is not derivable from the concept of liberal individualism – it is really a negation of the political (Schmitt, COP: 70-71). It seems that liberalism, according to Schmitt, could maintain a 'liberal' manner of handling states of exception/emergency, only so long as the instances of exception (emergency) or disorder affecting public security did not threaten the homogeneity of the state itself.

On this basis, Schmitt builds his arguments for the incompatibility of liberalism and democracy – liberalism's formal "equality of persons as persons" (Schmitt, CPD: 13) stands not only in opposition to, but also in the way of his democratic (political) equality "which can only be substantive and concrete, that is, political" (Ananiadis, 1999: 127). Where the basic political unit in liberalism is the person who is equal to all other persons (regardless of state, peoplehood, etc.), the Schmittian democracy holds the person to be equal only to all other persons with membership in his/her own political unit; "[h]umanity is not a political concept, and no political entity or society and no status corresponds to it" (Schmitt, COP: 55). In the opposition of these two concepts, Schmitt finds the 'crisis' of mass democracy:

> As democracy, modern mass democracy attempts to realize an identity of governed and governing, and thus it confronts parliaments as an inconceivable and outmoded institution. If democratic identity is taken seriously, then in an emergency, no other constitutional institution can withstand the sole criterion of the people's will, however it is expressed.[28]

Schmitt's sovereign is provided, by democracy, with a new location from which to pursue his expulsion of heterogeneity, a new moment of in which to decide. 'The political' designates the character of social conflict because it makes reference to its potential for intense existential (concrete) antagonism between 'friend' and 'enemy'. The "paradigmatic constellation" (Preuss, 1999: 156) of this is a group's assertion of its 'sameness' or 'identity' in contrast to the 'otherness' of a different group. From this,

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[28] Schmitt, CPD: 15 (Ellen Kennedy, trans.)

Schmitt conceptualizes 'the people' (the democratic foundation of state) as having a political quality of their own.

For Schmitt then, democracy is a particular form of political sovereignty. Ultimately, in a genuine democracy what is important is that there is sovereign authority of a collective unity of the people, facilitated by and resting on a "substantive homogeneity" (the people). The content of this homogeneity is of no importance, but it must be something particular, something substantive, "a medium through which a people can distinguish itself from other peoples and thus find its specific identity" (Bielefeldt, 1998: 27). "Political democracy cannot rest upon the indistinctiveness of all human beings; instead, it is based upon membership in a particular people"[29] (Schmitt, op. cit. Bielefeldt, 1998: 27). Liberal constitutionalism, however, has no substance; it sets up individual rights and the separation of powers to defend economic interests (Bielefeldt, 1998: 27). Its purpose is to "tame" political power through balancing various state institutions, none of which may exercise any strictly sovereign authority. Liberal constitutionalism "rests upon a peculiar method of linking, balancing, and relativizing monarchic, aristocratic, and democratic elements of form and structure"[30] (Schmitt, op. cit. Bielefeldt, 1998: 27). Democracy, then, is a particular way of exercising political sovereignty, whereas liberal constitutionalism is a way of preventing it. Any democracy present in such a system is therefore at most half-hearted. In truth, the politics of a sovereign democracy and the

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[29] Originally in Schmitt, CT (*Verfassungslehre*): 227.
[30] Originally in Schmitt, CT (*Verfassungslehre*): 228.

anti-politics of a constitutionalist state cannot co-exist for any period of time – one will, in the end, prevail. For Schmitt, what prevails can only be the political.

Schmitt should not, therefore, be thought of as a democrat simply because he recognizes 'democratic' sovereignty. He ensures the restraint of democracy as a mode of governing by tying the doctrine of constituent power of the people to the principle of sovereign representation. The sovereignty of the people is to be delegated to the established representatives who are not to act as popular agents, as the voice of the constituents (Schmitt despises the parliamentary model). The representation of the people in Schmitt always relates to the political unity of the people (i.e., the state). It is not a representation of society, and it is not a representation of single interests within society. The subject of representation is not the people in the state, but the "politically united and organized people which is the state itself" (Böckenförde, 1998: 49). "Representation brings about unity, yet what it brings about is always the unity of a people in its political state" (Schmitt, COP: 214). Representation is therefore done by the rulers (those who hold sovereign power), not by the administration (those who act upon the sovereign decision). It is reserved for those who "epitomize and concretize the spiritual principle of political existence" (Böckenförde, 1998: 49).[31] It is political unity (concrete, existing, and working) that makes possible individual rights and liberties for Schmitt. Political unity as sovereign power protects individuals from endangerment and violation. As with Hobbes,

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[31] Notice the similarity here between Schmitt's 'representation' and Hobbes' conception of the 'monarchy'. See page seven.

Schmitt fuses sovereignty with representation, and by distinguishing the 'positive doctrine' of sovereignty from constituent power, through a non-popular representative sovereign, he denies the power of sovereignty to the people as a multitude while establishing the collectivity as its foundation.

1.3   Hobbesian Sovereignty as Absolutist Democracy

Schmitt adopts Hobbes' view of the relation between subject and sovereign as one of absolute submission to an omnipotent power. As I will discuss, the political is the realm in which 'friends' and 'enemies' are distinguished, and in the state it is the role of the sovereign to decide who fits where. He holds that the 'sovereign decision' is the highest political moment (Schmitt, COP: 43), and his critique of liberalism hinges on the liberal inability to incorporate 'the political' by insisting on individual equality and a universalizable humanity. This section will examine Schmitt's conception of equality as it relates to his critique of liberalism. Schmitt is able to show why Hobbes' conception of sovereignty, while based on liberal individualism, is best interpreted as democratic and not liberal. As we shall see, Hobbes' sovereignty must be understood as both an instance of the Schmittian political, and moreover as one of absolutist democracy.

1.3.1   Homogeneity and 'Democratic' Equality

Schmitt argues that "homogeneity" is the necessary condition of democracy (or at least the necessary condition of its possibility) (Schmitt, CPD: 9). In the preface to the second

edition of *The Crisis of Political Democracy*, Schmitt asserts that,

> Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second – if the need arises – elimination or eradication of heterogeneity.[32]

While chilling, given Schmitt's involvement in the legitimation of Third Reich policy, this thesis may force us, as Chantal Mouffe suggests, to come to terms with an aspect of democracy that liberalism tends to try to eliminate (Mouffe, 2000: 38).[33] Homogeneity, for Schmitt, is inherent to the democratic conception of equality; there must be a "common substance" for the presence of homogeneity (Schmitt, CPD: 9). But he rejects the notion that the general equality of humanity has the capacity to serve as the foundation of any form of homogeneity, and thus of any state or form of government. Humanity, Schmitt asserts, cannot wage war; it has no enemy (no planetary enemy), and thus excludes the possibility for differentiation between 'friend' and 'enemy'. Indeed, it excludes the concept of the enemy altogether because "the enemy does not cease to be a

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[32] Schmitt, CPD: 9 (trans., Ellen Kennedy).

[33] Mouffe is content to engage in Schmitt's critique of liberalism, but maintains that democracy and liberalism, existing in tension with one another, are not mutually negating. She argues that while Schmitt is right to stress the 'deficiencies' of liberalism in constituting a pluralistic society in political terms, this commits us neither to giving up the possibility of a politically pluralistic liberal theory, nor to finding a solution to the exclusive nature of democracy. Schmitt, she holds, must be engaged with in order to theorize a fully formed constitutional democracy, but this does not lead us to believe his "false dilemma": the unity of the people (requiring expulsion of some members) or legitimate divisions of the people (leading to the negation of political unity and of the people as such). See Chantal Mouffe, "Carl Schmitt and the Paradox of Democracy", in *The Democratic Paradox* (London: Verso, 2000), pg. 36-59.

human being", eliminating any internal differentiation on this basis (Schmitt, COP: 54).[34]

The idea of 'humanity', based on the idea of some common denominator (or equality)

among human beings, understood as the result of liberal individualism and universalism,

is an anti-political equality, for Schmitt, because it does not have as a correlate the

possibility of inequality. Politics must draw the line between friend and enemy. In

liberalism, the inside of 'humanity' does not have an outside; everyone is included.

Indeed, in liberalism, strict universalism generally tries to prevent an outside at all. But

democracy *must* draw boundaries; in order to determine a majority mathematically, one

must have a numerically determinate population. A democracy must, therefore, have an

inside and an outside; that is, a border at which it stops.[35] Liberalism and democracy are,

therefore, mutually incompatible. The political is the realm in which 'friends' are

distinguished from 'enemies', and liberalism has no such realm. The 'enemies' of

liberalism, to the extent that there are any, are never concrete and thus never eliminable.

For Schmitt, therefore, when we speak of equality, we must speak of two distinct

conceptions of the word: liberal equality and democratic equality. The former, he holds,

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[34] When war is waged in the name of 'humanity', Schmitt holds, it has an "especially intensive political meaning" – when an enemy is fought in the name of humanity the war is not for the sake of humanity, but for the sake of one state's (coalition's) usurpation of a universal concept against its opponent. It tries, he says, to ally itself with humanity in the same way that we misuse peace, justice, progress, and 'civilization' to deny these to the enemy – that is, to dehumanize the enemy. Indeed, the concept of humanity itself is, for Schmitt, an ideological tool of imperialism; in its "ethical-humanitarian" form, a mode of economic imperialism. See Carl Schmitt, *Concept of the Political*, (1932) (George Schwab, trans.) (New Brunswick, N.J.: Rutgers University Press, 1976), pg. 54.

maintains that every person is, as a person, automatically equal ('in worth and dignity', etc.) to every other person. Contrarily, the latter requires the possibility of distinguishing between who belongs to the *demos* (people) and who is exterior to it – to equality there must be a correlate possibility of inequality.

1.3.2   Political Community, Political Unity

This 'democracy' then, is squarely an instance of the Schmittian political, as that which entails the possibility of distinction: inside from outside, friend from enemy, included from excluded, and so forth. This 'democracy' is not a form of government, but a conception of constituent power. Furthermore, as mentioned above, it requires a bordered *demos* in order to serve its function, to have a general will. Political democracy for Schmitt, cannot, therefore, be based on a generality of all humanity. It must belong to a specific people,[36] understood as one of a multiplicity of ways for homogeneity (peoplehood), constituting a *demos* (state), to be manifested: "... since the nineteenth century [equality] has existed above all in membership in a particular nation, in national homogeneity" (Schmitt, CPD: 9). The nature of the similarity on which homogeneity is based is not important; what matters is the possibility of drawing a line between those

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[35] Clearly, liberal politics has boundaries. Animals and machines are not generally included as existing in any political context. Furthermore, liberal thought tends to leave room for the non-personhood of fetuses, comatose patients, and so forth, even when these are held, by many, to be issues involving persons.

[36] Mouffe notes that while it is the case that a specific people is required, for Schmitt, to have a democracy, this phrase should not be understood as applying to a 'racial' group. Chantal Mouffe, "Carl Schmitt and the Paradox of Democracy", in *The Democratic Paradox* (London: Verso, 2000), pg. 40.

who belong to the *demos* (who, therefore, have equal rights), and those who do not have

the same rights because they do not belong to the *demos*. As Mouffe argues, it is this

type of democratic equality which is known today through citizenship, and it is through

belonging to a *demos* that citizens are granted equal rights.[37] Their inclusion in an

abstract notion of humanity does not perform this function.[38] Democracy, as such, can

exist only for a 'people' and not for humanity (Schmitt, CPD: 11). Democracy relies on

the 'political' nature of a 'people', which distinguishes, on the basis of some factor(s) of

homogeneity, between its members and those who 'do not count'. Humanity, as a

concept, does not admit of politically defined 'us' and 'them' (excepting animals,

machines, and non-persons) in ways that , for Schmitt, are of any consequence. 'The

political' exists in the space of concrete, personified 'friend' and 'enemy', not in the

abstract, conceptual 'good' and 'evil' of liberal doctrine (Schmitt, COP: 28). To

illustrate this, Schmitt shows that even in modern democratic states, where universal

human equality is established as a value and norm, there exists a category of people who

are excluded as foreigners. He also holds that the correlate of any equality present among

the citizenry of those states is a strong emphasis on national homogeneity and on the lines

of demarcation between citizens and foreigners (Schmitt, CPD: 11). This is to be

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[37] Free emergency medical care, for example, is not provided to foreign visitors by the governments of nations where such a policy is in place for state nationals. In many instances of citizenship around the world, 'rights' refer universally but are only practically realized by those with access via wealth and the capacity to buy.

expected, Schmitt tells us. If it were not the case, if states tried to realize a universal

equality of individuals without concern for national (or any other form of) homogeneity,

then political equality, brought by being a 'friend', would be completely devalued and

political unity would crumble. This, he holds, is precisely what liberal democracy tries to

do; simultaneous commitment to a segregated (democratic) political state (community)

and to the (at least conceptually) universal equality of worth and dignity of all human

beings is practically impossible – only one of these can 'win out'.

