

The World of Equity:
Phenomenology of Welfare Rights and Foundations of Cosmopolitanism in Hannah Arendt and
Alexandre Kojève

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ABSTRACT

The World of Equity:

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Bogdan Ovcharuk

This thesis examines the principles and foundations underpinning universal rights articulated phenomenologically by Hannah Arendt and Alexandre Kojève out of the historical diremptions of modernity. It will be argued in the first chapter that Arendt's naturalistic phenomenology of labour—and the concomitant genealogy of submersion of the “political” into the “social” sphere—prevented her from conceiving modern welfare rights in view of her own analysis of the contradiction between legal equality and class inequality. Kojève's theory of rights, expounded phenomenologically in the dialectic of the working consciousness and need for recognition, along with the juridical historiography it engenders, will be presented as a corrective to Arendt's phenomenology of labour and the genealogy of “submersion.” Kojève's principle of “socialist right of equity” will be argued to stand for an egalitarian, if precarious, reconfiguration of the historical diremption between state and civil society attendant to the French Revolution. The principle of right's conditions of possibility will be discussed in the second chapter. In contrasting Arendt's phenomenological “common world” and Kojève's phenomenological “impartial third” as cosmopolitan grounds of rights, two thinkers will be shown to have provided different but complementary responses to Carl Schmitt's decisionist theology of sovereignty by drawing on resources of ecclesiology and teleological eschatology. Arendt's phenomenological “common world” will be shown to lack institutional foundations while offering an account of disinterested intersubjective judgment missing in Kojève's phenomenological notion of the “disinterested and impartial third.” The impartiality of the “third” in Kojève will be explicated as a response to Schmitt's theory of political sovereignty that speculatively conjoins the diremption between state and nation to the diremption between state and civil society thereby accounting for the critique of international political economy partially adopted by Arendt. Taken systematically, Kojève's impartial juridical federation, combined with Arendt's theory of disinterested judgment, will be shown to offer strong cosmopolitan foundations for universal rights.

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This project was conceived as part of an attempt to understand the purported “existential” failures of modernity—the failure to be born at the risk of staying forever pre-modern and the failure to survive the proclamations of no future—that nonetheless reveal a recalcitrant moment incessantly repeated in-between. A situation, in my case, experienced through immigration from a culture that resists modernity to a culture that deems it *passé*. Two immigrant philosophers—Hannah Arendt and Alexandre Kojève—became my guiding figures in this journey, and this work is devoted to their intellectual heritage.

I wish to acknowledge the formative force of Concordia’s intellectual community—faculty and student peers—that enabled both the flourishing and discipline of my thought. I feel obliged to Dr. Ed King for pedagogy on the facetious style, to Dr. Bisailon for equipping me with the tools of Marxian critique of economy and nationalism, and to Dr. Rupcic for taking me on the journey to “the ancient courts of ancient men.” I am grateful to Dr. Antonopoulos for teaching me to take philosophy personally, to Dr. Fritsch for lessons in exegesis and generosity, and to Dr. Angelova for showing me how to wonder with rigour. This project would not be possible without the intellectual and phronetic guidance of Dr. Sokolon, without the modern optimism of Dr. Ferrell, and the supportive oversight of Dr. Salée.

The emphasis on human rights was introduced as a reflection on the past and in anticipation of future practical engagements. This endeavour is indebted to the abiding influence of my human rights *praxis* colleagues. I want to thank Tanya Mazur for showing me the itinerary for cutting through the impasses of practical reason and Cinzia Angotti for the lessons in cultivating virtue in times of crisis. I’m grateful to Anna Neistat for towering as the exemplary figure of audacious action, to Anna Gay for sharing the joys of fieldwork, and to Max Tucker for his polemical comradeship, as well as to all my human rights colleagues from Amnesty International and OSCE who inspired me with their dutiful fight for rights.

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The fact that today man, as man, is considered the possessor of rights, should be highly valued, because it means that man is something superior to his status. For the Israelites, only Jews had rights; for the Greeks, only free Greeks; for the Romans, only Romans; and these had rights only to the extent of their status as Jews, Greeks, or Romans, not as men per se. Now, the source of rights is universal principles, and in this way the world embarked upon a new epoch.

Hegel

To keep this work in the middle, yet to risk comprehension of the broken middle, means returning beginnings to their middle and middles to their beginning incessantly...This is to challenge the prevailing intellectual resignation; to urge comprehension of diremption in all its anxiety and equivocation; to aim — scandalously — to return philosophy from her pathos to her logos. In this way, we may resume reflexively what we always do: to know, to misknow and yet to grow. The middle will then show: rended not mended, it continues to pulsate, ancient and broken heart of modernity, old and new, West and East.

Gillian Rose

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GENERAL INTRODUCTION

The appeal of universal human rights holds sway because they promise to reconcile both democratic freedoms and economic rights¹ while transcending the borders of nation-states. Behind this promise, however, is the reality of human rights ridden by a schism between civil and political freedoms, on the one hand, and socio-economic rights, on the other. Furthermore, while human rights are posited as universal, their enforcement relies on particular sovereign nation-states. This thesis will examine the phenomenological, historical-hermeneutic preconditions of modern human rights to disentangle these contradictions, challenging the conventional wisdom that holds human rights to be natural and ahistorical moral phenomena grounded in abstract reason and human dignity. The thesis will discuss the works of two unlikely theorists of human rights, Alexandre Kojève and Hannah Arendt, who in their different phenomenologies of universal rights reject the idea of natural and ahistorical rights, problematize the phenomena of political and economic rights at the level of human consciousness and history, and dismiss the nation-state as the sole source of rights, thereby confronting the theorist of political theology and sovereignty—Carl Schmitt.

Phenomenology is far from the most commonly used method to theorize legal phenomena, to which, one would think, human rights belong. Founded by Edmund Husserl, the phenomenological movement was a reaction to abstract thinking divorced from concrete and subjective lived experience as it appears to human consciousness. Notwithstanding Husserl's (1970; 2014) preliminary reflections on regional ontologies and the historical crisis of natural and human sciences, this new method did not have any evident tools to address and reformulate political and juridical abstractions into concrete phenomenological terms. Further developed by Martin Heidegger in *Being and Time* (1973), phenomenology was expanded to include existential questions of distinctly human moods (such as *Dasein's* anxiety in the face of death), temporal ontology, as well as the hermeneutics of lived experience and historicity. Nevertheless, the political implications of Heidegger's phenomenology were either interpreted through the lens of his Nazism (Beardsworth 1996) or developed by other explicitly political thinkers (Marchart 2008).

One political thinker to expand on the political implications of Heidegger's phenomenology was Kojève, well-known for introducing a Heideggerian reading of G. W. F. Hegel and Karl Marx into 20th century Continental philosophy. For Kojève, there is a clear continuity between Hegel's idea of death and Heidegger's existential analytic of *Dasein's* finitude. If Heidegger articulated anxiety in the face of death as foregrounding individual conscience divorced from "inauthentic" sociality (Heidegger 1973, 159-168), Kojève drew on Hegel's phenomenology of the struggle for recognition and transformative work to construe an intersubjective and historical variant of phenomenology (Kojève 1973, 148; Love 2018). Heidegger's account of *Dasein's* temporal "thrownness" was also posited to be congruent with the primacy of the futural temporal mode in Hegel, an argument developed by Kojève (1980, 138) on the basis of Alexandre Koyre's interpre-

¹ The United Nations human rights body (OHCHR) emphasizes interdependence of the two international human rights covenants (International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights), while acknowledging that their separation reflects the historical Cold War cleavage: "The market economies of the West tended to put greater emphasis on civil and political rights, while the centrally planned economies of the Eastern bloc highlighted the importance of economic, social and cultural rights." See "Key Concepts on ESCRs - Are Economic, Social and Cultural Rights Fundamentally Different from Civil and Political Rights?" OHCHR, accessed 18 August, 2021. <https://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx>

tation of Hegel (Koyré 1961; Tazi 2018). Moreover, the hermeneutic source of Kojève's phenomenology was found in the philosophy of history gleaned from Hegel's *Phenomenology of Spirit*, wherein "[a]t the beginning and during all the discursive developments... a *We* 'reflects' from one and the same 'point of view' upon a series of 'phenomena' where men of different types say '*I*' in diverse 'existential situations' or 'attitudes'" (Kojève 2013, 40). Arendt, a student of Heidegger's, was also determined to confront the latter's undeveloped phenomenological account of intersubjectivity. Her famous existential category of natality, a purportedly political response to Heidegger's solipsistic treatment of human finitude, underpinned an account of intersubjectivity that drew on Aristotle (Benhabib 2003) and St. Augustine (Rose 1992). And while Arendt rejected Hegel's philosophy of history espoused by Kojève, she nonetheless sought to construe her own genealogical approach to historical preconditions of political phenomena from the ancient Greek *polis* to the events of the French and American revolutions. Thus, both Kojève and Arendt responded to Heidegger's underdeveloped existential analytic of *being-in-the-world-with-others*, albeit in different terms.

Arendt is increasingly presented by commentators as a phenomenologist of human rights (Benhabib 2003; Birmingham 2006; Parekh 2008; Bell 2018). In particular, her notion of the "right to have rights" briefly presented in *The Origins of Totalitarianism* is said to have been conceived out of the political phenomenology articulated in *The Human Condition*, and against the background of her consistent critique of the "Rights of Man" rooted in the tradition of the French Revolution. At the same time, regardless of the immense influence that Kojève's *Introduction to the Reading of Hegel* has had on 20th century phenomenology and Continental philosophy (Descombes 1980), Kojève's theory of rights articulated in the *Outline of a Phenomenology of Right*, along with the *Notion of Authority* has received only limited treatment (Roth 1983; Frost 1999; Minkinen 2009; Frost and Howse 2007). Furthermore, while Arendt's (Kalyvas 2004; 2008; Keedus 2011; Scheurman 1997; Volk 2013; Jurkevics 2017) and Kojève's (Geroulanos 2011; Müller 2003; Howse 2006; Rech and Grzybowski 2016; Tony Burns 2014) separate engagements with Schmitt have been discussed in the literature, there is no comparative study of their cosmopolitan responses to the author of *Political Theology* (2005), *The Concept of the Political* (2007), and *The Nomos of the Earth* (2006). This thesis will bring the two thinker's phenomenological theories of rights into conversation apropos the contradictions between political and socio-economic rights and between the universality of human rights and Schmitt's theory of political sovereignty.

The philosophical interpretation of the French Revolution will be the *point d'appui* of the hermeneutics attendant to these phenomenologies of rights. While Arendt recognizes the French Revolution as the event of historical modernity *par excellence* and Kojève's interpretation of Hegel's philosophy of history centres the French Revolution, the two authors will be shown to disagree on the consequences the French Revolution had on both the principles of universal rights and their possible foundations. On a methodological level, in this thesis, the French Revolution will be taken as an event generating historical truths (Badiou 2005; Meillassoux 2011); thus, the philosophical and political meaning of this event will be at stake in this thesis.

The first part of the thesis will discuss the contradiction between the "Right of the Citizen" and "Right of Man" and the correlate contradiction between state and economic "civil society," first articulated by Marx (1992) in his analysis of the French Revolution. The first two parts of Arendt's *The Origins of Totalitarianism*, as Gillian Rose has observed, represent "the most sustained attempt to develop Marx's account of the split between the state and civil society" (Rose 1992, 217). This chapter will discuss how Arendt disowns this analysis in her phenomenology of

the “social” and how Kojève’s phenomenology of right seeks to diagnose and mend this contradiction in what will be presented as his account of welfare rights. As such, this chapter aims to analyze the contradiction attendant to socio-economic rights as articulated phenomenologically by Arendt and Kojève from within the hermeneutics of the French Revolution.

The second chapter of this thesis will discuss the contradiction between the state and nation, or universal rights and national sovereignty, and its consequences for the phenomenological foundations of universal rights offered by Arendt and Kojève. Problematics of sovereignty will be discussed concerning the French Revolution as exemplified in Schmitt’s political theology of sovereignty. Here, Schmitt is introduced as an interlocutor not only because both Arendt and Kojève engaged with his theory—the former implicitly and the latter explicitly, but also because of the existential and phenomenological terms on which his theory of sovereignty is premised (Marder 2014). This chapter will also consider the interdependence of the first contradiction between state and civil society and the second contradiction between universal rights and national sovereignty. This interdependence, first developed in Rosa Luxemburg’s (2003) analysis of international political economy, was further developed by Arendt in her account of imperialism in *The Origins of Totalitarianism* (1973), but then abandoned in her articulation of the “common world,” a phenomenological precondition to the “right to have rights.” Kojève’s explicit engagement with Schmitt and implicit engagement with Luxemburg will be considered as a corrective to Arendt’s phenomenological foundations of universal rights.

In terms of research method, a comparative approach was used to study Arendt and Kojève, as well as their engagement with Schmitt’s works. In analyzing these authors’ contributions, their theories were considered against a backdrop of the contradiction between civil society and state and universal rights and national sovereignty with reference to Hegel, Marx, Max Weber, Luxemburg, and Rose. The first interpretative strategy aimed to bring Arendt’s phenomenological theory back to her Marxian insights on the “twin contradictions” expounded in *The Origins of Totalitarianism*. Meanwhile, my reading of Kojève sought to attend to the arguably more speculative exposition of his theory of right, questioning whether his attempts to mend contradictions are plausible. In so doing, I followed Rose’s reading of the Hegelian speculative proposition arguably deployed by Kojève as well. For Rose, the Hegelian speculative identity means both a lack of identity and mutual dependence between seemingly contradictory propositions. Following Rose, where appropriate, the term “diremption” was used instead of “contradiction” in this thesis. As explained by Rose:

‘[c]ontradiction’ implies ‘resolution,’ whereas ‘diremption’ may only manifest as paradox; ‘contradiction’ is a logical term, which implies the simultaneous assertion of A and not-A, while...‘diremption’, on the other hand...formally implies the third, *tetrium quid*, implicit in any opposition, *qua* sundered unity, without positing any substantial pre-existing ‘unity’, original or final, neither finitely past or future, nor absolutely, as transcendent.” (1992, 236)

While “Hegel’s philosophy has no social import if the absolute cannot be thought” (Rose 2009, 98), in the context of this thesis, the “absolute” was understood as a compound concept that brings together contradictory and yet mutually dependent notions. Following Rose, both Kojève and Arendt were read with caution to prevent a facile resolution of “contradictions” between the state and civil society and universal rights and national sovereignty so as to discover the difficulties of these diremptions and critically scrutinize the solutions offered.

The overall structure of this thesis is twofold. It will be argued in the first chapter that Arendt’s naturalistic phenomenology of labour and the concomitant genealogy of the “social” sphere

prevented her from conceiving modern welfare rights out of the diremption between state and civil society. Kojève's theory of rights, articulated phenomenologically in the dialectic of "working consciousness" and the need for recognition, will then be presented as a corrective to Arendt's phenomenology of the "social." The principles of "socialist right of equity" will be argued to stand for an egalitarian reconfiguration of the historical diremption between state and civil society attendant to the French Revolution. The principle of right's conditions of possibility will be discussed in the second chapter. Arendt and Kojève will be shown to have provided two different but complementary responses to Schmitt's theory of political sovereignty. Taken systematically, Kojève's impartial juridical federation, articulated out of the double diremption of modernity and combined with Arendt's theory of disinterested judgment will be argued to represent strong cosmopolitan foundations of universal rights.

CHAPTER I

Phenomenology of Welfare Rights in Arendt and Kojève

Introduction

Post-war political philosophy in the Anglo-American world and on the Continent has yet to come to terms with socio-economic rights. With consistent emphasis on equality of opportunity, Anglo-American political theory accepts economic conditions only in terms of their reinforcement of individual freedom. The "difference principle" of distributive justice, as formulated by liberal theorist John Rawls (1999), is the primary example of a theoretical position sensitive to socio-economic inequalities while unquestionably accepting capitalist property ownership. Theorizing out of the democratic tradition associated with Arendt, Jürgen Habermas (2001) sought to condition economic welfare on the ability of citizens to partake in deliberative democracy. Habermas's theory is critical of the market's instrumentalist rationality, but not so much of capitalist exploitation. These variants of liberal-democratic welfare theories can be contrasted with the predominantly left-leaning Continental thought that has nonetheless abandoned its solid Marxist roots and resorted to either libertarianism or various strains of "ontological communisms." With the Soviet barbarism example serving as a strawman for a politics that collapse the economic class and state, these political philosophers have disavowed notions of state and juridical rights altogether (Agamben 1998; 1999; Badiou 2002; Hardt and Negri 2003), rethought class as another type of identity (Laclau and Mouffe 2001), or focused on the question of radical democracy (Lefort 1988; Rancière 2004) and recognition (Fraser and Honneth 2003). The existentialist and phenomenological strain of Continental political philosophy has been stained by Heidegger's Nazism. Meanwhile, the "so-called" left-Heideggerians (Marchart 2008) either dismiss the question of law and right (Agamben 1998; 1999) or discuss them only tangentially (Lévinas 1998; 2013; Derrida 1999; Nancy 1993). However, with the gradual collapse of the Western welfare state following the demise of state-socialism and rise of neoliberal triumphalism, the right to socio-economic welfare has regained momentum (Moyn 2018). Most recently, Steven Klein (2020) has rethought welfare rights and the welfare state from within the democratic tradition. More straightforwardly, Samuel Moyn (2018) put economic and social rights at the centre of his philosophical and historical approach to human rights.

Two prominent figures of 20th century Continental thought have profoundly influenced political phenomenology and existentialism: Arendt and Kojève. Both influenced by Heidegger, Arendt and Kojève proposed their own idiosyncratic political phenomenologies while preserving the

traditional phenomenological emphases on consciousness, history, temporality, and the fundamental structures of human existence, including the existential categories of death and birth. In recent literature, Arendt is increasingly presented by commentators as a phenomenologist of human rights (Benhabib 2003; Birmingham 2006; Parekh 2008; Bell 2018). And while Arendt's phenomenological contribution to the theory of democracy and political rights is unquestionable, the economic and material conditions of her radical democracy are less clear and increasingly debated (Bernstein 1986b; Tony Burns 2013; van der Walt 2012; Emden 2019; Wellmer 2000). At the same time, regardless of Kojève's immense influence on 20th century phenomenology and Continental philosophy (Descombes 1980), his phenomenology of right has received only limited treatment (Frost 1999; Minkkinen 2009; Roth 1983; Frost and Howse 2007). With this in mind, this chapter will bring Arendt and Kojève to a conversation on the issue of socio-economic rights.

In this section, the phenomenology of socio-economic rights will be discussed against the backdrop of what Arendt calls "[t]he fundamental contradiction between a political body based on equality before the law and a society based on the inequality of the class system" (1973, 12) and the analogous tension between state and economic society emphasized by Kojève (Kojève 2007, 430, 470-9). The historical contradiction of modernity in relation to human rights was formulated as a problem by Marx (1992), wherein Marx analyzed the contradiction between the "Rights of the Citizen" and the "Rights of Man" promulgated in revolutionary France and North America. In "On the Jewish Question", Marx explains that the "Rights of Man" belong to economic "civil society" and are distinct from/but interdependent with the citizen's "formal rights," just as the bourgeois civil society is distinct from/but interdependent with the political community. While the "Rights of the Citizen" promise a communal existence, Marx's critical observation is that they are effectively reduced to a means of realizing the egoistic "Rights of Man"—the rights of a bourgeois individual to accumulate capital at the expense of others. As a result, what remains concealed under abstract legality—as Marx later demonstrates in *Capital* (2008)—is the substantial difference between those who have to sell their labour as a commodity and those who own capital and the means of production. Just as Marx focused on the French and American revolutions as hermeneutic sources of thinking about human rights, the consequences of the French Revolution will be the structuring element of the phenomenological exposition of this contradiction by Arendt and Kojève.

Argument

In the next chapter, I show how Arendt's naturalistic phenomenology of *animal laborans*—premised upon Nietzsche's philosophy of life—and the concomitant genealogy of the "political" realm's "submersion" into the naturalistic "social" economy prevent Arendt from conceiving welfare rights out of the modern diremption of state and civil society. Arendt's stance on welfare rights will be juxtaposed to Kojève's phenomenology of the "socialist" right that he articulates phenomenologically through the dialectic of the "working consciousness" and need for recognition and, historically, in terms of the Hegelian-Marxist dialectical historiography of economy and state. Having contrasted Arendt's naturalistic *animal laborans* and Kojève's anthropological "working consciousness" along with the historical and legal implications thereof, I will argue that Kojève offers a theory of welfare rights that addresses Arendt's concern with the "social question" by way of a double gesture—first, by providing a historical variant of Arendt's "submersion" thesis in his critique of the French Revolution's capitalist legacy, and then by offering a synthetic account of socialist welfare rights out of the diremption between state and civil society.

1. Phenomenology of the “Social” in Arendt

What does man actually know about himself? Is he, indeed, ever able to perceive himself completely, as if laid out in a lighted display case? Does not nature conceal most things from him—even concerning his own body—in order to confine him and lock him with a proud, deceptive consciousness, aloof from the coils of the bowels, the rapid flow of the bloodstream, and the intricate quivering of the fibres! She threw away the key.

Friedrich Nietzsche

1.1. Phenomenology of Labour and the “Social”

In *The Human Condition* (1998), Arendt takes her bearings from Heidegger’s phenomenological analysis of being-in-the-world (Benhabib 2003, 51-6) to offer an account of active human life as conditioned by the fundamental phenomena of labour, work, and action—*vita activa* (Arendt, 1998, 7). It has been emphasized that Arendt has a clear transhistorical hierarchy in mind in the design of this typology (Rose 1992, 225, 229-30). According to Arendt, action is the highest human activity and “is the exclusive prerogative of man; neither a beast nor a god is capable of it” (Arendt 1998, 20). Only humans can act in the full sense of the word because they are capable of acknowledging the presence of others and act in concert, that is, to exercise non-violent political power (*praxis*). Primarily conceived in terms of speech, the phenomenon of action gives rise to the “political” public sphere. Work, on the other hand, signifies the human ability to create objects that form a temporally stable and durable “human artifice.” The activity of work, and its correlate figure *homo faber*, is not properly political and presupposes what can be understood as instrumental fabricating rationality. But work, according to Arendt, should be further distinguished from labour and the phenomenological type that it represents: *animal laborans*. “Unlike the productivity of work,” she writes “the productivity of labor power produces objects only incidentally and is primarily concerned with the means of its own reproduction...it never ‘produces’ anything but life” (88).

This distinction between “working hands” and “labouring body,” to invoke Arendt’s paraphrasing of John Locke, is the most unusual innovation of Arendt’s phenomenology. While working hands procure the human artifice that sustains the “political” public sphere, the labouring body is said to belong to the vitalistic sphere of “social” economy. Even if the Western tradition of political thought has largely ignored this distinction, says Arendt, all European languages have retained this etymological difference between work and labour (80, n3). The stakes of this novel demarcation are high; here, Arendt aims to respond to the theorists of labour, from Locke to Smith and Marx, in an effort to establish a transhistorical phenomenological description of the economy.

In *The Human Condition*, the naturalistic manner in which the “social” is theorized is best discernible in the section called “Labor.” Labour is said to reproduce life and mirror processes inherent to the ontological plane of nature, as opposed to the human spirit or, to use Arendt’s terms, human artifice and political action in the public sphere. She goes on to argue, “[o]f all human activities only labor, and neither action nor work, is unending, progressing automatically in accordance with life itself and outside the range of wilful decisions or humanly meaningful purposes” (105-6). These processes of organic life are portrayed as a circuit of regeneration and deathless repetition: living things grow out of nature, perish and return to the “gigantic circle of nature” (96). In a similar vein, the results of human labour are produced and consumed immediately to satisfy biological needs and wants, the most obvious of which are hunger and reproduction. Here, Arendt

conceives the necessity of human biological subsistence in terms of the cyclical process of labouring that “always moves in the same circle, which is prescribed by the biological process of the living organism” (98). One can easily recognize the Nietzschean influence in these claims on life’s perpetual continuity, and Arendt herself explicitly invokes Nietzsche to suggest that the organic determinants of the labouring process resemble the “eternal recurrence.” For Nietzsche, “eternal recurrence,” along with its derivative phenomena of hunger and procreation (Nietzsche 1968, 347), are inherently life-affirming principles juxtaposed to the life-denying “spiritual” world (342). In this respect, the “will to power” can be understood as a subterranean drive that allows the “eternal recurrence” to overtake the “spirit,” that is, human artifice.

Arendt’s deployment of the “will to power” is apparent in her qualification of the labouring process as naturally producing a surplus, becoming especially salient in the discussion of fertility. “The reward of toil and trouble,” she writes, “lies in nature’s fertility, in the quiet confidence that he who is ‘toil and trouble’ has done his part, remains a part of nature in the future of his children and his children’s children” (1998, 107). The nature of labour is said to be “intimately bound up with life as giving birth,” as attested by Hebrew and classical traditions (106). In contrast to Arendt’s political notion of natality,² the act of giving birth attests to fertility as the force of life (108). Arendt observes this exuberance of life in “[t]he living organism [that] is not exhausted when it has provided for its own reproduction, and its ‘surplus’ lies in its potential multiplication” (108). The upshot of the fertility discussion is that the eternal return of natural necessity implies a surplus, a potential to multiply indefinitely presupposed in the doctrine of the “will to power.” And insofar as the phenomenon of labour structures the “social,” the latter appears *ontologically* as a paradoxically private sphere marked by both eternal deathless repetition and the lurking possibility of an exuberant outpouring.

However, if Nietzsche “willed” the life-affirming principle of “eternal recurrence” (1968, 342-7), Arendt circumscribes “eternal recurrence” and “will to power” only to the phenomena of labour. As such, the phenomenology of the “social” espoused here by Arendt takes much from Nietzsche’s vitalistic philosophy of nature, but its application is limited to the category of labour. While Arendt denounces the “process reality” of labour as the lowest human activity, she nonetheless relies on Nietzsche’s metaphysical innovations to articulate the “process” of labour. In a homologous manner, the doctrine of the will to power is used in a negative sense, for the sphere of natural necessity (labour and the economy) should, and this is Arendt’s normative³ statement, be prevented from infiltrating political life.

Since Arendt’s phenomenology of labour hinges on a larger philosophical claim regarding nature, it is phenomenological only in a limited sense. Heideggerian phenomenology permits thinking of human phenomena as temporally finite, circumscribed by the categories of birth and death. However, as Arendt herself acknowledges, the eternal principle of life is at odds with the finite principle of human worldly phenomena:

Nature and the cyclical movement into which she forces all living things know neither birth nor death as we understand them. The birth and death of human beings are not simple natural occurrences, but are related to a world into which single individuals, unique, unexchangeable, and unrepeatable entities, appear and from which they depart. Birth and death

² See Chapter 2, Section 1.2. of this thesis.

³ Notwithstanding this normative claim, Arendt will argue that *animal laborans* does overtake human spirit in modernity. See Hannah Arendt, *The Human Condition*. 2nd ed. (Chicago: University of Chicago Press, 1998), 321-324.

presuppose a world which is not in constant movement, but whose durability and relative permanence makes appearance and disappearance possible, which existed before anyone individual appeared into it and will survive his eventual departure. Without a world into which men are born and from which they die, there would be nothing but changeless eternal recurrence, the deathless everlastingness of the human as of all other animal species. (1998, 96-7)

Because the phenomenal world presupposes birth and death, eternal recurrence cannot fully appear within the limits of the human world. Arendt, however, *makes* it appear nonetheless: first, uncontroversially, in the observable phenomena of growth and decay, and then in the figure of the perpetually producing and consuming *animal laborans* and the “social” sphere.

In fine, the principle of necessity translated from the ontological determination of natural labour into its political significance is the pivot of Arendt’s theory and critique of the paradoxically private character of “social” economy. Insofar as the repetitive processes of the labouring body stem from natural necessity—and this is crucial for Arendt—they do not imply any meaningful participation of others. In the absence of political participation, the “social” becomes a paradoxically asocial private sphere. Following this line of thought, the production and consumption of food, for example, becomes devoid of any political implications. Arendt hypothesizes the theoretical constellation of the *animal laborans* as procuring a natural biological foundation—*zoe*, for the human finite biographical life—*bios* (84, 97). At first glance, this position resembles that of Kojève, for whom, as we will see later, the sustenance of animal life also serves as a necessary biological basis of properly human existence. But if Kojève says nothing about the qualifications of animal life apart from its inherent inertia of self-preservation, Arendt attributes to it what she judges to be a politically dangerous force of natural necessity and the paradoxical privacy of the “social.”

