

BEDTIME FOR DEMOCRACY: THE POWER ELITE AS SOVEREIGN  
ARISTOCRACY IN NEOLIBERAL AMERIKA

A Thesis

by

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Submitted to the Office of Graduate and Professional Studies of  
Texas A&M University  
in partial fulfillment of the requirements for the degree of

MASTER OF ARTS

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August 2016

Major Subject: English

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## ABSTRACT

Leftist political theory in Amerika has struggled to understand the two most important issues facing us today: sovereignty and neoliberalism. In their efforts to understand neoliberalism, most scholars rely on either neo-Marxist or poststructuralist (Foucault) approaches, and in their efforts to understand sovereignty, scholars commonly turn to Carl Schmitt's legalistic notion of sovereignty. Unfortunately, these approaches cannot produce a sufficiently descriptive account of sovereignty in neoliberal Amerika, which is why I turn to the sociological political theory of C. Wright Mills, articulating a power elite theory of neoliberalism that provides a ground for identifying the aristocratic structure of sovereignty in our historical period.

First, I provide an empirically-supported account of the development of the Amerikan power elite from the 1950s to today. Rather than consisting of three directorates as Mills observed in the 1950s – political, economic, and military – the power elite today rules from only two directorates: the Corporate-Juridical Directorate and the Military-Juridical Directorate. Second, I turn to early modern political theory to identify two modes of sovereignty: legislative sovereignty and executive sovereignty, the latter of which consists of two principles, executive enforcement (of law) and executive prerogative. Third, I argue that, in neoliberal Amerika, the Corporate-Juridical Directorate wields legislative sovereignty and the Military-Juridical Directorate wields executive sovereignty. Ultimately, the Left should abandon its reliance on pluralistic and legalistic notions in order to understand the aristocratic sovereignty of the power elite.

“America’s history, her aspirations, her peculiar triumphs, her even more peculiar defeats, and her position in the world – yesterday and today – are all so profoundly and stubbornly unique that the very word ‘America’ remains a new, almost completely undefined and extremely controversial proper noun. No one in the world seems to know exactly what it describes, not even we motley millions who call ourselves Americans.”

– James Baldwin, *Nobody Knows My Name* (3)

“To be sure, at this decisive turn in the history of American life and thought, [American intellectuals] did grouse a bit, in a literary way, but, it was a grouching about a society with which in actual practice they were well satisfied. Now... they have come to celebrate this society. In reality, they know very little about it; in reality, they are not trying very hard to find out.”

– C. Wright Mills, “The Decline of the Left” (215)

*For all those who lost their lives fighting for democracy, equality, and justice. Though the victors have attempted to relegate your struggle to the dustbins of history, no amount of defamation and propaganda can prohibit history from absolving you. You will not be been forgotten.*

*All Power to the People!*

## ACKNOWLEDGEMENTS

I would like to thank my committee chair, Dr. Hoagwood, for not only encouraging my research but also for ensuring my ambitious project did not grow beyond my capabilities. His comments on many drafts made possible the success of this thesis. I also thank the other committee members, Dr. Griffin and Dr. Conway, for taking the time and energy to provide thought feedback at various stages in the project. Your collective approval of this work means a great deal to me.

Thanks also go to my friends and colleagues at Texas A&M University, especially Rocio Alvarez and John “Curry” O’Day, for listening to my ideas and helping me develop them over countless hours of conversation. I also want to extend my gratitude to the University Writing Center, especially Tommy Pfannkoch and Katelyn Werner, two amazing consultants who listened to me talk for hours and provided help feedback on chapter drafts. In addition, thanks to Dr. Tommy Curry and Dr. Dwayne Tunstall for being my mentors from my undergraduate days to today. I would not be the scholar I am today without both of you.

Finally, thanks to my family – all of you – for your endless love and support. And for anyone I may have forgotten, please put your name here \_\_\_\_\_.

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## CHAPTER I

### INTRODUCTION: C. WRIGHT MILLS AND THE LEGACY OF THE LEFT

“The ‘60s weren’t all failure. It’s the ‘70s that stunk.”  
– Dead Kennedys, “Chickenshit Conformists”

“[T]he moral cowardice of the American intelligentsia is virtually complete.”  
– C. Wright Mills, “Letter to Walter Klink, March 1961” (328)

In Amerika today, there is a crisis of the Left – if we can be called that any longer.<sup>1</sup> It is not clear that our social theories are sufficiently descriptive, and it is not clear that we have developed sufficiently radical normative ideals. A *descriptive account* of social structures requires a holistic investigation into the political and economic organization of society and an analysis of these relations, all while suspending moral judgment. A *normative critique* requires a juxtaposition of a developed descriptive model of society with a set of ideal values, a comparison that allows for moral criticism based on the divergence between the actual and the ideal. Insofar as reality diverges from our ideals, we can criticize the status quo and fight for structural change. Unfortunately, structural accounts of the whole no longer constitute our descriptive theories of society, for we have replaced total views of society with a series of local views of the parts. Many on the Left believe it is no longer desirable – or even possible – to criticize society as a whole. Likewise, economic equality and substantive political power no longer constitute our normative ideals, for we have replaced these demands with the demand for the free expression of identities and the isolated reform of the self.

Many on the Left believe that someone is listening when we “speak truth to power.” Because our aspirations have become increasingly individualized, the distance between our normative ideals and our descriptive models increasingly shrinks. The more our ideals are thought to converge with reality, the less likely we are to demand substantial structural change in the social, political, and economic realms. Once we settle for marginal reforms, we lose our revolutionary determination and resign ourselves to perpetual subjugation at the hands of the elite.