Much like Hobbes, then, political unity is crucial for Schmitt; but for Schmitt it is

'democracy', that is, formation upon a political people, which provides the basis for state

existence. A state must be distinguished from other /the outside and for Schmitt, its

foundation on a 'people', possessing of 'substantive homogeneity' ('democracy') is what

grants the state its instantiation as a political unit. Recall that the political is the realm in

which 'friends' and 'enemies' are distinguished, and that the sovereign decision is the

foremost instance of the political. 'Democracy' consists in the identity between ruler and

ruled (citizenship), as linked to the principle of the unity of the *demos* and its sovereignty

(Mouffe, 2000: 43). Therefore, if the will of the people is to take shape as a unity, there

must exist criteria to determine who are the bearers of democratic rights.

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[38] Many theorists hold that there are grounds for instituting a system of cosmopolitan
citizenship (or a 'thick' conception of rights) based on a commitment to the equality of
all human beings. See, for example, David Held's *Democracy and the Global Order*
(Cambridge, MA: Polity Press, 1995); and Richard Falk's *On Human Governance*
(Cambridge, MA: Polity Press, 1995).

1.3.3 Sovereignty and Political Embodiment

In Hobbes, political unity is embodied in the sovereign, whose power, as fundamental act of will, lays the groundwork for state order. Political 'democracy' is conceivable in Hobbes in a slightly different way than in Schmitt: the sovereign ('civil person'), as the representation of the public will and power of the people, embodies the democracy (the appointment of the people) in his person. Sovereign power, understood as the collective power of the subjects residing in a man or counsel, is democratic power, understood as the representative collective will of a defined 'people'. If we understand 'protection' as a way of expressing what Schmitt would call 'right', this comparison becomes closer still: Hobbes' sovereign provides protection through ownership, while Schmitt's democracy provides rights through citizenship (determined by sovereign decision). The sovereign decision in both is the means for establishing the criterion for inclusion. In Hobbes, the sovereign is the foundation and content of the law which exists outside of the law (as its sole director). In the Hobbesian state, it is the law which decides who is subject to the law and who is exempt from it. Similarly, it is the sovereign (law) who decides who is protected by the sovereign (law) and who is abandonable to the world outside of its protection. But on what basis can I claim that Hobbes' theory of sovereignty is best understood as an example of Schmittian democracy?

First, it is important to separate the homogeneity of a people through common substance as a necessary condition of democracy from democracy itself. Hobbes' theory of sovereignty yields a common substance on two levels. Individual subjects engaged in the

social contract initially experience a common, mutual fear for their lives at the hands of one another and, in agreeing to be ruled by an all-powerful sovereign, experience a common tie to one another in agreeing to live peacefully together and be ruled by a common sovereign. Individual subjects also experience a 'common substance' if by substance we understand something like 'the nature of life under a designated sovereign's rule'.

The sovereign, as empowered by the collectively transferred wills of the people (the subjects), simultaneously represents and transcends this will. If we are to understand democracy as that political instance in which the people have sovereign power to decide who will and who will not be included in the *demos* (as Schmitt would have us do), then Hobbes' sovereign ('civil person', 'city') is a man or counsel that embodies such a power. This is, in fact, his nature by definition. Recall that not only does the Hobbesian sovereign embody the will of the people (and the multiplicity of individual subjects as 'the city') -- as the law, he *is* the criterion for inclusion or exclusion within it. That is, the constitution of the Hobbesian sovereign is conceivable as the embodiment of the political nature of democracy. Recall as well that the mind of Hobbes' leviathan was the 'reasoning' state infrastructure, while the sovereign was the soul, the spirit and life-force of the state. Schmitt's distinction between the state as the location and the people as the force of the political is much the same. As composed of the strength and will of a people, the soul is likely to reflect the spirit and life-force of this people. Such a common spirit

and 'personality' of peoplehood clearly rails against a notion of equal humanity – some people fit into and reflect such a spirit or personality and others simply do not.

There is individual equality in Hobbes, certainly, but it is of the kind described by Schmitt as 'democratic equality', that is, it exists only between members of the (each) social contract – the subjects. But as Schmitt notes, and Hobbes would agree, a citizen (as a subject) is only a citizen if s/he belongs to a people. Equality in these terms is thus inextricably tied to membership in a people, to engagement in the social contract. In Hobbes' case, the people is defined by a common sovereign power to which all subjects submit without exception. For this submission, subjects retain the protection of the sovereign's power, both from one another and from themselves. We may understand this as a 'right' (for Hobbes, a 'power' to exercise what one wills), but we need not do so. Schmitt's democracy does not require rights, except for citizens to say, as with Hobbes' subjects, that 'I belong to sovereign X and to no other'.

Hobbes' initial moment of civil war, on the other hand, in which each man's life is in the hands of every other, in which mutual fear is present, characterizes a liberal notion of 'humanity' and 'human equality'. Persons are equal under the law of nature in that, without the social contract, their lives are equally nasty, equally brutish, and (relatively) equally short; their lives are instances of what Giorgio Agamben calls 'bare life' (Agamben, 1998), life divorced from legal engagements. They are equal under the law of nature in that, without the social contract, they are always afraid. They are equal under

the law of nature in their inability to live for long periods in peace without a fear of punishment for failing to do so. But once engaged in the social contract, as all humans are, equality moves to the interior of the realm of sovereign power. Humans under a sovereign are no longer humans as 'bare life', but are subjects as politicized beings.

Life is absorbed into the political realm by the sovereign through the sovereign's decision to include or exclude. This moment of decision is one of transition. Because the nature of sovereignty includes the justice of punishment (in Hobbes the sovereign decides what is just, and is thus incapable of acting unjustly; in Schmitt the law is the act of the democratic sovereign who decides who will live and who will die), we must acknowledge the role of violence in sovereign power. Political rule, the law, and justice are only understandable through the legitimacy of the attack on the citizen, in each case by their own will.[39] If the state and/or sovereign power are understood to be legitimated by and the representative of the people, then any attack upon them (decision about them) must be similarly conceived. It is only the absorption of life into the sovereign realm (as in the sovereign-subject relation) that can authorize politics, understood as the realm distinguishing friend and enemy. The sovereign decision to take life, and the subject's acceptance of the right of another to take life, is the ultimate political moment. It is thus life (in the multiplicity of individual lives) that makes the differentiation between citizens and foreigners, inside and outside, possible.

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[39] For more on the citizen attack by his/her own will, see Michael Hardt and Antonio Negri, *Empire*, (Cambridge, MA: Harvard University Press, 2000), 103-113; hereafter

Democracy: Foundational, Governing, and Electoral

Before I continue on, I want to clarify some points on the concept of democracy, or rather, the concepts of democracy I have been using, or which I will use shortly. As I write and think more seriously about the subject, and about Schmitt's version with regard to his critique of liberalism, the issues seem to become much more cloudy and complex than the word 'democracy' might first let on. This is largely the result of the relationship of democracy to sovereign power, as we will see. For ease of classification, I will identify three modes of democracy, although these clearly do not exhaust all of the options or do justice to their identifiable sub-versions.

The first was used in the first chapter with reference to Hobbes as interpreted through Schmitt — *democracy as sovereign legitimacy* or, perhaps, social contract democracy, in which 'democracy' refers to a political system in which we are to understand the sovereign power to be the result of an originary consensus or agreement to contract itself to said sovereign. The sovereign power is that which is legitimated by the *demos* and which, as such, is understood to take on and embody all of their collective wills and powers in one entity. Sovereign legitimation comes in the understood agreement of a given group of people engaged in the social contract, entered into under duress of their own nature. The sovereign-democratic relationship is one of protection in exchange for unconditional obedience — in an odd turn, the power invested in the sovereign by the

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cited in the text as (Hardt & Negri, 2000: page).

joined will of the people is precisely the power to which it must bow down. The sovereign is understood to protect the individuals from one another and from outside threat to the community and its interests. This conception coincides with the classical modern conception of sovereignty (Hobbes, Bodin, etc.).

The second is the mode of democracy we are most familiar with in the West — *democracy as a mode of governance*, or national capital democracy. This mode of democracy is understood to legitimate the sovereignty of the people qua the political body, and is characteristic of the liberal democratic state. I associate this type of democracy with the ideal of individual sovereign autonomy, gathered to form a collective sovereignty that is greater than the sum of its parts. This is most often the case in systems which are embedded in the capitalist market economic structure, such that the sovereignty of each individual is required for the conceptual equality of each, predominantly as a consumer and/or holder of property. This conception coincides with the rise and solidification of liberal constitutionalism in the West, emphasizing equality between individuals and governance that is truly the result (ideally) of the people's choice.

Finally, I identify a rather new conception of democracy, one that stems predominantly from the latter mode, but embodies certain characteristics of the former. Cursory democracy as a mode of legitimacy, or *electoral democracy*, is the type of democracy we see occurring increasingly in the present world order, often in states which have not been

engaged in liberal constitutional frameworks of government previously. This is the mode of democracy in which free elections (often not 'free and fair') are held, usually to determine sovereign rule as opposed to determining representative governance. Often what results are what Fareed Zakaria calls 'illiberal democracies', to contrast them with the liberal democracies of the constitutionalist West. Electoral democracies are, it seems, the result of a desire both to open markets around the world and to have peace between nations, and are largely established at the encouragement (or rather, pressure) of the internationalized Western world. This mode of democracy coincides with the dual nature of the present capitalist world order, and represents the other pole of the liberal democracy.

Chapter II

The Nation, The People, and Absolutist Democracy

The people rules in all governments. For even in monarchies the people commands; for the people wills by the will of one man ...(however it seem a paradox) the king is the people.

Thomas Hobbes, *De Cive*

The precarious power of sovereignty as a solution to the crisis of modernity was first referred for support to the nation, and then when the nation too was revealed as a precarious solution, it was further referred to the people.

Michael Hardt and Antonio Negri, *Empire*

Political democracy cannot rest upon the indistinctions of all human beings; instead, it is based upon membership in a particular people.

Carl Schmitt, *Verfassungslehre*

Modern theories of state sovereignty can be characterized by their preoccupation with state legitimacy. The Hobbesian conception of sovereignty is one of absolutism legitimated by the social contract. His emphasis, however, on the sovereign as the embodiment and the unity of individual subjects tends to reflect a concept of transcendent sovereign essence (not just power) and distinct sovereign personality. In addition, that this conception clearly means to delineate between state authorities instead of

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establishing a means by which to overcome them, tends to dissociate such a view from liberal conceptions of universality and common humanity.[40]

In the last chapter, I established Hobbes' conception of sovereign power as one that could be called a 'Schmittian' democracy, that is, an absolutist democracy. The 'people' is understood as the force of state legitimacy for Hobbes; indeed, his focus was the rational foundation of legitimate sovereign power. But the 'people' is understood as itself sovereign only insofar as it is embodied or represented by a sovereign man or counsel, possessing every right over his (their) subjects (and even declaring what those rights entail). The 'people', it seems, must be understood in some way to have (indirect) sovereignty over itself in order for the state to be legitimated. In this chapter I will attempt to link the concepts of (Hobbesian) foundational democracy of states to that of nationalism, both liberal and illiberal. During the late eighteenth and early nineteenth centuries, the location of sovereign power changed from the ruler to the ruled (the 'people') directly, and this occurred largely in conjunction with a certain conceptualization of the 'nation' as political form. The sovereign power theorized by Hobbes finds its place more concretely in the 'people', as the legitimators of state power. A 'people' is understood to legitimate a state insofar as it is understood to have a

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[40]Clearly, there are many who would describe themselves as both liberal and nationalist (or preferentially patriotic). Some theorists argue that 'liberal nationalism' is compatible with a cosmopolitan ethic (that is, the view that all people are equal in worth and dignity -- and right -- regardless of nationality or citizenship). See Jocelyne Couture, "Cosmopolitan Democracy and Liberal Nationalism", in *The Monist*, 82(3), 1999: 491-

collective 'will'. The state becomes sovereign only insofar as it is understood to *represent* the sovereignty of the 'people' and to *embody* its 'national identity'. In the final section, I will contend that 'democracy' becomes a confusing mix between a mode of state representation and a means of national legitimation. Moreover, it is now the democratic 'nation' which justifies the exclusion of some of state members such that the unity 'the people' is preserved.

