ALEXANDRE KOJÈVE'S NOTION OF AUTHORITY AND THE CONSTRUCTION OF POLITICAL LEGITIMACY[1]

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Abstract
The recent translation both in English (2014) and in Romanian (2012) of Alexandre Kojève's "The Notion of Authority", as well as other major texts, have led to a resurgence of interest in the late philosopher's work. In the following paper I will attempt to approach this body of work critically, focusing on the role that Kojève casts for the notion of Authority in the foundation of Law and Politics in general, showing how it participates in a post-Hegelian tradition that also includes early psychoanalysis and certain strands of phenomenology among others. I will counter-pose this approach to that of contractualist thought, which gained traction in early modernity, as well as the historicist tradition, both of which, I will argue, offer more valuable insights into the development of law and politics, as well as providing for a proper grounding of political legitimacy, both in relation to what politics is and what it ought to be.

Keywords: Kojève, authority, legitimacy, social contract, Hobbes

The recent translation of several important texts by Kojève in English – "Outline of a Phenomenology of Right" (2007), "The Notion of Authority" (2014), "The Concept, Time, and Discourse" (2016) – and also in Romanian – "The Notion of Authority" (2012), "On Tyranny", with Leo Strauss (2014), has led to a revival of interest in one of the major figures of mid-century continental philosophy, whose intellectual influence is visible with most Post-War French philosophy, as well as with the American disciples of Leo Strauss' conservative political thinking, and who helped shape the early stages of the European political community (Descombes 1981; Drury, 1994).

Despite this impressive resume, Kojève's particular brand of post-Hegelian thought did not produce any important direct disciples, and his role in the introduction of Hegel's philosophy to French thought is overshadowed by the massive turn away from Hegel in the 1960 (Descombes 1981, 75-76). Today he has become a semi-marginal figure within the 20th century cannon, and despite the recent interest that translators have shown him, there is very little theoretical development on these new materials. All in all, it can be said that Kojève's thought has not aged well through the

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developments of structuralism and post-structuralism, despite the fact that, ironically, Hegelian philosophy has found a wider audience in the past couple of decades (Cf. Bryant, Srnicek and Harman 2011).

I will attempt to investigate precisely why this is so, by appealing to his (incomplete) work "The Notion of Authority", which attempts to conceptualize Authority as a central element of political philosophy, in a type of framing that is characteristic to certain strand of early 20th century continental philosophy in three ways: it uses a mixed register of ontological and psychological concepts (which it casts as "phenomenological") to discuss central issues of political philosophy; it disavows empirical research, instead relying heavily on speculative philosophy and deductions from conceptualizations of everyday life; it is essentially naturalistic in its outlook, albeit in a very idiosyncratic understanding of what the "natural" may be. The text is conceived in the first years of the Second World War, with the neokantian-inspired philosophy of culture, the vitalists gathered around Bergson, Heidegger and Husserl's students still, and the religious proto-existentialists still lingering in what could have been called "contemporary thought". As such it bears the mark of its age.

My approach will be critical – I will try to prove why Kojève's grounding of political thought in Authority is theoretically weak, as it tries to recast speculations around Authority as hard political facts that can be used as frameworks for interpretation, and practically risky, as it veers into trying to ground politics on apolitical affects in order to obtain a justification for a fairly authoritarian practice of politics. In deriving an "ought" from an "is" (and a particularly poorly justified picture of an "is"), Kojève's text mixes variations on Hegelian concepts with a central naturalistic fallacy, which supersedes his intentions of focusing on Authority as a manifest phenomenon, instead of its genesis and transmission, by erasing the genetic level of Authority entirely. Thus, by grounding political legitimacy on a concept of Authority that is both completely unquestioned and non-political, his text contributes to the political naturalism that has challenged continental thought throughout the past century.

Authority and Legitimacy
The issue of legitimacy is an essential one for any political philosophy of law and of the state, given that it must provide for the limits of judicial power and for the grounds for its being exercised. Given its status as a problem of political philosophy, the posing of problem and its solution must take the perspective of the polis, the politically organized community,

in order to be grounded on a solid basis[2]. Tackling the problem of legitimacy will depend on the entities that act in the name of the Law (phrasing its enunciations, deciding on the manner of their implementation, carrying out these decisions etc.), on the entities that bear the consequences of these actions, on those in whose name the Law is proclaimed and enacted and on their mutual relationships.

I begin by clarifying what is meant by political community and its role in grounding the Law. The obvious long-history standard for mapping out this concept is of course Aristotle (whom Kojève himself references heavily in the text and casts as the main thinker of the Leader type of Authority), who states that "every community has been brought together with a view of some determined good", and the community "that surpasses all others, is brought together for the greatest good of all", it being "the State or the political community" (Aristotle 1991, 2), later adding that "unity is for a State the greatest good in the highest measure" (Aristotle 1991, 23), without this unity being complete to the point of undoing its constituting parts. The State is thus „by its nature […] plural".