Unlike the musicians on the Titanic, however, it is not necessary to resign ourselves to this fate, for a creative reinvention of our normative ideals and theoretical models could reinvigorate the Left. Noting the inadequate response of the Left to the political, economic, and social crises that face us today, C. P. Chandrasekhar insists that “the Left has been called upon to fundamentally rethink its strategy and tactics” (33); here, we can paraphrase him and say that the Left is called upon to rethink its theories and ideals. *Bedtime for Democracy: The Power Elite as Sovereign Aristocracy in Neoliberal Amerika* provides a model for the regeneration of the Left, turning to and reviving the political and social theory of C. Wright Mills. A native of Texas, Mills escaped the military training of Texas A&M University that his parents had planned for him, ultimately earning advanced degrees in philosophy and sociology and becoming one of the foremost public intellectuals and social theorists of the twentieth century. By the time of his death in 1962, Mills had secured his legacy as one of the most important influences on what became the New Left. Mills’s philosophy has become a somewhat forgotten strand of leftist thought, and this unfortunate historical amnesia has led some



to believe that his work is generally irrelevant or out-of-date in the twenty-first century (Brewer; Wolfe; Burawoy; Fuller). As Stanley Aronowitz explains, “since the late 1970s his major works are virtually unread in social science classrooms, have disappeared from many scholarly references, and are largely undiscussed in the academic trade” (“Mills”). Despite this general disregard for Mills’s work, both his method of social inquiry and his political ideals provide a promising platform from which the Left could regenerate its radical ambitions. Certainly “Mills does not have all the answers,” but because “he may have many of the right questions” (Swan 306), we should heed Joseph G. Peschek advice: “Citizens who are committed to a more just, equitable, and participatory America would do well to consider the legacy of C. Wright Mills” (403).<sup>2</sup>

#### *The Liberal Mood of the New New Left*

Before we can appreciate the value of reviving Mills’s social-political theory, we must identify, on the one hand, the major problems that face the Left today and, on the other hand, the theoretical tools currently used to confront those problems. Because questions of social and political freedom are intimately connected with both history and social structure, the two most pressing questions facing the Left today are the question of *neoliberalism* and the question of *sovereignty*. As Alfred Saad-Filho and Deborah Johnston explain, “We live in the age of neoliberalism.” Leftists have described neoliberalism in various ways – as a new stage of capitalism, as form of governmentality, as a political and economic ideology – but because “neoliberalism has become so widespread and influential, and so deeply intermingled with critical important aspects of life...it can be difficult to assess its nature and historical importance” (1).

Likewise, the concept of sovereignty has become a widely debated issue among critical theorists in recent years, but in the debates between those who believe in popular sovereignty and those who believe in sovereign individuals, we have overlooked the possibility that an elite group is sovereign in Amerika. Here it is necessary to define these terms differently than most recent critical theorists. *Neoliberalism is defined as a way of organizing the social structure*, and *sovereignty is defined as the power to control the organization of the social structure*. Unlike the majority of contemporary political theorists, who tend to treat the question of sovereignty as separate from the question of neoliberalism, we must acknowledge that any conception of sovereignty in the neoliberal era must be defined by the structural power that any individual or group has to control the social structure, and two consequences follow from this. First, the question of neoliberalism and the question of sovereignty cannot be treated separately. Second, our conception of sovereignty depends upon an adequate description of the neoliberal social structure in Amerika.

Leftist critical theory has addressed both the question of neoliberalism and the question of sovereignty, but many attempts to describe these historical and political phenomena from a leftist perspective have been undermined by what we might call *the liberal mood of the New New Left*. In the political climate of the 1950s, Mills adamantly opposed the prevailing attitude of his day, which he called “the conservative mood.” “As an intellectual articulation,” Mills writes, “the conservative mood is merely a reformulation of classical liberalism in the entirely unclassical age of the twentieth century; it is the image of a society in which authority is at a minimum because it is

guided by the autonomous forces of the magic market” (*PE* 336). “This image of the government,” Mills adds, “is carried over from the image of the economy: in both we arrive at equilibrium by the pulling and hauling of each individual or group for their own interests, restrained only by legalistic and amoral interpretation of what the law allows” (“The Conservative Mood” 101). For Mills, an unwarranted and inaccurate pluralism dominated political theory, distorting, mystifying, and obscuring the social structure and its mechanisms of power. Pluralists believe in “a society in which widely varied groups compete with each other, in which decision-making rests on give-and-take among various groups” so that “no one political, economic, social, religious, regional, or racial group will dominate” (Lefcourt 32). Pluralists often conflate their normative ideas and their descriptive accounts, assuming that society is a multiplicity across which power is distributed. But in addition to pluralism, the conservative mood also implied a faith in the rule of law. According to this legalist perspective, because the law reflects the will of the harmony of interests of the people, it is a neutral guarantor of freedom and security according to which disputes can be settled peacefully.