2.1   Hobbes' Sovereign Legitimacy

Hobbes' theories of state sovereignty and sovereign power, though not the only such theories of the modern period, are certainly the most recognized. F.H. Hinsey argues that Hobbes completed the modern notion of (state) sovereignty, thereby solidifying the conception of state legitimacy, by substituting the "equal rightlessness of men as individuals before the state that was their own creation" for the previous dualism between monarch and people.[41] He contends that Hobbes accomplishes this by setting out from Jean Bodin's theory of sovereignty in which the subjects retain their rights and powers against the sovereign -- sovereign power is absolute, perpetual and complete, but it does not override the rights of individual citizens (Bodin, 1992). For Hobbes, the sovereign relation exists between sovereign and subject, but these are not fully distinct entities; the

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515. For an argument in favour of a liberal nationalist approach see work by Yael Tamir, Charles Taylor, Will Kymlicka, and Michael Walzer.

[41] F. H. Hinsey, *Sovereignty* (Cambridge: Cambridge University Press, 1986), p. 98; hereafter cited in the text as (Hinsey, 1986: page).

authority of the ruler, in Hobbes, is the authority, will, and action of every subject.[42]

John Hoffman argues, on the other hand, that the problem of consistency present in the

earlier modern works on sovereignty remains in Hobbes;[43] the claim that sovereignty is

absolute, perpetual, and total cannot be reconciled with the claim of (limited) subject

rights.[44] Allowing subject rights when the sovereign is conceived as all powerful over

his subjects (i.e., they have no rights against the sovereign) reveals the fundamental

contradiction of state power. Hoffman holds that Hobbes' concern with the legitimacy of

the state through the social contract causes him to make such a limitation on the power of

the sovereign (through the 'silence of the law', subject liberty) that the desire for subject

rights overrides the claim to absolute power, thus threatening his own conception of

sovereignty (Hoffman, 1998: 40).

But if Hobbes retains the crisis of modernity, the legitimacy of state rule, in his theory, he

also provides the conceptual framework to relieve it of this tension. It is precisely this

tension that is mitigated by the national formation. And while Hobbes does not resolve

the tension himself, his theory provides conceptual tools which coincide with what would

later be used in the formation of nations. His emphasis on a unification under the

sovereign called the 'people' (Hobbes, *De Cive*: 2, XII, 8), on the absolutist nature of

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[42] See above.

[43] John Hoffman, *Sovereignty* (Minneapolis: University of Minnesota Press, 1998), p. 40; hereafter cited in the text as (Hoffman, 1998: page).

sovereign power, and on the unquestionable need for state legitimacy, all provide a way

out of the crisis of the legitimate state: these are all important components in the more

contemporary concept of 'nationhood'. Indeed, although he never conceptualized the

'nation', his theorization of sovereign power as embodiment and representation of the

'people' leads directly to its formulation. But we must not be fooled into thinking that

the 'people' pre-exist the nation or the state. On the contrary, the 'nation' is only ever a

product of the state for its own legitimation, and a 'people' is only ever a means to

justifying the 'nation'. The fundamental problem of the post-Hobbesian state is to

produce the 'people' and to make it continually reproducing in order to identify and

support a national community, and this problem amounts to the production of some

unitary effect, a homogeneous effect, through which the 'people' will seem to be 'a

people', the basis of legitimate political power.

We also see this idea of unitary effect appearing in Schmitt. Recall that, for him, what

characterizes democracy is a mode of political rule in which sovereign power is primarily

involved in deciding the nature of homogeneity and performing the task of concrete

homogenization (the foundation of 'the people'). The 'nation', appearing about two

hundred years ago,[45] is, I hold, an example of such a 'democracy' – it acts as that which

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[44] Hoffman refers to Jean Bodin's work, *On Sovereignty: Four chapters from the six books of the commonwealth*, (Julian H. Franklin, ed. and trans.) (Cambridge: Cambridge University Press, 1992).

[45] I am thinking here of post-Revolutionary France, in particular (i.e., after 1799). For more on the formation of the nation concept, see Leonard Tivey, ed., *The Nation-state: the formation of modern politics* (Oxford: M. Robertson, 1981).

founds a people, and it does so through the homogenization of a multitude. Schmitt's

'democracy' requires a defined people understood to share a common substance, that is,

to embody a homogeneity. The 'nation', as I will explain, must be understood to be

based upon a given 'people' in order to hold any political weight. The nation must

delineate between 'friends' (members of the people) and 'enemies'. Schmitt, unlike

theorists in favour of the conceptualization of the naturalized 'people' (Michael Walzer,

for example[46]) is not fooled into thinking that the nation is that political manifestation of

the people; on the contrary, he identifies straight away the role and power the state has in

creating the people.

Schmitt holds that democracy, as the foundation of a state, is exclusive. But why ought

we understand the nation in this way? There are various forms of liberal nationalism, and

certainly various forms of liberal democracy. Our present conception of the state and its

sovereignty is based, I contend, on the Hobbesian model. Remember that Hobbesian

sovereignty, like that of Schmitt, is a monopoly of decision (entailing any means to

enforce given rulings). This monopoly must be engagable in states of

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[46] I should be clear: Walzer does not dispute that 'peoples' and 'nations' are constructions; indeed he writes that "[c]onstructed communities are the only communities there are". My point here is that some theorists identify that communities are constructed and then hold them to be or treat them as somehow natural or naturally based, as Walzer does by continually privileging the "shared experiences", "cooperative activity", and "common life" of the nation which, in his estimation, is that body that gives a people (tribe) the rights to political sovereignty and territorial integrity. Schmitt, on the other hand, has no illusions about the naturalness of such a formation. See Michael Walzer, "The New Tribalism: Notes on a Difficult Problem", in *Theorizing Nationalism* (Ronald

exception/emergency, but may be understood to be 'silent' when order is established and citizen interaction is relatively stable. In present (legitimate) states, power is held by a person or group who is understood to represent the 'people' as that unitary body of citizens. I hold that if the above claims are true, the sovereign establishes and represents a unity, both internally and externally, by defining the terms of the nation, by deciding who counts and who does not count as a member of the nation, as a citizen.

2.2   The Sovereign State: The People and the Multitude

Contrary to the present-day Western[47] penchant for representing the political realm in terms of citizen rights, free will, social contracts, and so forth, from the departure point of modern (i.e., Hobbesian) sovereignty, it is subjected life that is *"authentically political"* (Agamben, 1998: 106; original italics). That is, our present representation of political life (citizenship) is the result of a conceptual tradition of subjects under a sovereign power (the sovereign-subject relation). Life that has been absorbed into the political realm by the sovereign decision to include/exclude is life that has entered the realm of 'friend' and 'enemy'. This explains why, for Hobbes, the basis of sovereignty is sought not in the subjects' free renunciation of their natural right, but rather in the sovereign's preservation of his (in addition to theirs, combined), to do anything to any subject, i.e., the right to punish as he sees fit (and what is fit is something over which he is the only judge).

Beiner, ed.) (Albany: SUNY Press, 1999), and *Just and Unjust Wars*, Third Ed. (New York: Basic Books, 1977).

Recall that, for Schmitt, as for Hobbes, the monopoly of sovereignty is the monopoly of decision. If this is the case, we are better able to conceive why understanding Hobbes' myth, the state of nature, renders us, in thinking of and within a modern democratic framework, incapable of imagining politics without imagining the form of the state, of the sovereign.   Still, it remains 'the people' who retain the sovereignty of their respective states; and it is through 'the people' represented by the 'nation' that sovereignty retains its function, its power, and its ability to be a part of the international theatre.

It seems important here to differentiate between 'the people' as a collective and 'the multitude' as a group of individuals, and it is in Hobbes that we find one of the first accounts of such a difference. Not distinguishing between the people and the multitude, Hobbes writes, is a "hindrance to civil government" (Hobbes, *De Cive*: 2, XII, 8). The people is *one*, "having one will", a unity, "to whom one action may be attributed"; "none of these can be properly said of the multitude" (Hobbes, *De Cive*: 2, XII, 8). The multitude is the group of individual subjects who *each* owe their submission to the sovereign. It is a "multiplicity, a plane of singularities, an open set of relations", bearing "an indistinct, inclusive relation to those outside of it" (Hardt and Negri, 2000: 103). Schmitt noticed that it was the people who needed to be understood as embodying sovereign power (see Chapter One), as did Hobbes (see epigraph). The 'people' is based on a conception of internal homogeneity and identity, as well as the differentiation from what is external. This is the case for Schmitt and for Hobbes, but it is also the case in the

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[47] When I use the words 'Western', 'the West', and so forth, I am referring to the non-Islamic Western World -- predominantly North America, Western Europe (and perhaps

present Western conception of a 'people', which is often tied conceptually to an idea of civic, cultural, ethnic, or racial continuity.[48] As such, nations must create a people out of the multitude because only a 'people' is capable of sovereignty. It provides a unified will and force of action that overrides (and often conflicts with) the singular interests of the multitude. But the nation must be understood in a particular way in order to give the state the type of projected unity it needs to maintain its justifiability as sovereign at all. The sovereign, as justified by its ties to the nation, is the master of the nation, of the unity of its projects. The sovereign decision thus comes to refer to the establishing of the lines of nationhood, of inside or outside, of protection and obedience.

2.3   The Political Realm of the Nation

2.3.1 *Invention and Imagination*

There is a conceptual difference between the nation and the people which, as Bernard Yack holds, 'strains' ordinary language (Yack, 2001: 520). Both are, to use Benedict Anderson's famous phrase, 'imagined communities', both derive their character from the way in which distant individuals imagine their connections to one another that do not involve their direct or even indirect interactions. While the 'nation' allows us to imagine a community that precedes us and survives us, the 'people' allows us to imagine a

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community which we share with others in dealing with the state's coercive authority

(Yack, 2001: 521). The 'people' is always available to be invoked in the struggle with

political authority or for political power; "It exists as long as one believes in a particular

theory of political legitimacy" (Yack, 2001: 521). The denial of the 'people' becomes a

matter of injustice as opposed to misdescription.

Relatively speaking, the 'people' is still a new or modern conception, 'invented' to solve

the problems of political legitimacy within the modern state. It draws on images of the

multitude and of the ruling group of a community. 'The people' is the constituent

sovereign power that establishes government. This is clearly a highly abstract concept.

Hegel complained about conceiving of 'the people' for precisely this reason; what was so

dangerous and mysterious for him in the idea of 'the people' as a constituent sovereign

power was a lack of institutional definition, making it susceptible to irrational appeals to

public passions. "The word most on its lips is the 'people'; but the special mark which it

carries on its brow is the hatred of law" (Hegel, 1967: 6). Law is "the shibboleth which

marks out these false friends and comrades of what they call the 'people'" (Hegel, 1967:

7). But it is precisely the abstractness and mysteriousness of the 'people' as constituent

of sovereignty that is indispensable in liberal democratic politics; it allows all territorial

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[48] Recall that for Schmitt, "democracy is a particular form of political sovereignty. Ultimately, in a genuine democracy what is important is that there is sovereign authority of a collective unity of the people, facilitated by and resting on a 'substantive homogeneity' (the people)." See Chapter One. Homogeneity must be "a medium through which a people can distinguish itself from other peoples and thus find its specific identity" (Bielefeldt, 1998: 27).

inhabitants to be spoken of as a collectivity, as a collective source of state authority, but as a collective of *individuals*.

2.3.2 *Political Self-Assertion*

The question remains as to why the nation has been so closely associated, in the last two centuries, with political self-assertion. Generally, popular sovereigntists hold that monarchic and aristocratic rule usurp the right of the people by claiming sovereign power over given persons or territory (Yack, 2001: 522). These thinkers do not insist, however, that the people have the right to use the state's authority without limit. Rather, they argue that all forms of government take their authority from the inhabitants of a territory, imagined as a unified collectivity. The 'people', therefore, represents a new form of political community. The one imagined by popular sovereigntists represents neither an (absolutist) community of subjects, nor a (republican) community of participant rulers. Rather, it is the community from which political authority (government) arises and to which it reverts when it no longer serves its proper function (Yack, 2001: 522). This conception seems to point to a sovereign power that is indirect, or mediated, through the function of government, the state. That is, sovereign power, which is the people's, is administered by the state, but remains conceptually understood as the people's. In many ways, this comes directly from Hobbes, although clearly, in Hobbes, the political authority of the sovereign never 'reverts' back to the people, save in a case of civil war. Schmitt maintained that constitutional sovereignty was the people's insofar as they were a homogeneous unity, even though state rule held the monopoly of power and decision.