We can conceive, from this perspective, the political as the totality of actions intended to organize the social space, to structure interactions, negotiations and transformations of the plurality of entities that comprise this space, circumscribing it and confering onto it a specific institutional topology[3]. Thus, the issue is how the different points of view that compose

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[2] The legitimization of the Law can be, of course, grounded outside the political, however we can call into question how analytically useful this approach may be, from the stand point of a political philosophy or political science, as well as point to its unintended consequences. Any attempt to ground elements of political thought on non-political concepts risk subordinating political knowledge to other fields of knowledge (economic, religious, biological, psychological, etc.), thus doing away with what has always been the practical realm of politics in favor of a technical administration that borrows its imperatives from the field that would ground politics. By this, of course, I do not rule out that within political action, discourse and analysis, there can be a multitude of claims and imperatives that are constituted outside of political knowledge, and that can guide our decisions, but only that these claims must be given a proper political expression, within proper political models.

[3] Although contemporary readings of Aristotle focus on his thoughts on slavery, gender issues etc., or on his pragmatic and (in a wider sense) empiricist approach to the study of political systems, there are fewer mentions of the fact that he offers the first conceptualization of the political community as a space of difference, especially given the way in which the bringing together of the separate elements within the community not only does not suppress them, but is done in order to free them (by freeing their time) towards the good life.

the social space are given a voice, how various lines of discourse are reified (institutionalized), what is the relationship between the virtual space of the law and its institutions and the real space of society etc. Insofar as our area of study is concerned, the issue of legitimacy is what makes one of these discourses be heard and taken as an imperative without oposition from its receiving audience (Kojève 2014, 25-29) – what gives those who speak in the name of the Law the right to do so.

Any discourse on legitimacy must thus go through two stages: analitical and constructive[4] – which Kojève casts as a triple analysis (phenomenological, metaphisical and ontological) and a triple deduction (political, moral and psychological). The two movements of Kojève's text contain a symmetry in discursive logic: it ascends from discussing the subject to the social, and on to Being, then descending from the construction of the political, to the intersubjective and back to the subjective. His intuition here is very important towards conceptualizing the productive relationship between the individual and society, and it also brings out Kojève's relationship to Hegelian and Marxian philosophy: on the one hand Marx's overturning of Hegelian philosophy is upheld, man being the starting point of the movement that constitutes the social structure and superstructure, which in turn produce the human subject; on the other hand, by placing the endpoint of his analytical ascent in the discourse of Being, he recovers the role of the Hegelian Absolute Spirit in the evolution of society and politics (thus facilitating his recovering of the idea of an end of history), which Marx already replaced with the permanent movement of matter[5].

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[4] Both stages will contain critical moments, but these are integrated in the analytical and constructive theoretical labor. A purely critical discourse on legitimacy can only be a theory of the general impossibility of legitimacy – and in consequence of the impossibility of any politics that goes beyond what Hobbes called "bellum omnium contra omnes". Furthermore, this type of discourse would in fact signify giving sole theoretical voice to a particular element of the political sphere – its "death-drive" – the centrifugal movement that traverses the social space and pushes towards its tearing apart into its constitutive elements. Since these elements themselves can only take shape within their specific social space, we must point out, in order to prevent any emancipatory illusion that juridical nihilism may produce, that a torn social space does not produce free-floating individual atoms, but, on the contrary, locations defined by the social logic of division. Without the constructive theoretical labor that allows for the recuperation and maintenance of the opening of each locus of the social space uncoupled and closed off through critique, all routes of passage and all lines of communication and exchange that articulate the social space are cut-off, and only allow for the possibility of encounters of the Other as Stranger.

[5] It can be argued, and it certainly has been argued sufficient times, that Marx's theory of history also contains an end of history, in the form of fully-established communism. This is

Kojève nonetheless commits an essential methodological error (which may in fact be accounted for by the fact that the text is a work in progress that was abandoned), which reveals itself especially well in the following fragment: "In other words, the phenomenological analysis (A, I) has to answer to the question 'What does it mean?' applied to all the phenomena that we qualify, let us say "instinctively", as authoritarian. It has to unveil the essence (the idea, das Wesen) of Authority as such, as well as the Structure of this "essence", meaning the various irreducible types under which it manifests" (Kojève 2014, 23).