Arendt’s unusual phenomenology of the “social” has been criticized as incoherent even by the most sympathetic of her commentators. Margaret Canovan points to a tension between the economic sense in which the “social” is couched and Arendt’s cultural critique of “high society” (Canovan 1974, 108; Pitkin 1998, 17). Instead of “high society,” Seyla Benhabib suggests that Arendt’s “social” implies a critique of the normalizing effects of “mass society” in a fashion similar to Michel Foucault’s critique of disciplinary institutions (2003, 26). On the other hand, Benhabib identifies and separates two interlinked economic senses of the “social”: “a capitalist commodity exchange economy” and the realm of voluntary associations—civil society (23-5, 29). In the *Attack of the Blob: Hannah Arendt’s Concept of the Social* (1998), Hanna Pitkin comes the closest to analyzing the vitalistic connotations of Arendt’s “social” ontology. The “social,” Pitkin explains, is deployed by Arendt as relying on the imagery of “*The Blob*...a monstrous, jellylike substance..., which has a predilection for coating and then consuming human beings and grows with each meal” (4). While Arendt herself cautioned against these types of mystifications in her account of the “social,” observes Pitkin, she nonetheless resorts to an image of an “abstract, personified agency beyond human influence” (6). In particular, Arendt is said to articulate the economy in terms of natural biological necessity expressed in the irresistible force of the vitalistic and pernicious “blob” (11). Pitkin, however, limits herself to psychobiographical explanations of Arendt’s deployment of the “blob” and does not draw implications from the ontology of the “blob” for the phenomenon of right. At the same time, Dana Villa hints that Arendt’s critique of “process reality,” to which the “social” would belong, is indebted to Nietzsche’s vitalism: “[a] ‘process reality’ mirrors the endless and repetitive quality of Nature itself. It dissolves everything in a Heraclitean flux, albeit a flux in which no true change—the creation of something genuinely new—is

possible” (Villa 2008, 405). Like Pitkin, however, Villa does not discuss the relationship between Arendt’s deployment of Nietzsche’s naturalistic “eternal return” and her thinking about the “social,” labour, economy, and rights.

1.2. *The Historical Hermeneutic of Animal Laborans*

To fully understand the political consequences of the “social,” especially in relation to historical modernity and rights, one has to proceed from Arendt’s phenomenology of *animal laborans* to the level of historical hermeneutics. The latter, which one would expect to comprise the interpretation of political ideas of authors reflective of their historical epochs, is consistently employed and simultaneously disowned by Arendt. On the one hand, she suggests that active phenomenological life traditionally received its hermeneutic meaning from contemplative life (Arendt 1998, 16). That is, the human world has been shaped by monumental works of various thinkers, from Plato to Marx. On the other, she claims that the traditional hierarchy of *vita contemplativa* and *vita activa* has been reversed by Marx and Nietzsche in favour of the latter (Arendt 2014, 26-37). Arendt admits her own reluctance to think the proper relation between *vita activa*, expressed in phenomenological terms of labour/work/action, and *vita contemplativa*, reflective of the Western political tradition. This undecidability, as Rose (1992) suggests, makes Arendt take a judgmental stance, one beyond the tradition she deems bankrupt and establish her own transhistorical hierarchy of active life to judge the Western political tradition and its modern outcomes (224, 232-3, 237). In so doing, as I will show, Arendt’s conjoins the Nietzschean naturalistic phenomenology of *animal laborans* with her idealized reading of the Greek *polis*. She presents a genealogy of the “social” *animal laborans*: from a state of desirable circumscription to the privacy of *oikos* in the Greek world to the “unnatural” rise of welfare’s “natural” necessity introduced by French revolutionaries concluding with the modern “submersion” of political life into a “social” economy she imputes to Marx.

Arendt begins her genealogy of *animal laborans* in the Greek *polis*. She presents the distinction between *homo faber* and *animal laborans* as that between a craftsman and those in Greek society who work with their bodies “like slaves and tame animals...minister to the necessities of life” (Aristotle cited in Arendt 1998, 80). And while both these figures are said to be excluded from Greek public life, is it *animal laborans* that dwell exclusively in the realm of privacy and necessity (7, 24, 40). The Greek solution that Arendt repeatedly construes and endorses in the phenomenological hierarchy of *vita activa* is intended to preserve the realm of public freedom by domesticating the labouring process in the *oikos*, the household economy. For the Greeks, “[t]he *polis* was distinguished from the household in that it knew only equals, whereas the household was the center of the strictest inequality” (32). This way, and following Arendt’s phenomenology of labour, the despotic and incontestable rule predicated on “the absolute dictate of the bodies” could be tamed and the eternal recurrence of life prevented from encroaching on the equality of the “political.”

Yet, as Hauke Brunkhorst (2000) has observed, the strict separation of the *polis* and *oikos* is construed by Arendt through the German idealist opposition of freedom to necessity, alien to Greek political philosophy (186). Indeed, one is tempted to argue that it is only by interpreting the notion of necessity as antithetical to the freedom gleaned from Kant’s second *Critique* that enables Arendt to say that:

What all Greek philosophers, no matter how opposed to *polis* life, took for granted is that freedom is exclusively located in the political realm, that necessity is primarily a prepolitical phenomenon, characteristic of the private household organization, and that force and

violence are justified in this sphere because they are the only means to master necessity—for instance, by ruling over slaves—and to become free. Because all human beings are subject to necessity, they are entitled to violence toward others; violence is the prepolitical act of liberating oneself from the necessity of life for the freedom of world. (1998, 31)

Here, Arendt posits the eternal recurrence of life as a necessity to be dealt with violently and apolitically. The politically subservient position of slaves and women in the Greek *polis* thus does not concern Arendt, as she seems to applaud the awareness of the Greeks “that the *polis* could survive only if the number of citizens remained restricted” (43). What is more, the “slavish” process of labouring is further presented as a legitimate justification for enslavement (83). Paradoxically, Arendt’s circumscription of *animal laborans* to the privacy of household economy is justified on the grounds of freedom, even if the historical reality of the Greek world implies a heavy price for this freedom: slavery⁴. The only way for Arendt to avoid this problem of historic slavery is to construe an idealized version of the Greek *polis* as consisting exclusively of *agora*.

The Greek understanding of politics will be lost, however, as Arendt continuously laments, first in the co-existence of the private and public sphere in the Roman Empire, then in the gradual disappearance of the public realm in the Middle Ages and, finally, in the “fire” of the French Revolution (1998; 23, 34, 59). In *On Revolution* (1990), Arendt explains that the unprecedented concern with the “social” occurs against a backdrop of oppression, mass poverty and destitution of feudal France’s social classes from which the revolutionaries sought to liberate themselves (60, 112). Acting under the dictate of their natural bodies, observes Arendt, the multitude of the poor “rushed to the assistance of the French Revolution, inspired it, drove it onward, and eventually sent it to its doom, for this was the multitude of the poor” (1990, 60). Here, “the social question” is presented as a response to this historical conjuncture, an attempt to solve the question of poverty that, to be sure, Arendt insists should not be resolved by political means: “[t]he whole record of past revolutions demonstrates beyond any doubt that every attempt to solve the social question with political means leads to terror, and that it is terror which sends revolutions to their doom” (*Ibid.*). According to Arendt, the Terror of the French Revolution originated in the sphere of “natural necessity” from which the “social” question of the “masses” stems.

As stated earlier, in Arendt, the cyclical movement of “social” labour finds its counterpart in human life’s recurring necessity (1998, 59). In *On Revolution*, Arendt envelops this Nietzschean philosophy of life into the temporal metaphysics of the French Revolution: post-Kantian philosophy’s rectilinear movement of time incorporates the cyclical movement of nature, culminating in the idea of historical revolutionary necessity (1990, 52, 55). Arendt’s recasting of historical necessity seeks to reveal how a Hegelian “absolute freedom” driving the French Revolution should be understood as the vitalistic “forces of the earth” (114). Theorized by Arendt as unleashed from the private sphere and driven by the will to power, the eternal recurrence of life overtakes the “political” and installs the “social” in its stead. As a result, for Arendt, the necessity of the French Revolution implies the irresistible growth of the “social,” an “unnatural growth...of the natural” (1998, 47, 48).

⁴ As Bernstein has observed, Arendt’s examples of successful politician communities—the Greek polis and the American Revolution—“occurred at a time when slavery was acceptable and justified.” See Richard Bernstein, “Rethinking the Social and the Political,” in *Philosophical Profiles: Essays in a Pragmatic Mode* (Philadelphia: University of Pennsylvania Press, 1986), 249.

Arendt further elaborates that, in the words and actions of Robespierre, the welfare of the people became a political virtue (1990, 73-5)⁵. Because the most sacred of laws became the welfare of the people, the French Revolutionaries are said to have surrendered freedom to the necessity and urgency of life processes (60). According to her, the eternal recurrence of life in the form of the “social” and embodied in the needs of the multitude submersed the public realm (48, 60)⁶. As a result, genuine Greek politics degraded to political economy, which Arendt deems a contradiction in terms: a contradiction embodied in the modern nation-state as a “[n]ation-wide administration of housekeeping” (1998, 28).

It is in the course of the French Revolution, the modern event *par-excellence*⁷, that the reversal of Arendt’s posited hierarchy of *vita activa* takes place: the sphere of political action becomes defined by the instrumental thinking of *homo faber* and, ultimately, the asocial social concerns of *animal laborans* (Bernstein 1986, 239; Kalyvas 2008, 266; Wilkinson 2012, 37). Arendt suggests that the “Rights of Man” to survival and welfare, that is, the rights of the *sans-culottes* as according to her, are also Marx’s primary concern regarding social emancipation. Concomitantly, she posits that Marx’s Hegelian notions of class-consciousness and exploitation are equally predicated on the slave-economy logic, liberated from the Greek household (1990, 63-4). Because the rise of the “social” in the modern age brings about ultimate depoliticization, Arendt asserts that Marx’s social emancipation is at odds with public freedom and *praxis* (1998, 47, 89, 90). By attempting to solve the question of slavery, according to Arendt, Marx follows the French Revolutionary tradition and espouses a pernicious doctrine of “liberty,” thereby abdicating freedom to necessity (61-2, 65).

To this effect, Marx’s “socialized man” correlates with the submersion of the “political” into the “social” inaugurated by the French Revolution. She writes:

In the rise of society, it was ultimately the life of the species which asserted itself. Theoretically, the turning point from the earlier modern age's insistence on the ‘egoistic’ life of the individual to its later emphasis on ‘social’ life and ‘socialized man’ (Marx) came when Marx transformed the cruder notion of classical economy—that all men, in so far as they act at all, act for reasons of self-interest—into forces of interest which inform, move, and direct the classes of society, and through their conflicts direct society as a whole. Socialized mankind is that state of society where only one interest rules, and the subject of this interest is either classes or mankind, but neither man nor men. The point is that now even the last trace of action in what men were doing, the motive implied in self-interest, disappeared. What was left was a ‘natural force,’ the force of the life process itself, to which all men and all human activities were equally submitted (‘the thought process itself is a natural process’) and whose only aim, if it had an aim at all, was survival of the animal species man. (1998, 321)

⁵ Arendt is especially scornful of two great thinkers of the French Revolution: Rousseau and Robespierre. In particular, she places compassion (goodness of man in nature) at the heart of Rousseau’s “selfness” and Robespierre’s “terror of virtue” (that presupposed the welfare of the people). See Arendt, 1990, 73-5, 79-81.

⁶ As Arendt judges the historical event of the French Revolution against the idealized Greek *polis*, the exemplary Greek “freedom” is also (apart from necessity) superseded by the modern notion of “liberty.” Thus, the egalitarian tendency of the French Revolution is portrayed by Arendt as pernicious in general and particularly damaging for the public sphere. See Arendt, *On Revolution*, 32-3, 40.

⁷ Arendt herself acknowledges that the French Revolution along with its American counterpart embodies the principle of natality. See Arendt, *On Revolution*, 298.

Arendt's critical point is that the late modern ideal of "socialized humanity" that Marx allegedly espoused aims at a view of humanity reduced to the natural circuit of consumption and production. While there was no division between labour and work for the Greeks, this distinction is said to have become meaningful only in modernity. The "mankind" of the French Revolution is a progenitor of Marx's thinking about class insofar as both emanate from the force of life itself and reduce the human ability to act. Further, "[w]ithin [Marx's] completely 'socialized mankind'...the distinction between labour and work would have completely disappeared" (89). Eventually, the distinction between labour and work was abandoned in favour of labour (90). Thus, labouring activity, once belonging to the privacy and despotism of the Greek household, was extrapolated onto society at large. In this respect, Marx is said to espouse a "consistent naturalism" and denigrate human freedom to the mere natural labouring process thus proclaiming the victory of the *animal laborans*.

However, the victory of *animal laborans* that Arendt imputes to Marx is premised on a misreading of Marx. Pitkin observes that Arendt's charges against Marx's purported "naturalism" are premised on the blatant distortions of his conceptualization of labour and work (1998, 133). Arendt's etymological argument that Marx focuses entirely on *arbeit* (labour) and disregards *werke* (work) is based on Arendt's confused etymology of these words in German and the subsequent extrapolation of this confusion into English. "Marx's frequent use of words from the *arbeit*-family," says Pitkin, "cannot indicate a preoccupation with labor to the detriment of work." "On the contrary, except where context indicates otherwise, when Marx says *Arbeit* or *arbeiten* he is just as likely to mean work as labor, or both together" (134). One can also add that Arendt's reliance on etymology, in addition to her vitalistic ontology, is another Nietzschean strain underlying her phenomenology of *animal laborans*. In this respect, Christopher Holman (2011) has argued that Arendt criticizes "an imagined content within Marx" to support her own theoretical notion of *animal laborans* (334). While Arendt relies on Marx's description of labour as "metabolism with nature" and "production of life" within a species, she misses that, for Marx, a "species life" is not merely natural (335). Far from being subsumed in the natural life of a collective species that reduces human plurality, Marx's account of labour affirms "the embedded self-differentiation of the individual" (336). Finally, Mildred Bakan (1979) showed that Arendt's conceptualization of labour from a Hegelian-Kojevean "master and slave" structure has deficiencies, discussed later in the thesis. Suffice it to say, labour contains a dialectical relation to nature, because while transforming nature for the other, the slave is detached from his/her own appetite (52)⁸. Bakan writes, "[a]ccording to Hegel, it is the transformation of appetite itself into thought in the context of deferred desire that allows labouring work in a world to occur" (53). What is also crucial here is that labour as a mediating phenomenon engenders thought and, by extension, freedom⁹. For Hegel, as

⁸ When Arendt talks about the labouring slave reproducing life in the Greek household, she avoids considering that the slave's labour is not merely natural insofar as the slave labours for the other. In a Kojevian vein, Mildred Bakan reminds us that animals do not labour but are merely driven by appetite or desire. The enslaved has to defer his/her own desire and labour to an object destined for the other's desire or consumption. According to this logic, it seems natural to desire to eat an animal, but there is nothing natural in hunting an animal for the other. See Mildred Bakan, "Hannah Arendt's Concepts of Labour and Work," in *Hannah Arendt, the Recovery of the Public World*, edited by Melvyn A. Hill (New York: St. Martin's Press, 1979), 52.

⁹ Judith Butler explains this point in the following way: "In Hegel's chapter the bondsman discovers that he is not a thing-like creature, but a dynamic, living being capable of negation. The bondsman experiences himself as an embodied actor, one who also thirsts for life. Although the bondsman confronts his freedom from natural constraints through the negating activity of his labour, he rediscovers the 'natural' aspect of his existence as a *medium* of self-

for Kojève, the slave's labour for the master is what allows the former to realize his/her potential freedom (54). Consequently, in eliminating the dialectical relationship between work and nature, Arendt is unable to acknowledge the dialectical relationship between freedom and natural necessity (53). This Hegelian insight is ignored by Arendt because, as Brunkhorst has noted, "Arendt remains completely in line with the elitist assumptions of ancient Greek philosophy and practice" (2000, 184). "For the Greeks, there could be no struggle for recognition between master and slave because these two types of human beings belonged to irreducibly different ontological spheres" (*Ibid.*). As such, for Arendt, there can be no Hegelian overcoming of the slave's condition as a *telos* of political action because politics proper "occurred only amongst those who were already civic equals" (*Ibid.*).

To recapitulate, Arendt devises a phenomenology of labour and its correlated "social" sphere out of a Nietzschean philosophy of nature as a transhistorical and explosive private sphere wherein *animal laborans* dwells. Having chronicled the genealogy of *animal laborans* from the circumscription in the Greek polis to the "slave revolt" of the French Revolution, Arendt proclaims the submersion of the "political" into the "social," also traced to the "Rights of Man" and Marx's concern with economic exploitation and social emancipation.

1.3 *Welfare Rights and Civil Society*

Arendt presents the "Rights of Man" proclaimed by the French revolutionaries as the result of the final submersion of the "political" into the "social," a development she blames on the multitude of the poor, a "slave revolt" driven by the necessities of life and the "general will" that dethrones the lofty "political" for the sake of slavish "social" welfare (1990, 90). In her famous critique of human rights in *The Origins of Totalitarianism* (1973), she describes the conditions of 20th century refugees and those who have lost their civic and political status and had to rely on the "Rights of Man":

[L]eft with those qualities which usually can become articulate only in the sphere of private life and must remain unqualified, mere existence in all matters of public concern.... Since the Greeks, we have known that highly developed political life breeds a deep-rooted suspicion of this private sphere, a deep resentment against the disturbing miracle contained in the fact that each of us is made as he is—single, unique, unchangeable. (301)

Here, human rights as "Rights of Man" are understood not as rights but as damnation. Those who have to rely on human rights found themselves in the dangerous private sphere of natural necessity. The "Rights of Man" are posited as reducing politics to "nature," and for Arendt, this predicament roots back to the tradition of the French revolutionaries, who supposedly wanted to emancipate the people, not *qua* citizens but *qua malheureux* (108, 112). Having first equated the "social" with welfare in her critique of the French Revolution and derivative philosophies of Hegel and Marx, Arendt now couches welfare rights in terms of the (Hobbesian) state of nature.

This criticism of welfare rights takes place against a backdrop of Arendt's naturalistic ontology of the "social." In particular, she goes on to attribute the principle of "natural differentiation" to those who are forced to rely solely on their "Rights of Man":

The great danger arising from the existence of people forced to live outside the common world is that they are thrown back, in the midst of civilization, on their natural givenness,

reflection. The body which once signified his enslavement comes to appear as the essential precondition and instrument of his freedom." See Judith Butler, *Subjects of Desire: Hegelian Reflections in Twentieth-Century France* (New York: Columbia University Press, 2012), 70.

on their mere differentiation. They lack that tremendous equalizing of differences which comes from being citizens of some commonwealth and yet, since they are no longer allowed to partake in the human artifice, they begin to belong to the human race in much the same way as animals belong to a specific animal species. (302)

However, “mere differentiation” is argued to stem from the fact of life, not from human artifice. As Rose has observed, Arendt’s “argument conflates...the ‘disturbing (sic) miracle’ of each unique life ... - with socially developed and recognized differences: the equality and inequality which are historical constructions, and which ‘political’ institutions may equally reinforce as seek to abolish’ (1992, 226). “The ‘threat’ is the ‘artifice’, not the ‘givenness’, of human inequality, which is socially conditioned” (*Ibid.*). Instead of analyzing “the historically specific constitution of apparently separate and yet contrary sets of institutions which presuppose and are implicated in each other—state and civil society” (231), Arendt posits the rise of the transhistorical and debased “social” that, as we have seen, hinges on the Nietzschean philosophy of eternal recurrence and will to power. Arendt’s criticism of the “Rights of Man” hinges on the submersion of the “political” into the “social” and largely ignores the historically specific conditions of the bourgeois civil society.

These conditions were analyzed by Marx in “On the Jewish Question” out of the contradiction between the “Rights of the Citizen” and the “Rights of Man” promulgated in revolutionary France. Marx explains that citizen “rights” are realized in a sovereign political state, wherein citizens are considered part of an imagined communal species-being (1992; 220, 228). However, according to him, citizens are forced to live a “double life” because their real and material existence takes place in civil society, a sphere where people are separated by their self-interest and engage in the egoistic market exchange that Hegel calls the “system of needs” (220, 229). Marx’s critical observation is that while the “Rights of Citizen” promise a communal existence, they are effectively reduced to a means of realizing the egoistic “Rights of Man”—the rights of a bourgeois individual to accumulate capital at the expense of others (228-9). This configuration of *bourgeois* civil society—separated from the state but supported by the state-guaranteed private property law—is contrasted by Marx and feudal society, in which configurations of the “old” civil society have a political character, even if in the feudal sense (232). However, the dissolution of the feudal civil society into the bourgeois civil society comprising of real egoistic individuals is achieved together with the constitution of the political state with formal law. As such, bourgeois civil society results in the “debasement of politics to individual antagonistic interest” (Rose 1992, 222). The state and concomitant “right of the citizen” thus become a tool to service the private interests of the egoistic “man.”

These insights into the contradiction and mutual dependence of state and civil society were not unfamiliar to Arendt. As Rose argues, the first two parts of *The Origins of Totalitarianism* should be seen as “the most sustained attempt to develop Marx’s account of the split between state and civil society from ‘On the Jewish Question’” (1992, 217). Systematic class inequality is understood throughout by Arendt as “[t]he fundamental contradiction between a political body based on equality before the law and a society based on the inequality of the class system” (Arendt 1973, 12)—the gist of Marx’s “On the Jewish Question”. This contradiction is then investigated by Arendt as the “equivocalities of [bourgeois] emancipation, and the ‘deepening...split’ or ‘growing tension’ between state and society” (Arendt 11, 17, 25 as cited in Rose, 218): first, on the individual level in the Dreyfus case, and then in the origins of imperialism and “tribal” nationalism (Rose, 219, 222). In this respect, Arendt’s account of the “social” is justified to unite two economic senses defined by Benhabib, that of “civil society and civic associations” and “the rise of a commodity

exchange market” (Benhabib 2003, 23, 25). Pitkin also acknowledges that Arendt’s ideas about the “social” resemble Marx’s account of exploitation inherent in the bourgeois civil society, “in which every individual is a totality of needs and exists for the other person, as the other exists for him, insofar as each becomes a means for the other” (1998, 137).

The problem, however, is that in her phenomenology, Arendt misconstrues modern civil society as a transhistorical sphere of necessity and the circularity of life. While Marx contrasted the bourgeois civil society with the feudal one, Arendt equated it with the transhistorical account of the pernicious “social” and with the equally transhistorical “political.” As a result, as Rose has observed, “her thinking becomes judgemental, abstract and ahistorical, and unintentionally falls to that very illusion of the perfection of the idealism of the state and politics which has its Janus-face in the simultaneous perfection of the materialism of civil society—the very founding historical diremption on which the *Origins of Totalitarianism* is otherwise based” (1992, 223). For, “[b]y conflating ‘social’ and ‘existential’, Rose continues, “Arendt reinforces the historical conflation of ‘given’ and ‘natural’” (227). This, of course, goes against Marx’s Hegelian insight that there is nothing natural about civil society. For Marx, as for Hegel, civil society is a historical product, not a natural sphere that has existed since time immemorial: “[c]ivil society emerged in the eighteenth century when property relations had already evolved from the community of antiquity and medieval times. Civil society as such develops only with the bourgeoisie” (Marx and Engels cited in Keane 1998, 63-4). Hegel, in his turn, expressed this contradiction phenomenologically in the “spiritual animal kingdom” section of *Phenomenology of Spirit* that narrates the consciousness’s experience of the contradiction between the injunction of “spiritual” law to treat others like ends and the “animal” propensity to treat others as means (Hegel 2013, 397-418; Rose 2009, 188).

Arendt misconstrues bourgeois civil society and is thus likewise unable to properly account for the “Rights of Man.” To construe the “Rights of Man” as welfare rights, Arendt has to devise a genealogy of the “social” economy that overtakes human artifice with the French Revolution in a manner of a “blob” released from the despotic inequality of the Greek *oikos*. The “Rights of Man” are then said to stem from a concern for welfare, whereas by Marx’s account, the “Rights of Man” belong to the hybrid term of modernity—bourgeois civil society—that presupposes contradiction and mutual dependence between the “Rights of Man” and the “Rights of Citizen.” To be sure, a weakness in Marx’s argument was his belief in the *emancipation* of civil society through the project of the “proletariat.” Instead of only criticizing this utopian emancipation, Arendt also simplifies his *critical analysis* of civil society by construing it into naturalistic terms. Because Arendt blames abstract “natural forces”—“the blob”, she not only follows the naturalism of bourgeois economists Marx criticizes but, most importantly, fails to critically scrutinize the historical conditions of social inequality. In this respect, what Arendt imputes to Marx as consistent naturalism is, in fact, her own Nietzschean naturalism. In the end, her recasting of Nietzsche’s eternal recurrence in light of the idealized Greek *polis* returns to haunt her analysis of modern “civil society” and stance on “the Rights of Man.”

2. Phenomenology of Welfare Rights in Kojève

[...]welfare has no validity for itself as the existence of the individual particular will but only as universal welfare and essentially as universal in itself, i.e. as according with freedom. Welfare without right is not a good. Similarly, right without welfare is not the good; *fiat justitia* should not be followed by *pereat mundus* [...]

Hegel

As I have shown, Arendt's phenomenology of the "social" presupposes the rise of a Nietzschean natural "eternal recurrence" and its growth into human artifice resulting in the superimposition of the natural reproduction circuit onto the modern apparatus of welfare rights. In contrast, Kojève's dualistic ontology prohibits penetration of any such qualified nature into human phenomena in general and the phenomena of the economy and rights, in particular. The following section responds to Arendt's critical phenomenology of the "social" and welfare rights from the standpoint of Kojève's phenomenology of work and its legal implications. Defying the rigid Arendtian distinction between labour, work, and action, Kojève conceives a dynamic phenomenology of work out of a dualistic ontology premised on the Hegelian dialectic of the self-consciousness's autonomy and dependency. Articulated in terms of the interdependency of desire for recognition and transformative work, Kojève presents the sphere of economy as an inherently human and historically dynamic realm, in stark contrast to Arendt's vision of the natural transhistorical "social" economy. Drawing on Hegel's historiography, Kojève devises a history of the working consciousness from the condition of slavery in the aristocratic Greek *polis* to the gradual emancipation through transformative work from the Roman Empire to the bourgeois French Revolution. On this account, humanizing work and the correlate sphere of economy become not only a source of human historical progress leading to mutual recognition but also the evolution of the phenomenon of right. Kojève will be shown to phenomenologically account for the diremption between state and civil society and its "capitalist" configuration, thereby recasting Arendt's critique of the "social" in historical terms. Instead of rejecting welfare rights, however, I show that Kojève presents a "socialist" synthesis between state and economic society: the bourgeois right of contract/equivalence is thought by Kojève as evolving into the "socialist" right of equity by enveloping the aristocratic right of status/equality.

2.1. Kojève's Ontological Dualism and Phenomenology of Social Relations

As shown in the previous section, Arendt defines the "social" through a phenomenology of labour articulated in terms of nature's eternal recurrence/will to power. I argue these ontological presuppositions are a defining feature of Arendt's hostility towards welfare rights. Before considering Kojève's phenomenological account of rights, I first consider the ontological premises of his phenomenology of work and social relations.

Kojève fleshes out a phenomenology of social relations out of the dialectic of autonomy and dependence of self-consciousness, or the master-slave dialectical schema, gleaned from Hegel's *Phenomenology of Spirit* and Jena writings. In the *Introduction to the Reading of Hegel* (1980), this schema is understood by Kojève as the phenomenological offshoot of the modern ontological principle of human negativity signaled in Kant's dualistic metaphysics and developed further by Hegel and Heidegger. If ancient Greek ontology was dominated by an understanding of nature as identical to itself, says Kojève, the modern Judeo-Christian dialectical ontology introduced negativity and its concomitant category of human action that negates the givenness of nature and realizes itself in rational history (215). While accepting dualistic ontology, Kojève nonetheless suggests that in modernity, the identity/"actuality" of nature becomes subservient to the negativity/"potentiality" of the human being who creates the spiritual world as second nature. Kojève notes that even Hegel committed a theoretical error by extending the dialectical character of human reality to nature itself in the *Science of Logic* (213). In a telling "golden ring" analogy, Kojève summarizes his phenomenological rekindling of Hegelian negativity and its relationship to nature:

Let us consider a gold ring. There is the hole, and this hole is just as essential to the ring as the gold is: without the gold, the 'hole' (which, moreover, would not exist) would not be a

ring; but without the hole the gold (which would nonetheless exist) would not be a ring either...The hole is a nothingness that subsists (as the presence of an absence) thanks to the gold which surrounds it. Likewise, Man who is Action could be a nothingness that ‘nihilates’ in being, thanks to the being which it ‘negates.’ (215)

Having thus interpreted Heidegger’s famously obscure statement “The Nothing itself nihilates” in terms of human freedom, Kojève’s project can be seen as a corrective to Hegel’s ontological monism (*Science of Logic*) in light of his appropriation of Heidegger’s phenomenology of human historical existence (*Dasein*), while also bringing Heidegger’s apolitical and contemplative phenomenology back to the Hegelian idea of the human being that creates history *for-itself* through a negating action revealed in rational speech (*Phenomenology of Spirit*).