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Under this conception, then, of indirect or mediated sovereignty, something that is not

contained in the structure of institutions or exercise of rule and being ruled (government),

must define the people. In Schmittian terms, the rule of law (i.e., liberal

constitutionalism) cannot and does not define the people, and as such is incapable of

leading a political unity. If the people are understood to precede political authority and

survive its dissolution, the case both for Schmitt and for many populist thinkers, then

something beyond a relation to that authority must be shared.

The 'people' is clearly understood as a bounded community. Practically speaking, there

is the boundary of subjection to a given common authority, which not every member of

the human family shares. Conceptually speaking, the 'people' is based on, if not

homogeneity, then certainly 'something shared' between them which is different from

what is shared between members of the community and what is outside of it. We must

ask, then, from where these boundaries originate. In general, those who theorize nations

and, particularly, nationalisms, hold that these boundaries come either from the state, as

that body of (at least administrative) power which is distinct from the 'nation';[49] or from

the rights of the 'nation', the representative of a 'people'.[50] In the first scenario, if

'peoples' are the communities to which states are understood to be accountable, then the

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[49] For example, see Etienne Balibar, "The Nation Form: History and Ideology" (Chris
Turner, trans.), in E. Balibar and I. Wallerstein, *Race, Nation, Class: Ambiguous
Identities* (London: Verso, 1991), p. 86-106.
[50] For an example of this general kind, see Michael Walzer, *Just and Unjust Wars* (New
York: Basic Books, 1977), p. 53-58.

boundaries between one people and another will be those that differentiate the reach of one state's coercive authority from another's. In the second, if the 'people' is understood to exist *a priori* to the state, as the community that authorizes the state's authority and survives its dissolution, then it cannot be defined by the boundaries of individual states. The people is imagined as both *a priori* and as defined by the state, as both pre- and post-political community (Yack, 2001: 523).

2.4   The Nation in Perspective: A Historical Account

Given that the community which is understood both to authorize and to survive the state cannot be defined by state boundaries and rule, it may be helpful to look at some of the historical conceptions which lead us to 'the people' and the nation today. This development was highly complex and subject to a seemingly infinite number of variables, depending upon region, pre-state populations, and so forth. What follows is not only brief, but represents only one possible account of the logic of national formation. I have included it to give some historical depth and context to the concept of the nation.

In the Hanover school of the late German Enlightenment, modern theories of sovereignty were used to analyze the real historical continuity of the territory, population, and nation, conceiving of these as social and cultural continuities (Hardt and Negri, 2000: 100). National identity was conceived as the product of a 'primordial unity' – the 'nation' is a complete instance of sovereignty before any historical development; "the nation sustains the concept of sovereignty by claiming to precede it … The nation becomes finally the

condition of possibility of all human action and social life itself" (Hardt and Negri, 2000:

101). By the early nineteenth century, the concept of national sovereignty emerged in

European thought in 'completed form'. The French Revolution certainly assisted in this

completion, and its resolution in the appropriation and veneration of the (concept of the)

'nation'.

Given the social and political climate, it was at this time that Emmanuel-Joseph Sieyés, a

French thinker, linked the concept of the nation to the bourgeoisie, interpreting the nation

as a constructive political concept, a 'constitutional mechanism',[51] which allowed the

bourgeoisie leverage over the aristocracy, running counter to the dictatorial powers

established through war. Responsibility for the war of 1792, placed squarely in the hands

of the French by Georges Michon, represents a decisive moment of Schmittian politics

and a demonstration of its sovereign power:

> War was willed solely to act as a diversion from the social problems which were
> becoming more serious with every day that passed. For six months, several
> methods had been employed in an attempt to destroy the democratic party and
> not one had succeeded; so this time the extreme remedy - war - was to be tried,
> for it would give the government dictatorial powers and would allow it to
> eliminate its detested enemies. For these groups the war was a grand manoeuvre
> of domestic politics.[52]

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[51] Emmanuel-Joseph Sieyés (1748-1836), "What is the Third Estate?" ("Qu'est-ce que le
tiers état?") in William H. Sewell, *A rhetoric of bourgeois revolution: the Abbé Sieyés
and What is the Third Estate?"* (Durham: Duke University Press, 1994).

[52] Georges Michon (Paris, 1924) (T.C.W. Blanning, trans.), op. cit. T.C.W. Blanning, *The
Origins of the French Revolutionary Wars* (London: Longman, 1986), pg.71.

Where the nation has been offered conceptually as something popular and revolutionary, as in the case of the French Revolution, it is easy to conclude that the nation had broken free from the modern conception of sovereignty (as a means of domination and ultimate power) and dedicated itself to a 'democratic' (that is, popularly founded) notion of 'community'. But in the case of the Third Estate, and likely in most cases of national construction, this is not necessarily the case. Linking these two, the nation and the democratic (popular) community, as Sieyès did, was a "powerful innovation" (Hardt and Negri, 2000: 102). Where nations exist (or are understood to exist) the state is understood as the structure that allows the community ('the people') to function politically, and the nation is the political community for which the state performs its role. The nation acts as the political abstraction of the community which popular sovereigntists theorize as holding sovereignty. The power of the nation-state is thus comprised of the sovereign nation (community representation) on the one hand, and on the other, the power of coercion and external representation on the part of the state. The sovereignty of the state in a 'nation-state' is therefore clearly understood to lie in the hands of the nation, although it is practically administered by state infrastructure. The nation 'completes' the notion of state sovereignty by claiming to precede it (therefore legitimating it), and the people completes the nation via another logical regression. The identity of the people must appear natural and originary in order to hold political power -- in the case of the French bourgeoisie, over the will of the people, whose force, if properly discharged, was conceived as unstoppable; but this is always already fallacious. 'The people' is posed as pre-existing the nation-state, but the modern notion of 'a people' is actually its *product*

(Balibar, 1997). The 'people' is a community that recognizes itself as arriving before the inception of the state. The state thus 'belongs' to the people, and the people's political issues are therefore inscribed within it.

2.5   Democracy and Democratic Foundation: Connections

Hobbes' emphasis on state sovereignty and the legitimation of that sovereignty through the social contract provides us with the means to date the conceptual framework of the nation to the mid-seventeenth century. That is to say, the nation, so named and established as an entity in its own right, did not appear until the turn of the nineteenth century, but its conceptual precursors were present from the time of Hobbes. I have shown that the concept of the created nation relies on 'the people' and is thus closely tied to the political self-assertion of peoples. Through Schmitt, the people are theorized as the basic foundation of the state and in Hobbes, "the king is the people" (see epigraph); that is to say, the sovereign power is the unitary location of the people. The nation may be said to be that contemporary conception which joins with and thus endows the state with the legitimacy of the people. The nation can be thought of as the antithesis of the multitude which is nonetheless derived from it. For contemporary politics, on this view, the nation is the political location of the pre-political people – it is the nation, the legitimate political force, which endows autonomous states with sovereignty. The nation reflects or is understood to reflect the character and personality of the people at an abstracted and more powerful level.

Increasingly, particularly in the Western liberal constitutional states, an ethic of

multicultural constitutionalism and liberal 'tolerance' pervade, at least on the surface of

political rhetoric.[53] The nation has become increasingly based on citizenship as opposed

to country of origin (e.g. *jus sanguinis*, see above, f.n. 52) and, at least in states like

Canada, on a perceived and embodied 'nation' of immigrants and the ancestors of

immigrants. The rhetoric of the nation has become tied to social spending (i.e., universal

healthcare) and inclusive freedom (i.e., the 'tossed salad' as opposed to the 'melting

pot'). Certainly, such national foundations offend any Schmittian sensibilities, insofar as

they subjugate difference and shy-away from the political. And such offended

sensibilities can be found lurking under the surface of the nationalist political discourse

of the new Right, neo-conservatives, whose often hard line stance on such things as

immigration policy and welfare spending appears to be cropping up across the liberal

constitutional West.

But I hold that while Schmitt would criticize the inclusiveness of the multiculturalism of

constitutional liberal governments, their mode of founding their rule and legitimating

their power is Hobbesian. The nature of electoral voting serves to distinguish between

inside and outside, at least on the national level. One must be a member of a given

political community to participate in voting; one must be a member in residence, a voice

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[53] I should note that while states like Canada maintain (quite acceptable levels) of
multicultural policies (Will Kymlicka, in a paper given at the University of Regina,
October, 2003, based on findings of research done on global multiculturalism), any

of 'the people' in order to go to the polls. In many liberal constitutional states, this power

is open to those meeting relatively minimal limits of qualification. In others, like

Germany, one must still prove blood relation to a German citizen to be allowed to vote.[54]

It may be said that the whole point of democratic process through voting in liberal

constitutional states is to represent the people accurately. But, indeed, the requirements

for belonging to the people are set, pre-voting, by the government or state. The state

decides who counts and for how much, and in many ways, who will be represented.

Still, the nation established as a "mechanism" for constructing the people (see above),

allows the people to retain sovereignty conceptually and, in liberal democracies, this is

done through the model of democratic function and practice, reminding us of our unity

under one common rule. In this way, the electoral process brings the liberal democratic

multitude of voters into the orb of the democratic nation.[55] The concept of democracy in

liberalism thus becomes a confusing mix of individual right, equality to voice opinions,

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public 'tolerance' for those living with conditions like poverty or disability continues to
remain merely rhetorical in much of the political sphere, if these are addressed at all.
[54] Full German citizenship voting rights are still founded on the strict application of *jus
sanguinis*, the law of blood, requiring proof of "German ethnic origin". This is
particularly an issue for immigrants, sometimes first, second and third generation, who
achieve a kind of citizenship without democratic privilege. See Duncan Kelly,
"Multicultural Citizenship: The Limitations of Liberal Democracy", in *Political
Quarterly* 71(1), 2000: 31-41, p. 31.

and the always already pre-determined (in many respects) population of voters (voiced

individuals); of the strange partnership of popular legitimation and the constraints of

liberal constitutional state functioning; of inclusion on the one hand, and exclusion on the

other. Even more disturbing in the retention of sovereign power (conceptually) by the

people through the nation is the ability that the people's sovereignty then has to exclude.

For even though the voters elect their representatives, they are only their representatives

and any decision they make is understood to be the decision of the people. The

exclusivity of the people in states which value the democratic process becomes, even

more than in Hobbes, the demand of the people. In Hobbes, although "the king is the

people", we are clearly to understand this as a mode of sovereign legitimation of an

absolute power over the people – the king is the people, but sovereign power belongs to

the individual (or counsel) who rules. In liberal democracies, the people, and indeed the

individual, are protected and valued, and the sovereignty of the state belongs to the

people, though it is exercised through the state. The government decides who may vote,

as well as who may stay within state borders and who may benefit from state spending,

but all of this is legitimated by the nation and thus authorized by the people through

voting – at least conceptually and ideologically. Perhaps it is here that we can see

Schmitt's critique of liberal democracy best illustrated.

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[55] One may cite the fact of poor voter turn-out in liberal democratic elections and
referenda to dispute this claim. I am interested here in the conceptual nature of voting –
the fact that many of a voting population do not vote (for any number of reasons) is
another issue which deserves more careful attention than I can give here. Perhaps this
trend supports the argument that sovereignty is still able to function at the same time as
the myth of popular democratic foundation is called into question.

The 'people' is constituted foremost by the subjugation of various populations to a

common law, as administered by a common power. Today, this subjugation is achieved

through mechanisms of citizenship, 'naturalization', assimilation, and so forth. The

common law is legitimated (in democracies) by the power of the voting public. The

model of national unity, however, must always anticipate the constitution of the 'people'

– as Etienne Balibar holds, the unification processes presuppose a specifically constituted

ideology (Balibar, 1991: 93).[56] The symbolic difference between 'us' and 'them' must be

the difference that 'wins out'. But the 'people' is not one and the same with the ideal

(idealized) nation, as the object of and as a necessity for patriotism. Rather, without a

unified 'people', the nation appears as precisely what it is: an idea or arbitrary

abstraction with no legitimation. The appeal of patriotism (nationalism) is addressed to

no one, and the political force of the nation is crippled.