What immediately strikes as odd here is the phrase "all the phenomena that we qualify […] instinctively" – unlike the Hegelian approach, which we could call "embryological", that would have connected the analytic and deductive components of Kojève's conceptualization in a singular circular movement of the Spirit, and the Marxian "archeological" approach, that would have opened up and unfolded that circular movement into a historical investigation, Kojève's notes go straight towards establishing a blueprint for Authority, without questioning its conditions of possibility or limits[6].

Kojève offers us two definitions of Authority, from different perspectives, that of the person on whom Authority is exercised, and that of the person exercising Authority: "Authority is the *possibility* that an agent has of *acting* on others (or on another) without these others *reacting* against him, despite being *capable* to do so", and respectively "by acting with *Authority*, the agent can change the outward human given without suffering a repercussion from this action, i.e. without himself changing as a result of his action" (Kojève, 2014). In what does this refusal to exercise a capacity consist of? The transfer, or at least externalization, of intentionality is not at all clearly described at this point.

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however inconsistent with Marx's historical-materialistic ontology, which only moves onwards to a wider opening of history as a horizon of human activity (both as increased social productivity, as well as increased participation of society in its own government)

[6] It can be argued that this was his intention: "Questions pertaining to the transfer of authority and its genesis have been the main concern, while the actual essence of this phenomenon has rarely attracted any attention." (Kojeve 2014, 22), however an analysis of the phenomena of Authority that doesn't take into account their pre-history, can only draw some logical connections between observations of the most rudimentary manifestations of these phenomena.

I must also bring attention to a note later on in the text: "the ('democratic') theory of the 'social contract' arises from an erroneous interpretation of the fact of the existence of (political or other) elections [...] this theory does not see that, as we have just said, election 'confirms' rather than *engenders* Authority – that is to say, it simply makes it externally manifest" (Kojève, 2014). This rejection of contractualism, which Kojève considers defunct "even in the eyes of its partisans", as nothing more than "a 'working hypothesis': they have never maintained that this is how Authority actually comes into being" (Kojève, 2014), will have to be reconciled some way or another, with the fact that the Theory of Authority presupposes transfer of decisional power onto another.

Given that, for Kojève, any possibility of a decision regarding this transfer is eliminated from the start, the transfer of power being inherent in the subject, three problems arise: where exactly in the space of subjectivity do the conditions of possibility for this transfer of power exist, which would constitute Authority at a phenomenal level, and how is this layer of subjectivity constituted; in what measure is Kojève's critique of contractualism valid and what would be the theoretical consequences; is the generation of Authority indeed beyond the decisional capacity of reason?

In his work, Totem and Taboo, Sigmund Freud offers us the concept of the taboo, the quality of magical force that certain persons can be believed to possess, but that is also transmissible to certain locations, objects, passing states, which regulate the interdiction, and confer a "demonic power" to those that wield it, inspiring a feeling of horror not yet differentiated between "veneration and aversion" (Freud 1995, 481-513). Gradually this becomes a self-sustaining force, which separates itself from demonism and becomes the coercive power of morals, customs and finally the Law itself (Freud 1995, 504-511).

The central interdiction pertaining to the taboo, that of contact, of action taken against it, draws an interesting parallel to the central feature of Authority – that it suppresses any desire to oppose it. Kojève even points out that the point in which Authority is at its highest is divine Authority – granted that, in this case, human reaction is impossible. The taboo's susceptibility to being transmitted through contact also relates to the way in which Authority is transmitted, albeit through a gradual dilution of

Authority on transmission, depending on the type: the Authority of the Father is the easiest to transmit, that of the Judge the hardest (Kojève, 2014).

We can therefore pose a challenge to Kojève's metaphysical analysis, which correlates each type of Authority with a mode of historical time: as present, past, future or eternity (Kojève, 2014). Insofar as transmission is concerned, we can craft a genealogy of Authority starting from the taboo, as an objectivation of the unknown that inspired horror in the first human communities, going through its subjectivation through divine essence, and later the monotheistic one-god, as bearer of the power behind this form of horror, and reaching the transferal of this power onto the institutions of rational discourse and modern political organization, understood as a totalizing, descriptive and prescriptive discourse on the nature of reality and its governance (for a more coherent development of this argument from a position neighboring Kojève's theoretical roots, we can call upon Adorno and Horkheimer's "Dialectic of the Enlightenment" (Adorno&Horkheimer 2002). In Kojève's own terms, this transmission is configured as one that descends from Divine/Fatherly Authority, to that of the Master, the Leader and finally the Judge.