The political landscape has changed a great deal since the 1950s, and as the conservative mood was gradually replaced by the liberal mood, the New Left was replaced by the New New Left, a Left ensnared in liberal rhetoric that undermines its critical potential.<sup>3</sup> There are three phases to the history of the Left in Amerika. In the early twentieth century, Old Left Marxists rejected the capitalistic version of pluralism, which insisted that all workers were individuals competing in the market, choosing instead to emphasize the power difference between the proletariat and the bourgeoisie. In

the mid-twentieth century, the New Left eclipsed the Old Left, replacing the “labor metaphysic” of Old Left Marxism with elite theories of social-political power or an anticolonial theories of global imperialism (Césaire; Fanon; Memmi). New Leftists rejected the liberalistic version of pluralism, which insisted that all citizens were individuals contributing to the polity, choosing instead to emphasize the power difference between the elites and the masses or the colonizer and the colonized. In the 1970s and 80s, however, the New Left was in turn replaced by what we might call the New New Left, which rejected comprehensive approaches to structural political criticism in favor of a nominalistic emphasis on individualism and a legalistic insistence on institutional constraints to political power.

The New New Left, like the social critics who were afflicted with the conservative mood in the 1950s, largely abandoned the type of critical assessment offered by Marxists and New Leftists in favor of bare descriptive pluralism that posits from the outset that society *just is* a collection of various individuals and groups with different interests, aims, and objectives.<sup>4</sup> Since the 1970s, what William R. Schroeder calls “philosophies of dispersion” have come to dominate critical theory. He primarily reserves this term for philosophies that are considered “poststructuralist” because the philosophers associated with poststructuralism emphasize the scattered, diffused, and disseminated nature of human existence. Michel Foucault, for example, one of the most important thinkers of the late-twentieth century and a self-described pluralist, insists upon a pluralistic method of political inquiry, arguing that

The analysis, made in terms of power, must not assume that the sovereignty of the state, the form of the law, or the over-all unity of a dominion are given at the outset; rather, these are only the terminal forms power takes...power must be understood in the first instance as the multiplicity of force relations immanent in the sphere in which they operate and which constitute their own organization. (*HSI* 92)

Elsewhere, Foucault has described his tendency to multiply rather than synthesize social and political phenomena. “Wherever it seemed necessary,” he writes, “I have been prepared to add to the plurality of distinguishable systems” (“Politics” 55). Though Schroeder correctly distinguishes between poststructuralism and postmodernism, their shared nominalism put them in close relation, not only to each other but also to some forms of liberalism. The pluralistic similarity between liberalism, poststructuralism, and postmodernism has implications for political theory, for each one resists the temptation to synthesize social and political phenomena into one larger, coherent social totality. Instead, they all insist upon distinguishing between as many relevant entities as possible. Although they advance widely different philosophical anthropologies, epistemologies, and philosophies of language, all of these philosophical paradigms subscribe to some version of social-political pluralism.

In addition to its pluralism, the liberal mood of the New New Left entails a legalistic tendency to place faith in the rule of law and institutional constraints on abuses of political power.<sup>5</sup> Legalism is not opposed to pluralism; in fact, the two compliment each other in many ways. Yet, unlike those who emphasize the pluralistic nature social

and political power, a legalist conception of power emphasizes the relationship between power and law. On this view, it is assumed that power used within the law is legitimate and sanctioned, but extra-legal uses of power are forbidden or tyrannical. As legal scholars Eric A. Posner and Adrian Vermeule explain, “the simplest version of liberal legal theory holds that representative legislatures govern and should govern, subject to constitutional constraints...[and that] executive and judicial officials carry out the law [while] law does and should constrain the executive” (3). Leftists have remained somewhat skeptical regarding the use of legal reforms for progressive social change, citing the paradox of relying on normative means to achieve anti-normative ends (Brown and Halley 5), but in terms of political power, legalism has dominated the Left since its discovery of Carl Schmitt in the late-1980s (Bobbio). Schmitt was an adamant opponent of pluralism, of course, which has led some theorists to conclude that Schmitt is not a liberal (Strong xvii). However, a number of Schmitt scholars have noted his liberal tendencies (Strauss; Schelsky; Schwab), and Posner and Vermeule have identified his liberalism precisely in his legalism. As they write, Schmitt “fell into a characteristic error of liberal legalism, which equates lack of legal constraint with unbounded power” (4). Critical theorists who have relied on Schmitt’s conceptual schema have also succumbed to his legalistic tendencies (Agamben; Derrida; Butler).

Unfortunately, the liberal mood has undermined the Left’s ability to make sense of either neoliberalism or sovereignty. Whereas Mills saw the conservative mood as a commitment to classical liberalism, the liberal mood of the New New Left indicates an extension of classical liberal principles that, as we shall see, make it *more liberal* than

classical liberals themselves. In many ways, the liberal mood results in a collapse in the distance between descriptive accounts of social structures and normative ideals of social aspirations. While contemporary leftist theory can challenge neoliberalism in a number of useful ways, the pluralistic assumptions of the liberal mood have diluted our ability to confront neoliberalism on the basis of political, economic, and social power. To be clear, normative pluralism is a noble aspirational goal for the Left, but many Leftists today are committed to descriptive pluralism, which means they tend to overlook, disregard, or completely ignore the emergence and maintenance of dualistic power structures.<sup>6</sup>

Neoliberalism is a self-described pluralistic system; as Margaret Thatcher once declared, there is “no such thing as society, only individual men and women” (qtd. in Harvey 23).