Historically, we can see this clearly in the Third Estate; the Estate *is* a power; the nation

is its representation, the 'people' is its 'natural' foundation.[57] The bourgeois formulation

of national sovereignty in the eighteenth and nineteenth centuries consolidated the

totalitarian image of modern sovereignty by 'historicizing' and 'universalizing' the image

of the victorious bourgeoisie. It made "[n]ational particularity ... a potent universality"

(Hardt and Negri, 2000: 105). The concept of the 'people's identity' formed in this

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[56] By unification processes, it is helpful to think, as Balibar does, of wartime
mobilization, the collective capacity to confront death as a group.
57 This reading of Sieyès' *Qu'est-ce que le tiers état*, from Michael Hardt and Antonio
Negri, *Empire* (Cambridge: Harvard University Press, 2000), p. 105.

period is one that incorporates the "spiritual essence" of the 'people' and the 'nation' as embedded within a territory, cultural meanings, a shared history, a linguistic community. National identity thus ensures a *reinforcable* legitimation of the 'nation' and the rights that exist for a sacred, unrestrained unity (Hardt and Negri, 2000: 105). The concept of sovereignty thus shifted decisively. When joined to the concept of the 'nation' and the 'people', sovereignty shifts its "epicentre" from the mediation of conflicts and crises (the state of emergency) to the "unitary experience" of a "nation-subject" and its imagined community (Hardt and Negri, 2000: 105).

It is in the context of these sovereign 'nations' that the present international community was formed and is maintained. Indeed, it is no accident that the largest non-religious, international apparatus is the United Nations. And its very name implies the desired unity of these diverse 'peoples', the unity of numerous collective popular wills, of 'ethnic' groups. But again we see Mouffe's paradox.[58] If everything that I (and others) have contended about nations is correct, the joining of them, the *uniting* of them in order to emphasize a universal humanity, seems counter-intuitive. The problem is not simple, however, for liberalism holds the basic unit of social and political thought ought to be the individual. A commitment to (non-Schmittian) democratic concepts is sensible because it allows for the voices of the multitude of individuals. The liberal commitment to the rule of law and legitimacy of the (minimal) state, however, requires the multitude to vote as individuals, but to be treated as equal members (with the same voice) of a 'people' to

ground the 'nation' and so legitimize the state. We see even more clearly through the lens of the nation the self-contradiction of 'liberal democracy'.

There is ongoing debate in Western, economically advantaged states regarding the nature of state responsibility to foreign nationals and stateless persons, usually under the rubric of 'immigration policy'. On the one hand, arguments are made from the perspective of mutual human responsibility and benevolence (or charity) that immigration policies, particularly those regarding refugees, ought to be more (than less) open, and that there exists a duty to assist. On the other are arguments from the populist voice(s), which holds that borders which are more open to outsiders decrease national stability and endanger the nature of democracy. This debate is typical of the problems arising from what Mouffe calls "the conflict between democratic and liberal requirements" (Mouffe, 2000: 37).

Hobbesian states are all around us. The legitimacy of states is understood through their foundation on and embodiment of their nation – hence the term 'nation-state'. The location of sovereignty now resides in the 'nation' as that conceptual entity which, in turn, is founded upon and embodies the 'people's' will. The will of the 'people' is understood, in liberal democratic states, to be ascertained by the exercise of democratic principles. The public will becomes a matter of non-Schmittian politics. But this basis of democracy justifies state existence and enables mechanisms of state population control.

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[58] See above.

'Peoples' are constructed by nation-states, and their boundaries are as constructed. But it becomes the job of the state to maintain these boundaries, to create states of emergency in which it must exercise its decision. Some states do this in relatively 'innocuous' terms by, as mentioned above, limiting the allowable entrance of immigrants and refugees; others in relatively 'radical' terms, by setting about the homogenization of the population through elimination: expulsion and ethnic cleansing. Both of these types of measures are increasingly common, around the world, often under the guise of 'nationalism'. This fact is particularly compelling when one considers the spread and influence of the processes of globalization – of communication, capital, and technological infrastructure. The borders of nations appear, quite literally, to be increasingly porous, sovereignty increasingly questioned. In the following chapter, I will examine this more closely and argue that the reason we see more and more incidents of 'nationalism' is directly linked to the questioning of the use of sovereign states and the rise of universalist liberalism through the forces of globalization.

Democracies and Liberal Constitutional States

Democratically elected regimes (sometimes re-elected or reaffirmed) routinely ignore limits on their power (defined by state constitution) and deprive their citizens of dignity and freedom. The former Yugoslavia, Peru, Pakistan, Sierra Leone, the Philippines, and the Palestinian Authority hold or have held elections to determine their rule. Yet all maintain governments or state structures which do not coincide with or, in some cases, even qualify as, tolerable to those with liberal democratic sensibilities. By 'liberal democratic' I mean to refer to (primarily Western) political systems characterized by free, fair elections as well as by the rule of law, the separation of powers, and the protection of basic human liberties, or 'rights', particularly to property and person, but also to assembly, religious freedom, and so forth. But indeed, as Fareed Zakaria, the former editor of *Foreign Affairs* (periodical), rightly notes, an increasing number of democratic countries are, in fact, illiberal.[59] More interesting, perhaps, is Zakaria's observation that few 'illiberal' democracies have "matured" into liberal democracies (Zakaria, 1997: 24). It is this claim that I will focus on here; for this observation, cloaked though it is in neo-liberal, paternalistic language, appears to have some truth to it, if one observes the prevalence of "democracy" in the international arena in correspondence with the increasing numbers of refugees, displaced persons, and incidents of ethnic cleansing and genocide. This disturbing trend deserves some attention and I propose to pay that attention here.

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[59] Fareed Zakaria, "The Rise of Illiberal Democracy", in *Foreign Affairs* 76(6), Nov/Dec. 1997: pg. 24; hereafter cited in the text as (Zakaria, 1997: page).

States holding relatively competitive (more than one name on the ballot), multiparty elections are states we call democratic; and the more participation they allow, the more democratic they are considered. But many of these do not fit into the framework of constitutional liberalism. Constitutional liberalism refers to the tradition that values and seeks to provide protection for individual autonomy and dignity while faced with the reality of necessary coercion. It is the result of a combination of two concepts, most often attributed to John Locke. It is liberal in its philosophical emphasis on individual liberty, and constitutional in its assertion that properly organized society must rest on the rule of law. The result is a system of checks and balances, most notably a separation of powers, to ensure that the power of government is unable to interfere with those liberties or rights of individuals which are understood to be inviolable. For the government is conceptually composed of individuals equal in liberty and right to all other societal members, but who happen to be suited for leadership. The sovereign power of such a society resides in the agreement of its citizens to live together peacefully, by the Golden Rule, and to pool their individual sovereignty. Democracy, it seems, originated in this type of system as a means to waylay conflict within society. Constitutional liberalism, it seems, often leads at least to some minimal form of democracy, but democracy cannot, of itself, move into (constitutional) liberalism.

Chapter III

State Legitimation and the International Order

In the end, however, elections trump everything. If a country holds elections, Washington and the world will tolerate a great deal from the resulting government ... elections are easy to capture on film. (How do you televise the rule of law?)

Fareed Zakaria

In the previous two chapters, I have dealt mainly with issues of sovereignty and nationhood. I began by arguing that Hobbes' sovereign is best understood as a Schmittian democracy, as a power which is representative, absolutist, and exclusive. I also alluded to the presence of these sovereign states within the present world order. I followed, in Chapter Two, with a historical examination of the conceptualization of nations (as arising from peoplehoods) and their normative force in the legitimation of states. I argued that, given our conception of Hobbesian state legitimation (that it requires the accord of the people), we (at least in the present non-Islamic West) look to electoral democracy as a mode of governance to legitimate the sovereignty of a given state. Throughout, I maintained that the 'nation' and the 'people' are post-state constructions, largely the result of, though portrayed as the justification for, nation-state sovereignty. I now want to carve out a place for such Hobbesian sovereign (Schmittian democratic) states in the international theatre; that is, to locate them within the international community.

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I characterize the international theatre as a system based originally on an ideal of peaceful

relations between states, but one which allows a great many Hobbesian sovereign states,

that is, Schmittian democracies to participate. The international community does this by

encouraging and fostering plebiscitary democracies in non-liberal, non-constitutional

states. I contend that this is the case because we are again experiencing a crisis of the

nation-state, this time threatened by the forces of globalization. In Hobbes' era, the crisis

of the nation-state required a conception of sovereignty for the citizens, in order to

prevent the threat of civil war. Today, it is the international community which requires

proof of a nation's internal sovereignty. The function of democracy, as the signpost of

legitimate sovereignty, has a pivotal role because of the nation-state's engagement with

the global community, spiritually headed by the liberally-backed, predominantly Western

United Nations. By portraying the United Nations in a certain way, I hope to show that

the apparent elements of contradiction found between the Hobbesian and United Nations

versions of sovereign power and international relations, when considered with those

aspects of their theories which mesh with one another, highlight the Schmittian critique

of the opposition of democracy and liberalism.

In the first section of this chapter, I outline a liberal conception of legitimate sovereign

formation and rule as originating in the Hobbesian tradition. I then offer an explanation

as to why liberal democracies do, in fact, seem to 'work', despite the conflictual nature of

democracy and liberalism which I dealt with earlier. In section two, I argue that if non-

liberal, non-democratic nations are to become liberal democracies they require

liberalization, and not the democratization largely imposed by the international community. Whether these nations *ought*, normatively speaking, to be democratized or liberalized is a problem which I leave largely to one side. I turn to sub-Saharan Africa to exemplify the nature of non-liberal or illiberal democracy, and use the work of Fareed Zakaria to illustrate the contemporary Western/international approach to illiberal, non-democratic nations. I argue that the West is content to allow nations to remain illiberal so long as they are 'democratic' (or democratic enough), because it is in democracy that the international community identifies legitimate sovereign formation and global market acceptability. In the final section, I draw directly on the goals, history, and values of the United Nations and argue that the reason why legitimate national sovereignty is important to the international community has to do with the role of the UN in privileging such sovereignty and in the present crisis of the nation-state.

3.1   The Liberal State and Sovereignty

It is the conception of legitimate sovereign formation and rule (by social contract), if nothing else, that the political theory of liberal states retains from Hobbes. Liberal political theory holds that a mode of validating laws relies on the (democratically established) constitutional institution, the legal state, which ensures the legitimacy of law.[60] This is so on the basis of democratic procedure. Laws themselves (specific laws) are considered democratically established if the procedure by which they are legislated

(in general) is democratically established (Habermas, 1996: 47). The rule of law in liberal constitutional states relies on a conception of democratically established legitimacy. In liberal democracies, we elect the representatives who make and enact laws and, unless they act in complete opposition to the manner in which they told us they would, they do so largely without our direct input. In fact, it is often the case that the publicly voiced opposition to laws goes unheeded by our representatives.[61] Still, we generally understand such situations to fall under the rule of law of our states, and we understand such laws to have been created by the will of the people. In the case of illiberal democracies, which I will discuss at length later, the power of the sovereign law, understood by virtue of an election to be the will of the people, is often used against the people who's power it holds.

Philosophical or ideological liberalism is distinguished by its emphasis on negative political liberties (with or without social welfare commitments), most often requiring equal respect for all members of a political community (from very small communities to

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[60] See Jürgen Habermas, *Between Facts and Norms* (trans. William Rehg) (Cambridge, Mass.: MIT Press, 1996), section 3.1, for a detailed discussion of Hobbes' role in the theory of legal legitimacy.

[61] As a recent example, the public opposition to military combat, both before and during the coalition attack on Iraq (2003), in the US and in Britain. A number of well publicized polls indicating strong public disapproval of state military action went seemingly unheard by both the US and UK leaderships.

the community of human beings as a whole).[62] It is only fitting, then, that political

liberalism seeks to ensure representation of 'the people', person by person, through

democratic process — that is, by voting. It makes little sense in a society that values (in

general) individual autonomy not to ask each autonomous individual to decide upon the

way in which her negative liberties are best protected. Furthermore, if we understand

stable legitimacy of states to be based upon the authority of the people through

representative constitutionalism, then democratic voting and political principles are

absolutely necessary to the functioning of sovereign power.

Liberalism remains, both ideologically and philosophically, closely tied and often

ardently committed to an ethic of human equality. This tie and commitment may be

based upon, for example, our rational nature (as in Kant), our existence as solely the

property of God (as in Locke), or more generally, a belief in the equality of human worth

and dignity based on an accompanying belief in mutual human empathy and compassion.