Furthermore, Kojève establishes that the actual existing manifestations of Authority do not adhere to his typology, but in fact present themselves as mixed, though he tries to distill his four separate types in each situation, claiming mere difference in statute (Kojève 2014). The Authority of the Judge, for example, is considered ineffective in the absence of a political power based on another type of Authority. Moreover, the Authority of the Leader, based on the practical wisdom of its bearer, will have less force than that of the Master, which is heavily inspired by the Hegelian concept of the master, and presupposes an original submission per the Master-Slave dialectic. Finally Divine Authority, fueled by primordial horror towards the Real in its most traumatic form, would surpass even that of the Master.

This posing of the problem lacks any rigor of course, and is for the most part an intellectual speculation around the author's own conceptual artifices. Even if we accept his taxonomy, there is very little to suggest that any natural advantage that one may have over the other – in the secular modern world there is, for example, very little to enforce the hypothetical force of Divine Authority or even the traditional Authority of the Father (Kojève himself decries the fact that modern democratic regimes lack a particular institution for this fourth Authority type, a phenomenon which

he calls "the amputation of the Father"). All in all, his hierarchy of Authority owes its debt to the Hegelian theory of the Subject, which, for Kojève, is sacrosanct (at least in his particular interpretation), and does little to investigate other theoretical avenues.

Another observation: the genealogy of reason that the Frankfurt School establishes, and that Kojève's theories are at least compatible with (if not explicitly subscribing to it), points out that the historic sublimation of the taboo with the subsequent shift to reason reflects in the way the human subject relates to the order of the world. Relating to Kojève's typology, insofar as we can have an ideea of what is just within this order, the bearer of this justice cannot lose their Authority without an overturning of the rational order of things, in which another form of Authority overtakes that of the Judge.

While it can be argued for or against the position that in modernity Reason becomes the focal point of the symbolic order, it is certain that Kojève himself subscribed to the Hegelian thesis of the triumph of Reason (Kojève 1969). Furthermore, if we admit that legitimacy is identified as that which is just, rational and self-evident (without solving the problem of legitimacy, as we do not yet have an answer to how this self-evident and just order of things is constituted), we must point out that there is an opposition between Legitimacy and Authority, insofar as the Authority is not that of the Judge.

Seeing as the prime moving force behind Authority is the same as in the case of the taboo, the problem is of course to identify how it is possible to ignore the taboo without repercussions. This can be easily solved by pointing out that, because of its continous sublimation into more abstract forms, the taboo is absent from our imediate given experience. Kojève himself explains this on account of the lack of direct orders given from the wielder of Divine Authority. Our only discovery of its presence relies on indirect signs or intermediaries, but without any direct contact – all for the better, as freudian discriptions of contact with the taboo are particularly brutal, resembling the reaction of Freud's neurotics coming into contact with the object of their obsessional interdiction (Freud 1995).

This presence/absence dynamic means that we can describe authoritarian phenomena in spatial terms – as present or absent, and moreover as immediatly present or mediated through their inscribing in the order of

things. The original source of this presence is the Symbolic Father (Freud 1995), and thus our representation of this presence will depend on attempts to intepret signs of this presence in accordance with representations of the Symbolic Father in the actual layout of the world around us. Kojève hints at a similar concept in his "Note on the Authority of the dead", where he identifies the Authority of the deceased with divine Authority, presenting similar conclusions to early psychoanalysis, without openly quoting it. Beyond a form of Authority that is subjectivized at the level of the individual or group, we grasp the idea of an abstract Authority that bears the foundational principle of any Authority within the order of the world, which can be framed as utopia, and that, insofar as it can be made manifest in phenomena (something akin to the saturated phenomena – see Marion's work "*In Excess*" (Marion 2002) or in their symbolic structure, be territorialized onto real locations as heterotopies (Foucault 1984a, 46-49).

It is this aspect of presence/absence of Authority, as well as its underlying grounding into the symbolic fabric of the world, that Kojève ignores completely, or hints at without pursuing it. Within his own 4-part temporal structure, we would get 12 variations of Authority, depending on their relationship to the actual space of the world (immediatly present, accessible mediated presence or inaccessible absence). More importantly, these variations will reconfigure our relationship to those who do not see the Authority we recognize as legitimate (either by their own admission, or by their incompatibility to our representations), thus being cast as Strangers ("sons" of a different Symbolic Father – to strain the metaphor). Insofar as legitimate Authority resonates with the political form of the community, this political form will be viewed as legitimate, and the people submitting to this Authority will be viewed as majoritarian or minoritarian.