In his dualistic ontology, Kojève elevates negativity (potentiality) over and above nature existing *in-itself* (actuality). In so doing, he effectively “brackets” nature and closes the door on the ancient Greek belief in the “sacred” limitations of human existence (actuality) that Arendt has shown to time and time again seek to revive¹⁰. In contrast to Arendt, Kojève attributes neither a qualification of circularity nor the will to power to nature and devises a clear separation between nature and human reality thus prohibiting both “scientific” and philosophic accounts of nature from encroaching onto human artifice and the phenomenon of right. Even when Kojève acknowledges that quantum mechanics does away with determinism in nature, he argues it is still the human observer who is responsible for transforming nature in quantum mechanics (Kojève 2021; Geroulanos 2010, 69). As Stefanos Geouralos explains:

[F]or Kojève...the existence of man transforms something like nature qua pure exteriority into a given world man always finds himself in interaction with and continually transforms. If such a nature exists, it does so only in the absence of man, but given man’s presence in and interactions with it, such an imaginary nature is immediately turned into a world or reality that man operates in and with, a world that no longer holds anything in itself. (70)

It is not nature as such, but the human transformation of nature, that can be rendered transparent in discourse/rational speech. These transformations would moreover constitute a spiritual history. This also means that natural sciences like mathematics (e.g. Cantor Theory) are not properly discursive and, for this reason, cannot explain the political, let alone the juridical truth of human existence in the world. The same holds for any philosophical claims about nature, be it F. W. J. von Schelling’s “absolute,” the usage of which Kojève attacks in his dissertation on Vladimir Solovyov (Kojève 2018), or the Nietzschean philosophy of life, that Kojève discusses in George Bataille’s attempt to overcome the historical rationalism of Hegel (Belay 1997). Just like in the natural sciences, claims on nature are not discursive. They might only derive from a philosopher’s revelation or silent contemplation that seeks to articulate the ineffable. In this respect, Arendt’s claim that nature affects human artifice in a qualified manner is in line with what could be considered as Nietzsche and Schelling’s conjectures on the circularity of subterranean drives in nature, if not an outright biologism. “It is pointless,” according to Kojève, “to discuss the biological ‘theories’ of *Droit*...*Droit* is a specifically human phenomenon and is not found in non-human nature” (Kojève 2007, 117). In short, Kojève’s dualistic ontology does not allow for any qualifications of nature to affect the human spirit whatsoever, let alone overtake human artifice and impose a cyclical movement of nature onto political and juridical reality.

¹⁰ In this respect, Arendt’s approach is similar to that of Leo Strauss. See Timothy Burns, “The Place of the Strauss-Kojève Debate in the Work of Leo Strauss,” in *Philosophy, History, and Tyranny: Reexamining the Debate between Leo Strauss and Alexandre Kojève*, edited by Timothy Burns and Bryan-Paul Frost (Albany: Suny Press, 2017).

The phenomenon of work/labour is articulated by Kojève in terms of human social reality in drastic contrast to Arendt's naturalism of the "social." Kojève expounds the origins of human reality in the famous dialectic of master and slave, a story of origins of the self-conscious and historical human being (Love 2018, 111). According to this anthropogenic phenomenology of human sociality, awakened by the desire for recognition, that is, by a desire directed towards another desire¹¹, two consciousnesses risk their lives for a non-natural end, that is, the pure prestige of recognition (Kojève 1980, 5). The vanquished consciousness, having voluntarily¹² renounced the struggle for recognition out of the fear of death, becomes enslaved to the victorious other, the master. As a result, it is for the enjoyment of the master that the slave works, for example, by preparing food for the other's consumption. But this work is not the repetitive circuit of production and consumption attributed by Arendt to *animal laborans* because the dependent consciousness:

[A]lso has engaged in a Struggle for recognition; he also has therefore desired a desire, has experienced anthropogenic Desire. Of course, he renounced the Struggle through fear of death. But it is a Struggle for recognition that he renounced, not a biological struggle for food or sex. In the terror (*Furcht*) of death, the Slave saw that which the Master, who had only to overcome a simple fear (*Angst*) of danger, did not: he saw his essential finitude; he understood that Recognition presupposed biological life; he sensed that death was absolute Nothingness [*Néant*], pure or abstract Negativity—a Nothing [*Rien*]. The terror of death has therefore humanized the Slave, even if he was forced to renounce the *Recognition* of his humanity, i.e., its *actualization* or *objectification*; for the animal that *knows* itself to be finite [525] or mortal is no longer an animal: it is a human being, if only in potentiality. (Kojève 2007, 431)

Far from being the Arendtian labouring animal, for Kojève, the working consciousness is a human in potentiality. In realizing its human potential through work, the dependent consciousness finds itself not in the Arendtian "natural" "social" but in social relations that stem from the initial need for recognition. The dependent consciousness is emphatically not *animal laborans*, the latter being merely animal *Homo sapiens*. And while Kojève acknowledges that the anthropogenic encounter is possible only if there is a herd of *Homo sapiens*, the animal herd does not constitute a human society (Kojève 1980, 4; 2007, 401-3, 433). Instead, the dependent consciousness is humanized by facing the terror of death/the "absolute Master" and realizing its finitude, even if the struggle for recognition results in servile work for the other/the "relative Master."

Kojève is clear that this work, which is *also* labour, is not merely natural. He states:

Death is embodied for him not in Nature, which kills the animal (illness, various accidents, or old age), but in the Master, in a human being, is a being who goes to the very end of the Struggle to the death for Recognition. And this is why, in submitting to death, the Slave does not submit to Nature, but to Man, to the Master, to his Master. This is also why this submission, this dependence, leads to Work for the Slave; for the Master, on which his life

¹¹ "Desire must...be directed towards a nonnatural object, towards something that goes beyond the given reality. Now, the only thing that goes beyond the given reality is Desire itself. For Desire taken as Desire—i.e., before its satisfaction—is but a revealed nothingness, an unreal emptiness...Therefore, Desire directed towards another Desire, taken as Desire, will create, by negating and assimilating action that satisfies it, an I essentially different from the animal "I"...And since Desire is realized as action negating the given, the very being of this I will be action." See Alexandre Kojève, 1980, 5).

¹² As Frost and House note, this means that on Kojève's existential account, there are no "natural" masters or slaves. See Bryan-Paul Frost and Robert Howse, "Introductory Essay: The Plausibility of the Universal and Homogenous State," In *Outline of a Phenomenology of Right* (Rowman & Littlefield Publishers, 2007), 14.

depends, does not kill him and is not content to let him be: he forces him to work and to work for him. Now to work for the Master, to work for another, to exert effort without profiting from the results, is to act against animal nature, against his biological interests: it is to negate his innate animal nature, and consequently to negate Nature in general, the natural given. (431-2)

The slave's labour is never merely natural, for having initially risked his life—even if this risk was abandoned, the dependent consciousness knows itself as having a master, and its work does not merely reproduce what Arendt calls the circuit of nature, but works for the other while transforming nature and humanizing itself.¹³ Production and consumption by the slave then are not merely private and reducible to the recurring cycle of production and consumption described by Arendt. Instead, labour is relational, and the working consciousness works for the benefits of the other's consumption by alienating the product of production and exchanging it for the benefits of security.

The dependent consciousness's potential is gradually realized in work that humanizes and educates. Having the object of its labour humanized and transformed into the technological and cultural world, the working consciousness comes to embody the instrumental rationality of the craftsmen or Arendt's *homo faber*:

By his Work, the Slave (and man in general) frees himself from his dependence with respect to Nature, the spatio-temporal material given, since he negates it, transforms it into an artifact, creating in its place a technological reality—that is, humanized or human. ...Now, to preserve objective reality while abstracting from the natural *hic et nunc*, in detaching it [objective reality] from it [the natural *hic et nunc*], is to violate the essence of existence; it is to conceive [526] reality in and by a concept (Logos). In working, man thinks and speaks. And it is in thinking and speaking that he works; for the artifact is a concept realized by Work, which negates the raw given. And this is why the artifact is independent of the natural *hic et nunc*, of its topos in the Cosmos of Nature, in particular, the *hic et nunc* of the technological producer, of his body, his animal being. (431-2)

Thus, the rigid distinction between *animal laborans*, *homo faber*, and *praxis* that Arendt devises does not make sense in Kojève's dialectical schema. Not only are labour for the other and the fabrication of human artifice different aspects of one dynamic historic phenomenon of work, in Kojève, these activities are underpinned by the need for recognition.

By understanding human action in terms of the struggle for recognition, Kojève explains how the asymmetry between the autonomous master and working consciousness undergoes a logical and temporal reversal that engenders historical movement. Having not recognized the slave, the master consciousness is not satisfied with the recognition it fought to attain. As a result, the master finds itself in an existential impasse. The slave, however, embraces its mastery of the natural world that s/he transforms and humanizes under the master's coercion. Having been awakened by anthropogenic desire and forced to work by the master, it is the slave who grows to embody the ontological category of negativity and transforms natural reality into the human world. Because

¹³ The slave is part of a social relation that s/he recognizes as such, even if s/he her/himself has not yet recognized: "The Slave transforms Nature by his Work. He negates it, and the revealed or objective reality of this negation is the artifact, the technological or cultural World, the humanized or human World. Of course, the Slave does not profit from this World that he produces. But if he is not part of it, like the Master, as consumer, he nevertheless is part of it as producer: and being part of a humanized or human World, he is himself humanized or human: he humanizes himself in and by his (productive) Work. In "molding" the "raw material," the Slave-worker "molds" himself: to the extent that he works he *is* human." See Alexandre Kojève, *Outline of a Phenomenology of Right*. Edited by Bryan-Paul Frost. Translated by Robert Howse and Bryan-Paul Frost (Lanham: Rowman & Littlefield, 2007), 432.

the dependent consciousness is not identical to itself, it is essentially temporal: “history is the history of the working Slave” (1980, 20). And since Kojève emphasizes that the *telos* of history is the elimination of slavery, as I will show in the next section, the historical movement unfolds as a transformation of the dependent consciousness and the attainment of mutual recognition.

The working consciousness and correlated phenomena of economy thus dominate the historical dialectic. Keeping in line with Arendt’s argument on the rise of the “social,” this can be seen as inaugurating the “slave revolt” of the French Revolution. However, for Arendt, the “social” incarnates the transhistorical “slave economy” that rises as an unnatural growth of the natural. While Arendt claims that the economy stems from the realm of necessity and should be restricted to the private realm, for Kojève, the economy is emphatically human insofar as it emanates from the need for recognition (2007, 215). As James H. Nichols (2007) explains, “[h]umans, because of their originating as master and slave in the fight motivated by the desire for the nonnatural goal of recognition, become separated from and so take a distance on the immediate consumption of desired objects” (73). The driving force of economy, then, is not the eternal recurrence of nature, but the human phenomenon of exchange that stems from the slave’s ability to alienate the products of the *here and now* of production and exchange them for security (Kojève 2007, 433). Because the alienated products possess relative autonomy, they can be exchanged (355). According to Kojève, “[e]xchange of the products of Work realizes and reveals the specifically human character of these products and of Work itself: for there is only exchange when there is genuine Work, and this is why there is no Exchange in the animal world” (433). Similarly, Kojève notes that there can be a division of labour among animals but no exchange and commerce (433, n144). Consequently, “[t]he human economy is based upon work and exchange, which do not have equivalents in the animal world” (177). The economy is not directed towards the satisfaction of natural necessity, contra Arendt, but is structured by the human phenomena of work and exchange (428). The human phenomena of work and exchange are thus constitutive of the human character of economy (177), and, as we shall see, have implications for the phenomenon of right.

2.2. Kojève’s Historical Phenomenology of Welfare Rights

Kojève seeks to articulate a dialectical history of political and economic rights in light of the philosophical tradition without either stepping outside this tradition (Holden 2016) nor by reviving the Greek *polis* as Arendt does. “In opposition to the presuppositions of the ancient political thought that seeks insight into eternal...character of right or justice,” Nichols explains, “Kojève as Hegelian seeks to articulate a definition of...right that is temporally changing, that has a history of change” (Nichols 2007, 50). Based on an interpretation of Hegel’s philosophy of history expounded in the *Introduction to the Reading of Hegel* (1980), Kojève argues that “universal” history can be divided into three stages (45). Each period is then comprehended in terms of philosophies that reflect the specificity of a particular historical consciousness. This approach is, of course, in line with Hegel’s axiom that philosophy of history is a history of philosophy. Kojève, however, emphasizes the primacy of free contingent action and not the primacy of the idea. He then shows how this action is internalized in thought at different points in history or, to adopt Arendt’s terms, he shows how *via activa* and *vita contemplativa* are dialectically connected.

The first historical period in Kojève’s take on “universal” history is said to be dominated by the independent consciousness of the master; the second realizes the essence of the dependent consciousness of the slave. The third period is a synthesis of the two antithetical principles, realized in the event of the French Revolution and Hegel’s philosophy that comprehends this event (*Ibid.*). In the *Outline of a Phenomenology of Right* (2007), he then derives the principles of right from the

essential characteristics of two existential attitudes as the pagan-aristocratic principle of equality of status and the modern-bourgeois principle of contractual equivalence between rights and duties. For Kojève, the French Revolution then rendered *possible* the synthetic “socialist right of equity.” The whole historical development, to be sure, emanates from the original master and slave situation. “Since humanity is understood here as arising through the original or anthropogenic fight to the death for recognition, two types of right and justice emerge from this initial human situation.” (Nichols 2007, 69). Kojève’s antagonistic account of intersubjectivity serves as a story of origins of society (Love 2018, 111), and a logically necessary origins of law in “a similar way as Kelsen’s basic norm is the ‘transcendental-logical’ assumption of the legal system” (Minkkinen 2009, 120). The driving force behind this evolution of right, in stark contrast to Arendt, is the dependent “working” consciousness and correlated sphere of economy. As I will show next, humanizing work is also taken by Kojève as a source of not only historical progress but also the evolution of right in the juridical dialectic.

2.2.1. *The Ancients and the Aristocratic Rights of Equality*

Similarly to Arendt, Kojève’s historical exposition of the phenomenon of right begins with the ancient Greeks. Kojève and Arendt share the view that citizenship in the Greek city-state presupposed the right to own slaves and the restriction of work and economy to the operations of the household. If Arendt’s thinking about rights as “the right to have rights” evades the problem of slavery and instead takes inspiration from the discursive activity of ancient Greek citizens in the public space (*agora*), in contrast, Kojève seeks to explain the principle of justice behind the “pagan” understanding of right as it is conceived apropos both the master and slave.

The “pagan” historical period was a society of masters, says Kojève, where “only the one who makes war is a citizen” (Kojève 1980, 57). The ancient Greek city-state (*polis*) recognized as citizens only those who were ready to risk their lives for the recognition in asserting their right of citizenship and ownership of property. In this respect, the anthropogenic struggle does not presuppose the master’s desire to own an object, but rather his desire for the other’s recognition of his right to ownership:

Man who desires a thing humanly does not act in order to seize the thing but, rather, to have his right – as one will later say – to this thing recognized by another, to be recognized as the owner of the thing. (Kojève cited in Minkkinen 2009, 122)

Minkkinen holds this to mean that “Kojève understands the process of anthropogenic recognition as being juridical from the start” (122).

Initially, it is only the master that has a right in actuality, which is also informed by the principle of equality of condition. Because the initial risk in the struggle for recognition is accepted voluntarily by both consciousnesses, both the master and the slave are understood as having consented to the struggle. Having their humanity grounded in this humanizing existential risk (that has nothing to do with their physiological or natural characteristics such as physical strength), both participants come to embody the principle of *equality of condition*: the master in actuality and the slave in potentiality (Kojève 2007, 219-222). Furthermore, even if the struggle ends with the asymmetrical power relations of mastery and slavery, says Kojève, neither side suffers from injustice in the strict sense because “a treatment cannot be unjust towards the one who consents to undergo it” (219).

The juridical implications for autonomous consciousness and dependent consciousnesses, of course, are different. Understood in light of the anthropogenic struggle for recognition, the dominant aristocratic justice of the Greek city-state is predicated upon the principle of equality of masters. For the master, the principle of equality of condition becomes the principle of justice applied to social relations in the aristocratic state. Such a state will recognize as subjects of rights only those who take the risk to that end and seek to secure their autonomous status in the warlike community of “political friends” (227-8)¹⁴. For example, the principle of equality will generate *egalitarian* practices such as universal suffrage of aristocrats, including the equality of votes and the right of veto, economic practices of primitive “communism,” and the communitarian principle of exchangeability of combatants (228, 240). “It is in accordance with this basic character of aristocratic justice that aristocracies may tend to make landed properties permanent and inalienable (as was the case in some Greek cities, and as Plato’s Athenian Stranger recommends with some qualifications in *The Laws*)” (Nichols 2007, 70). As Kojève himself admits, however, the application of the ideal of equality is practically difficult, and at times impossible, because it presupposes only negative duties on the part of masters, from which follows the near-absence of interactions (Kojève 2007, 244). This is not paradoxical, says Kojève, because aristocratic law is essentially criminal law and prohibits actions—following the principle of *lex talionis*—that threaten strict equality and autonomy (244, 250).

At the same time, according to the pagan principle of equality, the condition of slavery is that of rightlessness but is hardly unjust. Having initially consented to fight, the dependent consciousness deems the asymmetrical outcome as “not unjust” insofar as the exchange of freedom for the guarantee of security is built based on the mutual consent to enter the struggle. Consequently, just as the aristocratic right ensures static status for warrior-citizens, the status of slaves is treated as static or natural. Kojève sees this reflected in Aristotle’s philosophy of “natural slavery,” according to which “[m]an is born with a slavish or free ‘nature,’ and he will never be able to overcome or modify it; Masters and Slaves form something like two distinct animal species, irreducible or ‘eternal,’ neither of which can leave its ‘natural place’ in the immutable Cosmos” (224). Since the humanity of the slave is not recognized from the master’s point of view, aristocratic society will refuse to recognize slaves as subjects of right (234).

Following Hegel’s philosophy of history, Kojève seeks to describe a historical passage from the aristocratic right to the bourgeois right—from the master’s to the slave’s right—and to discern its legal implications. The phenomenon of work will play a central part in this passage. In the *Introduction to the Reading of Hegel*, the pagan world and the aristocratic principle is said to contain a contradiction between the universality of mastery and particularity of slavery that will destroy the Greek “ethical substance” and inaugurate the second historical epoch and the correlate “bourgeois” right.

¹⁴ Here, Kojève addresses what he deems an oversight on Hegel’s part: “In truth, Hegel does not explain how a Master can be recognized by another Master. In other words, he does not explain the genesis of the state, and that is the most important gap in his phenomenology. One could, however, allow that the state is born from the mutual recognition of the victors of a collective fight for recognition. If several men fight together against common adversaries whom they end by enslaving, they can mutually recognize each other as masters without having fought among themselves. A fellow citizen would therefore be at the beginning identical to a brother-in-arms.” See Alexandre Kojève, “Hegel, Marx, and Christianity.” Interpretation 1 (1) (1970): 32.

Because aristocratic society is premised on the principle of combatant interchangeability, the Greek citizen is recognized in his universal humanity as a warrior but not in his particularity as a person. At the same time, in the household, he is recognized as a particular person but not as a human (Kojève 1980, 61). In Hegel's *Phenomenology of Spirit* (2013), this contradiction is expounded in the famous *Antigone* moment (475-80).¹⁵ According to Kojève's interpretation of this section, the suppression of the particular represents the exclusion of work from Greek ethical life (1980, 62). This exclusion leads to perpetual wars until the victorious Greek city becomes the Roman Empire. In the Empire, the citizens of the former Greek city-state are too few to protect the new entity and the Emperor resorts to mercenaries. At this point, the aristocratic master ceases to be a warrior and becomes a "pseudo-master," a private property owner or a "bourgeois."¹⁶ For Hegel and Kojève, civil law—the basis of modern bourgeois law, was born in the Roman Empire (Rose 2009, 121). And just as in Hegel's account, in Kojève, the suppressed principle of particularity "returns" with revenge: the Roman Emperor will render the Empire his private patrimony and treat former Greek citizens as his particular subjects (1980, 63). Viewed from the perspective of Kojève's *Outline of a Phenomenology of Right*, there is no evolution of the principle of justice and right, but rather an extra-judicial/historical passage from the aristocratic right to the bourgeois right. "This is so because the aristocratic right was already perfect insofar as the master and a juridical person coincided: the aristocratic right 'attains its perfection'" (264). While the aristocratic right is not contradictory in itself, it exists in social contradictions: all human beings can not be masters. As Minkinen explains, "[f]or Kojève, the gradual historical evolution of law...can only begin from the impossibility of the master's position" (2009, 128). We can thus infer that the exclusion of work and economy was the driving force behind the extra-judicial passage from the aristocratic right to the bourgeois right.

2.2.2. *The Moderns and the Bourgeois Right of Equivalence*

For Arendt, the demise of the Greek world led to the gradual rise of the private "social economy" out of the *oikos*. Kojève, in his turn, sought to explain the underlying historical and legal principles behind the "bourgeois" period that began with the Roman Empire and culminated in the French bourgeois revolution. Working consciousness, which now also includes the "pseudo-masters," starts to change with the advent of Roman private property and legal formalism. If in the Greek world the particularity of the master-citizen was not recognized, in the Roman world, all citizens of the enormous empire were considered *particular* subjects, or "persons," under the universal rule of the Roman state. Roman private property law will then develop into Christian dualism "between the 'legal person,' the private Property-owner, and the man of flesh and blood" (Kojève 1980, 65). In contrast to the aristocratic ethos, here, Christianity is seen as particularistic, slavish and familial as it elevates particularity to the highest value (66). In Kojève's Marxist interpretation of Hegel's philosophy of history, capital then comes to replace the Roman Emperor and

¹⁵ According to Hegel, Antigone's act to bury her brother despite Creon's prohibition appears as a locus of the tragic confrontation between human and divine laws, the law of the city and the law of the family. As a result, the principle of family is suppressed by the unbridled military acquisition by the strongest *polis*. But the family principle "returns" to render the state property into a private patrimony of the Roman Emperor. See G. W. F. Hegel, *Phenomenology of Spirit*. Translated by A. V. Miller. Reprint (Oxford Paperbacks. Oxford: Oxford Univ. Press, 2013), 475.

¹⁶ In the Roman world, Hegel explains, Greek "divine law" of the family is enveloped by the legal person: to be a person is to possess an abstract legal right to own property. See Hegel, *Phenomenology*, 477, 479-80.

Christian God as the entity to which “Man is supposed to devote his Actions, to sacrifice his sensual, biological Desires” (65). Even if at every step of this development the slavish consciousness manages to disavow the real conditions of slavery in the word, however, there is an emancipatory potential in this movement that Kojève attributes to the phenomenon of work/labour. As dependent consciousness undergoes positions of Stoicism, Scepticism and Unhappy Consciousness¹⁷, it nonetheless engages in work and economic exchange, thereby transforming itself and humanizing nature into a cultural and technological world (52). For Kojève, this period is a middle point in which the working consciousness undergoes a dynamic change on its way to overcome the slavish position to become a modern citizen (47).

In the *Outline of a Phenomenology of Right*, Kojève goes on to explain the bourgeois historical period in terms of principles of right. In the outcome of the anthropogenic struggle for recognition, as we have seen, the vanquished consciousness becomes dependent by accepting the burdens of servitude in exchange for security (Kojève 2007, 223). While the slavish consciousness initially seeks recognition, the terror of death and realization of human finitude forces it to exchange its freedom for the preservation of life:

The Slave had renounced the risk of the Struggle and has submitted to the Master because in his eyes the troubles of the Struggle are equivalent to those of Servitude, because the benefits of security compensate for the burdens of Servitude....Servitude is ‘just’ because in it the benefits and burdens mutually balance off one another. (252)

From this judgment of equivalence between the duty of working for others and the “right” to security¹⁸ Kojève derives the principle of *equivalence* that underlies bourgeois justice. What appears just for the working consciousness is then not the equality of autonomous aristocratic condition but a “contractual” equivalence between rights and duties. We can also see how this juridical development is reflected in the historical development from Roman property law to Christianity. As Kojève explains, property ceases to be static and acquires characteristics of exchange (259). As a result, the right of property gradually ceases to be absolute aristocratic right, and bourgeois law requires owners to work the land—the hallmark of protestant ethics (258-9, n17). Because the exchange of property boils down to exchange and work, the aristocratic right of status is replaced by the bourgeois right of contract (260, n18). As Kojève says, “[t]he fundamental category in the system of bourgeois Justice, therefore, will not be property, but work, or effort in general” (259). From the perspective of the bourgeois state of “social contract,” “[s]tatus now is juridically valid only if there is an equivalence between droits and duties that it implies (261).

The principle of equivalence is regulated by effort, not status. This is aptly demonstrated by Kojève in the dinner example:

If it is a matter of sharing food for dinner between two persons, one of whom had lunch and the other not, we will say that the share will be just if the latter receives more. And we

¹⁷ Based on the relative autonomy of legal personhood, the dependent consciousness will undergo three intellectual attempts to reconcile itself with servitude. If in the Greek world the legal non-recognition of the slave was justified by the Aristotelian philosophy of natural slavery, under Roman property law, the Stoic embraces his abstract status of a person and imagines himself free and independent irrespective of real social relations. This, however, leads the dependent consciousness to become a solipsistic skeptic who radically disavows the existence of the world. Eventually, this Cartesian attitude is transformed into Christian theology (“Unhappy Consciousness”) that posits all persons as God’s slaves. See Kojève, *Introduction*, 53-55.

¹⁸ The Master does not recognize this right as a right in a strict sense. From the slave’s perspective, however, he has the right to be protected in exchange for the duty to work. See Kojève, *Outline*, 256.

will say that it is just to give a child a slice of cake that is larger than the slices of the adults. It is also just that the weak carry less than the strong, and it is from an ideal of Justice that the practice of the handicap was born. From all of this, one need only go one step further in order to assert that it would be just to give a thing to the one who desires it the most. And one commonly says that it is just to give it to the one who needs it the most (cf. the principle of ‘communist’ Society: to each according to his needs). Or once again, one will say that it is just to give the thing to [296] the one who has made the most effort to have it (cf. the principle of ‘socialist’ Society: to each according to his merits)—and so on. (254)

Thus applied, the principle of equivalence is clearly at odds with the aristocratic principle of equality of status. One also can imagine, says Kojève, that “a weak person may through pride or amour-propre (the Bourgeois will say vanity) carry the same weight as the strong. Likewise, a child may be upset by a bigger share for himself if he wants to be treated ‘like an adult’” (254). However, if the “weak” or a child act in this manner, it is not out of judgment of bourgeois equivalence but based on the desire for recognition of status. The crucial point here is that even if the bourgeois principle comes to predominate historically, the phenomenon of right still requires the principle of status: the bourgeois right is already embedded in the dialectic.

Kojève explains that this dialectic of right stems out of the contradiction inherent to bourgeois right (264). Recall that the aristocratic right was non-contradictory: the aristocratic master and legal subject coincided. Kojève notes that this is not the case with bourgeois right. The dependent consciousness itself is conceived in juridical terms as having the right to security in exchange for work, bourgeois right already combines the principle of equality with its principle of equivalence (257). From this then follows that to apply the principle of equivalence, one has to tacitly acknowledge the legal status of participants: “[b]ecause to recognize juridical equivalence implies the recognition of participants as subject of rights, the right of equivalence tends to recognize the right of equality” (265). Furthermore, since to realize the right of equivalence it is necessary that it fuse with the right of equality, says Kojève, the subject of this right eventually becomes a “citizen-bourgeois”:

Bourgeois Droit is the Droit of the Slave, or more exactly, of the Slave recognized as a juridical person—that is, as a human being, [and] therefore of the Slave become Citizen. But in the Citizen-bourgeois the servile element greatly predominates over that of mastery. The Bourgeois is a recognized Slave, but recognized in his servitude (despite there being no more Masters properly so-called: the Bourgeois is a Slave without a human-Master, who therefore is seeking a Master and who finds it at first in God, and then in Capital, which he ‘serves’). Now, by definition, the Slave does not struggle and it is not through a Struggle that his property comes to him. It can only come to him through his Work. As well, from the point of view of bourgeois *Droit*, the sole source of Property is Work: either the work of producing the thing, or an exchange of work for a thing. (445)

While the aristocratic right recognizes only masters as the subject of right, the bourgeois right’s dependence on the phenomenon of work “has from the outset a tendency to universalism in the sense that it tends to be applied to Masters in the same that it is applied to Slaves” (Kojève 2007, 235). Just as the dependent consciousness is a human being in potentiality in the dynamic process of “becoming,” so the bourgeois right is a right in potentiality that will actualize itself by becoming *other* than itself, that is, the right of equality (257). Thus, the legal evolution of the phenomenon of right “begins with the bourgeois right” (264). “Bourgeois justice,” Minkinen explains, “unlike the master’s aristocratic justice, includes within itself an immanent juridical necessity to kick-start the dialectical process of the historical evolution of the law” (Minkinen 2009, 129).