Generally speaking, these approaches mandate, for one reason or another (fear of

inconsistency, fear of God, fear of personal emotional pain, respectively), the belief, at

least on a conceptual level, in human equality of inalienable right, liberty, or power

(sometimes accompanied by obligation or duty). John Rawls famously held that each

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[62] Of the many works written by philosophical liberals on philosophical liberalism, I find
John Rawls' work the most interesting and likely the most representative, in many ways,
of the American liberalism of present. See especially his *Political Liberalism* (New
York: Columbia University Press, 1993), *The Law of Peoples* (Cambridge, Mass.:
Harvard University Press, 1999), and "Reply to Habermas", in the Journal of Philosophy,
March 1995.

individual is entitled to as extensive a range of liberties as is possible such that there is

liberty and like liberty for all (Rawls, 1993: 22-28). Insofar as individuals have rights,

liberties, or powers which are inalienable from them, all differences are to be set aside,

ideologically speaking at least, and tolerance is to rule — that is, if those things which

differentiate us from one another do not impinge upon our rights, liberties, or powers to

act and live as we see fit, those differences are not to be considered important. In other

words, difference which makes no difference is both superfluous and spurious.[63]

But as I have shown in Chapter Two, the democracy of the Schmittian political not only

requires difference and differential boundary; these boundaries are definable, in

Schmittian terms, on any basis of difference, many of which, in the minds of most

committed liberals, 'make no difference': race, religion, language, and so forth. Even

within liberal communities, the democratic process demarcates between community

members and the world 'outside' of the community, between those who are included and

those who are excluded.[64]

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[63] I take this idea out of context, but I think it expresses an important feature of a certain form of liberalism. The original expression reads, "a purported difference which makes no difference at all is spurious", and it is based on the writing of Charles S. Peirce in Cheryl Misak, *Truth, Politics, Morality: Pragmatism and deliberation* (London: Routledge, 2000), p. 59.

[64] I do not mean to imply that many liberals are not cosmopolitans, I mean that the nature of liberal states and their smaller sub-communities requires demarcation, inside from outside, members from non-members. This is the case even if we acknowledge our commitments to one another as people living on the same planet and not just to one another as fellow citizens, nationals, and so forth.

The nature of sovereign power, when necessarily related to democratic foundation, has

the potential to become more vicious than what we can imagine of even a Hobbesian

sovereign. When tied, necessarily, to the authorization of the people, in the absence of

liberalism, the nature of sovereign power becomes a true Schmittian dictator — a

decisionist power which makes crises in order to require its own decision on the state of

exception, a power which makes spaces in which to exterminate heterogeneity. This

power recognizes not only its need to be legitimated by the authority of the people, but

also its need to base its unity on a principle of popular homogeneity, a principle which it

chooses. The rise in nationalism (both relatively peaceful and brutally violent), incidents

of ethnic cleansing, and ever-growing refugee camps,[65] all signal that there are higher

numbers of excluded persons from their own communities (often from any community at

all), even as there are more democratic elections held around the world.

The liberal state maintains a distinction between the establishment and voice of the nation

(the people) and the sovereign power; an aspect of the 'separation of powers'. The

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[65] A United Nations High Commissariat of Refugees (UNHCR) spokesperson remarked
in 1994 on the disarray facing the international community since the end of the Cold War.
She said that whereas the UNHCR used to function as a body of international lawyers
working to ensure refugee protection, they now perform what is better referred to as an
emergency response. Between 1974 and 1994, there was an increase in the number of
international refugees from 2.4 million people to 23 million people. See J. Darnton, "UN
swamped by a world awash with refugees. We can't cope with the crisis", International
Herald Tribune, 9 August, 1994. The ongoing civil war in the Democratic Republic of
Congo, the ethnic cleansing in the former Yugoslavia, and continuing unrest and conflict
in Islamic states, to name a few, have ensured an accelerated pattern of growth on this
front. As of 1 January, 2003, the estimated number of so-called 'Persons of Concern'

constitutional government is given sovereign power, thus allowing the power of

liberalism over democracy. In the interest of individual autonomy and right, the liberal

state keeps the democratic body and power 'in check'. This is necessary in a world of

financially interdependent states which are aimed, if not at domestic and international

peace, then at economic profitability (Wali, 2000: 5). States in which the rule of law is

not visible or powerful are seen by the international community as politically unstable

and therefore a bad investment/trading partner. As Maria Livanos Cattaui, Secretary-

General of the International Chamber of Commerce (ICC) said, "[t]he inescapable

conclusion is that good governance, a transparent and predictable regulatory framework,

the rule of law and a stable society all contribute to a hospitable investment climate" (op.

cit. Wali, 2000: 5).

As we see time and again in nations around the world, questioning the sovereign

authority in states without liberal constitutional bases often leads to an increase of

violence against the people at the hands of their government. It seems that, in these

particular states — Columbia, Sierra Leone, Indonesia, to name a few — a threat (or

perceived threat, or possible pre-threat behaviour[66]) to the internal legitimacy of

sovereign power is followed by an increased use of the sovereign decision and sovereign

violence. Regimes of this kind not only use violent coercion and the threat of violence as

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who fall under the mandate of the UNHCR was 20.5 million (up from 19.8 million in
2001). See www.unhcr.ch/cgi-bin/texis/vtx/.
[66] I should note that 'threat' to sovereign legitimacy can, as in the case of the German
Jews, manifest as a threat that was simply decided upon. The sovereign decision in such

a demonstration of power, they do so to create crises to which they can respond with force.[67]

3.2   Illiberal Democracies

Democratization has occurred in Sub-Saharan Africa at an incredibly fast rate. Democracy began in the region in the 1960s, following the granting of independence to many African states from their former colonial rulers. But as the Nigerian Ambassador to Argentina, Mohammad Ahmad Wali, wrote in 2000, "it should be pointed out that while some countries operated multi-party [systems], others adopted one [party] [systems]" (Wali, 2000: 1). Furthermore, before the "consolidation of democracy" in those countries, "military coups and counter coups and emergence of dictatorships began in most of the countries, starting with Togo in 1963 and by 1985, more than half of [sub-Saharan Africa] was under one kind of dictatorship or another" (Wali, 2000: 1). In 1990, many of the francophone (former French colonial) African states lifted their bans on multiparty politics, all within six months of one another (Zakaria, 1997: 28). Elections have been held in most of the sub-Saharan states since 1991, but many of these have not improved the general living conditions of their citizens. One observer has remarked that the overemphasis on multiparty elections in Africa has accompanied a 'corresponding

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a case creates the threat, builds the crisis for the people, and acts to remedy it.

[67] This is, perhaps, most interesting conceptually in the context of 'ethnic' fighting, in civil war, or in nationalist-based genocide. But this is a large topic, which is out of my reach here.

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neglect' of the basic tenets of liberal governance.[68] Democratically elected governments

or regimes, sometimes only re-elected or reaffirmed from previous non-democratic rule,

routinely ignore limits on their power and deprive their citizens of even constitutionally

declared dignities and freedoms.[69] In essence, what writers like Fareed Zakaria argue is

that while the West tries to liberalize the world's nations through democracy, the only

way to achieve liberal-democracy is through constitutional liberalization. We confuse, he

argues, constitutional liberalism, which refers to the tradition that values and seeks to

provide protection for individual autonomy and dignity through the rule of law, with

liberal democracy, a political system characterized by free, fair elections, as well as by

the rule of law, the separation of powers, and the protection of basic human rights

(liberties), particularly to property and person (Zakaria, 1997: 24-26). It is for this reason

that we see the rise in incidents of the 'illiberal' democratic phenomenon worldwide

(Zakaria, 1997: 28). By confusing liberal constitutionalism with liberal democracy, the

West mistakenly assumes that we can improve the lives of individuals living in non-

liberal, undemocratic nations through the democratization of their electoral systems.[70]

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[68] Michael Chege op. cit. Fareed Zakaria, "The Rise of Illiberal Democracy", in *Foreign Affairs*, 76(6), Nov./Dec. 1997: p. 28.

[69] This is not restricted to the African continent. The former Yugoslavia, Peru, Pakistan, the Philippines, and many others, have all held 'democratic' elections, but have refused or been unable to provide better levels of treatment and living conditions for their electoral body. See the Human Rights section of the United Nations website (www.un.org). Amnesty International (www.amnesty.org) also has information on these states and others.

[70] There are multiple UN press releases on this subject. See, for example, HR/CN/937, "Resolution on Promotion of Democracy Adopted by Human Rights Commission" (28 April, 1999).

While it is true that in states in which there has been a tradition of constitutional liberalism of some form (often in former British colonies) political democracy often takes hold quite well, states which have instituted democratic elections without such a history often have social systems which do not improve. Worse, in some cases, the incidents of nationalism and politics delineated upon 'ethnic' or 'racial' grounds can actually manifest themselves in ways which create even worse living situations.

Not unlike Schmitt, Zakaria holds that the difference between constitutional liberalism and democracy turns on the concept of power: "[c]onstitutional liberalism is about the limitation of power, democracy about its accumulation and use" (Zakaria, 1997: 30). Indeed, democracy has traditionally been seen, by thinkers like Kant, as an undermining force of good government and a peaceful system of well-ordered states (Kant, 1970: 101). But unlike Schmitt, Zakaria holds that the reason for this lies in the positive effect of the liberal state's interest in the market. I elaborate on this point in what follows.

3.3   Neo-Liberalism and Democratic Peace

Zakaria holds that constitutional government is the cornerstone of successful economic reform policy (Zakaria, 1997: 33). The protection of individual rights (especially those regarding property), along with principles of liberal governance (the separation of powers, the rule of law) are the factors which lead, in proportion to the level at which these principles are imposed within the state, to "capitalism and economic success" (Zakaria, 1997: 34). As Alan Greenspan, US Federal Reserve Chair, concluded in a 1997

speech to US Congress, "the guiding mechanism of a free market economy ... is a bill of rights, enforced by an impartial judiciary" (op cit. Zakaria, 1997: 34). And while Wali writes more from the perspective of someone living in sub-Saharan Africa, his own words reflect a similar outlook and confusion regarding the relationship of liberalism, democracy, and the market. On building democratic infrastructure, he cites first and foremost "subordination of the polity to the rule of law; strengthening the judiciary; and facilitating economic growth" as the necessary elements of policy (Wali, 2000: 8). As Zakaria argues, we strongly associate the presence of democracy with the presence of individual rights found in constitutional liberal states, and because of this we make a habit of mistakenly taking the forces of democracy for the forces of civil peace within the state, and peace and multicultural harmony between states.

One approach to international affairs that is epitomized, in many ways, by Zakaria's writing on illiberal democracy, assumes not only that "mature" liberal democracies accommodate 'ethnic pluralism', difference of opinion, religion, and an ethic of individual autonomy through the force of ideologically liberal state functioning (Zakaria, 1997: 35). This approach also holds that these states routinely 'live' in peace with other liberal democracies, both longstanding and relatively new, known in the study of international relations as the principle of 'democratic peace'. In neo-Kantian fashion, theorists hold that in liberal democracies, it is the public who pays for wars, and as citizens with decisive powers over state action, liberal democratic citizens will be cautious with regard to engagement in armed conflict (and indeed, in any form of behaviour that will cause

tensions between nations and instability in the market)[71] (Zakaria, 1997: 36). The claim

is that states in which the people understands itself as paying financially for war will not

be so likely to support the state's engagement in armed conflict. What is important to

note here is that this holds only in relations between democracies; liberal democracies do

not have a good track record of maintaining peace with non-democratic states (Zakaria,

1997: 36). Could this explain why, if the powerful states internationally are liberal

democracies which have a tendency to war with non-democratic states, those non-

democracies would want to establish democratic elections? It would certainly be

advantageous to establish at least the trappings of democratic process if it meant avoiding

the wrath or unsolicited intervention of powerful liberal democratic states in a regime's

daily affairs. Could the fact that many 'developing' nations rely on the liberally-backed

World Trade Organization, the World Bank, and the United Nations, for loans and

development funds, lead non-democratic states to conform to liberal conceptions of state

legitimacy (i.e., principles of democratic foundation)? As Wali comments, seemingly

without negativity,

> With the cessation of the cold war, coupled with the tremendous success of liberal
> economics, and concerted efforts of the donor communities to promote good governance
> in Africa, more than two third [sic.] of [sub-Saharan Africa] is under the influence of
> democracy ... the emergence and the concept of good governance in the early 1990s,

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[71] I should note that we seem bid by Kant to understand those who fund war (the public)
as able to refuse payment, which at this point seems sadly utopian. Immanuel Kant,
"Perpetual Peace: A Philosophical Sketch", in Kant's Political Writings (Hans Reiss,
ed.) (Cambridge: Cambridge University Press, 1970), p. 93-130. As an aside, Henry
David Thoreau's essay "Civil Disobedience" (1849) (New York: Dover Publications,
Inc., 1993) advocates refusing to pay taxes when one knows that one's money is going to
make citizens into cannon fodder, into men who "serve the State... as machines, with
their bodies", p.3.