The fact that legitimacy for Kojève can only be reduced to Authority, or its presence in the phenomena of daily life, makes his theory even more fragile – when the final word concerning the Law is given to a representative of some form of divine Authority – even a secularized one (Schmitt 2005, 35-40) – then we can call this political regime totalitarian in the loosest sense of the word. This conclusion is supported by Kojève's own "psychological applications": the political education of the community through propaganda, so that its average constituent member can be "helped to see that he is effectively dealing with an Authority, an 'conveniently' exercised Authority; or at least make him believe it is so. And we can – must – correct his psychological reactions, making him feel in the 'normal' (even 'moral')

case the 'correctly' exercised and supported Authority" (Kojève 2014, 113-114). Here we can view Kojève as a literal reader of Hegel, who sees in the recognition of Authority the key of understanding how exactly "the peculiarity of the idea of the modern state is that it is the embodiment of freedom", "not according to subjective liking, but to the conception of the will, the will, that is, in its universal and divine character." (Hegel 2001, 199)

The contractualist retort

I will move on to the analysis of these problems from the standpoint of contractualist theories. Having established that Kojève intimately ties legitimacy to the sacred (even if sublimated) dimension of phenomena, thus grounding politics onto a principle beyond the political[7], we must see to what degree does a contractualist viewpoint help ground political legitimacy, seeing as it has a "conditioned genesis", as opposed to "sui generis Authority" (Kojève 2014, 60). Out of the contractualist theories of modernity, I will call upon Hobbes and Rousseau's formulations, to keep in line with Kojève's textual references.

First of all, however, let us map out what the "social contract" involves. In his course of January-March 1976 at the College de France (entitled "Society must be defended"), Foucault characterizes contractual theories thus: "In the case of the classic juridical theory of power, power is regarded as a right which can be possessed in the way one possesses a commodity, and which can therefore be transferred or alienated, either completely or partly, through a juridical act or an act that founds a right—it does not matter which, for the moment—thanks to the surrender of something or thanks to a contract. Power is the concrete power that any individual can hold, and which he can surrender, either as a whole or in part, so as to constitute a power or a political sovereignty." (Foucault 2003, 13)

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[7] A critique could be made here that the phenomenon of the sacred originates within the rhythms of socia life, thus granting Kojeve's theory of Authority an element of political life as a foundational referent. However, once we have defined the political as the practice of organizing communal life, the sacred, insofar as it can become an element of political philosophy, must be considered either as an aspect of intersubjective or as a transcendental dimension of the political as such. Understood in the general Kojevian sense however, the sacred contains a complete closing-off from the Other, either by a rejection of the political in general, or by a subsumption of the political to a singular ideological principle. Politics, as understood by Kojeve, is definitely not the realm of the different, and the possibility of opening up to another, of calling upon him and relating to him, exists only as an apolitical possibility.

Admitting that the social contract cannot literally be a foundational act of law, as no state in history has been formed on the basis of a unanimously agreed upon contract for the transference of rights, we must interpret the social contract either as a speculative exercise meant to orient political practice (a perfectly just interpretation), or as an ontological allegory for its constitution. From this second viewpoint, contractualism contains an apparent paradox: its founding act is a juridical act; at the same time, any juridical act is impossible outside the legal boundaries drawn up by the Sovereign power. It follows that the founding act of the State is either ontologically posterior to the foundation of the State, which is impossible, or ontologically anterior to the constitution of its subjects, which means that the ontological constitution of the political subject has, as one of its conditions of possibility, the existence of the social contract. The concept of "natural state", as an ontologically pre-subjective stratum of the political subject, the place of appetites and unmediated power, further supports this claim (Hobbes 1996).

Returning to Foucault, the stake of political theory should therefore be "trying to discover how multiple bodies, forces, energies, matters, desires, thoughts, and so on are gradually, progressively, actually and materially constituted as subjects, or as the subject." (Foucault 2003, 28). If for Hegel and the post-Hegelian non-contractualist theories, the ontological precedence of the community to the subject is obvious, and for Rousseau it is explainable insofar as the individual living in a community is always socialised (and therefore politicised) (Rousseau 1987), for Hobbes this problem is somewhat more difficult to untangle.

In the introduction to "The Leviathan", Hobbes describes this sort of state as "an artificial man […] in which Sovereignty is an artificial soul, giving life and movement to the entire body […] equity and law, reason and artificial will; concord, health; sedition, sickness; and civil war, death. Lastly, the pacts and covenants, by which the parts of this body politic were first made, set together and united, resemble that fiat, or that 'Let us make man', pronounced by God during Creation" (Hobbes 1996, 7). The State for Hobbes, presents itself as an enormous artifact, whose constituting elements are the citizens, as components of the civic whole brought together through an immense unifying act that institutes the Sovereign, giving its Leviathan body life.