If the need for recognition socialization leads to the creation of the state, and socialized work constitutes an economic society (428), then the French Revolution is a historical event synthesizing these two phenomena. The extra-judicial force behind the French Revolution, that is—the social and historical, is the necessity to *institutionalize* the legal synthesis between the right to equality of status and the right of contract and equivalence between rights and duties. The dependent consciousness “must therefore become a Governor and cease being a Slave. But one becomes a Governor (without having been one from the beginning) only by being a Citizen” (266). Bryan-Paul Frost and Robert Howse hold this to mean that:

[A]fter the French Revolution and Napoleon, it has been decisively established that no human social order that allows for human satisfaction can be simply based on static equality between Masters, without taking into account equivalence of rights and duties, benefits and burdens. And as Napoleon’s building of the state upon the foundations of the revolutionary justice of (bourgeois) equivalence shows, the modern state itself can also not do without some elements of aristocratic equality—the equal status of all citizens before the law. (2007, 7)

In contrast to Arendt’s judgment of the “natural” character of the “social” and economy, the phenomenology of dependent consciousness and correlate sphere of economy are the driving force behind Kojève’s dialectical history and concomitant juridical dialectic. They are the driving force inasmuch as the juridical dialectic is expounded by Kojève as reliant on the economic phenomena of work and exchange.¹⁹ What underlies the transformation of the slave from the Greek household to the modern bourgeois civil society is a gradual liberation of the working consciousness from the particularity of the *oikos* to the universalization of work (Kojève 2007, 432-3). Furthermore, this process is facilitated by the necessity of economic exchange realized as money, or value, on the market (434). As Frost and Howse explain, “because work can lead to a recognition that is mutual and universal, it is, in comparison to struggle and mastery themselves, a more adequate path to human satisfaction” (2007, 15). Thus, in the final analysis, Kojève finds the French bourgeois revolution as having the potential for human satisfaction and mutual recognition.

2.3. Formal Rights or the Synthetic Right of Equity? The Two-Fold Heritage of the French Revolution

As I have shown, the evolution of the “bourgeois” right takes place for both historical and juridical reasons. Historically, the working consciousness creates the modern cultural and technical world in which the economic sphere provides the possibility for mutual recognition, with the French Revolution being the event that realizes the possibility of mutual recognition. On the juridical level, the principle of equivalence tends to synthesize with the principle of equality of legal status. However, according to Kojève, the initial synthesis between two principles is imperfect or “capitalist.” Kojève will now seek to theorize how the “socialist” synthesis of the two principles—

¹⁹ This is so because the working consciousness is inserted in-between nature and the independent, but idle, consciousness of the master. The transformation of nature presupposes the slave “abstracting” a product of its work from the immediate here and now: “If his animal body is, for example, stopped by the *hic et nunc* of a river, his human being of Worker “abstracts” from this *hic et nunc*, in constructing, say, a canoe: he replaces the given natural *hic et nunc* by a technological *hic et nunc* created by his Work.” Of course, this alienable product produced by the working consciousness is at first appropriated by the master. But gradually, the working consciousness itself becomes liberated from the natural *hic et nunc*. See Kojève, Outline, 431-2.

—equality and equivalence would look like. Let us first consider Kojève’s criticism of the “capitalist” right against the background of the contradiction between the state and civil society identified by Marx.

As noted earlier, Arendt incorporates Nietzschean eternal recurrence into the temporal ontology of the French Revolution to deduce that the “welfare” aims of the French revolutionaries were driven by the dictate of the natural human body to relentlessly “produce and consume.” Hegel’s philosophy of revolutionary necessity (and Marx’s, for that matter) is then said to represent an ideological offshoot of this impetus of the French Revolution. Kojève’s metaphysics of the French Revolution expounded in *The Notion of Authority* (2014) shows a completely different temporal configuration of the French Revolution and explains the problematic aspect of “natural” existence as the *historical* contradiction of bourgeois emancipation. As we have seen, the bourgeois emerges from the “dependent consciousness” that is inherently predisposed to change and to become its “other”: insofar as the bourgeois wants to “forget” his “lowly” origins, s/he tends to disown the past (64). Kojève explains that the revolutionary period of 1789-1848 marks the turn of the bourgeois against the past of the *ancien regime* towards the future (65). “Kojève evokes distinctively human time as having the rhythm future → past → present,” Nichols observes, “as opposed to the ‘natural’ times in which the present takes primacy in the domain of physics and in which the past takes primacy in the domain of biology” (Nichols 2007, 58; Kojève 1980, 138). In becoming revolutionary, the bourgeois embraces the primacy of the future, with Napoleon being the leader who realizes the revolutionary project (Kojève 2014, 65).

However, in 1848, “the future becomes the demand of another ‘class’: more precisely, the Future intervenes in the Present in the guise of a ‘revolutionary project’ *other* than that of ’89” (65). Here, the bourgeoisie, which has rejected the past, comes in opposition to the revolutionary project of the working class and, in so doing, also rejects the future. This marks what Kojève calls the period of “bourgeois domination” between 1848 and 1940, during which the state is “absorbed” by the bourgeois class (69). During this period, the bourgeoisie lived in “a ‘natural’ Present, non-human, non-historical, non-political” (65). Insofar as political reality disappears for the bourgeoisie, its existence comes to be dominated by “animal” aspects (66). It can be said then that it is not the *sans-culottes* and the Marxists who have reduced politics to nature, as Arendt argues, but the bourgeoisie that turned against the past and future, thereby reducing political existence to the continuous present. In other words, this “natural” present is not modelled on the eternal recurrence of nature but betrays the contradictory aspect of bourgeois emancipation under capitalism that can live in the continuous present only by excluding the emancipatory project of the working class.

In the *Outline of a Phenomenology of Right*, Kojève offers a phenomenological critique of property rights under “bourgeois domination,” that is, in the bourgeois “civil society” (*bürgerliche Gesellschaft*). Implicitly drawing on Hegel and Marx’s critique of the formalism of rights grounded in private property, Kojève explains bourgeois “natural” existence in terms of a formal “capitalist” pseudo-synthesis of state and economic society (257). What makes the right based on this synthesis “erroneous” is the exclusion of both the desire for recognition *and* work:

On the one hand, this *Droit* likens (‘capitalist’) Property to aristocratic property, seeing that it admits that the latter can be acquired and possessed without Work. But on the other hand, this same Property is likened to bourgeois property, seeing that it can be acquired and kept without a Struggle and even without the will to Struggle. This pseudo-synthesis is purely ‘formal’: the absence of Struggle is likened to Work, which in reality is missing, just as the absence of Work is likened to the Struggle, which in fact no longer exists either. (449)

This capitalist quasi-synthesis leads to the perversion of both the principle of equality and equivalence. On the one hand, the capitalist property-owner follows the aristocratic principle and treats property as hereditary. However, property is passed on in arbitrary fashion, without either the imperative of struggle to justify oneself as an aristocratic master-owner or the duty to work in exchange for the property attained through the bequest. Having revolted against the *ancient regime*, the bourgeoisie itself becomes a new aristocracy. Yet, this new “bourgeois aristocracy” does not generate aristocratic-egalitarian property rights: “it admits the inequality of Properties both in fact and in *droit*” (450). Meanwhile, on the other hand, the capitalist property right follows the bourgeois principle by reducing property to monetary value while at the same time likening property rights to the aristocratic right by evading the duty to exchange. Because the duty of exchange is “corrupted” by the static aristocratic principle, it gets accumulated and becomes capital: “a movable likened to an immovable” (*Ibid.*). “Exchange not being required, it can be bought: Property-Capital carries a revenue by transforming itself into exchange capital, the loan of Capital being bought at so many percent” (*Ibid.*). Moreover, this pseudo-synthesis of the bourgeois and aristocratic right, that is, *a synthesis of the arbitrariness of inheritance and the inegalitarian accumulation of capital*, is made for the owner's benefit not the worker's (*Ibid.*, n. 170). Property produced by the worker is treated solely in terms of the bourgeois principle of equivalence, without attaining any of the surplus that the capitalist gets as accumulated. Here, Kojève is articulating Marx's critique of bourgeois “civil society,” but on a phenomenological level.

It can be objected that this interpretation radically differs from the conventional reading of Kojève. In Anglo-American literature, Kojève is famous for proclaiming that the “end of history” has already occurred and what is left of the gradual re-animalization of man. This interpretation stems from his (in)famous note to the second edition of the *Introduction to the Reading of Hegel* (published in 1969), which influenced the liberal-conservative and simplified appropriation of Kojève's reading of Hegel by Francis Fukuyama (Fukuyama 1992; Derrida 2006). In the footnote, Kojève claims that in the absence of any authentic historical development and struggle for recognition (the French Terror being the last authentic manifestation of this struggle), “man” will cease to be human and will become a “natural” animal again (1980 159, n5). In this account, Kojève seems like a perfect target of Arendt criticism of the submersion of the “political” into an animalistic, or naturalistic “social.”

In light of Kojève's earlier political works surveyed here, this interpretation is untenable. For, the reduction of politics to “natural” existence is identified by Kojève as part of the historical condition of the capitalist bourgeoisie following the French Revolution. The latter aspect is reflected in his phenomenological critique of the “quasi-synthesis” between status and contract characteristic of the “bourgeois” domination of the 1848-1949 period, which mirrors Marx's critique of the contradiction between state and civil society. If this erroneous synthesis of equality and equivalence in the bourgeois right is viewed from the perspective of the continuous present in which the bourgeois lives in a period of “domination,” it becomes evident that a political life dominated by “natural” aspects of production and consumption is not the demand of the French Revolution as such. Rather, this “demand” is the contradictory reality of the bourgeois domination between 1848-1949, a contradiction inherent to bourgeois civil society. Arguably, it is precisely this “imperfect synthesis” of economic and political spheres that corresponds to Arendt's account of the “social” insofar it disowns the historical character of bourgeois civil society and misrecognizes it as a natural phenomenon. From this perspective, Arendt's critique of the rise of the “social” is wrong and built on the presumption against which the Marxian and Kojevian critique has been directed: an ahistorical and natural presentation of the economy.

If Arendt warns against the intermingling of the “economic” and the “political,” Kojève seeks to find a correct synthesis between the collective nature of aristocratic property and exchange-based bourgeois economy (Kojève 2007, 440-445). When in balance, however precarious one can imagine this balance to be, the two principles coalesce in the “socialist” right of equity (the citizen's “right of equity” or the “absolute” right). The right of equity is said to incorporate the principle of aristocratic equality of status inherent to pagan societies such as ancient Greece and the principle of bourgeois equivalence that developed from Roman civil law to modern bourgeois civil society. The pendulum movement between the right of equivalence and right of equality, which is expected to stabilize in the “socialist” right of equity, is described by Kojève with the same dinner example:

The principle of equality will require a share of equal portions between those having *droit*, and it will no longer be concerned about anything else. But the principle of equivalence will ask if the equal portions are truly equivalent. If one observes that some are more hungry than others, one will see [to it] that this is not so. One will then share the food differently, making the portions proportional to the hunger of each one. The principle thus being satisfied, one will leave matters there. But the other principle will be offended by the inequality of shares, and it will try to eliminate it. However, in order not to offend the principle of equivalence, it will be necessary to eliminate the inequality of the participants. One will therefore ask why some are more hungry than others. And if one observes that this difference results from the fact that some have had lunch and others not, one will see to it such that from now on all might have lunch. The principle of equivalence will therefore have incited that of equality to realize itself more perfectly. And by becoming perfect, equality coincides with equivalence; for if those having *droit* are truly equal, the equality of their parts no longer differs from their equivalence; their equivalence is nothing but their equality. (269)

Thus because Kojève conceptualizes the phenomenon of work as a human phenomenon with potential for universal mutual recognition, the right of equivalence is thought by Kojève as evolving into the “socialist” right of equity by enveloping the right of status.

In contrast to Arendt’s judgment of the unnatural rise of the natural “social” imputed to the French Revolution, it can be understood that Kojève sees both the dangers of the French Revolution’s legacy and its emancipatory “socialist” impetus. This two-fold legacy of the French Revolution has also been described by Alain Badiou. The driving force behind the “first stage” of the Revolution, says Badiou, was the bourgeois right to liberty and private property. At this point, Badiou argues, the principle of equality keeps in-line with the principle of liberty “in the sense that there [was] no longer castes or formalized hereditary inequalities - no longer any difference, for example, between nobles and commoners. This adjustment is symbolized by the execution of the king but equally by the fact that property was made sacred” (Badiou 2013, 15). “‘Democracy’ or ‘republic’ - even if the two things are not identical- can be said to be the political names adjusted to the first sequence” (16). In a homologous manner, Kojève argues that “the notion of hereditary property is foreign to the bourgeois *Droit* of property” (2007, 447). Badiou’s first stage of the French Revolution corresponds to the introduction of the bourgeois principle of equivalence to the state described by Kojève, that is, to the formation of the bourgeois “civil society” dependent on the private property law guaranteed by the state. But for Kojève, as it is for Badiou and Marx, this stage of the French Revolution leads to a tension between the formalism of capitalism and promise of universal emancipation. The second stage described by Badiou then clearly corresponds to Kojève’s socialist right:

But there is a second configuration that has not as yet stabilized, in which equality becomes the primordial concept that sets the norm, in its turn, for liberty and property. Equality sets the norm for liberty in the sense that it maintains that liberty must not seriously infringe upon equality. In terms of the norm set by equality, property itself becomes a basis of monstrous injustices, with this leading, as a result, to a priority of collective property over private property....‘Communism’ has to be declared the political name adapted to the second sequence.” (Badiou 2013, 16)

Whereas conceived in terms of Badiou’s “communism,” or Kojève’s “socialism,” the point here is that the progressive, if not yet stabilized, promise of the French Revolution is egalitarian.

3. Welfare Rights and the State/Civil Society Dilemma

The State and Society will never entirely coincide.

Kojève

Kojève does not interpret the economy as a natural realm driven by recurrent biological processes as Arendt does. Instead, as I have shown, Kojève’s account of the “imperfect” capitalist synthesis between equality and equivalence offers a phenomenological and historical critique of the “erroneous” synthesis between the rights of a citizen and a right of a bourgeois individual: the bourgeois civil society. His critique mirrors that of Marx in his insight that there is nothing “natural” about bourgeois civil society. However, unlike Marx, Kojève does not develop a theory of the proletariat as a solution, as criticized by Arendt. Instead, he revives the egalitarian promise of the French Revolution combined with the idea of modern citizenship. In what follows, I will show that Kojève’s theory of the “socialist” right is aware of the dilemma between the “Rights of the Citizen” and the “Rights of Man” (following Marx) and, at the same time, offers a reconfiguration of property and welfare rights out of this dilemma of modernity (contra Arendt’s “submersion” thesis and contra Marx’s “proletariat” thesis).

Kojève’s variant of welfare rights is most developed in his discussion of “socialist” economic society. The property right of the “socialist” citizen is said to incorporate the static component of aristocratic property right and the dynamic component of the bourgeois right of economic obligation (Kojève 2007, 437). In opposition to the “erroneous” capitalist synthesis of arbitrary inheritance and unequal accumulation of capital, Kojève’s “socialist” right of equity:

In the first place...preserves, on the one hand, the aristocratic notion of Property exempt of all ‘duty’ and not destined for Exchange—that is, independent of all Obligation (it is the “personal property” of the perfect synthetic Droit, i.e. socialist). On the other hand, this Droit is also familiar with bourgeois Property, understood as the simple premise of Obligations, destined for Exchange and equivalence to a corresponding duty (it is the ‘collective’ or ‘social property,’ ‘state-sanctioned,’ and so on, of socialist Droit: to participate in collective property is to participate in collective work). Second, this *Droit* reunites equality with equivalence. Thus, in its perfect form, it admits the equality of properties (and droits of property), but among each the droit of property is accompanied by a duty which is equivalent to it. (449)

Kojève’s synthetic welfare right presupposes collective contracts and inheritance of status in contrast to the “erroneous” and formal capitalist synthesis between equality and equivalence. On the one hand, the “socialist” state guarantees the minimum required work for all and regulates this through collective contracts (477). On the other, the right of status in this state is stripped of the inheritance of property: all that is inherited is the status of citizen. From this also follows that the

socialist “civil society” has to preserve the status of the individual person: “The unit of economic Society is here the individual and not the Family or any other given social group” (449). Against Marx, Kojève demonstrates that economic rights require the element of recognition and that a self-conscious individual can only be recognized as an individual citizen and not as a member of a class. And unlike Marx, Kojève does not believe in the “emancipation” of a civil society that would completely do away with the state.

In practical terms, as Frost and Howse have shown, Kojève’s “socialist” right seeks to resolve the tension between equality of opportunity and equality of condition. Naturally, then, it is no wonder that the two principles of right seem to foreshadow Rawls’ principles of liberty and equality of opportunity/difference principle. Commenting on this resemblance in passing, Nichols (2007, 127) suggests that Kojève’s theory is not limited to capitalist property-owning societies and, as we have seen, is not even compatible with private property in the strict sense. In this way or another, the mutual correction of these two principles, as Frost and Howse observed, is reminiscent of the development of the contemporary welfare state (2007, 22).

The very theoretical articulation of the “synthetic right of equity” betrays the impossibility of complete reconciliation of the state and economic society, and by extension, the “Right of the Citizen” and the “Right of Man.” The most significant crack in Kojève’s synthesis can be seen in his description of the relative autonomy of economic society. As demonstrated, the phenomenon of economic exchange is predicated on the alienability of the products of work (2007, 428, n 138). In the socialist society that Kojève posits as the “absolute” synthesis to be realized, citizens will still be able to possess *personal* property, even if there will be no *private* property. The necessity of personal property is predicated by human corporeality. As Nichols points out, Kojève shares Plato’s description of communism in the Book V of the *Republic*, wherein Socrates accepts the private character of individual human bodies as the limit of communism (2007, 73). And so it is for Kojève’s “socialism”: “[t]he body and its belongings constitute the “personal Property of the individual” (2007, 471). Thus, the socialist state is stipulated as retaining the phenomenon of property “by preserving the idea of property constituted by the owner’s own body...this is enough for there to be an economic Society distinct from the State” (471). Practically speaking, apart from completing the socially necessary labour, the citizen of the socialist state will be able to dedicate oneself to work during leisure time²⁰. Being alienable, products of work can then be subject to economic exchange and the right of property (conventional, contractual and delictual obligations) (472). For example, a painter can produce paintings and seek to preserve them as his *personal* property or exchange them for a monetary equivalent. Acting in his capacity as a personal owner, the painter becomes part of an economic society separate from the state while still dependent on the state’s regulation of exchange. Thus, in positing the relative autonomy of economic society predicated upon the privacy of human bodies, Kojève acknowledges that the state and economic society cannot coincide even in his account of the socialist welfare state. This means that that not only did Kojève understand the diremption of civil society and state, but also that his account of the “socialist” right and welfare state does not allow for a complete submersion into the “social.”

Kojève’s discussion of “personal property” as grounded on the privacy of human bodies fundamentally differs from that which Arendt calls the principle of natural differentiation of human

²⁰ Arendt’s “rise of the social” presupposes no leisure time, while in Kojève’s theory, the socially necessary labour is minimal, thus providing maximum leisure time (447). For more on the comparison between Kojève and Arendt on work and leisure see Daniel Just, “The Invention of Work in Modernity: Hegel, Marx, and Weber,” *Journal of Historical Sociology* 30 (2) (2007): 447.

bodies. To recall, Arendt criticizes the “Rights of Man” as reducing humans to natural givenness and mere differentiation that emanates from the givenness of human bodies. For Arendt, the corporeality of human bodies stands “as a permanent threat to the public sphere, because the public sphere is consistently based on the law of equality and the private sphere is based on the law of universal difference and differentiation” (1973, 300). For Arendt, the natural differences between human bodies “remind us of the limitations of human activity—which are identical with the limitations of human equality” (Arendt cited in Rose 1992, 226). This argument makes sense only if one accepts that there are natural or “sacred” limitations to human existence characteristic of ancient Greek thought. The existence of such limitation is asserted by Arendt in her philosophy of nature as an eternally recurring biological process that threatens the “political.” As we have seen earlier, it is under the pretext of justifying the political that Arendt accepts the circumscription of what she deems natural to the household of slaves in ancient Greece. It is then not particularly surprising that Arendt never became concerned with slavery in the American Revolution, her second favourite example of a successful “political” artifice.

What Arendt failed to understand is that, as Rose has pointed out, “there are no ‘given,’ ‘unique,’ ‘unchangeable’ differences between people, for recognition of differences implies a universal” (Rose 1992, 226). Thus, Arendt’s account of the economy does not only problematically hinge on a vitalistic ontology of natural cyclical recurrence but also avoids the issue of social recognition. Kojève, however, does not share what Arendt calls the ancient Greek “deep resentment against the disturbing miracle contained in the fact that each of us is made as he is—single, unique, unchangeable” (Arendt 1973, 301). On the contrary, it is precisely social recognition that Kojève emphasizes in his account of the economy as a humanized activity. Since the economy develops from the need for recognition, it is human and, moreover, has the potential for *mutual* recognition. Kojève’s account of economy, including autonomous economy in the socialist state, shows that even differences between human bodies are, to paraphrase Rose, “socially developed and recognized differences: the equality and inequality which are historical constructions, and which ‘political’ institutions may equally reinforce or seek to abolish” (1992, 226). For “[t]he threat is the ‘artifice,’ not ‘givenness,’ of human inequality” (226), and Kojève can be seen as seeking to reconfigure the historical contradiction between state and civil society. Kojève’s argument on economic society’s relative autonomy also shows that even an economic society that exists in relative autonomy from the state is not properly “natural.” In fact, Kojève emphasizes that bodily differences are never merely natural but are humanized as difference in character or tastes: “clothes must not only be warm, they must be pretty, fashionable and so on—likewise, the food must be good” (Kojève 2007, 471). For Kojève, difference is always already humanized in the history of the desire for recognition and humanized economic exchange, in stark contrast to Arendt’s naturalistic ontology of “social” economy.

The temporal mode that Arendt assigns to this circular movement of “nature” can be understood as chronological, not kairological or ainological: the time of bodily substances, not human events or epochs (Žižek 2013, 63; Deleuze 1990, 162-5). Whereas Heidegger’s authentic temporality from *Being and Time* expresses the eventfulness of Kairos, and his later writings on the epochs of Being problematize the temporality of Aion, the time of Chronos is dismissed in *Being and Time* as inauthentic, or “vulgar.” It is precisely this chronological time of body substances that underpins Arendt’s phenomenology of the “social.” By excluding the temporal mode of the economy from properly human time and thus denigrating it to the “inauthentic,” Arendt renders any economy impervious to reform. There can be no phenomenology of economic and welfare rights in Arendt because the economy is not human but “natural,” a phenomenological

rendition of bourgeois economists' postulates that the Marxists, including Kojève, have been at pains to refute. As a result, Arendt's "reluctant modernism" dismisses the welfare state—the hybrid term of modernity—in a move that renders an investigation of socio-economic rights impossible and their capitalist problems and egalitarian promises.

Kojève's account of the "socialist right of equity" can be seen as responding to this historical contradiction with a phenomenological theory. Neither following Marx's aspirations for the proletariat victory nor sharing Arendt's rejection to combine economy and politics, Kojève accounts for socialist welfare rights out of the diremption between state and civil society attendant to the French revolutionary legacy. Furthermore, since Kojève was well-aware of the non-coincidence of state and civil society, the "absolute" right of equity was read speculatively—as expressing both the non-coincidence of the "political" and "social," but also their mutual dependence. If it can be said that Arendt devises a transhistorical separation of the "social" and the "political" and then judges the mystified submersion of the "political" into the blobbish "social," Kojève seeks to offer a synthesis, however precarious, that would address the formalist synthesis of the capitalist state that combines arbitrariness of property inheritance and inegalitarian accumulation of capital. By theorizing individual human bodies and correlate "personal property" as the limit of the collective state welfare, Kojève admits the impossibility of an absolute synthesis of state and civil society while ruling out the justification of "sacred" limits/dependency of the "natural" body espoused by Arendt.

Conclusion

Richard J. Bernstein exemplified the tension between Arendt's theoretical disdain for the "social" and personal opinions she held about proper socio-economic conditions. Bernstein recalls a conference in Toronto at which Albrecht Wellmer confronted Arendt to explain which "social" issues are not simultaneously "political." In her response, she emphasized that social questions like adequate housing have a dual nature. On the one hand, decent housing is undoubtedly a political question and should be debated. However, on the other hand—and this is surprising—Arendt said that it is not a political question because "[t]here shouldn't be any debate about the question that everybody should have decent housing" (cited in Bernstein 1986, 251). What is striking here is that Arendt's reply relies on the common sense of the tradition—arguably rooted in Marx's concern with material subsistence—which she consistently disowns in her phenomenology of rights.

In this chapter, I sought to rekindle this common sense at the level of theory by critically scrutinizing Arendt's theoretical treatment of "social" and welfare rights. Arendt's phenomenology of *animal laborans* was demonstrated to hinge on a philosophy of life that also underpins her genealogical account of the modern submersion of the "political" into a naturalistic "social" economy. Insofar as Arendt's ontology of the "social" excludes her own insights on the contradictory nature of the modern state and civil society, a theory of socio-economic rights could not be positively construed. Arendt's critique of the "social" was then recast through Kojève's phenomenology of working consciousness and the need for recognition. I argue that Kojève's socialist right of equity offers a theory of welfare rights that addresses Arendt's concern with the "social question" by way of a double gesture, first by providing a historical variant of Arendt's "submersion" thesis in his critique of the French Revolution's capitalist legacy, and then by offering an account of socialist welfare rights out of the contradiction between the state and civil society. Thus, the reading offered here questions Arendt's rejection of welfare rights phenomenologically and historically, not to dismiss, but to enlarge Arendt's account to allow for her unquestionable support for "decent housing," as well as her recognition of the contradiction between the state and civil

society to be brought to the light of theory. For, as Bernstein has emphasized, Arendt understood quite well that liberation from poverty conditions the possibility of political action, even if her theory of the “social” suggests the opposite.

I suggest in this chapter that Arendt's ontology of the “social” is paradoxically asocial because it is premised on Nietzsche's philosophy of life. However, the aim of this thesis was not to demonstrate that Arendt is a consistent Nietzschean, let alone a vitalist. Instead, I suggest that Arendt deploys a Nietzschean argument strategically to express her legitimate concern with the modern condition of depoliticization and consumerism. And while this criticism, as Pitkin has forcefully demonstrated, mirrors Marx's concern with alienation (that, to be sure, is nearly absent in Kojève), what is effectively dismissed in Arendt is Marx's account of capitalist economic exploitation, expounded phenomenologically by Kojève. At the same time, contrary to the reading of Kojève as a totalizing philosopher, I argue here that Kojève's socialist right of equity is inherently precarious, even if it is a solid alternative to the liberal theory of welfare rights that presupposes capitalist property relations.

Further research into the phenomenology of socio-economic rights must avoid a hasty rejection of Arendt's seeming anti-Marxism and Kojève's perceived dogmatism. Even if Kojève's theoretical account of rights is a comparatively more adequate response to the class “contradiction” between state and civil society, it can be further researched how Arendt's own awareness of this contradiction is related to her critique of alienation and consumerism—issues missing in Kojève's analysis. Similarly, Arendt's thinking about the economy as structured by the circular movement of nature producing surplus can be further rethought as expressive of an illusion created by the capitalist economy. Conversely, if Arendt's grim account is more reflective of our contemporary reality, one should not undermine the human ability to reconfigure human artifice to which the economy demonstrably belongs. For, regardless of Arendt's pessimistic diagnosis of the modern condition, her thinking offers a possibility of a new beginning, as well as of scrutinizing all beginnings undertaken after the French Revolution—from the failed communist experiment to the civil rights movement to our contemporary predicament. Regarding the latter, the socialist version of welfare rights articulated here could be considered as an alternative to the liberal version of welfare rights. In particular, Kojève's insight into the inheritance of capital can be viewed in light of Thomas Piketty's (Piketty 2014; Milanovic 2014) work on patrimonial capitalism, while the phenomenology of collective contracts can be discussed apropos Yanis Varoufakis (2016) suggestions for an universal basic dividend. It is yet to be seen whether anything new has even appeared after the French Revolution. The rub is, of course, how to think of a new beginning against the horizon of our historical modernity and its diremptions.