[was] initiated by the World Bank, IMF and donor communities [which supports] democratization in developing countries.[72]

Perhaps the Western desire for open market space, added to the push from the liberal left to increase human rights and dignities for all people, have led us to focus entirely too much on democracy as the pre-eminent marker of nation-state legitimacy, or at least of market acceptability.

What Zakaria rightly observes is that the democratic peace of international relations is actually liberal peace. This is a notion that has a long tradition, particularly for philosophical liberals, most notably elucidated in Immanuel Kant's *Perpetual Peace*.[73] For Kant, 'democracies' were not included in his category of "republican" states, those which he held to be able to maintain not only domestic harmony, but also international peace and security (Kant, 1970: 100-102).[74] This contrasts starkly with Antonio Negri's reading of Machiavellian republicanism -- as always exhibiting constituent power which

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[72] Mohammad Ahmad Wali, "Africa: Viability and Challenges", 2000, p.2.

[73] John Rawls' *The Law of Peoples* is, in many ways, a more detailed, modernized version of Kant's *Perpetual Peace*, as Rawls intended it to be.

is the product of an 'immanently' social dynamic of conflictual counterpowers; "social

conflict is the basis of the stability of power and the logic of the [Machiavellian] city's

expansion" (Hardt and Negri, 2000: 162). Kant's republicanism, on the other hand,

consisted in the separation and balance of powers, the mechanisms of checks on power,

the rule of law, the emphasis on protection of individual rights, and representative (to

some extent) government (Kant, 1970: 102). He focused on the stability of such states,

largely the result of the rule of law. He firmly believed in the possibility of 'perpetual'

peace, but only between those states which he held to be properly republics — those

states which could rely on their common constitutional liberal 'character'. This

'character' consists in a mutual respect for the rights of one another's citizens; a common

form of checks and balances on power, ensuring a trust between nations that no leader

could make his citizens war; and most importantly, a classical liberal economic policy[75]

common to all republics — an internationally based domestic market economy,

emphasizing trade. He understood the latter requirement to create an interdependence

between states that renders conflict undesirable (costly) and cooperation advantageous

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[74] Kant holds that in order for peace to be obtained and secured, the first definitive article of such a constitution must be that the civil constitution (*ius civitatis*) of every state be what he called 'republican'. I distinguish between his use of the word and the way in which it is often used (referring to a state which is governed by a body actually elected by the citizens) because Kant is sometimes called a civic republican. A republican constitution, for Kant, is necessarily founded upon a principle of freedom for all members of a society, a principle of dependence of all members on a single, common legislation, law, and power, and finally, a principle of legal equality for all members "as citizens". He does not believe in equal voting or proportional representation, although he thinks that republics are essentially representative. This is clearly in sharp contrast to Machiavellian republicanism, described above. See Immanuel Kant, "Perpetual Peace", p. 99-104.

[75] I am thinking here of Adam Smith.

(financially useful)(Kant, 1970: 104). If the international community is effectively

following in the Kantian tradition, it is nowhere clearer than in Zakaria's assertions not

only that democratic peace is liberal peace, but also that "[h]istorically, the factors most

closely associated with full-fledged liberal democracies are capitalism, a bourgeoisie, and

a high per capita GNP" (Zakaria, 1997: 27-28).

In spite, it seems, of his own good sense, Zakaria still finds it "odd" that his own nation,

the United States, is "so often the advocate of elections and plebiscitary democracy

abroad" (Zakaria, 1997: 39). And it is, indeed, particularly odd if one considers how

distinctive the US is, as a democracy, in the number of constraints its constitution places

upon electoral majorities. The US Supreme Court, for example, is led by nine unelected

citizens who all hold life tenure — the largest unelected body in a democracy, save the

British House of Lords who hold no constitutional power. Perhaps, as Zakaria offers, this

reflects a system based on an "avowedly pessimistic conception of human nature"

(Zakaria, 1997: 39), much like Hobbes'. Regardless, democracy is part of what Zakaria

calls the "fashionable attire" of today's political environment; it seems, he writes, as

though there are no "respectable" alternatives (Zakaria, 1997: 42). But as he rightly

concludes, the problems of governance are often those occurring within democracy itself,

complicated by the connection between democratic elections and state legitimacy.

Zakaria's position illustrates the manner in which much of the Western, or at least North

American, world understands the issues of democracy and liberalism. What he is talking

about, it seems, in illiberal democracies are actually subaltern nations[76] — nations which are disenfranchised or simply less privileged than many nations in the world. The subaltern nation is that state which must use the concept of the sovereign nation, either for the good of the 'people' or for the power of the ruler, to maintain viable statehood in the eyes of the international community. The post-imperialist age, in which many former colonies have attained their 'independence', or lack of colonial domination, left us with a legacy of national liberation movements. The nation is understood in this context as not only a mechanism of protection from external forces that infringe upon its constitution, but also as a sign of unity, community, and stability (Hardt and Negri, 2000: 125). National sovereignty now means the freedom from foreign domination and the defeat of colonial rule. On the negative side, the national sovereignty of state actors almost always requires powerful networks of internal domination (Hardt and Negri, 2000: 125), what Wali seems to be describing as the situation of pre-consolidated democracies, i.e., dictatorships (Wali, 2000: 1). Remember that, based on my argument (simply put), the crisis of modernity, the crisis of state legitimacy, begets absolutist and exclusive sovereignty which supports the concept of the nation, only complete with the democratic foundation of the people. The unity of the people into the nation (and thus the legitimacy of sovereignty) must be understood to be originary and democratic, and not the result of the sovereign decision. Therefore, particularly in subaltern nations, the *projected* unity of the people must be protected. The sovereign decision must be repeatedly in effect to

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[76] Rawls would call these 'burdened societies'. See *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 90, 105-113.

overcome any difference (most easily identified, in a relatively homogeneous population, in a questioning of sovereign decision or power). The elimination of projected (or projectable) difference within the nation allows the sovereign to properly represent the group as a whole. The construction of national identity seems to guarantee a continually reinforced legitimation of the sovereign and the state, embodying all of the rights of a unity. It is for this reason that theorists like Hardt and Negri describe nationalism, particularly in the subaltern state context, as political and economic modernism, as a revolution of the people given to the bourgeoisie via representative sovereignty (Hardt and Negri, 2000: 42-43).

The international community (or as Zakaria himself notes, largely the United States) seems committed to the world holding 'free and fair' elections. Optimistically speaking, the international community holds these commitments because there is a belief in the power of the people, not only to choose leaders who will not harm them, who will be 'decent', but also as capable of authoring their own government, the representation of their own sovereign power. Pessimistically, it has these commitments because it sees, in the democratic foundation of government, a sufficient condition for a government's legitimate sovereignty and thus ability to engage in the global market. Based on Samir Amin's reading of economic capitalism, capital continually functions to make boundaries, dividing the world into polar opposites of rich and poor, powerful and powerless (Amin, 1998). On this reading, the chasm between the two poles becomes more and more insurmountable each time boundaries are drawn; "the polarized world ...

is and will be more and more inhuman and explosive" (Amin, 1998: 75). If the capitalist

system needs boundaries in order to have a place into which it can expand, there will

continue to be cycles of inclusion and exclusion of certain types of national markets. The

force of trade sanctions (exclusion) on non-democratic, illiberal nations serves both to

create the perception of 'untouchable' markets for the rest of the international community

and the impetus to overcome such market boundaries (the challenge of capital). And all

the while, such nations are shown the impossibility of their own economic stability and

prosperity, that is, their dependence. A nation having a "capitalist economy, a

bourgeoisie, and a strong GNP"[77] is not only considered beneficial to that state and its

people, it also benefits the entire market by expanding its boundaries, or overcoming old

boundaries only to create new ones.[78]

But it cannot be a mystery why illiberal states holding democratic elections do not

"mature" (Zakaria, 1997: 36) into liberal democracies. And it should not be a surprise

that non-democratic, illiberal sovereign powers perceive that 'free and fair' elections can

be held in order to reaffirm their own power, this time with the support of at least part of

the international community, as well as the authorization of 'the people'. In the following

section, I explore the history, goals, and values of the international community (the UN)

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[77] See above.

[78] See any number of works on capitalism and the global market. For example, Samir
Amin, *Capitalism in the Age of Globalization: The Management of Contemporary
Society* (London: Zed Books, 1998).

and the ways in which these are linked to democratic formation and populist authority. I

begin with the contemporary crisis of the nation-state.

3.4   The United Nations and the Present International System

The phenomenon which is widely referred to as the 'crisis of the nation-state', "the

declining power of nation-states in the international context" (Hardt and Negri, 2000: 4),

is not new; the crisis of modernity and of sovereign state legitimacy theorized by Hobbes

(among others, e.g., Jean Bodin) constitutes an earlier version of this situation. What is

new in the present manifestation of the crisis of modern state sovereignty is the

established conception of sovereign legitimacy in relation to the increasingly integrated

global order. The present crisis is understood to be the result of a conflict between the

sovereignty of particular states and their interdependence with one another, through the

forces of globalization. This contrasts with the crisis of Hobbes' era in which the

problem was understood to occur *within* the state — sovereignty required legitimation in

the minds of the subjects, at the same time as the sovereignty of states was assumed

under conceptual frameworks like the 1648 Peace of Westphalia.[79] This time, nation-

state sovereignty requires legitimacy in the minds of the international community, at the

same time as the practical boundaries of states become increasingly porous.

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[79] For a good, concise review of the details of the Peace of Westphalia and a thorough
looks at the 'balance of powers' see Derek McKay and H.M. Scott, *The Rise of the Great
Powers: 1648-1815* (London: Longman, 1983).

The inception of the United Nations, at the end of World War II, served to consolidate and enrich an already developing international order, at first European, but increasingly global: "The United Nations, in effect, can be regarded as the culmination of this entire constitutive process, a culmination that both reveals the limitations of the notion of *international* order and points beyond it toward a new notion of *global* order" (Hardt and Negri, 2000: 4). The UN may be said to be influential in the present crisis of the nation-state (Hardt and Negri, 2000: 4).

It is true that the UN is effectively the join between the transformation from an international state order to a global one. In the first place, the conceptual structure of the UN is founded upon the legitimation and recognition of such legitimation of particular nation-state sovereignty. It began and remains embedded within a structure of state rights in the international community laid out by treaty, and other written and unwritten agreements. In the second place, though, the legitimation of state sovereignty is recognized (and thus made effective) through the transfer of sovereign state right to a transcendent international location. However, the conception of right (both of the state and of the individual) defined by the United Nations Charter[80] might itself be pushing us

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[80] "The Organization and its Members ... shall act in accordance with the following Principles. 1. The Organization is based on the principle of the sovereign equality of all its Members. 2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.", etc.. United Nations, Chapter 1, Article 2, Charter of the United Nations, www.un.org.

toward a new source of normativity, effective globally, that can act as a sovereign source

of juridicature (Hardt and Negri, 2000: 4). The United Nations, for my purposes, is a

representative of what is best called the international or interstate community. This

'community', however, is still best thought of as predominantly international only in the

non-Islamic West. While it is unarguably global in its outlook, the control of its practical

function (and of its normative foundation) remains largely confined to North American

and Western European states.

In the first few decades of the twentieth century, thinkers like Hans Kelsen,

foreshadowing the formation of the UN, envisioned an international system, the laws of

which could stand as the source of each and every national legislative formation and

constitution. The model of international order could not be based on the legitimation of

states, as thinkers like Hobbes would have us do; the international order ought not to be

understood as comprised of state actors, likened to the individual subjects of a state.

Instead, state legitimation must come from the top down. The form and structure of the

nation-state, for Kelsen, was unable to realize the idea of international, transcendent right

— a conception of right that could beget an "organization of humanity" (Kelsen, 1952:

"The General Assembly, Proclaims this Universal Declaration of Human Rights
as a common standard of achievement for all peoples and all nations, to the end that
every individual and every organ of society, keeping this Declaration constantly in mind,
shall strive ... to promote respect for these rights and freedoms and by progressive
measures, national and international, to secure their universal and effective recognition
and observance, both among the peoples of Member States themselves and among the
peoples of territories under their jurisdiction." United Nations, "Preamble", Universal

586), based on a similar notion of transcendent right, both of individual people and of sovereign peoples.