Because current economic and political trends suggest that neoliberalism entails a concentration rather than a dispersion of power, we have reason to question the pluralistic claims of neoliberalism. But if the neoliberal concentration of power results in a dualistic social structure, it is not clear how we might discover and analyze it if we are committed to bare descriptive pluralism.<sup>7</sup>

The Left faces a similar problem in relation to the question of sovereignty, for legalistic disposition of the liberal mood dominates contemporary leftist theories of sovereign power. Unlike like Schmitt, who celebrated the power of the executive to declare a state of exception, Leftists usually express moral panic, for, on this view, when the state declares a state of emergency and suspends the law, the executive is transformed from a public official democratically appointed by civilians into a sovereign dictator whose actions are unbound by legal constraints. Judith Butler’s legalist

understanding of sovereignty “as a lawless and unaccountable operation of power, once legal rule is effectively suspended and military codes take its place” expresses this well (*PL xv*). The correlating assumption here is this: during a period in which a constitutional democracy is functioning normally, there either is no sovereign or the people are sovereign. But this view fails to consider the possibility that a small group of elites enjoys a monopoly of control over the institutions of society through which sovereign power is exercised. Classical political theory, we must remember, acknowledged not only the individualistic sovereignty of the monarch and the popular sovereignty of the people but also the elitist sovereignty of the aristocracy. The liberal mood, then, has weakened the revolutionary potential of the Left by reducing the critical distance between its normative ideals and its descriptive models. Because we accept as mundane the truth of pluralism and the efficacy and equity of the law, we relinquish our critical vision in favor of a celebratory acceptance of the status quo.

*Reviving the New Left: Mills and The Sociological Imagination*

As Quentin Skinner once remarked, “it is remarkably difficult to avoid falling under the spell of our own intellectual heritage” (LBL 116); yet, if we want to construct new theories of both neoliberalism and sovereignty, then we must break the spell of the liberal mood, and the social theory of C. Wright Mills may be helpful in this task. Mills believed that leftist political theory required a structural understanding of society, which could be achieved by using the sociological imagination. In his 1960 “Letter to the New Left,” a letter that practically created its own audience, Mills denounced the “labor metaphysic” of the Marxist Old Left and the “liberal rhetoric” of emerging New Right,



arguing that global political change was going to come from “the young intelligentsia.” For Mills, both the former-Marxists-turned-liberals in the United States and the Socialist Realists of the Soviet Union stood “opposed to radical criticisms of their respective societies” (258). Because both groups sought to reduce social and structural problems to individuals and local groups, neither could offer the sort of structural critique that Mills found necessary for a leftist politics. “Left means,” Mills insisted, “structural criticism and reportage and theories of society, which at some point or another are focused politically as demands and programs” (260). “If there is to be a politics of the New Left,” he continued, “what needs to be analyzed is the *structure* of institutions, the *foundation* of policies. In this sense, both in its criticisms and its proposals, our work is necessarily structural – and so, *for us*, just now – utopian” (261). Mills is unequivocal: on the one hand, the descriptive approach of the Left – its “criticisms” – must be grounded in total structural analyses of political and economic systems; on the other hand, the normative ideals of the Left – its “proposals” – must be radically utopian, for only utopian ideals can ensure the necessary critical distance between the Left’s descriptive and normative accounts.

In order to achieve a proper understanding of power and effect structural change, Mills believed that the intelligentsia must rely on what he called the “sociological imagination.”<sup>8</sup> According to Mills, all citizens – intellectuals or otherwise – should cultivate a quality of mind that allows them to grasp “the interplay of man and society, of biography and history, or self and world” (*SI* 4), but the intellectuals, he thought, were in a special position to achieve this. Access to facts and the possession of reason are

necessary but not sufficient for understanding social structures, for in order to understand society, one must be able to connect personal milieu – the life-world, the immediate realm of personal experience, of individuals and local groups – with the social structure. As Mills puts it, “To be aware of the idea of social structure and to use it with sensibility is to be capable of tracing such linkages among a great variety of milieu. To be able to do that is to possess the sociological imagination” (SI 10-11). Or, put more completely,

The sociological imagination enables its possessor to understand the larger historical scene in terms of its meaning for the inner life and the external career of a variety of individuals... The first fruit of this imagination... is the idea that the individual can understand his own experience and gauge his own fate only by locating himself within his period, that he can know his own chances in life by becoming aware of those of all individuals in his circumstances. (SI 5)

Thus, an impressionistic understanding of society, the equivocation of personal experiences and social truths, is not enough. In order to understand the context of this or that personal milieu, one must relate it to the larger patterns of society established by social science and political theory.

For Mills, when we exercise our sociological imagination, we ask three questions, which provide a methodological framework for our investigation: What is the structure of society? What is its place in history? What types of individuals emerge and prevail in this society? The first question requires us to set geographical boundaries, and

Mills recommends the nation-state as the political unit for investigation. Whereas using smaller entities risks missing larger patterns and larger entities risk becoming too general, the nation-state allows for relevant generalizations based on an institution with domestic and global efficacy (*SI* 135). The first question also requires us to produce a social ontology, a conception of the various groups of a society and their relationships to the dominant institutions of that society. The second question requires us to define a temporal “period” in which our investigation will take place (*SI* 149). Because societies change over time, it is essential to identify, choose, and justify the use of historical events to set boundaries to an analysis. The third question requires us to conceive of types of personalities that might appear in society, relying on something akin to Max Weber’s “ideal types.”<sup>9</sup> Mills adamantly rejects “psychologism,” the tendency to resolve everything down to individual psyches, because such an approach “rests upon an explicit metaphysical denial of the reality of social structure” (67n.12). In fact, the sociological imagination is diametrically opposed to psychologism: whereas the latter transforms social issues into personal problems, the former translates personal problems into social issues. From these questions, the intellectual produces a “working model” of society, but this model need not be mutually exclusive of other models, nor must it be deterministic (*SI* 44). As Mills notes, society is constantly changing and no theory will ever result in anything like the totality of absolute knowing in the Hegelian sense.<sup>10</sup> Finally, the working model need not produce a pleasant picture of society; the investigation should lead where it leads, and if the outcome is unpleasant, that just means there is work to do (*SI* 78).