In opposition to this stately order is always the state of nature, the war of everyone against everyone, that does not however consist of "in actual fighting; but in the known disposition thereto, during all the time there is no assurance to the contrary" (Hobbes 1996, 84). This state of conflict appears on the background of a relative equality among individuals, that cannot help but move towards its own upheaval, towards the creation of differences, of accumulations for one individual or another (Hobbes 1996, 82-83), but at the same time it presents itself as an indirect conflict, rather as the projection of the fact that each individual is prepared to engage in conflict with all others: "There are presentations, manifestations, signs, emphatic expressions, wiles, and deceitful expressions; there are traps, intentions disguised as their opposite, and worries disguised as certainties. We are in a theater where presentations are exchanged, in a relationship of fear in which there are no time limits; we are not really involved in a war. Which means, ultimately, that the state of bestial savagery in which living individuals devour one another can in no way be the primary characteristic of Hobbes's state of war […] We are not at war; we are in what Hobbes specifically calls a state of war." (Foucault 2003, 92)

Foucault's interpretation is interesting, but it tends to outbid the Hobbesian text, which does indeed present a state of war as described above, but with an emphasis on actual confrontations. Hobbes describes the conditions of the state of nature as leaving "no place for industry; because the fruit thereof is uncertain: and consequently no culture of the earth; no navigation, nor use of the commodities that may be imported by sea; no commodious building; no instruments of moving, and removing such things as require much force; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short" (Hobbes 1996, 84). Hobbes' state of nature is always followed by the permanent risk of meeting violence, altogether with the continuous threat that the individual's work and activity will be interrupted, and therefore the outcomes of one's action will be perturbed. While work is always threatened to be stopped and its fruits always threatened. For the Hobbesian human it is impossible to accumulate and store their own work.

Invoking Aristotle again, he states that the State is built not "for the sake of a good life and not for the sake of life only […] nor does a state exist for the sake of alliance and security from injustice, nor yet for the sake of exchange

and mutual intercourse" (Aristotle 1991, 57). The main purpose for Hobbes' instauration of the Leviathan is similar: of course, individually each person will protect its own safety and comfort - but Sovereignty means much more for Hobbes – it is the very condition for the possibility of civilization. This separation between the natural state and the contractual state is fundamental to an accurate understanding of the Hobbesian political theory: his deep intuition is linked to his ability to recognize the need for "hard" guarantees in order to maintain agreements between members of a community, and to protect its creative acts.

Therefore behind the individual contract we can always find the sovereign power, which gives it legitimacy: "where there is no common power, there is no law: where no law, no injustice. Force, and fraud, are in war the two cardinal virtues. Justice, and injustice are none of the faculties neither of the body, nor mind."– what is just and legitimate action characterizes only the life in common, the political life, whose founding act is the establishment of the Sovereign, that underpins all rights, including the right to property. The only right left to the individual alone after the contract is his right to life (Hobbes 1996, 88-89). It is worth noting that Hobbes is not unjustly labeled by Negri as "Marx of the bourgeoisie" (Negri 1991, 19) – Hobbes has the merit of having conceptualized the modern state in its pure form, and it would be naive to see him as a mere apologist of absolute monarchy.

In order to relate to the ontological assumption we made earlier earlier - that the ontological model of contractualism assumes that the political subject who is transferring its power through contract has to be established by the very act of contract - we have three elements to consider. The first element: the natural state, that is characterized both by everyone's right to everything (Hobbes 1996, 86-87), thus by the complete openness towards satisfying all appetites and desires, and by the confrontation of that right with any other right to the same total access to the world, which leads both to confrontation and to the realization that continued survival requires the institution of peace. Thus everyone's access to all resources is transformed into everyone's access through the mediation of a politically organized community.

In this, there is already a transition from Aristotelian model, that sees the State as a "community that aims at the good life, pursuing the autarkical and complete life of both the family and the clan", community traversed by relations of friendship, which for Aristotle means "choosing life in

common" specific to the Greek antiquity (Aristotle 1991, 59), to the Hobbesian model, which sees the Leviathan as a perfect organism that harmoniously organizes the manufacturing and creative activity of its component parts - the horizon of this state, specific to the European modernity, is the individual creator (who naturally loves their own freedom and domination over others), and the relationship that crosses the community and links it as life in common – the contract.

The second element is the Sovereign, as the soul of the Leviathan, which represents the point of convergence between particular voices and the full rights that the State's subjects have over all of nature and themselves, which binds each individual in a community through a parallel convergence of fears they feel towards one another. Finally, the third element to consider in the constitution of the political subject for Hobbes, is the contract – "the reciprocal transferal of rights" (Hobbes 1996, 89) – which means that, participating in the formation of the community, the individual surrenders their own natural right, in order to receive it back together with the rights of every other citizen through political mediation. Thus, if in the state of nature, the individual has a potential access to the entire wealth of the world, but must contend with every other individual that has the same right, in the contractual state, as a political subject, they will be allowed all rights of access through the mediation of the political sphere – they will participate, by living in a community, not only to their own actions and the actions they share with others, but to other people's actions as well. It is also important to note that, in the state of nature, all individuals are equal as far as Hobbesian theory is concerned, and after accepting the social contract, all individuals are reconstituted as political subjects, with all pre-contractual, "prehistoric", dimension of the political subject being leveled and suspended.