CHAPTER II

Cosmopolitan Foundations of Universal Rights in Kojève and Arendt: Impartial “Third” and Disinterested Judgment

Introduction

The second chapter will turn from the principles of welfare rights to their conditions of possibility as offered by Arendt and Kojève against the backdrop of the double diremption of modernity. I will inquire how Arendt and Kojève sought to overcome Schmitt's theory of political sovereignty by grounding universal rights on a non-sovereign phenomenological “common world” and phenomenology of a “disinterested and impartial third,” correspondingly.

Diremption of State and Nation: Carl Schmitt's Political Sovereignty

The theological problem of the modern nation-state was already contained in Nicolò Machiavelli's *The Prince*. What Machiavelli understood is that for a body politic to be truly independent—which meant independence from the Pope's authority—the prince had to be vested with a God-like sovereign power (Machiavelli 1998; Arendt 1990, 37-9). Contemporaneous with Machiavelli's time, the Reformation unleashed forces in Europe that set in motion the history of the nation-state up to the French Revolution and forward. As Antonio Cerella (2012) explains, “on the one hand, the Reformation is the fragmentation of the Christian unitary ethos and unleashing of the productive energies of the Protestant individualism, on the other hand, it brings back the theological-political problems in all thus mixing together the two dimensions, *civitas Dei* and *civitas terrena*, (religion and politics) without any recourse to the mediation of the Church” (980). The sundered unity of the Catholic Church—and the precarious copula of Caesar and Pope—entailed a separation of politics from the sacred, to which the nation-state was a response. This new form of political organization in Europe introduces a problem of internal and external boundaries of nation-states, already discussed in Jean-Jacques Rousseau's *The Social Contract*. For Rousseau, as Rose (1992) explains, the terms in which the nation/national question is defined in relation to sovereignty “comprise, taken collectively, when passive ‘the state’, when active the ‘sovereign’; taken individually, when passive ‘subjects’, when active ‘citizens’. To its members, ‘city’, ‘republic’ or ‘body politic’; ‘when compared to others like itself, it is ‘power’” (241). While the inner *state* boundary defines the conditions of universal citizenship and right, the outer *national* boundary is defined in terms of sovereign power vis-a-vis other sovereign powers. The first difficulty of the “nation-state” resides, Rose emphasizes, in the equivocation between this outer distinction separating particular sovereign powers “with no reference to recognition or legitimation” and inner legitimacy grounded in universal citizenship of the state (242). With the medieval idea of “natural law” dissolving with the grip of the Catholic Church, sovereign powers face each other in a Hobbesian “state of nature.” In the *Outlines of the Philosophy of Right* (2008), Hegel demonstrates that in the absence of a “Praetor to judge between states,” “active” citizenship realized in the nation's external sovereign power manifests itself in interstate wars (303). The diremption between the external “particular will” of a sovereign nation and the internal “universal” rational state—in the time of Hegel and ours—could not be resolved.

Following the “conservative” Hegel of the *Outlines of the Philosophy of Right*, Schmitt draws theological-political ramifications from the *seeming* secularization of nation-states attendant to the Reformation. Far from being secularized, according to Schmitt, the nation-state's independence had to rely on the theological notion of sovereignty. Similar to Machiavelli, who vested the prince with a constitutive power to create a body politic in solitude and out of nothing, in *Political Theology* (2005), Schmitt defines the sovereign as the one who decides on exception and in so doing constitutes a legal order. Inasmuch as there is a possibility of war between nation-states—thus justifying exceptional measures, for Schmitt, a sovereign extra-legal decision is the ultimate foundation of the existence of a body politic. And while “the exception in jurisprudence is analogous to miracle in theology,” (2005, 36), Schmitt understood that sovereignty as a founding principle of the modern state dissimulates the theological creation *ex-nihilo*. As a result, the sovereign-nation state and its legal apparatus are said to be constituted on the exceptional, that is—arbitrary, decision and not on a normative social contract or legal institutions. In *The Concept of the Political* (2007), Schmitt further depicts the sovereign as the one who decides on the irreducible friend/enemy distinction that sustains the heterogeneity of equal sovereign nation-states. Further, suggested by him in *The Nomos of the Earth* (2006), the Peace of Westphalia can be seen as the historical

consequence of the process triggered by the Reformation that crystallized the European order of sovereign powers—*modus vivendi* expressed in the *jus publicum Europaeum*—wherein the nation-state form ensures external equality on par with other nation-states (Schmitt 2006, 145). In this chapter, the French Revolution will be discussed as an event that can be seen as either cementing this order of nation-states by means of “tribal” nationalism (Arendt) or as fundamentally challenging it on cosmopolitan and secular grounds (Kojève). In particular, I will discuss how Kojève addresses the problem of national sovereignty attendant to the diremption between the state and nation by grounding universal rights in international institutions and how Arendt’s theory of rights is grounded in an intersubjective non-sovereign community independent from both the state and nation.

The Double Diremption of Modernity: Marx, Luxemburg, and Rose

The diremption between universal rights and national sovereignty will be considered in this chapter in conjunction with the diremption between state and civil society already discussed in the first chapter. For Hegel and Marx, as Rose shows, Rousseau’s inner distinction between active citizens and passive subjects expounded in *The Social Contract* can no longer be maintained in light of Rousseau’s own insights into political economy/private property from the second Discourse *On the Origins of Inequality* (Rose 1992, 242). Hegel, and Marx following him, understood that the inner distinction is inverted in modern “civil society,” which is based on particular needs of subjects in separation from the universal interest of the state and its citizens: “[a]s a result subjects pursuing their particular interests are active; citizens acting in the interest of the universal are passive” (243). But unlike Rousseau, who theorized civil society only abstractly, Hegel and Marx were aware that the historical origins of this relative separation of civil society from the state harken back to the subordination of religion to politics since the Reformation, “which has ‘emancipated’ religion into civil society since the early nineteenth century” (164, 173). Modern civil society as the abode of capitalism was born, following Weber, from the specifically Protestant ethics comprising “unplanned but progressive accumulation of resources for investment and the systematic rationalizing and legitimizing of quotidian economic and official power consequent on the cultivation of inner importance” (Rose 1992, 176; Weber 2001). The precondition of capitalism expressed in terms of individual inwardness and ethos of entrepreneurship is foreshadowed in Hegel’s *Phenomenology of Spirit*: “the spiritual animal kingdom” appears as a phenomenological experience of “spiritual” universal law, presupposing a kingdom of ends, but corrupted by the “animal” treatment of others as a means, presupposed by legal formalism and private property (Rose, 174; Hegel 2013, 397-418). In a similar vein, Marx saw “the Rights of Man” as the rights of bourgeois “civil society” members to pursue their private interest in relative separation from the state while engaging in the seemingly apolitical but real dynamic of economic class exploitation (Marx 1992b; 2008).

This unrestrained and concealed accumulation of private capital theorized in Marx’s “On the Jewish Question” and later in *Capital*, is recast by Luxemburg in light of the international political economy, thus conjoining the diremption between civil society and state and state and nation. In *The Accumulation of Capital*, Luxemburg describes the dynamic of international economic exploitation: “Capital needs other races to exploit territories where the white man cannot work. It must be able to mobilize world labour power without restriction in order to utilize all productive forces of the globe - up to the limits imposed by a system of producing surplus-value” (Luxemburg 2003, 343). What Marx failed to recognize, according to Luxemburg, is that the capitalist economy cannot reproduce and expand itself if comprised only of workers and capitalists

but requires “third persons,” that is, pre-capitalist sectors within the national economy to feed on (Arendt 1968, 39). Once the capitalist mode of production spreads over national territory, the capitalist is forced to look overseas to realize the surplus value and increase variable labour capital (Rose 1992, 218). As a result, as Arendt shows in the *Origins of Totalitarianism*, the initial political indifference of the emancipated bourgeois “civil society” transforms into imperialist politics based on overseas accumulation and expansion of capital (Arendt 1973, 15; Rose 1992, 220). The critique of the international political economy thus demonstrates how the inner fissure between state and civil society is tied to international economic exploitation.

Argument

This chapter will consider Arendt’s and Kojève’s phenomenological grounds of universal rights as two alternative but ultimately complementary responses to Schmitt’s political theology of sovereignty that draw on resources of teleological eschatology (Kojève) and ecclesiology (Arendt). Arendt’s phenomenological “common world” will be shown to lack institutional foundations while offering an account of disinterested intersubjective judgement missing in Kojève’s phenomenological notion of “disinterested and impartial third.” The impartiality of the “third” in Kojève will be expounded as a response to Schmitt’s theory of political sovereignty that conjoins the diremption between state and nation to the diremption between state and civil society, thereby accounting for the Luxemburgian critique of international political economy on which Arendt relies in *The Origins of Totalitarianism*. Finally, it will be argued that Kojève’s theory of impartial juridical federation combined with Arendt’s theory of disinterested judgment offers a strong systematic rights-based cosmopolitan response to Schmitt’s theology of political sovereignty.

1. “The Right to Have Rights” and a Phenomenology of Non-Sovereignty in Arendt

In her analysis of the condition of rightlessness amid the two world wars, Arendt traces back the contradiction between universal rights and national sovereignty to the intellectual and political heritage of the French Revolution. Because the “Rights of Man” are identified as a paradoxical source of national sovereignty, Arendt rejects human rights *qua* the “Rights of Man” in favour of her own notion of the “right to have rights.” In so doing, Arendt is shown to respond to Schmitt’s theory of political sovereignty by grounding the “right to have rights” on the phenomenology of the non-sovereign “common world.” However, by failing to theorize an *institutionalized* “common world,” Arendt’s “right to have rights” retreats to an ecclesiological “culture of judgment” that oscillates between a solely moral premise of universal rights (and thus does not sustain Schmitt’s criticism) and un-theorized commitments to international institutions. Arendt abandons her insight from *The Origins of Totalitarianism* on modernity’s “twin contradictions” and as such, her phenomenology of the “common world” (as ground for universal rights) evades rather than confronts Schmitt’s theory of political sovereignty.

1.1. “Rights of Man” as the Source of National Sovereignty

Human Rights and Rightlessness

In *The Origins of Totalitarianism* (1973), Arendt discusses the historical consequences yielded in the early 20th century by the contradiction between the promise of universal rights and the reality of national sovereignty. In a chapter titled “The Decline of the Nation-State and the End of the Rights of Man,” Arendt turns her attention to the rightless condition of refugees fleeing wars and the stateless people that emerged from the collapsed Austro-Hungarian and Russian Empires (267). Arendt observes that these groups were deprived of legal protection offered by their native political communities and were not accepted as rightful citizens in host communities (*Ibid.*). What

this analysis suggests is that the loss of citizenship rights meant the loss of supposedly inalienable human rights:

The Rights of Man, after all, had been defined as ‘inalienable’ because they were supposed to be independent of all governments; but it turned out that the moment human beings lacked their own government and had to fall back upon their minimum rights, no authority was left to protect them and no institution was willing to guarantee them...The stateless people were as convinced as the minorities that loss of national rights was identical' with loss of human rights, that the former inevitably entailed the latter. (292)

Just as Arendt will later reiterate in *On Revolution*, the “perplexity” of the “Rights of Man” is then nothing else but their reduction to the rights of nationals (1990, 149).²¹

This alleged reliance of human rights on national citizenship became particularly problematic once the logic of national sovereignty was brought to the extreme. As it turns out, nothing prevented nation-states from abusing the absolute sovereign discretion as to whether to grant citizenship to refugees and stateless people, with matters becoming even worse in the time of crisis and interstate belligerence. For “when the chips are down,” totalitarian states could establish legal distinctions between full citizens and other nationals (1973; 278, 288). Deprived of legal protection in countries like Nazi Germany, national minorities became an easy target of totalitarian politics and persecution (273). In an example that is as illuminating as it is disturbing, Arendt shows that the extermination of Jews by the Nazi regime was carried out once it was ensured that no sovereign country would claim the victims (296). Further, with the League of Nations having no effective powers to protect human rights in sovereign states, “the only practical substitute for a nonexistent homeland was an internment camp” (284). Arendt then suggests that the somber reality of the permanent state of exception and internment camp behind the universalistic facade of human rights became salient only once the *nation*-state was conceived not in civic but “nationalistic” terms. Arendt then goes even further to claim that both the “Right of Man” and this “tribal” nationalism share the same historical root—the French Revolution.

The “Rights of Man” as the Source of National Sovereignty

Arendt’s somewhat counterintuitive and bold argument is that it is precisely the “Rights of Man” that have historically become the foundation of national sovereignty. Proclaimed initially by the French revolutionaries in 1789, the 19th century turned the “Rights of Man” from the rights of an individual person to the source of legitimation for nascent nation-states. Because the French Revolution:

combined the declaration of the Rights of Man with the demand for national sovereignty...the same essential rights were at once claimed as the inalienable heritage of all human beings *and* as the specific heritage of specific nations, the same nation was at once declared to be subject to laws, which supposedly would flow from the Rights of Man, *and* sovereign, that is, bound by no universal law and acknowledging nothing superior to itself. (230)

²¹ This also explains the paradox why “[t]he Rights of Man, supposedly inalienable, proved to be unenforceable - even in countries whose constitutions were based upon them - whenever people appeared who were no longer citizens of any sovereign state.” The condition of rightlessness experienced by the refugees and stateless people amid the two World Wars is thus presented as the emblematic case attesting to the impotency of human rights in the face of national sovereignty. See Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace Jovanovich, 1973), 293.

In other words, the “Rights of Man” are said to ground both the legitimacy of the rational state and the arbitrariness of sovereign power. Developing this argument further in *On Revolution*, Arendt observes that in contrast to its American counterpart, the French declaration of the “Rights of Man” did not serve as a limitation on the government but as the very foundation of the government (1990, 148). For, the French Declaration of the Right of Man proclaimed 'man' — and neither God nor convention — to be the source of law (1973, 290). “The American ‘formula’ proclaims man to be created in the image of God, while the French ‘formula’ posits mankind that harbours within himself the sacred demands of natural law” (300). With the French “people” elevated to the position of the lawgiver, this foundation took on a form of the “general will” bounding a multitude of particular wills into one sovereign entity, theorized by Rousseau and put into practice by Robespierre (1990; 75, 77).

The problem, says Arendt, is that once “man” in the plural (“general will”) is conceived as a lawgiver, one also has to introduce the notion of the sovereign people:

Man appeared as the only sovereign in matters of law as the people was proclaimed the only sovereign in matters of government. The people's sovereignty (different from that of the prince) was not proclaimed by the grace of God but in the name of Man, so that it seemed only natural that the ‘inalienable’ rights of man would find their guarantee and become an inalienable part of the right of the people to sovereign self-government. (1973, 291)

To promulgate law in the name of “general will” is to do so on behalf of the French people as a sovereign entity. As a consequence, “[t]he whole question of human rights, therefore, was quickly and inextricably blended with the question of national emancipation; only the emancipated sovereignty of the people, of one's own people, seemed to be able to insure them. As mankind, since the French Revolution, was conceived in the image of a family of nations, it gradually became self-evident that the people, and not the individual, was the image of man” (291).

Arendt thus posits the dependence of national sovereignty on the “Rights of Man” as the formula for the nation's victory over the rational state. Rights given by the state—the “Rights of the Citizen”—are ultimately dependent on concrete juridical institutions and positive law that treat all citizens as formally equal juridical persons. But the “Rights of Man,” if understood as applied not to individual but “primordial” communities, came to express the romantic idea of common origins and “national-soul” (1973, 230-1):

The practical outcome of this contradiction was that from then on human rights were protected and enforced only as national rights and that the very institution of a state, whose supreme task was to protect and guarantee man his rights as man, as citizen and as national, lost its legal, rational appearance and could be interpreted by the romantics as the nebulous representative of a "national soul" which through the very fact of its existence was supposed to be beyond or above the law. National sovereignty, accordingly, lost its original connotation of freedom of the people and was being surrounded by a pseudo-mystical aura of lawless arbitrariness. (230)

The precarious balance that resided in the “and” of “the Rights of Man and the Rights of the Citizen” broke in favour of the former but was conceived in terms of national sovereignty. The victory of national emancipation over institutionalized rights became possible once the “supremacy of the will of the nation overall legal and "abstract" institutions... was universally accepted” (1973, 275). From this it followed that while *individual and universal* “Rights of Man” reveal themselves as abstract and powerless without the “Rights of the Citizen” as their support, the latter were ultimately grounded in *collective but particular* “Rights of Man,” that is, in sovereign nation-states.

As a result of these inversions and displacements, according to Arendt, refugees were excluded from any legal protection whatsoever: once the legal “Rights of Man” were conceived as emanating from “common origins” and not from individual humanity, the loss of a political community implied the total loss of rights.

Arendt and Schmitt: Arendt’s Strategic Conservatism

Without taking into account Arendt’s own phenomenology of rights, this genealogical description of the “Rights of Man” may suggest that Arendt takes a conservative position by recognizing the reality of nation-states as opposed to the lofty but utterly inadequate idea of human rights. Her endorsement of Edmund Burke’s criticism of the French Revolution confirms this *apparent* conservatism²². Having demonstrated the impotency of human rights during the time of world crises, Arendt says that the wretched condition of stateless people only attests to the fact that Burke was right to argue that:

Human rights were an ‘abstraction,’ [and] that it was much wiser to rely on an ‘entailed inheritance’ of rights which one transmits to one’s children like life itself, and to claim one’s rights to be the ‘rights of an Englishman’ rather than the inalienable rights of man. (299)

As Arendt reiterates in *On Revolution*, one can hardly offer anything against Burke’s assertion that there was no point in history when people would possess inalienable rights by birth (1990, 45). The permanent state of exception (internment, concentration and extermination camps), in which those who possess nothing but their human rights found themselves, only elucidated Burke’s assessment that human rights are the “right of the naked savage” (1973, 300).

The cautionary tale that human rights universalism reduces “civilized nations to the status of savagery” (300), of course, resembles Schmitt’s concern that the breakdown of the political distinction among European nation-states will lead to absolute hostility (Schmitt 2007, 36; Toscano 2008, 422), as well as his conviction that “global implementation of human rights obeys a moral logic and hence would lead to interventions that would be merely thinly disguised police action” (Habermas 1998, 192). If this pragmatic, albeit pessimistic, view of Burke against the theorist of natural law and Robespierre’s notion of “mankind” is accepted by Arendt, one can imagine that Arendt would also share Schmitt’s “realistic” view on human rights and sovereignty. To this end, it has been emphasized that Arendt shares Schmitt’s criticism of “depoliticization” inherent to human rights universalism and his skepticism towards the prospects of global legal order (Kee-dus 2011, 194-5). Moreover, to conceive the “Rights of Man” as the collective “will of the nation” that engenders the law while being “beyond or above the law” (Arendt 1973, 230) is to describe the logic of Schmitt’s theory of sovereignty. And what is Arendt’s characterization of national-sovereignty as having “pseudo-mystical aura of lawless arbitrariness” if not a rumination on Schmitt’s contention that the sovereign is the one who decides on the exception, that is, in a manner of an arbitrary decision that constitutes the legal order while being outside of it? Is it not that Arendt clearly understood that if “mankind” is posited as a family of sovereign nations, the next logical move is to assert the implied truth of Schmitt’s theory that the nation is rooted in “homogeneity of population and rootedness in the soil” (270)?

²² For example, it has been argued that Arendt’s reading of the French Revolution makes her “emerge as an unintentionally conservative thinker.” See Christian J. Emden, “Romanticizing the Republic: Hannah Arendt on Freedom, Rights, and the Modern State,” in *Arendt on Freedom, Liberation, and Revolution*, edited by Kei Hiruta. (Springer, 2019), 80.

Arendt would not agree with Schmitt, of course, and the substantial differences between the two thinkers have been discussed at length in the literature (Kalyvas 2008; Keedus 2011; Scheuerman 1997; Volk 2013, 762). While Schmitt accepts the French revolutionary legacy of Sieyès, Rousseau and the Jacobins to justify the necessity of an absolute constitutive decision, according to W. E. Scheuerman, Arendt turns away from the French revolutionary tradition to seek inspiration in the principles of the American republic (Scheuerman 1997, 142-3). Further, it has been argued that Arendt's phenomenological theory of right, especially in its emphasis on political action, is "intended to secure an elemental human dignity that is systematically jeopardized by the imperatives of national sovereignty" (Isaac 1996, 61).

Arguably, this interpretation of the French Revolution along the right-Hegelian position of Schmitt is deployed by Arendt strategically. By collapsing the "Rights of Man" and national sovereignty, Arendt proclaims the victory of the Schmittian sovereign nation-state as the only possible outcome of the French revolutionary tradition. Her agreement with Burke is as well partial and strategic: she agrees with Burke that human rights promulgated by French revolutionaries are an abstraction but does not agree with Burke's conservatism that espouses the nation-state as the only source of right. To disentangle Arendt's strategy and understand her position on human rights and engagement with Schmitt's understanding of political sovereignty, I will first consider the phenomenological grounds on which she erects her theory of the "right to have rights": the non-sovereign "common world."

1.2. Phenomenology of Non-Sovereignty and the "Rights to Have Rights"

Arendt devises a genealogy of modern human rights wherein not only the "Rights of Man" cannot protect people from excesses of national sovereignty and guarantee human dignity for stateless people and refugees but also serve as the very basis for the pernicious principle of national sovereignty. In this respect, Arendt's "the rights to have rights" can be understood as an alternative to the "Rights of Man" that seek to evacuate the problematic grounds of the French revolutionary tradition. In this respect, Serena Parekh (2008) has shown that Arendt premises the "right to have rights" upon the notions of the "common world" and "political commitment to plurality" (68). And insofar as Arendt's understanding of plurality rests on the principle of natality, Peg Birmingham (2006) holds that "the event of natality, with its inherent principle of humanity, provides the ontological foundation for human rights" (3). As we shall see in the next section, if viewed in light of Arendt's phenomenology of natality and non-sovereignty, the "right to have rights" is grounded in the phenomenological "common world" and the correlate public realm.

Natality

Arendt's response to the modern understanding of political sovereignty begins in her political phenomenology of natality expounded in *The Human Condition* (1998). For Arendt, "natality, and not mortality, may be the central category of political, as distinguished from metaphysical thought" (1998, 9). The "metaphysical thought" chastised here by Arendt is arguably nothing else than the modern political tradition from Hobbes to Hegel that treats political sovereignty as interlinked with death. The major representative of this tradition on the political right—Schmitt, defines "the political" as structured by the grouping of friend and enemy. The real combat to death is the extreme but necessary consequence of this irreducible political distinction (Schmitt 2007, 35). The sovereign is then the entity that decides on this political grouping (38-9). In this respect, according to Arendt, the Schmittian belief that the unity of a nation can be asserted only in foreign affairs and that it is only foreign affairs that are political (which makes the internal affairs merely "social") originates with Saint-Just (Arendt 1990, 77). For Arendt, the unified sovereign will of the nation

is precisely what is metaphysical about this type of thinking about the “political” for it imagines human plurality as reducible to one indivisible “general will.” On the Hegelian left, Kojève understood sovereignty in terms of mastery (as shown in the first section of this thesis), an existential position of an independent consciousness risking life for pure prestige in the struggle for recognition. For Arendt, this type of thinking too originates in the philosophy of “will” that finds its political realization in the French Revolution, of which the Hegelian philosophy is the “ideological” offshoot (51). Arendt writes:

If it were true that sovereignty and freedom are the same, then indeed no man could be free, because sovereignty, the ideal of uncompromising self-sufficiency and mastership, is contradictory to the very condition of plurality. (1998, 234)

In other words, sovereignty understood as mastery is said to be at odds with political freedom grounded in human plurality.

Articulated in *The Human Condition* as an implicit response to Heidegger's existential analytic of death (Benhabib 2003, 106) and explicitly opposing the “metaphysical tradition,” Arendt’s notion of natality is meant to emphasize two essential characteristics of human political existence: first, we are born into the world as distinct individuals, and second, each of us has the capacity to create anew (1998; 7, 177-8). The uniqueness of each individual attests to the fact of human plurality and is revealed in human speech. A political initiative responds to this primordial plurality revealed in speech, an impulse that “springs from the beginning which came into the world when we were born and to which we respond by beginning something new” (176). The interplay between the fact of birth and political capacity to create anew punctuates the basic coordinates of Arendt’s political phenomenology of natality. Couched in the Aristotelian description of the human as speaking animal (Benhabib 2003, 107; Wolin 2015, 42), the interplay of these two existential fundamentals of natality allows Arendt to assert that political action occurs as mediated in an egalitarian speech in the ontological condition of plurality:

If action as beginning corresponds to the fact of birth, if it is the actualization of the human condition of natality, then speech corresponds to the fact of distinctness and is the actualization of the human condition of plurality, that is, of living as a distinct and unique being among equals. (1998, 178)

From this follows that the “political” is structured not by the struggle to—or the fear of death, but by birth that opens up an initiative to act and speak.²³

The freedom to create anew contained in the phenomenology of natality is thus the most fundamental category that Arendt uses to counter the principle of sovereignty. In *On Revolution*, Arendt turns to an analysis of the American Revolution to articulate the principle of natality in modern and concrete political terms. Arendt does not deny that the French Revolution was a quintessentially modern event, so much so that together with the American Revolution, the two events come to embody the human capacity to create anew (1990, 34). But the problem of the French Revolution was that it was driven by the desire for liberation from oppression and poverty, not by

²³ This political ontology also tallies with Arendt's typology of the human condition considered in the first part of this thesis: the condition of action that corresponds to the human speech and the condition of plurality hinges on the phenomenology of natality and in which speech takes place. See section 1.1.

the impetus to constitute freedom (*Ibid.*)²⁴. In contrast to the French “negative” liberty from oppression (and the correlate Hegelian philosophy of revolutionary necessity), the American revolutionaries understood freedom “positively” as the ability to create anew politically. In doing so doing, they created not sovereignty but a foundation of freedom—*Constitutio Libertatis* (154). According to Arendt, the American revolutionaries avoided the problem of sovereignty by grounding the origins of power in the people, but the source of the law in God (181). The Americans thus created more power, not law (154). As she shows in the example of the American Revolution, our capacity for *political* beginnings “is rooted in natality, in the fact that human beings appear in the world by virtue of birth” (211). This contrasts with the French revolutionaries, who derived both the origins of power and the source of law from the same source—the people, thereby deifying the “people” in the figure of the sovereign general will (181). While being aware that the United States of her time did not quite tally with this description of a non-sovereign entity, Arendt's point is that it was the American Revolution in its inception that created something new in the history of Western mankind by suspending sovereignty thereby creating a chance to escape the burdens of the old tradition of nation-states (153, 194, 195).

Non-Sovereign Powers to Promise and Forgive

To create non-sovereign power means to follow the political exigencies of Arendt's concept of freedom understood in terms of human plurality. Having argued that sovereignty is at odds with human plurality, Arendt then goes on to formulate principles of “non-sovereignty”: the power to forgive and promise. These two “faculties”:

[B]elong together in so far as one of them, forgiving, serves to undo the deeds of the past, whose ‘sins’ hang like Damocles' sword over every new generation; and the other, binding oneself through promises, serves to set up in the ocean of uncertainty, which the future is by definition, islands of security without which not even continuity, let alone durability of any kind, would be possible in the relationships between men. (1998, 237)

These two faculties are also articulated *phenomenologically* inasmuch as they are defined in terms of temporality. The power to forgive allows us to escape the irreparable consequences of the *past* and arises from our respect for the distinctness of others (237, 243). Without the power to forgive, humans would be trapped in the never-ending cycle of revenge. The act of forgiveness is devoid of the calculus of retribution and can never be predicted (241), which makes it similar to the human condition of action that, according to Arendt, is an end in itself outside the means/ends calculation (229). Further, it is the power of promise that enables us to wrestle with the indeterminate *future* that she defines in terms of the unreliability of others' commitments and unpredictability of consequences of freely undertaken actions (244). Arendt juxtaposes the non-sovereign power to forgive to Kojevan-Hegelian sovereign “mastery”:

The function of the faculty of promising is to master this two-fold darkness of human affairs and is, as such, the only alternative to a mastery which relies on domination of one's self and rule over others; it corresponds exactly to the existence of a freedom which was given under the condition of non-sovereignty. (244)

²⁴ Habermas, however, objects: “The French Revolution takes natural right as an ideal to realize, whereas the American Revolution takes it as a real state that political intervention can only disfigure. The constitutive productivity of the political is thus all on the side of the French Revolution: it is the only modern revolution. The American Revolution is a conservative revolution, whose ideology is premodern and corporative, thus antimodern and antipolitical.” See Antonio Negri, *Insurgencies: Constituent Power and the Modern State*. Theory out of Bounds, v. 15. (Minneapolis: University of Minnesota Press, 1999), 18.