In addition to his methodological apparatus, Mills also reminds us to remain radical in our normative ideals. In *Undoing the Demos*, Wendy Brown argues that the under the pressures of neoliberalism, Americans – including leftists – have surrendered their demands for democratic participation, reluctantly accepting the marketization of individualism in exchange. As Brown explains, neoliberalism “transpose[s] the meaning and practice of democratic concerns with equality, freedom, and sovereignty from a political to an economic register...Liberty itself is narrowed to market conduct, divested of association with mastering the conditions of life, existential freedom, or securing the rule of the demos” (41). While the contemporary Left has become largely skeptical of notions such as “democracy” and “freedom,” Mills uses these concepts as the normative grounding of his leftist criticism. As Mills defines it, “Democracy means the power and the freedom of those controlled by the law to change the law, according to agreed-upon rules – and even to change these rules; but more than that, it means some kind of collective self-control over the structural mechanics of history itself” (*SI* 116). For Mills, this conception of democracy is closely linked with his conception of freedom; as he writes, “Freedom is not merely the chance to do as one pleases; neither is it merely the opportunity to choose between set alternatives. Freedom is, first of all, the chance to formulate the available choices, to argue over them – and then, the opportunity to choose” (*SI* 174). Against the neoliberal divestment of individual citizenship, Mills reminds us that to be *free* is to participate in our own governing. In the face of increasing concentrations of political and economic power, collective democratic action and

economic equality stand as the most effective and most suitable normative ideals against which we can evaluate the existing structures of society.

*From the Overture to the Movements, or, The Plan of the Work*

As a prolegomenon for a new comprehensive theory of the structure of sovereignty in neoliberal Amerika, *Bedtime for Democracy* uses the sociological imagination to intervene in the direction of the Left, reviving the tradition of structural criticism and breaking free from the liberal mood. With the sociological imagination as our method, it is possible to identify the parameters of this study. Geographically and historically, we will confine ourselves to the United States since the early 1970s. Thus, sovereignty will be considered the structure of domestic political power and not a principle of international relations (Murphy 87), and the neoliberal era will be considered the period of reaction that follows the tumult of the 1960s. Finally, it is important to remember that the model produced in this investigation is only a working model, which means, first, that should be revised with new evidence and historical developments and, second, that its aim is purely descriptive, even though it is impossible to fully bracket our guiding normative ideals. Mills is clear that the purpose of social analysis is identifying and illuminating trends, which means that all descriptive accounts of social structures are by necessity contingent. Because our discussion will focus only on the social structure, it will be left to the reader to consider the relationship between the social structure described here and their personal milieu. In the end, some may wonder if *Bedtime for Democracy* accords with the aspirations of English as a discipline, and their concern would not be completely unfounded; however, my interdisciplinary

training compels me, and Mills's sociological imagination requires me, to work beyond the strictures of standard disciplinary boundaries and question disciplinarity as such. Confining social and political theory to isolated disciplinary conventions impedes our ability to cultivate the sociological imagination, producing very the liberal mood we aim to overcome.<sup>11</sup>

In Chapter II, "Overcoming the Liberal Mood: The Power Elite and Neoliberal Amerika," we begin with *The Power Elite*, a paradigmatic example of Mills's sociological imagination in practice. While a few scholars, most notably G. William Domhoff, have updated, extended, and amended Mills's theory of the power elite, none have used it as the basis for an analysis of neoliberalism.<sup>12</sup> After a brief exegesis of Mills's power elite theory, we will identify two trends of the neoliberal era, namely, the consolidation of political power by capital and the militarization of law enforcement by the executive branch of the federal government, and amend his analysis. Where Mills found three directorates in the 1950s – the economic, political, and military – we find in the neoliberal era two directorates: the corporate-juridical directorate and the military-juridical directorate. These two directorates represent the two primary centers of elite power in neoliberal Amerika.

In Chapter III, "This Ain't Your Grandpappy's Sovereign: Rethinking the History of Sovereignty from Jean Bodin to *The Federalist*," we turn to early modern political theory to investigate a strand of Mills's theory that even he never fully explored, namely, sovereignty. Mills's suggests that it is not the people who are sovereign in Amerika but the power elite, but to understand their sovereignty, we must

revise our understanding of early modern theories of sovereignty. Against the prevailing tendency to distinguish between absolute state theory and liberal democratic or constitutional democratic state theory, we explore the continuities between, on the one hand, thinkers like Jean Bodin and Thomas Hobbes and, on the other hand, thinkers like John Locke and the Framers of the Constitution of the United States, especially regarding the two principle modes of sovereignty, legislative sovereignty and executive sovereignty, and the two principles of the latter, executive enforcement and executive prerogative. In addition, and again against the prevailing tendency, we will rethink the meaning of the “separation of powers” by placing it in the context of changing social ontologies. The conception of social ontology transforms from a tripartite ontology to a monist ontology between the seventeenth and eighteenth centuries, meaning that the separation of powers is not the negation or even the limitation of sovereign power. Finally, we turn to *The Federalist* to identify the aristocratic legacy of early modern political theory in the founding of Amerika.