If Hobbes creates the prototype for the modern state, Rousseau is definitely the theorist of its lines of flight. We will refer to his work "On the Social Contract" (Rousseau 1987, 141-227), to grasp the major differences between himself and Hobbes. First of all, the Sovereign is no longer an artificial person, "incarnated" in the person of the monarch or in a governing body, but the community synthesized as such, the body-politic or res publica in its active form (the State being its passive form) (Rousseau 1987, 147-150). Despite this, the Sovereign has its own will different than the will of the majority, which would reduce the Sovereign to a group – this will is specifically called the general will. As far as the state of nature goes, in

Rousseau's conception "man is born free, and yet everywhere he is in chains" (Rousseau 1987, 141) – the individual in his natural state lacks, for Rousseau, both Hobbes' deterministic view, as well as the Hobbesian desire to dominate others. Only with the exteriorization of a dimension of subjectivity into property, do Hobbesian-style social relations occur:

"Men are not naturally enemies, for the simple reason that men living in their original state of independence do not have sufficiently constant relationships among themselves to bring about either a state of peace or a state of war. It is the relationship between things and not that between men that brings about war. And since this state of war cannot come into existence from simple personal relations, but only from real [proprietary] relations, a private war between one man and another can exist neither in the state of nature, where there is no constant property, nor in the social state, where everything is under the authority of the laws" (Rousseau 1987, 145)

The political ontology we framed for Hobbes therefore sees two new developments. On the one hand, that ontological pre-subjective layer that we have named the state of nature is restructured into two stages: an original space of pure freedom and openness and a following moment in which this space is externalized and finds an outer determination in property. For Hobbes the original openness of the individual is already oriented towards property (in the sense of natural right to use), but the Hobbesian subject is still unitary, and extending it onto outer determinations would be absurd – in Rousseau we already find small cracks in the classical model of the subject

On the other hand, this new conception of subjectivity grants us a basis for constructing a new type of Sovereignty, one derived from the common condition of all political subjects, as citizens, which represent the externalization of the subject in the public sphere. The general will is created out of the different voices that make up this public dimension of the citizenry and that circulate in the public sphere. This private-public division is not completely new, as it appears in some form or another at previous thinkers (Spinoza, Locke etc.). What is new here is the reproduction of this division at the level of the ontological constitution of the political subject, while in previous models the subject had clearly belonged to the domain of the private, with public spaces serving as agoras in which private subjects could open lines of dialogue. Rousseau's subject is

already characterized by openness and traversed by spaces exterior to his private life. With Rousseau we can already speak of a different type of political thinking, which overcomes the unitary subject.

Therefore, despite Kojève's critique, which claims that contractualism is merely a disguised imposition of one of the four types of Authority, we have proven that this tradition of thought has developed more coherent theories of legitimacy even in relation to Kojève's era, building upon the contract as the ontological formalization of a foundational relationship between the subject and the political. Already with Rousseau we see how the limits of this subject, in its classical Cartesian representation, are forced. In order to proceed, we will refer to a short Kantian text: "An answer to the question: 'What is Enlightenment?'" (Kant 1991, 54-61). This text was conceived as an answer to the question "Was ist Aufklarung?", posed in December 1784 by the German periodical "Berlinische Monatsschrift".

Political use of reason as a grounding for legitimacy
The text starts off with the following paragraph that summarizes the main argument of the text: "Enlightenment is man's emergence from his self-incurred immaturity. Immaturity is the inability to use one's own understanding without the guidance of another. This immaturity is self-incurred if its cause is not lack of understanding, but lack of resolution and courage to use it without the guidance of another. The motto of enlightenment is therefore: Sapere aude! Have courage to use your own understanding!" (Kant 1991, 54). The piece is conceptually dense, as it lays the ground for the ideas that will constitute the entire text: immaturity, the proper use of reason and the guided use of reason as the emergence from the state of immaturity, which, according to Kant, represents the Enlightenment's central project, achieved through the individual use of reason.

Kant goes on pointing out that if individual release from this state of immaturity is more difficult, the emancipation of a larger public is comparatively much easier, "indeed almost inevitable, if only the public concerned is left in freedom" (Kant 1991, 55) and this freedom refers to the public use of reason. The private use of reason, on the other hand, can be restricted without hindering the process of enlightenment – indeed, according to Kant, it often has to be restricted in order to allow for the proper functioning of the institutions of a community.