The interlinked powers to forgive and promise thus coalesce into a power that is non-sovereign and makes possible acting “in concert” in the condition of plurality (244-5).

In *On Revolution*, Arendt comes back again to the American Revolution example to show how it reflects the non-sovereign power to promise. She details how the pre-revolutionary body politic in America did not claim sovereignty and instead built promises in the form of manifold social contracts (1990; 168,171). This type of political organization, says Arendt, follows the long tradition of contract theories that originated in the Roman Republic (244). And in contrast to the French belief in the goodness of human nature and the “general will,” the Americans understood that human nature should be checked through these promises and common bonds (175). If both revolutions discovered the power of public opinion, only the reliance of the Americans on non-sovereign powers enabled them “to build a lasting institution for the formation of public views into the very structure of the republic” (228). What the American building of a political world heralded is a congruence of the grammar of action and syntax of power:

The grammar of action: that action is the only human faculty that demands a plurality of men; and the syntax of power: that power is the only human attribute which applies solely to the worldly in-between space by which men are mutually related, combine in the act of foundation by virtue of the making and the keeping of promises, which, in the realm of politics, may well be the highest human faculty. (175)

While Arendt does not discuss the power to forgive in the context of the American example and also admits that contemporary America was not able to escape the principle of sovereignty, the point of this example is not so much to extoll the American Revolution but to illustrate Arendt's own principles of political action and non-sovereignty on which “the right to have rights” depends. American political foundations are emphasized as having “the combined power of the many” in common deliberation and mutual promises in order to create anew (214). What is crucial here is that Arendt's examples draw from pre-revolutionary America of townships and wards (235, 249). The principles, to be sure, were also embodied in what Arendt calls the lost treasure of modern revolutions—the ability to organize and form a “common world.” Her examples include French clubs (240), American wards system, Hungarian councils, and soviets mushroomed in the Russian Revolution (249). What unites all these examples is the pre-political nature of rights that, as we shall see a moment, is at odds with legitimate violence's modern legal institutions.

The Common World and the Public Realm

In *The Origins of Totalitarianism*, Arendt says that the loss of the “right to have rights” by stateless people and refugees entailed the loss of a politically organized human artifice (293-4, 302). It is, she writes:

Not the loss of specific rights, then, but the loss of a community willing and able to guarantee any rights whatsoever, has been the calamity which has befallen ever-increasing numbers of people. Man, it turns out, can lose all so-called Rights of Man without losing his essential quality as man, his human dignity. Only the loss of a polity itself expels him from humanity. (297)

However, as it may be clear now, a community “willing and able to guarantee any rights whatsoever” cannot be a sovereign community or nation-state. Instead, Arendt's “common world” is understood as a discursive community in which the relevance of speech—“and man, since Aristotle, has been defined as a being commanding the power of speech and thought” (297) is actualized in human relationships—“and man, again since Aristotle, has been thought of as the “political animal,” that is one who by definition lives in a community” (297). The “common world” wherein

“the right to have rights” originate is first and foremost “a place in the world which makes opinions significant and actions effective” (296). As the foundation of the “right to have rights,” the common world is defined as necessitating an event of beginning (natality), a space of opinion exchange and political action, and a community build on mutual promises.

In the *Human Condition*, Arendt ties together the “common world” and the “public realm”:

The reality of the public realm relies on the simultaneous presence of innumerable perspectives and aspects in which the common world presents itself and for which no common measurement or denominator can ever be devised. For though the common world is the common meeting ground of all, those who are present have different locations in it, and the location of one can no more coincide with the location of another than the location of two objects. Being seen and being heard by others derive their significance from the fact that everybody sees and hears from a different position. (1998, 57)

The discursive community, or the “public realm”, is central to Arendt’s response to Schmitt’s political sovereignty. As Kalyvas (2008) has emphasized, Arendt’s pluralistic and multi-perspectival definition of the public realm is posited against Schmitt’s glorification of “a popular sovereign will” (192). Law, and rights, hinge not on a sovereign entity that decides on an exception in the face of existential threat. Instead, the core of any political and legal community is the public realm of the discursive “common world.”

1.3. Ecclesial “Culture of Judgment” or/and International Institutions?

“Common World” and the “Culture of Judgment”

Most commentators agree that the “right to have rights” is grounded on the phenomenological principles that coalesce in Arendt’s concept of the “common world” (Benhabib 2003; Birmingham 2006; Parekh 2008). What is more contested, however, is which institutions can accommodate the exigencies of Arendt’s political phenomenology. On the one hand, Benhabib maintains that Arendt’s understanding of universal rights is grounded on a “phenomenological essentialism” critical of institutions (2003, 124-6). In a similar vein, Parekh emphasizes the non-judicial nature of the “right to have rights” (2008, 39). On the other, Tony Burns (2013) notes that “the right to have rights” is congruent with the Hegelian vision of the right to citizenship, while Tsao (2004) draws attention to Arendt’s affinity with Hegel’s theory of the state. In this respect, Birmingham’s (2006) study of Arendt’s theory of right offers a middle-ground: while she demonstrates that Arendt’s theory of right is phenomenological rather than juridical, she also catalogues Arendt’s endorsement of international juridical institutions. In the next sections, I will look into this tension that arises between Arendt’s theory of universal rights grounded on the phenomenological “common world” and her political endorsement of regional and federative international institutions. Drawing on Rose’s reading of Arendt, I will demonstrate that Arendt inaugurates a “culture of judgment” (discursive community) in place of the institutional foundation of universal rights. This will allow me to argue that, notwithstanding Arendt’s acceptance of the necessity of international institutions, the institutional aspect of international human rights remains un-theorized.

A crucial problem of the “common world” which makes it vulnerable to the Schmittian critique of moralism is Arendt’s disavowal of institutions of legitimate violence. In her reading of Arendt, Rose demonstrates that Arendt’s principles of natality, non-sovereignty, and the “common world” are rooted in ahistorical and ecclesial Augustinian politics (1992; 216, 223, 231). For one thing, says Rose, Arendt’s political phenomenology of natality hinges on St Augustine’s theolog-

ical distinction between two origins of man, given by God and made by human (225). This distinction is expounded as “between the beginning of man—*initium*—and the beginning of the world, between first birth, the sheer fact, and second birth, “with words and deeds...into the human world” (231). However, the first beginning, the existential “fact of birth,” according to Rose, is conflated with “natural” givenness devoid of any social differentiation and historical specificity. Contrary to what Arendt postulates, this birth “does not include ‘the shape of our bodies’ and ‘the talents of our minds,’ for these are socially relevant characteristics” (225). Posited outside of social differentiation, the first birth does not appear historically, in our case, against a background of the historical contradiction between universal rights and national sovereignty, but “is couched as a theological affirmation of the new, of birth as such, but not repetition as recollection forwards of ‘what has been’” (228). In other words, the first birth can not emerge as a “determinate negation” of the historical constellations of the contradiction between universal rights and national sovereignty, of which Arendt is otherwise aware in the “Imperialism” section of *The Origins of Totalitarianism*. As a result, miraculous birth ends up being identical to the condition of stateless people isolated from the “common world” and political freedom, a condition Arendt herself deplors (228).

The second political beginning of natality, as we have seen, is understood by Arendt as a world-creating response to the first beginning. According to Rose, this second beginning, which is supposed to be political and not existential, is articulated as an Augustinian ageless city “without force or violence, but with perfect property or place” (231). The second birth also avoids the contradiction inherent to modern institutions and instead projects an Augustinian ecclesial sociality of saints (228). According to Rose, Arendt’s principle of non-sovereignty that is supposed to found the political “common world” can only found the “City of God” in a form of a discursive community (232). Rose argues that “this deployment of *aporetic* and *agapic* Augustinianism leads the authorship to reduce philosophy and political culture...to ‘judgment,’ culled from Kant’s third *Critique*” (1992, 216).²⁵ By positing Kant’s aesthetic judgement as the principle of persuasion in politics, Arendt theorizes “a culture of judgment” in separation from political representation and institutions. This “culture of judgment” is only possible as a sociality of saints, not as a political world (233).

The point of Rose's criticism is not to chastise Arendt for secularizing Augustinian theology by adapting it to phenomenological terms, but to show that Arendt's political phenomenology is ahistorical and avoids the diremptions inherent to modern institutions rather than grappling with them. This criticism shows the major weakness of Arendt's “common world” and grounds for the “right to have rights.” While “St Augustine in The City of God provides the quintessential statement of the Roman public realm” (228), the public realm, the centre of the “common world,” is nonetheless detached from the historical conditions of Roman law and institutions:

Arendt is so concerned to universalize and dematerialize the idea of the ‘public’ as *res publica*—a public thing, contour of a shared world of debate—and to separate it equally from substance, from force and violence, and thus from risk, that the origin and character of Roman private law, legal status’ that ‘the idea of the ‘public’ is made into an ideal, transhistorical, discursive plurality, its origin in this equivocal emancipation of ‘persons’ from the collective interests is completely obscured. (229)

²⁵ The judgment is moreover not only theorized by Arendt but is also continuously enacted as Arendt “continues to indict, condemn, to judge the ‘modern age’ held against the ageless world.” See Gillian Rose, *The Broken Middle: Out of Our Ancient Society* (Oxford: Blackwell, 1992), 232.

Because Arendt does not accept violence as the “lowest common denominator of action” (152), she refuses to recognize the historical, institutional and legal precondition of the public realm. Coupled with natality, “[t]his fictional 'public realm' amounts to a celebration of the birth and potential emergence of each individual into its light. It becomes in effect the City of God” (229). Habermas (2001) puts it in a more sociological manner when he observes that the “communicative power” of the public realm emphasized by Arendt “runs dry” and is detached from the administrative power of the modern constitutional state (147-50). Thus, in the context of modern institutions, the communicative power of the public realm becomes divorced from the administrative and juridical underpinning (legitimate violence) of the modern constitutional—not necessarily “national”, state.

Neither Rose nor Habermas reject the importance of the public realm. Rather, what they point to is that Arendt “dogmatically” disregards the institutional conditions of the public sphere (Habermas) and does not articulate the institutional conditions of possibility of the “culture of judgment” (Rose). Moreover, when it concerns international human rights, the international juridical and political institutions are likewise outside of Arendt’s theoretical project. For as it has been widely acknowledged, Arendt’s phenomenological “common world” is not a juridical, but rather, a moral or pre-political category (Benhabib 2003, 55-8; Burns 2013; Wellmer 2000, 223). Thus, Arendt unwittingly becomes vulnerable to Schmitt’s criticism of human rights moralism: in absence of a concrete juridical order, the “common world” appears as a moralistic notion.

What Arendt Knew but Chose to Ignore

The “common world” does not tally with Arendt’s own theoretical approach undertaken in *The Origins of Totalitarianism*. In construing the phenomenology of non-sovereignty, as Rose suggests, Arendt turns away from the contradictions of state and civil society and the resultant contradiction between human rights and natural sovereignty that nonetheless underpin Arendt’s critical project (1992, 235).

In *The Origins of Totalitarianism*, Arendt furthers Marx’s critique of the “Rights of Man” from “On the Jewish Question.” If Marx criticized that “the rights of the citizen” are reduced to the rights of egoistic man and politics overdetermined by the interest of property owners, Arendt’s historical vantage point and Luxemburg’s insights on international political economy allowed her to diagnose how the contradiction between state and civil society translates into the contraction between state and nation (Rose, 220). Contrary to Marx’s predictions, class contradiction did not lead to human emancipation and solidarity, instead:

The class-ridden society of nation-state whose ‘apolitical character...came to light only when the class system broke down and carried with it the whole fabric of visible and invisible threads that bounds the people to the body politic’, and ‘whose cracks had been cemented with nationalist sentiment...in the first helplessness of their new experience tended towards an especially violent nationalism.’ (Arendt cited in Rose, 222)

In a section named “Imperialism,” Arendt demonstrates how the equivocality of bourgeois emancipation led not only to nationalism but also to imperialism. Thus, as Rose explains, Arendt marries Marx’s critique of bourgeois emancipation, and Luxemburg’s account of capital accumulation expanded overseas (221). This allows Arendt to explain how the contradiction between state and civil society was set to generate “solutions” in the forms of nationalism, imperialism and racialism (220). In this sense, as Rose points out, Arendt’s *The Origins of Totalitarianism* presents “the most sustained attempt to develop Marx’s account of the split between state and civil society...and to provide a political and sociological history of the modern nation-state” (217).

The problem is that Arendt's phenomenology of right abandons her own critical insights into the diremptions of modernity. The contradiction between universal rights and sovereign nation, which emanates from the contradiction between state and civil society on which the *The Origins of Totalitarianism* are based, "is replaced by the prescribed foundation and publicity of the new" (224). Influenced by Augustinian idealized politics, Arendt's thinking:

[B]ecomes judgemental, abstract and ahistorical, and unintentionally falls to that very illusion of the perfection of the idealism of the state and politics which has its Janus-face in the simultaneous perfection of the materialism of civil society—the very founding historical diremption on which *The Origins of Totalitarianism* is otherwise based. (223)

In a word, by abandoning Marx's insight into the contradiction between state and civil society, together with Luxemburg's analysis of the international political economy, Arendt turns away from the institutional problems of universal rights.

International Institutions

Arendt acknowledges that humanity has reached a moment where we live in "One World," so much so that "humanity, which for the eighteenth century, in Kantian terminology, was no more than a regulative idea, has today become an inescapable fact" (1973, 298). Arendt, however, does not hail this contemporary global condition of humanity. For one, Arendt is convinced that human rights cannot be grounded either in history or nature: "[h]istory and nature have become equally alien to us, namely, in the sense that the essence of man can no longer be comprehended in terms of either category" (298). With the repudiated belief in natural rights and the regulative idea of rights-to-come, "One World" does not promise any good for Arendt's own conception of human rights: "the right to have rights, or the right of every individual to belong to humanity, should be guaranteed by humanity itself," but "it is by no means certain whether this is possible" (298). In the anarchic world of international relations between sovereign nation-states, there seems to be nothing that would guarantee the "dignity of man." On the contrary, she writes:

Only with a completely organized humanity could the loss of home and political status become identical with expulsion from humanity altogether...this calamity arose not from any lack of civilization, backwardness, or mere tyranny, but, on the contrary, that it could not be repaired, because there was no longer any 'uncivilized' spot on earth. (297)

How can "the right to have rights" be actualized in the somber reality of "One World"? Here, Arendt is brushing away the possibility of a world state as untenable because it would not reconcile the Socratic problem of the relation of the whole and its parts: "The crimes against human rights, which have become a specialty of totalitarian regimes, can always be justified by the pretext that right is equivalent to being good or useful for the whole in distinction to its parts" (299).

In her later political writings, paradoxically, Arendt is more sympathetic towards international institutions. To this end, Birmingham's account of Arendt's endorsement of international agreements is particularly telling (Birmingham 2006, 132-42). As Birmingham demonstrates, Arendt supported the idea of internationalism and a "worldwide federated political structure" in her letter to Jaspers (135). Further, Arendt endorsed the European resistance movement and the Dutch resistance in their aspiration to surrender sovereignty to a larger European federative structure (136). She also appears as a proponent of an international criminal court in her book on Adolf Eichmann as she is appalled that crimes against humanity are tried by the Israeli national court (137). As Arendt grew increasingly critical towards Zionism as a nationalist and sovereignist project, she argued for the federalization of Palestine (138). Finally, Arendt welcomed the prospects of an economic and political federative structure in Eastern Europe (140-1). Birmingham's analysis

of Arendt's political rather than theoretical writings concludes: "The institution of this fundamental right depends upon the collective limited sovereignty of states, regional federations with open borders, and international institutions, both legal and economic" (142).

Here, I want to suggest a tension between the theory of the "common world" as the foundation of "the right to have rights" and Arendt's support of *international* juridical federation. On the one hand, Arendt's theorization of the "common world" as the ground of human rights does not offer theoretical resources to conceive international institutions. In this respect, James Bohman is correct to argue that Arendt's thinking about rights is more in line with a non-statist cosmopolitanism (2012, 324). On the other hand, Arendt's endorsement of international federative structures suggests that more should be done in order to counter Schmitt's political sovereignty. To this end, Jurkevics has pointed out that Arendt's support of peripheral empowerment and "comity among nations" can be seen as a response to Schmitt's "imperialist" geopolitics espoused in *The Nomos of The Earth* (Jurkevics 2017, 360). Articulated in terms of Arendt's political phenomenology of non-sovereignty, however, Arendt's political response to Schmitt can be conceived only as an international forum, not an institution. In other words, the phenomenological "common world" finds its extension in an international public sphere, which likewise grounds the "right to have rights." The non-sovereign public sphere, even if one can imagine an international public sphere without institutions (a variant of the Republic of Letters), is unlikely to surpass the principle of national sovereignty, however. Keeping in mind Rose's critique of Arendt, this type of cosmopolitanism would be a culture of judgment, or "The City of God," separate from international institutions. The Schmittian response is predictable: this is an abstract position of moral pacifism unable to build institutions.

To recapitulate, in her critique of human rights, Arendt traces back the origins of national sovereignty to the French Revolution and its derivative philosophy of general will. Arendt seeks to diagnose how the French declaration makes sense only as a right to national self-determination, thereby unintentionally rendering the "Rights of Man" the source of romantic and arbitrary law-creating sovereign power that will later find its radical expression in Schmitt's theory of sovereignty. Arendt's political phenomenology then offers a radical alternative to Schmitt's political sovereignty. Yet, it is precisely the radicality of this alternative that does not allow Arendt to address the contradiction between universal rights and state sovereignty. Arendt grounds the "right to have rights" in a "common world" that enables the exchange of opinions but disavows legitimate violence on which juridical institutions of modernity are built. Arendt rejects the possibility of an institutionalized "common world," thereby hinging her "right to have rights" on an ecclesial "culture of judgment" that oscillates between a merely moral theory of universal rights and un-theorized loose regional institutional commitments. By evading the contradictions inherent to modern institutions altogether, Arendt's presents a theory of rights that is not able to offer "a new law on earth" (1973, ix) that she seeks, but a "culture of judgment," a "public realm" that is possible not as a political society, but as a community of saints (the City of God), or, at best, scholars (the Republic of Letters). This is no way to discard the importance of the "culture of judgment" and Arendt's account of intersubjectivity, to which I will return in the final part of this thesis. What is problematic about Arendt's phenomenology of rights is that it does not articulate a concrete juridical/institutional order that would effectively address Schmitt's theory of political sovereignty. In the next section, I consider Kojève's phenomenology of universal rights as an institutional corrective to Arendt's theory of "the right to have rights."

2. Impartial Third: International Juridical Federation and International Political Economy in Kojève

States as such are independent of one another, and therefore their relation to one another can only be an external one, so that there must be a third thing standing above them to bind them together.

Hegel

We have seen that Arendt articulates a political phenomenology of non-sovereignty—defined as the powers to forgive and to promise—to ground universal rights on a phenomenological “common world.” I suggested that rather than confronting Schmitt’s problem of political sovereignty, Arendt’s non-sovereign “common world” evades it by retreating into an ecclesial “culture of judgment,” a non-institutionalized public realm. Arendt’s phenomenology of the “common world” was also shown to be in tension with her political writings, wherein she endorses different variants of international institutions. In seeking to address this tension, this section will draw on Kojève’s theory of right that grounds universal rights, phenomenologically, on the intervention of a “disinterested and impartial third” and, at the same time, institutionally, on an international federative juridical union. Premising his theory of right on his recasting of Hegel’s philosophy of history and the French Revolution in atheistic and cosmopolitan terms, I will show that Kojève “neutralizes” Schmitt’s theology of political sovereignty by articulating a (neo-Kantian) logic of legal unification engendering an *impartial* international juridical federation. I argue that by conditioning this *juridical impartiality* on the international political economy, Kojève offers a speculative legal rights-centred response to Schmitt’s political sovereignty that acknowledges the interdependence of the diremption between state and civil society *and* the diremption between state and nation.

2.1. Historical Consciousness of the French Revolution: Teleology, “Christian” Atheism, Homogeneity

Kojève, like Arendt, rejects the idea of universal rights as emanating from either “divine” or “natural” law (Groys 2016; Frost and Howse 2007; Kojève 2007, 47, 49, 177). However, instead of criticizing the impotency of the “Rights of Man” like Arendt, or the dangerous moralistic consequences of human rights like Schmitt, Kojève offers a strong legalistic theory of universal right that seeks to reconcile the rational and historical foundations of right (92). Whereas Arendt claims that both nature and history are bankrupt categories for comprehending human rights, Kojève seeks to combine the two. In a Hegelian manner, Kojève says that the natural right is “not a beginning but a result...a becoming in time and history” (92). The rational foundation of right will be articulated by Kojève in terms of a phenomenological “juridical situation” structured by the intervention of an “impartial and disinterested third.” The possibility of such an intervention is historically grounded in the event of the French Revolution²⁶, interpreted by Kojève as the secular realization of Christianity inaugurating “ontological homogeneity,” thus serving the central premise of Kojève’s cosmopolitan response to Schmitt.

In his premise, Kojève couches the Hegelian historical teleology in characteristic existential-phenomenological terms. The Heideggerian analytics of finitude, to which Arendt responds

²⁶ As seen in the first part of this thesis, Kojève takes the French Revolution as an “eventual” source of the “socialist” right of equity, a principle that incorporates the aristocratic principle of equality of status and the bourgeois principle of equivalence between rights and duties (see Section 3). If these two principles loosely correspond to *égalité* and *liberté* in the French motto “liberté, égalité, fraternité,” one can expect that Kojève would offer a vision of juridical community to ground *fraternité*.

with her notion of natality, is combined by Kojève with the account of intersubjectivity gleaned from Hegel's reflections on the struggle for recognition in Jena writings and the master slave dialectic from *Phenomenology of Spirit*. Hegel's idea of death is said not only to foreshadow Heidegger's existential analytic of anxiety in the face of death but also as presenting an account of intersubjective struggle:

[A] l'encontre de Heidegger, Hegel affirme que ce n'est l'angoisse de la contemplation passive de l'approche de sa fin biologique, mais uniquement l'angoisse dans et par la lutte pour la mort, c'est a-dire dans et par la *negation*-active de l'etre donne comme un Ce-qui est-comme-lui-sans-etre-lui (bref : d'un autre homme), d'un etre qui peut ainsi le nier activement lui-meme, que c'est seulement la mort revelee dans et par cette lutte negatrice qui a la valeur humaine ou - plus exactement - humanisante que lui attribue. (Kojève 1993, 39)

Whereas for Heidegger, death individualized *Dasein*, Kojève's deployment of the Hegelian struggle for recognition presents the antagonistic story of social origins (Love 2018, 111). Two consciousnesses driven by the anthropogenic desire—the desire for the other's desire—engage in the mortal struggle for pure prestige (Kojève 1980, 5-24). The fear of death (the absolute master) forces the future bondsman to freely give up the struggle for recognition in exchange for work in service of the future lord (the relative master). The dialectical schema results in the historical progress and the slave's education (*Bildung*) through transformative work that will eventually enable the slave to overcome the fear of death and the other, while the master finds himself in the “existential impasse” insofar as he is recognized by the other (the slave) whom he does not recognize in return.

Dialectics develop through historical iterations of the synthesis between slavery and mastery that are nonetheless unsuccessful and where the slavish consciousness predominates: first, in the existential position of Roman Stoicism, then, in Scepticism and the “Christian unhappy consciousness” (53-8). The final overcoming of slavery, which Kojève posits as the *telos* of history, is achieved when the slave becomes the citizen of the Napoleonic state:

The final goal of human becoming is, according to Hegel, the synthesis of the warlike existence of the Master and the life of labor of the Slave. The Man who is fully satisfied by his existence, and who achieves precisely thereby the historical evolution of humanity, is the Citizen of the universal and homogeneous State, that is, for Hegel, the worker-soldier of the revolutionary armies of Napoleon. Therefore, it is indeed war (for Recognition) that terminates History and carries Man to his perfection (= satisfaction). Thus, Man can perfect himself only to the extent that he is mortal and accepts, with an awareness of what is involved, the risk of life. (Kojève 1973, 145)

Here, the Terror of the French Revolution is taken as a phenomenological experience of the “working bourgeois” who introduces the element of death into existence to overcome the master, while the resultant synthesis of mastery and slavery in the Napoleonic secular state creates conditions for mutual recognition (1980, 69).

Insofar as slavish consciousness is equated with Christian ethos, the French Revolution is taken by Kojève as a secular realization of Christian theology (67-8). For the Christian anthropological ideal, according to Kojève, can be achieved by “overcoming” Christianity, that is, by doing away with the idea of human immortality and transcendence, while preserving the emancipatory promise of Christianity. Thus, it is only with the French Revolution that humans embraced their mortality/finitude and the secular nature of existence by seeking to realize freedom and equality in *this* world (67). In short, the historical significance of this Hegelian-Heideggerian phenomenology of finitude crystallizes in atheistic secularism.

Kojève's "Christian" atheism thus constitutes the opposite of Schmitt's political theology. While Kojève's vision of history driven by the existential struggle for recognition resembles Schmitt's agonistic theory of political sovereignty, Kojève's central claim is that the French Revolution and Hegel's philosophy render conflicts obsolete. Where Schmitt posits the irreducibility of the friend/enemy grouping and the transcendence of the sovereign's decision that demarcates this political distinction, Kojève's master and slave structure is resolved dialectically in the figure of the citizen of a homogenous secular state that does away with transcendence²⁷. Thus, in response to Schmitt's "borderline concept" of sovereignty, in the *Outline of a Phenomenology of Right*, Kojève offers his own teleological "borderline concept": "the universal and homogenous state is a limit" (2007, 133, n13). In theological terms, Schmitt's sovereign represents the *katechon*, a restrainer of the coming of Christ, whereas Kojève's "universal and homogeneous state" is precisely the secular realization of Christianity in this world—*eschaton*. As Geouralanos explains, according to Kojève, "political and human relations are basically founded on a struggle for domination and recognition, yet Hegel's end of history and his homogeneous state have in all essentials come to being" (Geouralanos 2011, 535). The process of secularization in modernity, the condition *sine qua non* for the political, or rather—juridical reality of the "universal homogenous state" attests to the ontological homogeneity (538).

Kojève's cosmopolitan recasting of Hegel is also articulated in stark contrast to Schmitt's conservative reading of Hegel along the "severe style" of the *Outlines of the Philosophy of Right* (2008) that ends with a justification of interstate wars (334)²⁸. In contrast to this, the reconciliation of Hegel's philosophy and Napoleon's politics, as Comay (2011) explains, results from Kojève's idiosyncratic interpretation of the forgiveness scene in the *Phenomenology of Spirit* (136-7). This reading implies that the Napoleonic wars aimed to realize the "universal homogenous state" in Europe, while Hegel's philosophy comprehended the potential brotherhood of *all* "men." The resultant cosmopolitanism is more in concordance with Kant's teleology of history: "The means employed by Nature to bring about the development of all the capacities of men is their antagonism in society, so far as this is, in the end, the cause of a lawful order among men" (Kant 2009, 13). However, whereas Kant uses the metaphor of nature, Kojève uses the Hegelian master slave dialectic to account for the Kantian antagonism in society—"the unsocial sociability of men" (Kant 2009, 13)—leading to the final legal order.

The "brotherhood" of the French Revolution is thus said to be achieved when the phenomenological schema of the master and slave is resolved historically into the internalization of the master's need for recognition and the slave's transformative work in the figure of the citizen. This citizen, says Kojève, is mutually recognized by other citizens, or legal persons: "if man is only born in the opposition of Master and Slave, he is fully and actually realized in the synthesis of the Citizen, who is Master to the extent that he is recognized by others and a Slave to the extent that

²⁷ "Heidegger will say, following Hegel, that human existence is 'a life in view of death' (Leben sum Tode). The Christian also used to say it, a long time before Hegel. But for the Christian death is but a passage into the beyond: He does not accept death properly speaking. The Christian man does not place himself face-to-face with Nothingness. He relates himself in his existence to an otherworld, which is essentially given. There is not therefore in him any transcendence (= freedom) in the Hegelian, and Heideggerian, sense of the term." See Kojève, "The Idea of Death in the Philosophy of Hegel," *Interpretation* 3 (2/3) (1973): 148.