In Chapter IV, “Triumph of the Swill: Separation Theory, Sovereign Power, and the Neoliberal Power Elite,” we draw upon Wendy Brown’s separation theory of sovereignty, namely, that sovereignty is coming apart from the nation-state and migrating to transnational capital, to understand the sovereignty of the neoliberal power elite. However, because we distinguish between the legislative and executive modes of sovereignty, we are able to amend and perhaps correct Brown’s theory, acknowledging that only legislative sovereignty is migrating to capital while executive sovereignty remains tied to the state. Because the transfer of sovereign power is primarily a transfer

of legislative sovereignty, the neoliberal power elite increasingly legislates through the corporate-juridical directorate while the military-juridical directorate becomes increasingly militarized and undemocratic. In Chapter V, “Letter to the New New Left,” we reflect on the ways in which future research can help the Left overcome the liberal mood and inaugurate a democratic and egalitarian transformation of society.

In many ways, the legacy of modern political theory is at stake. In an analysis of early modern English state theory, Quentin Skinner has distinguished between neo-roman political theory and liberal political theory. As Skinner explains, the neo-roman theorists, unlike the liberals who would later discredit them, believed that participation in the government, especially in the making and executing of the laws, was essential in guaranteeing the freedom of the citizen, and they argued that this political participation was based on the distribution of wealth and property. The liberals disagreed, defining freedom as the absence of external constraints, which implies that the form of government and the level of citizen participation in it do not matter: so long as one is subjected to relatively few impediments on their actions, they can be considered free, regardless of who creates, imposes, and enforces those impediments. According to the logic of the neo-roman theorists, true popular sovereignty – and therefore true political freedom for all – depends on an egalitarian distribution of the material resources of society. According to the logic of the liberal theorists, the equitable distribution of neither economic nor political power is necessary for freedom, so long as those who are in charge do not infringe on individuals too much. Yet, as Skinner correctly observes, “No one can hope to speak truth to power if everyone is obligated to cultivate the



flattering arts required to appease a ruler on whose favour everyone depends” (*LBL 90*).

This is what is at stake here. And this is why it is necessary to understand that as the function of legislative sovereignty is gradually transferred to capital and corporations, leaving executive sovereignty behind, the state loses all semblance of democratic values and operation, and Amerika becomes a police state controlled by the masters of capital and a militarized executive who enforces their will.

CHAPTER II  
OVERCOMING THE LIBERAL MOOD: THE POWER ELITE AND NEOLIBERAL  
AMERIKA

“Rulers have rewritten history every other day including the documents upon which history must be based. So, first of all, we have to hang onto reality itself; and to do so, we must become very much aware of our standards of reality.”

– C. Wright Mills, “Letter to Tovarich, Winter 1956-1957” (225)

“Every society is really governed by hidden laws, by unspoken but profound assumptions on the part of the people, and ours is no exception. It is up to the American writer to find out what these laws and assumptions are. In a society much given to smashing taboos without thereby managing to be liberated from them, it will be no easy matter.”

– James Baldwin, *Nobody Knows My Name* (11)

C. Wright Mills’s *The Power Elite* is a classic of sociological theory and a useful starting place for the development of an elite theory of neoliberal Amerika. While it is generally overlooked today, G. William Domhoff reminds us that *The Power Elite* “was the first full-scale study of the structure and distribution of power in the United States by a sociologist using the full panoply of modern-day sociological theory and methods” and “opened space for and helped create the field of power structure research, which employs a range of empirical methods in an attempt to synthesize competing theoretical views” (“50 Years Later” 547). Just as Mills used his elite theory of power to criticize the conservative mood without turning to Marxism, we must here avoid the liberal mood that afflicts the Left today without turning to Marxism, and for many of the same reasons that Mills avoided it. In *The Marxists*, Mills questions some of the basic theoretical

assumptions of Marxism – the base-superstructure relationship, the economic determinism of the state, the inevitability of either revolution or economic collapse – but most importantly he questions the use of “class” as the defining concept of power. “As method,” Mills writes, “it is a useful simplification if ‘class’ is then used as *one* dimension of stratification... Property as an objective criterion of class is indispensable to the understanding of the stratification of capitalist society.” However, because economic dominance is not the whole story, “Alone it is inadequate and misleading” (106-107). Most Marxists who analyze the structure and development of neoliberalism argue that neoliberalism was the restoration of capitalist class power and assume that the state simply represents the interests of capital (Duménil and Lévy; Harvey). Viewing neoliberalism as a social structure rather than a stage of capitalism or a capitalist ideology, a power elite theory of neoliberalism argues that social and political power are not based *solely* on the ownership of the means for production – whether those means are industrial or financial – but rather rests in the centers of institutional organization. Refusing to use a Marxist analytic does not mean that Marxist critics of neoliberalism offer no useful insights – they do. But if the ultimate aim is to construct a theory of sovereignty appropriate for the neoliberal era, then the notion of economic class power will fail to provide an adequate foundation. Not only is the concept of class too limited, as Mills argues, it is also an insufficient foundation upon which to build a theory of sovereignty, which may explain why, in part, Marxists usually do not take up the problem of sovereignty in their work.<sup>13</sup>