Of course, when Kant speaks of the private use of reason, he has in mind something we tend to associate with the public sphere: using one's own reason as a public clerk or as a cleric exercising his vocation, as a citizen paying his taxes etc.; in short, as an individual acting within the structure of a public institution (Kant 1991, 55-56), where they have to "adapt the use they make of their reason to these determined circumstances; and reason must then be subjected to the particular ends in view" (Foucault 1984b, 36). The public use of reason, on the other hand, refers to our employment of critical rational discourse in our public roles of scholars, a role Kant envisioned as completely accessible and universally practiced.

This position can seem misleading at first: "we might think that there is nothing very different here from what has been meant, since the sixteenth century, by freedom of conscience: the right to think as one pleases so long as one obeys as one must" (Foucault 1984b, 36). Kant's apparent submission to established State authority comes with two important additions: firstly he claims that "the attitude of mind of a head of state who favors freedom in the arts and sciences extends even further, for he realises that there is no danger even to his legislation if he allows his subjects to make public use of their own reason and to put before the public their thoughts on better ways of drawing up laws, even if this entails forthright criticism of the current legislation" (Kant 1991, 59); at the same time "only a ruler who is himself enlightened and has no fear of phantoms, yet who likewise has at hand a well-disciplined and numerous army to guarantee public security, may say what no republic would dare to say: *Argue as much as you like and about whatever you like but obey!* This reveals to us a strange and unexpected pattern in human affairs [...] A high degree of civil freedom seems advantageous to a people's intellectual freedom, yet it also sets up insuperable barriers to it. Conversely, a lesser degree of civil freedom gives intellectual freedom enough room to expand to its fullest extent" (Kant 1991, 59)

How can we interpret this apparent paradox when it comes to civic and intellectual liberty? If Rousseau had laid out the public dimension of the political subject, Kant takes it further, making it the privileged proper space of rational discourse, and integrating the private dimension of the subject into the institutional assemblage of the State. The terms of the problem become much clearer: it would seem that, insofar as citizens are both legislators and subjects of laws (to adapt the essential conceptual structure of Kant's argument outside of the contingent historical content of the text),

their position as legislators is privileged in the construction of the political subject. Kant would further add that this public dimension of free and rational discourse is the grounding of the political involvement of the citizen.

We have already shown that an authoritarian entity of any kind, to whom political power can be delegated, cannot be the solid foundation for political legitimacy. Let us therefore return to the moment of the constitution of the political subject: if we have established that the public dimension of the subject is the space where he makes free individual use of reason, we must ask what is the relationship of this reason with the political sphere?

From the very beginning we should differentiate it from that form of rationality that we earlier described as a sublimation of the taboo – indeed the Kantian Critiques separate the use of reason from its transcendent irrational dimension. As a principle for the intellectual autonomy of the political subject, what enlightenment proposes, in Kant's view, is the privileging of the public dimension of the subject as a space from which the subject can speak and be heard, in a logic of transpersonal communication. In the simple logic of power, functioning as a "cog" in the complex machinery of the State, his decisional power will be subsumed to the logic of power – even in the form of technical power manifested through instrumental reasoning – and thus be integrated into another type of discourse on legitimacy, with other models of constituting the political subject.

This opening that Kant creates towards something beyond the classical subject, on the one hand towards the public dimension of an already cracked model of subjectivity, in which the individual's various layers, interests and openings can be expressed through discourse, on the condition that a distance is created to enable the free use of reason outside of a particular determination (Cf. Agamben 2005, 23-34), and on the other hand towards a general human dignity, understood as a singular event or irreducible multiplicity, that cannot be quantified on account of any of its determinations. These two strands together form the basis for the further development of the legitimacy of a political order and the subject that that order institutes.

If we admit to a historical transformation proper to the forms of legitimacy, which takes into account the way in which its institution reveals the way in which the subject of politics is also produced, and use the concepts we have accumulated with regard to Aristotle's "political animal" from the different forms of contractualism, we already map out a history of legitimacy that has as its proper descendants the contemporary discourse on politics, which tries to bring forth various subjective spaces that have either been historically marginalized, or placed at the borders of humanity, granting them a voice that can be expressed in the political sphere. This double development of a space in which rational discourses can be created and articulated, and of a position which allows these discourses to be expressed in a way in which they can be properly heard (by having the inherent dignity of being irreparable singularities) – a hospitable space that makes room for expression (Cf. Derrida 2000, 3-18) – allows for the enunciation of a set of different discourses that can be received and hear – legitimized – and that can thus legitimize a model of the political subject that answers to the demands of contemporary history.

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