²⁸ Hegel's severe style is a descriptive and not prescriptive mode of exposition, particularly employed in the *Outlines of the Philosophy of Right*. See Rose, *Hegel Contra*, 51-98. Furthermore, Kojève says that Hegel had to write his *Outlines of the Philosophy of Right* after Napoleon's defeat, which means that he had to describe the "real" in the "severe style." See Kojève, *Introduction*, 98.

he himself recognizes them” (2007, 213). Kojève’s reading of Hegel’s *Phenomenology* thus presents the French Revolution as engendering a “germ” of the “universal homogenous state” (Kojève, 1980, 44):

Individuality can be fully realized, the desire for Recognition can be completely satisfied, only in and by the universal and homogeneous State. For, in the homogeneous State, the specific-differences" (Besonderheiten) of class, race, and so on are ‘overcome,’ and therefore this State is directly related to the particular men as such, who is recognized as citizen in his very particularity. And this recognition is truly universal, for, by definition the State embraces the whole of the human race. (237)

In practical terms, Kojève interprets the French Revolution as an event that offers principles allowing to rationally conceive and realize a project of a global and peaceful legal structure: “once the universal and homogeneous Empire [*sic.*] is established, there are no more wars or revolutions” (2007, 145). In this respect, as Frost and Howse explain, Kojève’s famous “end of history” should be understood “in the specific sense that collective violent struggle is no longer necessary to establish any decisive principle of the ultimate and final social order” (2007, 6).

In the *Outline of a Phenomenology of Right*, this tendency for homogenization is expanded to a juridical evolution wherein “*Droit* tends toward the absolute *Droit* of the universal and homogenous State” (2007, 169). Based on the ontological homogeneity established by the French Revolution, Kojève will address Schmitt’s political theology on legal terms. In particular, the Hegelian dialectical understanding of history will be said to culminate in the secular principles of an international juridical federation that coincides with the “rationalist” phenomenological structure of right (92). Let us now consider the rationalist part of Kojève’s theory.

2.2. The Phenomenological Third and International Institutions

Kojève’s “rationalistic” theory of right expounded in the *Outline of a Phenomenology of Right* hinges on a phenomenological description of the juridical phenomenon, or the “juridical situation.” What is constitutive of the juridical phenomenon is the intervention of a “disinterested and impartial third” (C) in the interaction between two subjects of right, (A) and (B). In confirming the right of (A), the third party (C) annuls the “wrongful” reaction of (B) to (A)’s “rightful” action (38-39). In the course of this mediation, the “third” can act in the aspects of a legislator, judge, and/or juridical police. Kojève is careful to distinguish the notion of right from that of law: whereas right concerns an intervention into the interaction between two subjects, law also includes quasi-judicial norms that regulate the relationship between the subject of right and the “third” itself²⁹. Here, the emphasis on the notion of right is on the tripartite structure of the juridical phenomenon, which is also contrasted by Kojève with moral and religious phenomena, comprising only one entity in the first case and two entities in the second (191). Thus, for Kojève, the intervention of the “third” generates the key element of the juridical situation, “to have the *droit* to...” (36-8). This formulation immediately resonates with Arendt’s universal right as the “right to have rights,” especially when one considers that the defining aspect of Arendt’s “right to have right” is membership in a political community, that is, to some sort of a “third.”³⁰ The difference between

²⁹ For example, a national flag is regulated by law but does not presuppose the tripartite structure of right. See Kojève, *Outline*, 128-9.

³⁰ On the relationship between the third party and political communities, especially in the Greek polis, see Marcel Henaff, “I/You: Reciprocity, Gift-Giving, and the Third Party,” *Meta: Research in Hermeneutics, Phenomenology, and Practical Philosophy* 2 (1) (2010): 57–83.

Kojève's and Arendt's understanding of the grounds for rights, however, resides in the institutional character of Kojève's "third."

Juridical Impartiality and Schmitt's Political Sovereignty

Having laid out the basic schema of the phenomenon right, Kojève demonstrates under which conditions the phenomenon of right can be considered actual. For one thing, the "third" has to be impartial and thereby treat the participants of the juridical situation, (A) and (B), as interchangeable (79). The impartiality of the "third" can be confirmed phenomenologically if (A) and (B) changed places and the character of the third's interaction would not have changed. The third also has to be disinterested in the sense that s/he has to act without any material or practical (egoistic) interest in mind, but only out of "juridical interest" (80). From the external perspective of the "phenomenologist," the third's disinterestedness can be confirmed when the "third" can be "anyone at all" (81-82). In contrast to impartiality, the introspective aspect predominates in disinterestedness: the third's "disinterested" motive to intervene is understood as a *sui generis* "juridical interests," a problematic solipsistic notion that I will consider in a moment in relation to Arendt's theory of judgement. Regardless of Kojève's suggestions that impartiality can be reduced to disinterestedness (83), his engagement with Schmitt's theory of political sovereignty arguably deals largely with the problem of (im)partiality. As I will try to show, from the properly external phenomenological perspective, the only way disinterestedness can be confirmed (the "third" can be anyone at all) is if impartiality is ensured, that is, if juridical and political institutions allow the "third" to treat (A) and (B) as interchangeable.

Kojève acknowledges that the requirement for the "third" to be impartial does not tally with the juridical reality of the modern world (93). Ideally, the "third" must possess a juridical authority; that is, the "third" must be *recognized* as "just" without imposing itself with force (2007, 161; 2014, 21-3). In this case, (A) and (B) would welcome (C)'s intervention without the latter having to use coercion. But, in the reality of multiple states, the third's intervention is effective only within the framework of particular juridical doctrines and concepts of justice predominant in sovereign states (2007; 40, 85, 91). What makes the "third" partial in these conditions—and what Kojève's theory aims to address here—is the state's internal and external political groupings: the "political" is defined here by Kojève in terms of the internal tension between the exclusive group and the excluded group, *and* the external political distinction between friends and enemies (134). The first internal distinction corresponds to Marx's (1992) analysis of the contradiction between state and civil society, resulting in the class interest concealing itself as state law. This contradiction arises when the "third" is not being impartial insofar as class interest masquerades as "the reason of State,"³¹ thus resulting in "class justice" (Kojève 2007; 88, 90, 134-5). The external political distinction, in its turn, is explicitly borrowed by Kojève from Schmitt's theory of the "political": "'Friend'" and 'enemy' mean 'political friend' and 'political enemy.' Ultimately, the 'friend' is the brother in arms, and the 'enemy' the military enemy, who must yield or die; and if he does not yield and is not killed, one must die oneself" (134). This external political distinction implies that the state is constituted by a group of political friends in contradistinction to political enemies, whereas the properly political interactions are "actualized in the form of war" (316).

³¹ The internal political grouping, as Kojève acknowledges, need not to be of class nature. For example, he discusses how the "third" can represent the interest of a group that excludes the female gender, and in the *Introduction*, he hints at the exclusionary character of nation-states concerning ethnicity and other characteristics. For the purposes of this thesis, I will focus on class cleavage. See Kojève, *Outline*, 88-90.

2.2.1 *First Engagement with Schmitt: The Logic of Juridical Unification*

Kojève deals with the “external” friend/enemy distinction at length in the *Outline of a Phenomenology of Rights*. The problem of “external” partiality for the phenomenon of right is that there can be no juridical situation between friends and enemies: the third’s intervention is only juridical (and impartial in relation to the “external” political distinction) if (A) and (B) are political friends (137). In the interaction between a state national (A) and foreign national (B), the “national” “third” will, at least in a limit-case, take the side of its national and defy the principle of impartiality (137).³²

In his discussion of “international public right,” Kojève seeks to conceive how the phenomenological structure of right can be applied to interactions between sovereign states, thus neutralizing each state’s sovereign discretion to decide on the friend/enemy distinction. If each sovereign state is taken as a “collective moral person,” one can say that “State A can act as State B can react exactly as individuals act and react in social interactions” (314). Kojève, however, admits that the irresistible intervention of an “impartial and disinterested third” is not actual in the anarchic world of international affairs and exists only in potentiality:

By definition, this [public international] *Droit* is related to interactions between sovereign States. Now the very notion of sovereignty excludes the possibility of an irresistible constraint coming from the outside. Therefore, the Third in international *Droit* does not have any means to impose his intervention on the litigants, who can always opt-out. If international *Droit* is a *Droit*, it can therefore only be a *Droit* in *potentiality*... up until the present day, international *Droit* has never been a *Droit* in actuality. (315)

Kojève observes that up to the day of writing his work (1943), the “third” in the international public right “has always been a mere Arbiter, chosen *ad hoc*, for a given arbitration” (314). This arbitrating entity took the form of an oracle in pre-Christian times, a Papal arbitration in the Middle Ages, and a sovereign state onwards (314).

In discussing this last iteration of the arbiter, Kojève argues that a sovereign state cannot act as authentically impartial and disinterested. He explains that in the context of political interactions between states, a “third” state can only generate a “pseudo-*droit*” (317). For example, the “third” state can have two allied enemies and be impartial towards them insofar as the “third” state deems them interchangeable: both are equally enemies (317). But the “third” state will always be interested in discord between the allied enemies. In contrast, a properly juridical “third” “does not suffer from agreement between its litigants, just as it does not suffer from their disagreement” (317). Similarly, international treaties and political alliances are conducted against common enemies and, for this reason, are political and not juridical (318). The idea of political neutrality is also discarded by Kojève insofar as a genuinely neutral state is not a state in the strict sense (320). Finally, because interstate political relations presuppose, as per Schmitt, war and “war is... an essentially a-juridical phenomenon,” inter-state relations cannot give rise to a juridical third (317). In sum, because the third can not arise from authentically political interactions, a “public international *Droit* cannot arise from political interactions between states” (319).

³² In the time of peace, a national (A) and a foreigner (B) can be treated as interchangeable, but in this case, (B) is always treated “as if” s/he is a private person of civil law, not a citizen (of a foreign state). When the friend/enemy grouping is actualized in war, however, foreign nationals can be reduced to the condition of rightlessness—a situation aptly diagnosed by Arendt. If Arendt offers a non-sovereign political phenomenology to escape this predicament, then Kojève devises a logic of international juridical unification to confront Schmitt on his own terms. See Kojève, *Outline*, 139.

Having ruled out the possibility that a sovereign state can become a “third,” Kojève argues that the phenomenon of right “must penetrate the political from the outside” (319). While inter-state relations exist in the anarchic state with the constant possibility of war being present, what is “outside” these relations is the reality of domestic right, wherein the phenomenon of right is relatively actualized: “[t]he Third, without whom there would be no Droit in general and who creates international Droit, does not then make it [the international public *Droit*] from scratch. He starts from a juridical given, which is domestic Droit” (314). Because every state is familiar with the notion of right in virtue of its internal organization, sovereign states can extend the same logic to interactions between states (314-315-16). The upshot of this claim is that an institutionalized universal and homogenous entity must emerge from the interactions of domestic right, the right of a non-political society, rather than inter-state relations (319-321). In the condition of increasing secularization and homogeneity, domestic law will propagate itself outside the state towards juridical unification (126).

The above claim is clearly premised on Kojève’s philosophical interpretation of the French Revolution. In his letter to Schmitt dated 1955, Kojève says that Napoleon’s goal was to “sublate” the state in favour of society (2001, 97). And based on this historical—and ontological—homogeneity, Kojève devises a logic of international juridical unification. First, Kojève posits that all entities, including that of right, have a tendency to propagate, that is, to pass from potentiality to actuality (2007; 121, 161, 315). Because right tends to actualize itself in the condition of secular ontological homogeneity, the actualization of domestic right will eliminate the plurality of domestic rights, or “internationalize” itself (315). What is crucial here is that the “third” is engendered by the actualization of domestic right outside different states with the consequent dialectical harmonization between these domestic laws:

The actualization of domestic Droit can be therefore only be done in and by a juridical interaction between sovereign States, having as their goal the unification of their respective domestic Droits. Therefore, if international Droit seems unable to actualize itself except by ceasing to be ‘international’ and by becoming a sort of ‘domestic’ Droit, domestic Droit seems unable to perfect its actuality except by becoming ‘international,’ by ceasing to be ‘domestic’ in the proper sense of the word. (316)

These interactions will trigger dialectical interactions between national jurisdictions wherein different norms coming into dialectical conflict will engender a further inter-national synthesis (163-9). Once a normative legal synthesis is achieved, the international right will also come to actuality as a synthesis of public and private law. This would also mean a juridical unification that exhausts the political friend/enemy distinction (126). “According to Kojève,” Howse (2006) observes, “through the increasing integration, mutual recognition, and harmonization of laws and legal judgments between ‘states’ – the regulators and jurists of the different states – the political is ultimately replaced by the juridical as the basis of resolving differences between ‘states’” (96). “This line of thinking about *droit*,” Nichols (2007) explains, “brings forth a very interesting suggestion about how different national systems could be harmonized peacefully, as they come gradually to recognize each other’s legitimacy in ever-expanding areas of law, and how in this way movement could take place toward a universal system of law” (74). Frost and Howse (2007) also corroborate the validity of this logic by drawing on the contemporary works of Slaughter and Nicolaidis depicting international juridical unification and mutual recognition of national laws (18-21).

Quite strikingly, the logic of juridical unification so described appears to be similar to the argument Kant made in the *Perpetual Peace*, where he argues for the evolution of state-sanctioned laws into inter-state laws (Habermas 1998, 168). Kojève’s argument, however, goes much further

than Kant's federation of nations that would consist of sovereign states. As Frost and Howse explain, Kant's dilemma consisted of the problem that states would not give up their sovereignty (2007, 12). Kojève solves Kant's dilemma by developing a logic of juridical unification into "a federation in which states are no longer sovereign" (12). Once this federation comes into existence, they contend, "[t]he final order will be the achievement of what one might call the hyper-liberal goal of the full replacement of the rule of men by the rule of law" (3).

Kojève does not explain how institutions of this political entity might look like, even though he asserts that the "third" has to be a sovereign. What is clear is that in the absence of external enemies, it will not be a state in the Schmittian sense of the term but rather an administrative structure governed by an "internationalized" domestic law. And considering that the *Outline of a Phenomenology of Right* was written amid the failure of the League of Nations and before the United Nations (UN) came into existence, it is understandable why Kojève was hesitant to draw examples from the international institutions of his time. Even the structure of the UN of our time is far from satisfying the requirements of impartiality. At the same time, recent suggestions to transform the UN into a "cosmopolitan democracy" imply an institutional arrangement that tallies quite well with the three aspects of the Kojevian "third." For example, Habermas has suggested that the General Assembly should be reformed into a legislative body representing world citizens; the Security Council should be reformed into one executive branch able to implement policies, that is, to act irresistibly; and the World Court and the International Criminal Court should expand its adjudicating powers to interactions between individuals and not only states (Habermas 1998, 186-7). These three branches of the world republic suggested by Habermas resemble the three aspects of the third articulated by Kojève: the third as Legislator, Police, and Judge, respectively.

Finally, Kojève observes that this tendency towards juridical unification is salient in the international prosecution of certain criminals (2007; 126, 315). The development of extradition agreements between states can be understood as expressive of the tendency of domestic law to actualize itself outside the state. As Frost explains, the possibility of escaping domestic justice represents the most obvious threat to the rule of law (Frost 1999, 612-5). If we put this consideration in the context of international juridical unification of a domestic right that engenders the "third," those persons who threaten peace can be expected to be prosecuted by the "third" "that must deny war" (2007, 317). This is a particularly strong response to Schmitt since it directly targets Schmitt's insistence on the personalistic nature of any sovereign legal order. Here, Kojève offers a compelling response to Schmitt by rejecting that criminalization of individuals conceals political motives of dominant political states like the United States (since the "third" cannot be a state), but instead is carried out according to the logic of international juridical unification of domestic right. As Habermas notes, a crucial aspect of cosmopolitan law is that it "bypasses the sovereignty of states" and establishes "the personal liability of individuals for crimes committed in the course of government and military service" (1998, 181). Thus, it can be understood that the "third" will deny the sovereign decision of, for example, war criminals who made *personal* "sovereign" decisions that contradict peace. The irresistible intervention of the "third" as juridical police, coupled with the impartiality of the "third" as judge (and in line with the third's norms promulgated as legislator), would also satisfy Arendt's concern that crimes against humanity, such as those perpetrated by Eichmann, should be tried by a genuinely international court.

2.2.2 *Second Engagement with Schmitt: International Political Economy and the Double Diremp-tion*

A juridical unification as conceived in the pervious section would do away with the Schmittian political friend/enemy distinction, so much so that the “third” cannot be a state in the conventional sense. Kojève thus admits that having no external enemies, the “universal and homogenous state” will not be a state in the proper sense and often uses the word “society” instead (2007; 327, 91). The reason behind this ambiguity becomes clear when one considers that the “third” has to achieve impartiality apropos the “internal” political grouping between the governors (exclusive group) and the governed (excluded group), which is ridden by social antagonism insofar as the “exclusive juridical group” can exclude an economic class from the juridical doctrine and effectively reduce law to class interest. Moreover, this grouping ceases to be properly internal if we accept the process of domestic law’s juridical unification: the class distinction gets extrapolated onto global society and arguably endangers the validity of the international federative structure. This is the obvious Marxist problem that Kojève has to resolve to guarantee an international “third” impartiality as the ground for universal rights.

While the Marxist problem is not tackled in the *Outline of a Phenomenology of Right*, Kojève addresses it in his second major engagement with Schmitt. In a lecture named “Colonialism from a European Perspective,” Kojève outlines what is effectively a Marxian analysis of international political economy. An analysis of contemporary colonialism, according to Kojève, should go beyond the classical Marxist critique that looks into the dynamic of exploitation by extraction of surplus value *within* modern nation-states. By applying the class analysis to international economy, Kojève calls colonialism a “system where the surplus-value...is raised not inside but outside the country” (2001, 119), thus implicitly agreeing with Luxemburg’s thesis that imperialist capitalism needs “third persons”:

Capital needs other races to exploit territories where the white man cannot work. It must be able to mobilize world labour power without restriction in order to utilise all productive forces of the globe - up to the limits imposed by a system of producing surplus value. (Luxemburg 343)

The dynamic whereby internal class contradictions translate into international colonial or imperialistic policies was also described sociologically and historically by Arendt. As I have shown, these contradictions are exposed by Arendt in the *The Origins of Totalitarianism*, but not grappled with in her own Augustinian political phenomenology. In particular, Arendt does not address the question of universal rights in terms of international institutions and the political economy of imperialism/colonialism. Rather, she comes up with alternative foundations of human rights, articulated out of a non-sovereign “common world.”

Unlike Arendt, Kojève seeks to account for the class contradiction between state and civil society from an international perspective, as well as to mend this contradiction, if only facetiously. Having admitted that he is proceeding half-jokingly³³, Kojève says in “Colonialism from a Euro-

³³ In this lecture, Kojève openly admits that he proceeds half-jokingly: “I certainly do not need to bring to Anyone’s attention that what has just been said should be taken cum grano salis {with a grain of salt}. Or in German: it was a joke. But the philosophers call such a joke “Socratic irony”...my lecture is, at root, meant seriously and is, in one way or another, “pedagogical.” See Alexandre Kojève, “Alexandre Kojève-Carl Schmitt Correspondence and Alexandre Kojève, Colonialism from a European Perspective.” Edited by Erik De Vries. *Interpretation* 29 (1) (2001): 122

pean Perspective” that old-style capitalism, “which created investment capital by artificially limiting the income of the working class to the minimum subsistence,” existed only in the Soviet Union (2001, 118). And, continues, Western capitalism eliminated class contradiction by reconstructing the economy in the Fordist way: “Ford was the only great, authentic Marxist of the 20th century” (117, 120). He then suggests that the Fordist way of income redistribution inside the country should be applied to the international economy so that “colonialism” is “reconstructed in a rational way, which is analogous to the way in which the capitalist before, around and after Ford reconstructed old capitalism” (120). If the “Fordist capitalism” that “resolves” the internal class contradiction can be designated as “giving capitalism,” then, Kojève argues, a “colonialism” that shares the surplus-value with developing countries thus resolving the double contradiction can be dubbed as “giving colonialism.”

Kojève’s international political economy of “giving colonialism” is articulated against the background of his response to Schmitt’s theory of global order and law in the essay appended to *The Nomos of the Earth*, “Appropriation/Distribution/Production: An Attempt to Determine from *Nomos* the Basic Questions of Every Social and Economic Order.” Schmitt traces the etymology of the Greek word *nomos* to three key meanings: appropriation, distribution, and production (2006, 326-7). These three processes, according to Schmitt, “[are] part and parcel of the history of legal and social orders” (327), with *nomos* qua appropriation having historically had the “fundamental precedence...before distribution and production” (329). This fundamental precedence of appropriation is further expounded in *The Nomos of the Earth*: law is said to originate from the original appropriation of land. This stance, moreover, is posited as congruent with his theory of political sovereignty. As Minkinen explains, Schmitt’s theoretical axiom is that “[t]he appropriation of land is the decision that constitutes all *nomoi*...as the *localization that together with order accounts for the original experience of law*” (Minkinen 1999, 64, original emphasis). Moreover, viewed from Schmitt’s metaphysical attributes of land and sea as an opposition between the grounded *nomos* of original land appropriation and the dynamic *nomos* of commercial exchange, *nomos* as appropriation is posited as the primary category of law. He then suggests that while socialism is concerned with redistribution as a response to the liberal reliance on production, even socialist politics cannot avoid resorting to “appropriation,” for socialist redistribution implies the “expropriation of the expropriators” (2006, 334), that is “the great modern industry-appropriation” (334). In his letters to Schmitt and the lecture delivered in Dusseldorf upon Schmitt’s invitation, Kojève will contest Schmitt’s vision of the global *nomos*, explicitly, and socialism, implicitly.

The precedence of appropriation is first challenged by Kojève in his letters to Schmitt. In keeping with his argument on ontological homogeneity, Kojève asserts that since the French Revolution, there can be no “taking,” or appropriation of land, but, objectively (for “absolute knowledge”), only “producing” (2001, 99). In other words, the event of the French Revolution inaugurated rational politics that do not necessitate conquest and land appropriation. This is moreover consistent with Schmitt’s own argument that “appropriation was...the precondition and foundation for any distribution and production...until the 18th century” (2006, 328). At the same time, says Kojève, for “consciousness itself”—that is for political actors like the US and the Soviet Union—“there is also division” (2001, 95). As Howse explains, this argument implies that “of the three processes described by Schmitt, only ‘producing’ leads to rational recognition in itself...[b]ut the problem for (actual or contemporary) consciousness is how to redistribute resources and opportunities so that for all, regardless of place and class, there is the possibility of achieving recognition through producing” (2006, 99). Concomitantly, the predominance of land appropriation in the Schmittian opposition between land and sea can no longer be maintained. Kojève asserts that

“economically, there is no longer any ‘ocean,’ but only ‘inland water’” (2001, 99), thus suggesting that we live, to borrow Arendt’s term, in “One World.” Therefore, what is left to be done politically is this world is “homogenous distribution,” even though “a *concrete* prognosis is difficult” as to how this distribution is to be carried out (2001, 94-5). Kojève leaves the principles and means of distribution, according to Howse, as subject to democratic deliberation and disagreement and they cannot be discerned from “the concept of rational recognition in the Universal Homogeneous State” (2006, 99). In other words, there is much indeterminacy left as to how the primacy of production is to be organized through distribution, even if appropriation of land ceased to be the *nomos* of the Earth.

In the facetious delivery of the Dusseldorf lecture, Kojève addresses Schmitt’s vision of socialist distribution against the backdrop of his fundamental disagreement with Schmitt on the nature of modern law. Since the law of the contemporary world is “socio-political and economic,” and not that of “land appropriation,” war and conquest became juridically unnecessary and, as such, political colonialism does not represent a world problem. Instead, colonialism should be understood in economic terms: “economic colonialism is a world problem and a mortal danger” (2001, 122-3). According to Kojève’s reasoning, “all industrial countries—more or less unconsciously—are colonialist, in the sense that these countries alone derive advantage from technological progress in that they become richer every year, while the backward countries remain exactly as poor as before, and therefore relatively poorer every year” (122). The resolution of this problem is to be found if the Greek *nomos*, understood in terms of its fourth hermeneutic root: “giving.” In so doing, Kojève not only reverses the predominance of appropriation over production and distribution but adds that modernity introduced a central root of *nomos* as “giving” (123). This “giving colonialism” can be understood as a response to Schmitt’s criticism of socialist politics as reliant on appropriation. Instead of appropriating the means of production, “giving colonialism” hinges on the *nomos* as “giving”: “the *nomos* of the modern Western world is... ‘giving colonialism.’” Furthermore, given that this colonialism is “law,” all industrialized countries will, sooner or later, submit to it” (123-4). The aim here is a socialist approach to international political economy as envisaged by Luxemburg: “The aim of socialism is not accumulation but the satisfaction of toiling humanity’s wants by developing the productive forces of the entire globe. And so we find that socialism is by its very nature an harmonious and universal system of economy” (447). Naturally, this “socialist” approach should be distinguished from Soviet socialism, which Kojève essentially dismissed as barbarous. Instead, as Howse observes, the lecture outlines:

What was fundamental to the shape of the human future was the way in which legal and economic institutions synthesized market and socialist aspects of equality, and harmonized globally, with a view to the achievement of the Universal and Homogeneous State. This latter process was driven not by military struggle (at least not fundamentally) but by a combination of peaceful competition and co-operation among states and groups of states with different approaches to the mixed economy, and by the relations between these states or groupings of them with the developing world. (2006, 97)

He adds, “[Kojève] articulates his conception of a world state based on a ‘peaceful, democratic’ modification of capitalism in favour of redistribution, including between the developed and developing countries” (98).

2.3 The Third’s Speculative Impartiality

Hegel’s philosophy has no social import if the absolute cannot be thought.

Gillian Rose

I have shown how the “impartial third”—an international juridical federation—is articulated by Kojève as a possibility to be realized by harmonizing domestic laws. Since international juridical unification of domestic rights is underway due to “ontological homogeneity,” the question of the economy—the domestic “political” distinction comes to predominate, so much so that class distinction begins to manifest itself internationally between the developed and developing countries. From this followed that not only did Kojève premise his theory of universal right upon the neutralization of Schmitt’s friend/enemy distinction by means of international juridical harmonization, he also saw the achievement of a genuine worldwide legal union as dependent on the resolution of the class tension inherent to the international political economy. Did Kojève’s lecture truly resolve the Luxemburgian problem of international political economy so as to guarantee the impartiality of the international juridical federation as the ground for universal rights?

If we are to take Kojève’s lecture at face value, the resolution to the contradictions of international political economy is achieved if sovereignty is rethought in terms of “gift-giving.” According to Geroulanos, Kojève implicitly adopts the gift-centred theory of sovereignty along the lines of Bataille and Marcel Mauss to justify “the use of Marshall Plan-style economic gifts to the developing world” (2011, 536). Geroulanos explains that Bataille was critical of both Western capitalism and the Soviet approach to the economy insofar as the former focused on mere accumulation, while the latter amounted to “imperial industrialism” (550-1). As an alternative, Bataille drew on Mauss’s theory of *potlatch* from *The Gift* to conceive a system structured on a non-reciprocal gift. As such, he saw the Marshall Plan “as opening the possibility of a giant *potlatch*, a gift that could not and would not be repaid, and asserting a sovereignty that capitalist accumulation could not foresee” (551). According to Geroulanos, Kojève’s lecture in Dusseldorf on “giving colonialism” “was in all essentials founded in Mauss and Bataille.” (555). “Like Bataille and Mauss before him, Kojève found a superior ethics in the gift—the possibility of a different colonialism, one that would refuse exploitation.” (556). Regardless of Kojève’s facetious presentation of “giving colonialism,” Geroulanos argues that having overcome the Schmittian friend/enemy distinction by way of “ontological homogeneity,” Kojève articulates “giving colonialism” as rooted in “sovereignty that would not be political, but again ontological and ethical, that would foreground and preoccupy itself with a worldwide equality that would be economic as well as legal” (559).

While Geroulanos’s observation correctly describes the conceptual apparatus of Kojève’s rhetoric in the lecture, the deployment of “gift-giving” sovereignty arguably does not tally with Kojève’s phenomenology of right and should be primarily understood as part of his rhetorical strategy as a civil servant. Firstly, the major problem with a theoretical reading of this argument is the obviously untenable resolution of the class contradiction between state and civil society purported to the Fordist economy. The Fordist “resolution” is not only posited facetiously but contradicts with the “socialist principles of equity” expounded in the *Outline of a Phenomenology of Right* that rejects capitalist private property in favour of socialist personal property³⁴. Moreover, it contradicts Kojève’s disdain for “great unregulated cartels and massive unemployment dear to the Anglo-Saxon bloc” (2004, 18). Secondly, the solution offered in the lecture differs significantly from the legalistic approach to foundations of rights in the *Outline of a Phenomenology of Right*. The obvious problem with the resolution of economical contradictions through *nomos* as “gift-giving” is the evacuation of justice in favour of charity. In the *Outline of a Phenomenology of*

³⁴ See Chapter I, Section 3.