Mills's observations regarding the power elite are still relevant – perhaps even more relevant – in the neoliberal era than in the 1950s, but his analysis must be modified, adapted, and expanded in order to describe the changes in the structure of the power elite and its institutional bases of power. Stanley Aronowitz explains that such modification is entirely consistent with Mills's own views, because for Mills, society was constantly evolving and changing. “As a pragmatist,” Aronowitz writes, “he was acutely aware that theory requires constant renewal and revisions and that, contrary to much current thinking, the problem is not one of ‘applications’ of received wisdom but to interrogate the wisdom in the light of contemporary developments” (“Mills”). In order to examine Mills's wisdom in the neoliberal context, we must acknowledge that the sites and realms of power have transformed since the 1950s, though they have not disappeared. Mills describes three realms of power, the political, the military, and the economic, each of which was organized around its own central institutions of power, the executive branch, the Pentagon, and the corporations – or what Mills called the political, military, and economic directorates. But in the 1970s, a seismic shift began, shuffling not only the institutions of power but also their corresponding realms. In neoliberal Amerika, the corporate directorate is not confined to the economy; rather, it controls *both* the economic and the political, especially the legislative process. Likewise, the political and military directorates are no longer separate sites of power, if they ever were, for they have merged and formed the militarized executive branch. While capital has invaded the political sphere, the executive has been engulfed in a military logic that exponentially increases its capacity for violence through the incorporation and

militarization of local police forces. In neoliberal Amerika, the corporate-juridical directorate governs both the economy and the juridical order while the military-juridical directorate controls the police state apparatuses, all of which is increasingly separate from and in opposition to the average citizens of the postmodern mass society.

*The Rise of the Power Elite*

Writing in the middle of the twentieth century, Mills believed that Amerika had once been a democratic society in which publics consisted of relatively independent and autonomous individuals who were free to express opinions in a meaningful way, take action that produced material results, and participate in shaping the forces that governed them; however, it had evolved into an antidemocratic society in which the power elite used education, the media, and political, economic, and military institutions to transform citizens from active participants of the public into acquiescent employees of the mass society. Tracing out this historical transition, Mills explains that since the Civil War, the old wealth of the Southern planter class gradually merged with the new wealth of Northern and Southern capital; after World War II, the synthesis of these classes accelerated, producing one new class of elites who shared a common task, namely, the “destruction of the legislative achievements of the New and Fair Deals” (PE 36). The development of this new class was accompanied by social, political, and economic changes. In the realm of politics, power increasingly became centralized in the executive branch of the federal government, reducing the significance and the influence of Congress. In the realm of national defense, the military grew exponentially in size and sway. In the realm of economics, wealth was transferred from an independent middle

class of small business holders to an increasingly centralized corporate structure. As these social structures consolidated power, wealth, and influence between 1900 and 1950, social mobility became significantly difficult for the average citizen (*PE* 104-105). For Mills, these changes resulted in a bifurcated society defined by a differential in access to power: on one side, there was the power elite, the higher circles of the political, economic, and military domains; on the other side, there was the mass society, comprised of an inert middle level of white collar workers, union leaders, and agrarian organizers and a bottom level of average citizens stripped of their democratic sovereignty and distracted by media spectacles. For Mills, no society was absolutely democratic or authoritarian, but taking these two models as extremes on a spectrum of possible political realities, he believed that even if Amerika was once a democratic public, it no longer was in 1956.

On this view of Amerikan society, the power elite sits at the top, directing the national destiny – knowingly or unknowingly – from the pinnacles of political, military and economic power. As Mills puts it, “By the power elite, we refer to those political, economic, and military circles which as an intricate set of overlapping cliques share decisions having at least national consequences. In so far as national events are decided, the power elite are those who decide them” (*PE* 18). According to Mills, “this triangle of power is the source of the interlocking directorate that is most important for the historical structure of the present” (*PE* 8), and the proper understanding of this directorate provides “the sociological key” to the working of Amerikan society (*PE* 5). Despite their similar access to power, the highest agents of each of the three domains are

relatively autonomous, and they unify primarily coalitions, which is why Mills prefers “power elite” to “ruling class” (*PE* 277n.). But explicit coordination is not the only thing that unites the power elite; for Mills, the power elite is also unified through the institutional positions and psychological dispositions of its members (*PE* 19). Members of the power elite are socialized in such a way as they internalize the values of the group and assimilate themselves accordingly. “In a system of co-optation from above,” Mills writes, “whether you begin rich or poor seems less relevant in revealing what kind of man you are when you have arrived than in revealing the principles of those in charge of selecting the ones who succeed” (*PE* 349). Thus, the elite do not exist by nature; rather, they create and recreate themselves through explicit training and implicit socialization, ensuring the perpetuation of their group and its power.

In the three realms, the elites who occupy specific positions serve specific functions, contributing to the success of the elite as a whole. In the political realm, as power becomes centralized in the executive branch, most democratic checks on political power are circumvented. A civil service based on merit is replaced by an appointment system through which corporate leaders make their way into government (*PE* 232). Politicians increasingly team with appointed agency officials to form policy. The distinction between legislation and administration, the difference between making and implementing policy, gradually breaks down and “legislation itself is often written by members of the executive branch” (*PE* 258). Because legislation is not grounded in the will of the people, law comes to primarily serve the interests of the elites. In particular, the law tends to serve the wealthiest citizens alone: “the very rich have used existing

laws, they have circumvented and violated existing laws, and they have had laws created and enforced for their direct benefit”(PE 99). The power to make law, therefore, was gradually migrating from the legislature to either the executive or the economically powerful.