In thinking of the constitution of such a transcendent international organization, Hardt and Negri hold that the majority of theorists have, against Kelsen's recommendation, turned to models of state legitimation (Hardt and Negri, 2000: 6). Those models that were present during the 'birth of the nation-state' were proposed again, stratified to the international level and emphasizing the ruling sovereign, to prescribe and analyze the constitution of an international force and structure, so-called "domestic analogies".[81] The Hobbesian variant of these models relies on the social contract formation of legitimate sovereignty. The constitution of the international sovereign entity is conceived as a contractual agreement based on the contextual transfer of sovereign title of independent nation-state subjects. That is to say, with regard to the subjects/citizens, the state itself is understood to be sovereign; but in the context of interstate relations (and those issues pertaining to 'humanity', on some models) the transcendent right is contained in an international sovereign. It is based on the idea of the Hobbesian state of nature among individual nation-states, but unlike Hobbes' view of international relations, this model holds that state actors, like individual persons, can overcome the state of nature in which

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Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948.

[81] State actors are imagined as individual personal actors, and the state sovereign as some form of international sovereign. See Hedley Bull, *The Anarchical Society* (London: Macmillan, 1977).

they find themselves. For Hobbes this is not possible because the there is never room for more than one sovereign in a peaceful social arrangement. This model[82] presents the new global sovereign structure as an analogue of classical conceptions of national state sovereignty (Hardt and Negri, 2000: 6).

The result of these two approaches to legitimate international sovereignty, the overarching juridical (or top-down) approach and the domestic analogy (or bottom-up) approach, is the power of the United Nations. The UN joins a transcendent juridical system with the practical contracts of peace between nations in legitimating itself as an international sovereign power. Its structure allows it to work conceptually from both directions (top-down and bottom-up), but also positions it as a source of conceptual conflict regarding state legitimacy and proper domestic functioning. The UN is not based, strictly speaking, on a Hobbesian variant of the domestic analogy. The UN is clearly meant to embody, at some level, a structural *unification* of agreeing nation-states; but if the sovereignty of the nation-state is again visibly in question, as it seems to be, this has to do with another aspect of the 'join' between juridicature and international contract within the United Nations. The legitimate transfer of sovereign power to a transcendent international location comes from two opposite directions: from the agreement between

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[82] There are other models of the domestic analogy, most notably, one based on John Locke's theory of commonwealth formation. The Lockean analogy proposes a "global constitutionalism" or the "overcoming of state imperatives" through a global civil society, and "focuses on the counterpowers that animate the constitutive process and support the supranational power." See Michael Hardt and Antonio Negri, *Empire* (Cambridge, Mass.: Harvard University Press, 2000), p. 7.

states to meet under an international sovereign and from a formalist conceptual structure

(which is thus able to accommodate non-agreeing states), a political power able to

transcend and thus globalize (universalize) the relations of state and individual actors.[83]

The Hobbesian variant of the domestic analogy thus effectively represents part of the

motivation and thrust of the UN's international sovereignty and legitimacy. It is through

the Hobbesian sovereign that states are expected to legitimate their sovereign power and

autonomy enough to qualify as a member of the international community. It was Kelsen

who was rightly concerned to find a fundamental normative source and command capable

of both supporting a new global order and of prohibiting a fall into global anarchy; but it

is precisely this conceptual outlook that is now thought to threaten the sovereignty of the

nation-state.

The nation-state now remains caught in the middle of an international system which

wants it to be sovereign over its people insofar as it is responsible for them as citizens,

but as interdependent as possible with other states (to ensure its market share). The

vision of the United Nations is a world in which nations join together, as equal members

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[83] See "Membership", Chapter II (Art. 3-6), in the UN Charter, as well as Chapters XI
and XII (Art. 73-85), entitled, respectively, "Declaration regarding non-self-governing
territories" and "International trusteeship system".

of a global community, under the transcendent value of right and the market.[84] The

nation, by nature, includes boundaries which the forces of globalization, led by global

capital, must overcome; at the same time, the nation is crucial to the functioning of global

capital, for it serves as the force of population regulation and obedience.

The most pressing problem with regard to illiberal democracies remains the injustice and

deplorable treatment of state residents, citizens and non-citizens, under so-called

'democratic' regimes. This problem is a perfect illustration of the conflict between the

(Schmittian) political nature of democracy and the universalistic desires of liberalism,

and it is this conflict that makes the injustices occurring under 'democratic' regimes

somehow acceptable to the international community.

Zakaria's assertions point to the difficult conceptual connection between democracy (of

any form) and state legitimacy; moreover, the greater problem here has to do with the

type of sovereignty acceptable to the liberal world from non-liberal states. That is, the

greatest fallout from the desire to expand the liberal world through democratic means

(predominantly in the form of elections) is the increased level of Schmittian sovereignty

which is overlooked in the interest of preserving electoral democracy which, as Zakaria

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[84] For information and sources on the United Nations' involvement with, support of, and reliance on the international market see www.un.org/Pubs/business. See www.un.org/partners/business/index.asp, which lists (among others) the International Chamber of Commerce (ICC), the World Bank, the International Monetary Fund (IMF), and the World Trade Organization (WTO) as allied agencies in helping to further the UN Millennium Development Goals.

comments, 'trumps' everything (see epigraph). The liberal West seems content to allow 'democratic' dictatorships or absolutist regimes to engage in the global market so long as state sponsored elections are held or the trappings of democracy are in place.

The reason why liberal democracies arguably 'work' in terms of liberal requirements for what Rawls calls 'decency' has to do with the ensured predominance of liberalism over democracy within the state. Clearly, it is this ensured predominance which allows for the argument that illiberal democracies do not 'work' in the eyes of the international community. Tautologically, states without a liberal tradition cannot possibly have a predominance of constitutional liberalism to outweigh the political force of democracy. It is for this reason that states holding 'free and fair' elections do not, it seems, achieve liberalism. The Hobbesian legacy of sovereign legitimation through democratic foundation, or social contract, was adopted by states which were already liberal, which had in many cases been founded as such, and which were *then* legitimated by democratic functioning. That is, in as much as the social contract resulting from a state of nature was, for Hobbes, a myth, the tacit assumption that constitutional liberal states were democratically founded is false.[85] In all cases a democratic state was founded by the sovereign power of what would become a constitutional liberal society, then legitimated

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[85]See T.C.W. Blanning, *The Origins of the French Revolutionary Wars* (London: Longman, 1986), p. 73-80; and Mortimer N.S. Sellers, *The Sacred Fire of Liberty: Republicanism, Liberalism, and the Law* (Houndmills, UK: Macmillan Press, 1998), for readings of the French Declaration of the Rights of Man (26 August, 1789) and American republicanism at the time of the drafting of the US Constitution.

by democracy. The state, thus far, has always arrived before the people,

constitutionalism in the hands of the few before legitimating election by the multitude.

Conclusion

The eighteenth century conceptions of nationality and popular sovereignty may be called the 'embryo of totalitarianism' (Hardt and Negri, 2000: 113) — in these, we see the preservation of absolute sovereign power (usually in the monarchy), transferred to a concept of national sovereignty. The nation-state and its ideological structures create and reproduce the understood homogeneity of the people through the power of the sovereign decision. The mechanism of sovereignty that produces the 'other', the 'excluded', with boundaries that delimit and support the sovereign body is always intimately related to the production of crisis, the state of emergency.

Chandran Kukathas has argued that the liberal state (in its Hobbesian form) exists solely to uphold the law and to ensure the life and safety of the people it rules (Kukathas, 1998). As such, a state that is truly liberal has no conceptual or political trouble with multiculturalism, but does not consider the subject part of its duty or reign of power, so long as the citizens are protected from one another. But this is a position that doesn't represent the liberal philosophical position as it is normally presented. As Duncan Kelly observes, such a position understands liberalism, philosophically, as "uninterested in the identity of particular groups or their various struggles" (Kelly, 2000: 32). Indeed, even this version of the Hobbesian liberal state (and form of rule) has never actually existed outside of normative theory. Hobbes himself was motivated, if not by conflicting cultural groups, then by a desire to minimize conflict and strife within the state in general —

sovereign claims on religious choice, on language and expression, on every public matter, were clearly absolute for Hobbes. In any case, today, many 'cultural communities' (most, perhaps) continue to struggle for appropriate recognition within liberal democratic states (and often for survival and freedom from persecution within non-liberal, Hobbesian sovereign states). Charles Taylor has argued that the state must be understood to have a role in recognizing and protecting the rights of minority cultures, especially the right of cultural groups to the actual survival of their communities (Taylor, 1996).

As these relatively polar examples illustrate, many of the answers to the question of whether liberal democracies are able to recognize minority/cultural groups focus on the formulation of possible modes of balancing state-society relations such that both cultural diversity (pluralism) *and* political unity are valued and represented (Kelly, 2000: 32). These formulations help us to locate, quite specifically, the limitations of liberal democracy regarding multicultural citizenship. As discussed in the previous chapter, the claims to peoplehood give claims to (usually) national identity, with all of the normative force of nationhood. (And the claims to peoplehood and nationhood continue to rise.)

For Schmitt, a 'people' is a domain of the political insofar as it is a realm in which the 'us' is differentiated from the 'them', the 'friends' from the 'enemies'. I hold that the 'nation' is the political (that is, politics and not 'the political') domain of the people. The conceptual entities and their real resultant bodies are engaged in an interactive relationship with one another; the 'people' "founds" the nation, the nation creates the

terms of the people, the people imbibes these, has them inscribed, and reflects a 'national identity/personality', and the nation is portrayed as the necessary political representative of the 'will of the people'. The result is not only an 'ethnicization', to use Balibar's term, of both the 'people' and those not included in the 'people', but also a formulation of national sovereignty, conceptually founded by the people and equally conceptually legitimating that state which will respect, respond, and reflect the national identity. The 'people' must be exclusionary, and the 'nation' must be that political body which possesses the people's sovereignty. The people in their everyday lives, are not conceptualized as politically engaged, by liberal standards, in which the people is understood to be a phenomenon existing more in the private domain than the public, insofar as the existence of a people is not deemed properly 'political'. But there is a recognition of the fact that 'peoples' have political needs and requirements, and the nation functions as the mode in which the 'people' are, even in liberalism, properly political.

For all theories based upon Hobbesian sovereignty, the need remains for a political authority to make the decision about what the rules of society will be. The people do not decide directly on these rules. Even liberal democracy, "whose *ideal* aims might well be delineated philosophically as liberty and equality for all under a minimal state", is another specific mode of political organization "whose democratic impulses are surely not the limits of human potentialities" (Kelly, 2000: 37). Liberalism and democracy, if not in direct violation of one another, as Schmitt would have us believe, are at the very

least unequal players in liberal democratic political formation. Liberalism has long been the dominant power. The commitment, as we saw in Zakaria, to democracy in the West is, at least rhetorically, indubitable. But as Kelly notes, in terms of political organization, our interest in maintaining capitalist networks (and the liberal ability to accomplish this) has always ensured that our commitment to democracy has remained 'skin deep' (Kelly, 2000: 37). We can clearly see this in the rise of other (illiberal, non-liberal) democracies. But there are other reasons why liberalism and democracy do not 'blend' so well as we may think. Democracy among equal citizens is a notion distinct to a given set of beliefs about the world and moral requirements that are found predominantly in nations with traditions of Western philosophy, religion, economics, and the resulting political formations. As Kelly expresses it, "its arrangements cannot simply be tacked on to any old country" (Kelly, 2000: 37); we have seen in Africa, Eastern Europe, and the former Soviet Union, the mixed results of the forced application of democracy -- while some have been positive, some have been tragic. Some political power, some monopoly of decision is still the final word in the rules of association. This power does not come from the people so long as it exists within the framework of liberal democratic and representatively governed nation-states. (Even if this power is legitimated through reference to 'the people', 'the nation', and so forth, as it so often is). And it is often impossible to imagine that the rules of a given civil association could be effectively transformed into even an idealized form of liberalism; to imagine that liberal democratic societies could firmly hold the liberal tenets of real liberty and real equality. To remedy this would require a means by which to remedy and dissolve the massive inequalities

inherent to the capitalist system. The real equality required for a fully functional democracy is inaccessible to those members of many liberal societies with neither monetary nor intellectual capital. Until these issues are properly addressed, it is likely that attempts to formulate even a left liberalism that is practically tenable will stay out of reach.

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