Right, however, Kojève argues that the *potlatch*, and the gift, are essentially an aristocratic phenomenon: the reciprocity of gifts establishes or reestablishes equality between masters (2007, 459). In contrast to the presentation of “giving” as *nomos*, the gift is not considered a properly juridical phenomenon that “gives rise to the intervention of the Third” (459). Furthermore, the charity of “giving-colonialisms” is justified in the lecture with the functionalist maxim that “poor clients are bad clients” (2001, 120) which indicates that Kojève has used this rhetorical strategy in his capacity as a civil servant of the French Ministry of Foreign Affairs.

Kojève’s Dusseldorf lecture on “giving colonialism” nonetheless points to the interdependence of the diremption between state and nation *and* state and civil society, the latter being exposed but not addressed in the *Outline of a Phenomenology of Right*. For if in the *Outline of a Phenomenology of Right*, the contradiction between state and nation—between the universality of rights and national sovereignty structured by the friend/enemy grouping—is resolved by international juridical federation, the internal political/class distinction between exclusive and excluded groups is not tackled in Kojève’s discussion of international right/law. On the other hand, the lecture demonstrates that the non-resolution of this contradiction undermines the international juridical “third” insofar as it preserves the class antagonism and extrapolates it onto the international political economy. In the lecture, this contradiction is resolved only facetiously by presuming the resolution of the diremption between state and civil society in the Fordist economy and then by deploying the “gift-giving” *nomos*. If we omit the facetious tone of the lecture, the class contradiction is neither resolved within nation-states, nor in the international political economy.

In Kojève’s lecture, the contradiction between state and nation is only *projected* to be resolved. The resolution of the contradiction between state and nation into a secular universal state is presented by Kojève without rejecting the reality of sovereign nation-states that logically precede this historical and ontological homogeneity. Arguably, this is the core of Kojève’s Hegelian speculative thinking, and one cannot fail to notice much equivocality in Kojève’s reading of Hegel’s philosophy and the French Revolution. On the one hand, Kojève can be seen as acknowledging the right-Hegelian maxim “the real is rational,” thereby *describing* the link between law and religion exemplified by Schmitt’s political theology. Kojève was very well aware of the actuality of political and juridical existence in nation-states and the human propensity to divinize law (2014, 4; 2007, 51), a tendency on which Schmitt’s political theology relies. On the other, Kojève can be seen as embracing the left-Hegelian maxim “the rational is real,” thereby *prescribing* the abolition of the nation-state by means of a juridical project premised on secular atheism³⁵. Nichols points out that while Kojève has espoused the left-Hegelian vision of history and universal right, his writing also demonstrates that other possibilities are open insofar as history is a free and contingent process. In fact, Kojève says that the universal homogenous state might never be realized, “for historical evolution proceeds by negation—that is, freely, or in an unforeseeable way” (2007, 92). In the end, “the impartial third” is similar to a Kantian regulative idea, just as his left-Hegelian cosmopolitanism is an idea or a “project”:

In our time, as in the time of Marx, Hegelian philosophy is not a truth in the proper sense of the term: it is less the adequate discursive revelation of a reality than an idea or an idea, that is to say, a *project* which is to be realized, and therefore proved true, through action. (1970, 41, my emphasis)

What is discernible behind these speculative grounds of universal right is Kojève’s understanding that universal rights are perpetually undermined by the two diremptions of modernity—between

³⁵ On the distinction between right and left Hegelianism, see Rose, *Hegel Contra*, 196, 225.

state and civil society and nation and state. Moreover, since, in this case, he faced the interdependence of the diremptions between state and civil society *and* state and nation, the difficulty in resolving these tensions prompted Kojève to deploy a facetious argument. This contradictory, or rather *diremptive*, nature of “the impartial third” is attested to by the equivocation of the “universal and homogenous state,” or “society,” a notion never mentioned by Hegel himself. Kojève’s interchangeable usage of “state” and “society,” as Frost comments, is unusual for a thinker who was otherwise very precise in his definitions (1999; 621, n. 64). The equivocality of this impartial entity, universal and homogenous state *or* society, is arguably the most unstable and revealing conceptual move by Kojève. It is unstable insofar as universal right is posited as realized in the universal and homogenous state thus resolving the problem of political sovereignty, while, *at the same time*, universal rights hinge on a universal and homogenous society, wherein the class contradiction is resolved. What is revealing here is that both the “universal and homogenous” notions—state and society, remain interdependent and unresolved.

Kojève’s theory of “the impartial third” and correlate international federative structure should thus be read in a speculative manner. Following the Hegelian maxim that the “absolute has to be thought,” Kojève’s cosmopolitan foundation of universal rights is a dirempted absolute. Just as the first part of this thesis demonstrated that the absolute “socialist right of equity” is inherently precarious insofar as state and civil society cannot wholly coincide, “the impartial third” is likewise a precarious notion. This, however, does not mean that “the impartial third” should be rejected, quite the opposite: this impartiality has to be understood speculatively as a composite notion that conjoins the double diremption to articulate cosmopolitan and institutional grounds of universal rights.

In conclusion, Kojève can be seen as striking a double blow against Schmitt’s theory of political sovereignty. Having argued in the *Outline of a Phenomenology of Right* that the “impartial third” is engendered by the logic of juridical unification that seeks to resolve the “political” distinction that underpins the contradiction between universal right and national sovereignty, in his later engagement, Kojève raises the question of economy in response to Schmitt’s theory of global order. While the lecture suggests that the third’s impartiality can be guaranteed if and when national and class conflicts are neutralized, Kojève’s argument in the lecture is more rhetorical and strategic rather than theoretical. I argue that the facetiousness of Kojève’s response to Schmitt attests to the speculative character of Kojève’s theory of right, in general, and of the foundations of his cosmopolitanism, in particular.

3. The Disinterestedness of the Third and Culture of Judgment

In this last section, I will bring together Kojève’s speculative elaboration of juridical impartiality and Arendt’s theory of judgment. Notwithstanding the crucial institutional aspect of the *impartial* third, Kojève’s theory of juridical *disinterested* third presents a problematic abstract/solipsistic *sui generis* source of judgment. I will show that Arendt’s account of intersubjective judgment serves as a corrective to Kojève’s abstract understanding of juridical disinterestedness. I will conclude by arguing Kojève’s “disinterested and impartial third”—disinterestedness, here, understood in terms of Arendt’s “culture of judgment” and speculative impartiality ensured by a juridical federation—offer resources for strong cosmopolitan foundations of universal rights that address Schmitt’s theory of political sovereignty.

Kojève’s discussion of juridical disinterestedness, as we have seen, only tangentially concerns political/juridical institutions. According to his definition of disinterestedness, the “third” has to intervene from the interest of the right/justice alone. From an external phenomenological

point of view, the “third” can act in a disinterested fashion if s/he can be “anyone at all.” As we have seen, however, for Kojève, this can be achieved only through a universal and homogenous entity that does away with the partial interest of state or class. As a result, even though Kojève claims that disinterestedness is more important than impartiality and even presupposes it (2007, 79), his own phenomenology of right suggests the opposite: disinterestedness of the “third” depends on impartiality.

One can not simply reduce the criterion of disinterestedness to impartiality. Even if the “third” is truly impartial, it remains to be explained, in Kojève’s own words, “why, for what motives, man becomes a Judge or Arbiter” (174). And, in respect to this juridical motive, Kojève’s account of disinterestedness is profoundly confusing. At first, he explains that disinterestedness should be understood as the absence of any other interest apart from “juridical interest” (80). The latter must exclude any material or practical motives, as well as consideration of public “utility,” and be based solely on “moral” or “theoretical” considerations (80, 174). Later on, he clarifies that the “interest of the Judge is supposed to boil down to the desire to realize Justice” and to realize right by applying “to a given case the idea of Justice” (174). This desire is said to emanate from the tendency everyone possesses when faced with “the presence of some injustice”—to judge (174). This spontaneous propensity for judgment is explained in a Kantian fashion: “in the blink of an eye, one will have formulated a ‘law’...[and] applied this ‘law’ to the given case, and attempted to enforce this ‘judgement’” (174). Kojève then equates this desire to realize the right with a *sui generis* pleasure, “just as specific as sexual or aesthetic pleasure” (175). Thus, the only way to explain the introspective aspect of juridical disinterestedness is to:

[S]ay that...there is a *sui generis* motive, which [the phenomenologist] will call “juridical” and whose ‘principle’ is...Justice. One loves to be Judge or Arbiter because one possesses an idea or an idea of Justice, and because one tends to realize all one’s ideas. Now the idea of Justice is realized by its application to human interactions—that is, in and by the *Droit* that is concretized in and by the action of the Judge. The specific (and specifically human) pleasure that one experiences being Arbiter testifies to the existence in man of a *sui generis* idea that he tends to realize. And this idea we can call the idea of Justice, while its realization is called *Droit*. (175)

It seems that the only way for Kojève to establish judicial disinterestedness is to combine a Kantian conception of aesthetic pleasure attained through disinterested satisfaction and subjective universality in the judgment of taste from the third *Critique* (Kant 2000, 46-8) and the categorical imperative from the second *Critique* (Kant 2015, 28-37). Kojève explicitly evokes Kant (cf. Kant’s *Achtung fürs Gesetz* [respect or reverence for the law]) to demonstrate that the phenomenon of right “can enjoy a *sui generis* Authority, that it is possible to conform to *Droit* quite simply out of ...respect for the *Droit*, because one wants Justice that *Droit* realizes” (2007, 187). Then, of course, Kojève coats these Kantian categories in what he sees as juridical terms by turning aesthetic pleasure into juridical pleasure and the categorical imperative into a spontaneous ability to judge by formulating a law.

Articulated in these terms, however, the only way to verify justness is to ensure that others recognize the “third” as disinterested, that is, recognize it as a juridical authority. In his *Notion of Authority*, Kojève exemplifies juridical disinterestedness with Herodotus’s fable narrating the birth of monarchy among the people of Medes. The story about a Medes that becomes famous for his ability to judge and arbitrate fairly in the condition of state anarchy is said to show how people can recognize juridical authority and grant power to someone who is believed to be juridically disinterested (2014, 22-3). The problem with this example is that “[i]n order to be truly a Judge, he has

to be assisted by force and base himself on laws recognized by the State” (23). The question of disinterestedness is once again reduced to impartiality insofar as the third’s disinterestedness requires a relatively impartial state and enforcement. Thus, the definition of juridical disinterestedness that is presumed on a *sui generis* desire to realize justice and the concomitant pleasure one attains from exercising judgment can not satisfy the requirement that the “third” should be “anyone at all” without resorting to the question of impartiality. What is arguably absent in Kojève’s solipsistic account of disinterestedness is precisely what is at the core of Arendt’s theory of “common world”—the intersubjective faculty of judgment.

While Kojève’s usage of Kant’s philosophy is extremely selective, if inconsistent, Arendt draws far-reaching, if also somehow unfaithful to Kant himself, alternative political implication from Kant’s philosophy of aesthetic judgment. First, Arendt understands the notion of disinterestedness as central to “political philosophy that Kant never wrote” (Arendt 1992, 30). The conditions for disinterested judgment of the “Beautiful” are created when the subject is not engaged in the object’s immediate effects but represents these objects by means of imagination (67-8). Arendt then displaces the faculty of judgment from the domain of taste, to which Kant initially applies his theory, and recast disinterested judgment in political terms.

Arendt draws on Kant’s reflections of the French Revolution to recast disinterested judgment in political terms. In his evaluation of the French Revolution, the position of a disinterested spectator allows Kant to discover the historical meaning of revolutionary events concealed for the political actors who actually took part in the revolution (54, 65). Not only is this approach to political judgment congruent with Kojève’s Hegelian position of the spectator of the French Revolution, Arendt’s own position on the French Revolution as a world-historical event becomes increasingly, if not favourable, then at the very least less hostile—precisely where she refers to Kojève (56-7). The following statement by Arendt is not incompatible with Kojève’s cosmopolitan “Kantian” rendition of Hegel: “The general viewpoint [of history] or standpoint is occupied, rather, by the spectator, who is a ‘world citizen’ or, rather, a ‘world spectator.’ It is he who decides, by having an idea of the whole, whether, in any single, particular event, progress is being made” (58).

Contrary to Kojève, however, Arendt goes on to articulate a theory of disinterested judgment that goes beyond the subject’s individual desire to attain pleasure from judgment. Kant understood, says Arendt, that there is a nonsubjective, or rather intersubjective, aspect to the faculty of aesthetic judgment (67). One is interested in making a disinterested judgment about things beautiful only when there is a society wherein our judgment of taste “reflects upon others and their taste, takes their possible judgments into account” (67). If the operation of imagination detaches an object (the French Revolution) from its immediate reality to represent it to the judging subject, the intersubjective dimension underpins the operation of reflection (68). This enlarged mentality of *sensus communis* is said to tie an exercise of judgment to the mental representation of an intersubjective community (70-2). As Comay (2011) explains, for Arendt, “political judgment is an extension of the aesthetic judgment that simultaneously finds and founds the cosmopolitan collective as the *sensus communis* of the enlarged community; judgment performatively invents what it discovers” (37).

Arendt also agrees with Kojève’s view that disinterestedness excludes any considerations of usefulness or utility:

Disinterestedness is actually implied in the very words beautiful and ugly, as it is not in the words right and wrong. If, therefore, § 41 speaks of an ‘Interest in the Beautiful,’ it actually speaks of having an ‘interest’ in disinterestedness. Interest here refers to usefulness. If you

look at nature, there are many natural objects in which you have an immediate interest because they are useful for the life process. (73)

Similar to Kojève's description of the disinterested "third" as having a purely theoretical or moral interest *qua* judge, "one withdraws also to the 'theoretical,' the onlooking, standpoint of the spectator, but this position is the position of the Judge" (Arendt 1992, 55-6). Considered from the perspective of Kojève's disinterested and impartial third as a condition of the possibility of universal rights, Arendt's theory of judgment appears in new light. I argue that Arendt's account of disinterested judgment is more developed than the one presented by Kojève. For, when Kojève argues that (C) is disinterested if s/he acts out of the desire to realize justice, both desire and justice are presented in abstract and solipsistic terms. At the same time, Arendt's account of disinterestedness emanates from an "intersubjective community" and enlarged mentality, which presupposed a shared and historically grounded understanding of justice. In this context, Kojève's assertion that (C) should be "anyone at all" can be genuinely satisfied if rooted in *sensus communis* or the "culture of judgment."

This intersubjective corrective to Kojève's theory of juridical disinterestedness nonetheless raises the question how Arendt's theory of disinterestedness can be applied practically. Ronald Beiner (1992) points to a contradiction between Arendt's understanding of judgment as a political faculty of enlarged mentality to be exercised in the "public sphere" and a disinterested theoretical or contemplative judgment (139). Bernstein (1986) also notes that Arendt's position oscillates between contemplation and political practice (237). On the other hand, Parekh embraces the practical aspect of judgment concerning Arendt's concept of human rights. As Parekh (2008) explains, the enlarged mentality inherent in the faculty of judgment finds its political representation in the condition of plurality (85) that, as we have seen, hinges on Arendt's notion of natality. As Parekh observes, "what brings together politics and aesthetics for her—is the concept of intersubjectivity, the fact that both politics and aesthetics are the conditions and effects of what she calls "the common world" (80). *Sensus communis* is then constitutive of worldliness that grounds human rights (90). Parekh's interpretation thus suggests that disinterested judgment is a practical principle behind human rights.

This position is congruent with the role Kojève attributes to "world opinion." In the section where Kojève discusses the sovereignty of the "third," he says that the development of permanent international institutions might depend not only on the interactions of states but also on a juridical "world opinion" (2007, 314). Not only does Kojève not rule out the possibility of "world opinion" being constitutive of the entity but suggests a link between the transformation of sovereignty and intersubjective judgment of scholars and lawyers. As Frost and Howse have pointed out, "international law is no longer simply a product of states it is also in part a product of expert jurists and publicists (opinion juris)" (2007, 8). In contrast to civil servants, the expert opinion of human rights lawyers and activists would be independent of the reason of state. The judgment that is grounded in a culture separate from economic society with its inherent class interest and from the "reason of state" can shape the content of right and facilitate the international unification of domestic right presupposed in the theory of juridical impartiality. In this respect, the academic community and contemporary non-governmental human rights organizations can be seen as embodying this culture. Finally, it is only the public sphere that can become a bearer of a historical consciousness that interprets the French Revolution as a homogenizing event. For the "disinterested and impartial third" to come into existence in a way Kojève envisaged, there should be a discursive agreement

of the *project* of the “third.” In other words, the disinterested judgment conjoins the democratic deliberation³⁶ with the tradition of the French Revolution (Nichols 2007, 57; Kojève 2014; 41-3).

Conclusion

In the lecture “Colonialism from a European Perspective,” Kojève ponders about a new type of global order wherein “exploited” countries get more than is taken from them. Then, in what appears as a rhetorical rather than strictly theoretical passage, he says, tellingly:

[O]ur modern, giving capitalism, which gives the domestic masses as much as possible, still has no name...[and] giving colonialism, which gives the backward countries more than it takes from them, is still anonymous. It is, to be sure, only a newborn child (thus small and weak, but is it not also unusually beautiful?). But, in accordance with the modern Christian custom, a newborn child should be baptized and named (And that seems to be a good, a smart, custom). (2001; 123, my emphases)

“Giving capitalism” is posited here by Kojève as a facetious resolution of the class contradiction between state and civil society diagnosed by Marx. “Giving colonialism” is an equally facetious response to the problem of national sovereignty radicalized in Schmitt’s political theology, on the one hand, and the problem of imperialism theorized in Luxemburg’s international political economy, on the other. Viewed from the perspective of Kojève’s phenomenology of right discussed in this chapter, “giving capitalism” and “giving colonialism”—to be sure, yet unnamed and inexistent—would condition the impartiality of the “third,” the neo-Kantian global legal structure grounding universal rights. What is especially striking in this passage is the tacit reference to the power of natality—of a newborn child—and the discursive response to the fact of birth—the naming of a child. Even if unwittingly, the power of natality is evoked here in conjunction with the Christian tradition, that is, in reference to the discursive community—“the City of God”, our modern and secular tradition emergent from the spirit of Christianity. Finally, one is also tempted to say that the *beauty* of this child is *judged* here by Kojève in a manner expressive of the likewise neo-Kantian theory of intersubjective judgment offered by Arendt. In the end, Arendt’s power of judgment—a non-sovereign power of a discursive community—becomes necessary for Kojève to confront Schmitt.

The case for cosmopolitan foundations of universal rights and against Schmitt’s political sovereignty was argued in this chapter out of the historical double diremption of modernity and into juridical impartiality imbued in international institutions theorized by Kojève along with disinterested judgment from Arendt’s theoretical account of the discursive community. Thus, Arendt’s and Kojève’s cosmopolitan phenomenological foundations of universal rights were found to be complementary. Systematically, Kojève’s “impartial and disinterested third”—with juridical impartiality that speculatively conjoins and “sublates” national and class distinction combined with the disinterested intersubjective judgment as articulated by Arendt—was said to offer phenomenological and cosmopolitan grounds for universal rights.

From the pragmatic perspective on cosmopolitanism, Arendt’s “common world” can be loosely associated with the normativist response to Schmitt’s political sovereignty, while Kojève’s

³⁶ To this end, Howse detects a democratic tendency in Kojève that is congruent with Arendt’s “democratic” emphasis on intersubjective judgement: “the new, post-Schmittian political, implied but never explicitly articulated by the final thought of Kojève: the choice of policies through democratic decision-making, including transnational democratic governance, when the choice implies value divergences that cannot be reduced to different ‘scientific’ judgements about means.” See Robert Howse, “Europe and the New World Order: Lessons from Alexandre Kojève’s Engagement with Schmitt’s ‘Nomos Der Erde,’” *Leiden Journal of International Law* 19 (1): (2006), 103.

“impartial third” offers an institutionalist one. Departing from this complementarity between Arendt’s non-statist cosmopolitanism (Bohman 2012) and Kojève’s strong cosmopolitanism (Burns 2014), further research should investigate the relationships between the international public sphere, on the one hand, and international political and economic institutions, on the other. Habermas’s contributions to international law, congruent with Kojève’s neo-Kantian cosmopolitanism, and the international public sphere rooted in Arendt’s thinking about the public realm, can be further considered in light of the international political economy largely missing in Habermas. For this reason, further research should draw on the contributions to the relationship between foundations of international rights and the world-systems/dependency theory.

I argued Kojève’s impartiality of the “third” is interdependent with the disinterested judgment of Arendt’s “common world.” On the one hand, intersubjective judgment can emanate from the concrete activity of scholars and lawyers. Still, on the other, this disinterestedness is properly intelligible with reference to enlarged mentality—the ecclesial “City of God.” Thus, the discursive community is not free from the ecclesial connotations of a community of believers, even if this community is grounded in a secular worldview. To this end, Kojève’s idea of the international secular institution is modelled on the realization of Christianity—*eschaton*, and discursive development—*revelation*. This is to acknowledge the limit of Arendt and Kojève’s secularism but also to demonstrate that political theology does not have to stem from the Schmittian decisionist thinking about political sovereignty. If Schmitt’s theory of political sovereignty hinges on the Christian notion of *katechon*, a restrainer of the eschatological coming of Christ, Kojève’s theory seeks to imagine the realization of Christian teleology. Further research into the intersection of legal theory and political theology will benefit from questioning the teleological argument presented by Kojève along the line of Walter Benjamin’s Marxian non-teleological eschatology of redemption. Similarly, the Schmittian political theology of enmity can be reconsidered in terms of the political theology of the love of neighbour espoused by Emmanuel Levinas and Jacques Derrida. On the phenomenological method level, in particular, the systematic argument developed here on the “disinterested and impartial third” could be reconsidered apropos the phenomenological “third party” attendant to Levinas and Derrida’s ethics of the Other, the love of neighbour.

The systematic argument articulated here should nonetheless be understood as limited by its historical preconditions and further historical developments and political theologies they generated. Theologization of politics, individual inwardness and proliferation of sects inaugurated by the Reformation—the event of modernity, have to be thought through beyond the French Revolution and subsequent historical events reflected in the tradition, from the World Wars to the Holocaust. Arendt’s and Kojève’s contributions can be considered as responses to the interwar political developments, while the phenomenologies of Levinas and Derrida, for example, can be seen likewise as reacting to the event of the Holocaust. This way or another, any further phenomenological research into human rights should not avoid the old and ever-present problems phenomenologically problematized in this thesis: the diremptions between state and civil society *and* state and nation.

GENERAL CONCLUSION

The phenomenological method deployed by Arendt and Kojève to examine the contradictions of human rights does not shy away from a comprehensive analysis of human existence. These phenomenologies were seen as inevitably relying on meaning discernible in historical epochs and events and their inherent problems—from theological to economic. This is not to denigrate phenomenology as unable to offer resources for a concrete analysis of human phenomena in the final

instance but to reaffirm the correlation between the phenomenological consciousness and historical social forms, or, as Plato would have it, to think through the analogy of the soul and the city. Bearing in mind that contemporary ontology of the “political” is indebted to the works of Arendt, Kojève, and Schmitt (Marchart 2005, 19; 2008, 38), one has to be aware of not only the historical sources of these phenomenologies but their own historicities.

It was argued in this thesis that the phenomenology of welfare rights should conceive social welfare in historical terms and avoid “blob”-like abstractions and qualified claims about nature. Arendt’s contentious phenomenology of the “social” was brought back to her own account of the contradiction between state and civil society. The latter was shown to be accounted for in Kojève’s take on the French Revolution and addressed in the phenomenology of the “right of equity.” Even if inherently precarious, this concept was articulated out of a historical phenomenology of economy and need for recognition. The second chapter argued for cosmopolitan foundations of the right of equity by responding to Schmitt’s theory of political sovereignty. Drawing on Kojève’s phenomenology of the “impartial third” and Arendt’s theory of disinterested judgment, I argued that universal rights should be supported by impartial political and economic institutions, as well as the international public sphere. This way, Schmitt’s political theory of enmity can be opposed by the emancipatory political theology of realized Christianity (Kojève) and ecclesiology (Arendt).

I showed how the event of the French Revolution is contested as the idea of modernity itself. One may infer from this that welfare rights and international rights—the hybrid terms of modernity—are open to negotiations as long as modernity lasts. This is not to imply that one is faced with a Derridean undecidable or a Habermasian ever-receding horizon of modernity, let alone Kojève’s facetious “end of history” or Arendt’s hope for an unexpected new beginning. This thesis suggests that the French Revolution generated a horizon from and against which the modern political tradition is destined to continuously depart. The interpretation offered here is emphatically opposed to the conservative reading of this event of modernity provided by François Furet (1981) and would instead fit into that of Badiou (2005; 2005), Jean-Luc Nancy (1989), Antonio Negri (1999), and Slavoj Žižek (Žižek 1998; 2017). According to Badiou, “eventual” truths cannot be reduced to any of their historical components but are elevated over and above the historical continuity (Meillassoux 2011, 4-5; Badiou 2005). The socialist right of equity and the spirit of cosmopolitanism could be defined as the truth of the French Revolution. And while these truths are still relevant to the political problems of our historical conjuncture, the events that followed have to be investigated too—along with the truths they generated. In this respect, further research into the phenomenology of right should include Levinas (2013; 1998) and Derrida’s (1999) ethical phenomenology as a response to the horrific events of the Holocaust. Similarly, the phenomenologies of non-sovereign communities and globalization offered by theorists as different as Hardt and Negri (2003) and Nancy (1993) can be read as the Western Marxist tradition’s rejection of the state-form and a reaction to historical state-Socialism.

In the first part of this thesis, I argued that to conceive of the economy as a realm of “deathless repetition” is to reinforce the postulates of bourgeois economists that Marx was at pains to refute. I propose that what is implied in this presentation of the economy is its imperviousness to change and reconfiguration. Once such a philosophy of unchangeable nature is adopted, the difficult diremption between state and civil society is disavowed, and it becomes easier “to imagine the end of the world rather than the end of capitalism.”³⁷ What was reaffirmed in this thesis is that

³⁷ The phrase is attributed to Fredric Jameson and Slavoj Žižek.

human artifice is a product of transformative work growing out of the need for recognition, a “common world” in which awareness of the discrepancy between those who own capital and those who sell their work as a commodity can lead to a change by a reconfiguration of what was presented as legal principles of status and contract. The second part of this thesis demonstrated that this change has to occur at the level of legal phenomenon, so the “third” in the juridical situation can effectively apply the socialist justice of equity. This principle, to be sure, is subject to the “public sphere,” one is tempted to say—an international public sphere, to transform the project of socialist right into law, like Habermas following Arendt, emphasized. However, the argument presented here parts ways with Habermas by acknowledging the exploitative nature of capitalism, not only its alienating instrumental character. As suggested in the second part of this thesis, it is not enough to confront Schmitt by offering a secular and rational principle of international institutions, one must also confront the dependence of these institutions on the international political economy theorized by Luxemburg. This necessitates further research into the relationship between human rights and world systems/dependency theory. Similarly, the socialist right of equity was shown to emphatically oppose Rawls's liberal account of distributional justice, just as the Luxemburgian critique of international economy is shown to oppose Rawls's liberal approach to international relations. The argument offered here also diverges with the theorists on the left like Hardt and Negri by premising social welfare—what they call the “right to a social wage”—on concrete cosmopolitan legal institutions, not on “ontological” collectivity.

Finally, in this thesis, I showed how the contradictions of human rights are linked with the question of political theology. “Tribal nationalism” starts to resemble religion—“the sigh of the oppressed creature” (Marx 1992, 144), precisely when class antagonism of society is resolved, not into solidarity as Arendt has demonstrated, but into nationalist sentiment nurtured by the “the mob” and capital alliance (Arendt 1973, 150). At the same time, overcoming Schmitt's nationalistic political theology was shown to depend on *another* political theology—“the City of God—in the form of a discursive community and intersubjective judgment. These considerations yield more detailed research into political theology that is attentive to Weberian sociological insights on the economic consequences of individual inwardness of Protestantism combined with the secularization of theological notions. Thus, the solutions to the problem of national sovereignty should be further scrutinized as Christian solutions. This should be done not to warn against Christian eschatology (Derrida 2006, 77), but to understand better the consequences of secularization, something already attempted in recent contributions by Nancy (2008), Badiou (2003), Žižek (2003), and Giorgio Agamben (Agamben 2011). This way, the consequences of post-secular thought can be brought back to political and pragmatic consequences and the public sphere.

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