In the military realm, Pentagon officials and police officers not only serve as guardians of the established order; they also contribute to the general sense of public panic by actively cultivating “a military definition of reality” (PE 198). While the police and the military are only openly recognized as “indispensible elements of the order of power that prevails within and between the national states of the world” (PE 85) when war or revolution threaten the status quo, Mills insists that they should also be understood as active participants in the status quo itself. While the President is the civilian leader at the top of the “military bureaucracy” of the Pentagon (PE 186-187), the influence of the military over the executive branch threatens to transform the President into a smokescreen for military rule. Not only does the military sway the executive; it also imposes a “military metaphysic” in which “warfare is the only reality” (PE 223, 202). Like the executive branch, the military is co-dependent with the economic elite: they advise each other and perpetuate each other; federal military budget growth stimulates weapons manufacturers; money and science are used for military purposes, even at universities; even media outlets and film studios are used by the military publicists, producing a carefully crafted and censored image of the military and its operations.



Finally, in the economic realm, the production, distribution, and protection of property have all gravitated around the structure of the corporation. Whereas the very rich and the propertied middle class used to exist outside the corporate structure, the post-war world had eliminated independently propertied and monied groups, replacing them with the corporate directorate and white collar middle management. Mills is unequivocal on this point:

Not great fortunes, but great corporations are the important units of wealth, to which individuals of property are variously attached. The corporation is the source of wealth, and the basis of the continued power and privilege of wealth. All the men and the families of great wealth are now identified with large corporations in which their property is seated.

*(PE 116)*

Such control over property allows the elites, Mills argues, to regulate the flow of capital, goods, and service. Since “no one can become or stay rich in America today without becoming involved, in one way or another, in the world of the corporate rich” (*PE 148*), the selection process for economic elites undermines the ideal of meritocratic entrepreneurship. And since members of the economic elite rotate through the political directorate of the executive branch and the military directorate in the Pentagon, the three relatively autonomous sectors of elite power become progressively interconnected, and their interests – as well as their fates – become increasingly aligned.

Across the dividing line of Mills’s social ontology, standing in opposition to the power elite is the mass society. There is a definite qualitative difference between the

lives of the elite and the lives of those in the mass society. The elite – partly because they can transcend their personal milieu and *view* the social structure, and partly because they *create* the social structure – have a decided advantage in relation to the members of mass society. While the average citizen is subjected to the exploitation inherent in the money system, designed to keep them healthy enough to continue work, the elite citizen escapes these economic pressures through accumulation and networking (*PE* 163).

While the average citizen is subjected to an increasingly vocational education, designed to make them efficient employees and complacent citizens, the elite citizen is groomed in preparatory and boarding schools before attending an Ivy League university (*PE* 64).

While the average citizen understands the world through the filtered messages of the mass media, designed to produce a general “psychological illiteracy” in the citizenry, the elite citizen controls and shapes the content of that media (*PE* 311-315). Thus, the structural features of the mass society inhibit the average citizen’s ability to cultivate or use the sociological imagination, for they are largely prevented from transcending their personal milieu and understanding the social structure; “even the city,” Mills concludes, “cannot be seen as a total structure by most of its citizens” (*PE* 321-322). And while Mills does speak of a middle level of power, these are merely privileged members of the mass society: labor leaders, agrarian organizers, and white collar workers who, rather than forming an independent power base or representing the mass society, obfuscate the dualistic nature of power and perpetuate the illusion that citizens can participate in their own governance. In reality, the little power possessed by the middle levels is a mere gift of the power elite intended to pacify the once disruptive interest groups of Amerikan

society (*PE* 267-268). With little to no opportunity to thrive outside the confines of the mass society, the average individual has but one option: the emulation of the elite – and whether an individual of the mass remains complacent or strives to join the powerful, Mills suggests we should regret both.

It is understandable that many of the readers of *The Power Elite* have been uncomfortable with or even offended by Mills's suggestion that the United States has become an aristocratic oligarchy governed by a powerful group of elites. In the 1950s, liberals condemned *The Power Elite* for its supposed lack of evidence, its apparent failure to comport with the pluralistic nature and procedural apparatus of American society, and its ostensibly angry tone (Dahl, "Critique"; Bell, *End*). They insisted that Mills's conclusions regarding the power elite and the mass society were mistaken because it had failed to fully appreciate the nation's decentralized system of power. More recently, Alan Wolfe has insisted that while Mills provided an accurate description of 1950s America, his insights no longer hold true because American society has become even more pluralistic in recent decades. These critics merely demonstrate the truth of Mills's prediction, namely, that "conservatives of the painless schools of liberalism often confuse wishful image with reality. They either tend to relegate the elite to the past or they diversify its elements in the present" (*PE* 322). More importantly, their criticisms reveal their inattentive approach to Mills's work, for he is clear that society is pluralistic, just not basically so. "Within the higher circles of the power elite," Mills clarifies, "factions do exist; there are conflicts of policy; individual ambitions do clash...But more powerful than these divisions are the internal discipline and the

community of interests that bind the power elite together” (PE 283). Thus, merely insisting that Amerika is pluralistic does not address the fundamental point. There is a pluralism of forces and interests on both sides of the dividing line of this social ontology, among both the power elite and the mass society; however, there is both a qualitative difference between these pluralisms and a demonstrable opposition between these diametrically opposed groups. The question, then, is not whether Amerika is pluralistic, but rather where can we locate any important and isolated centers of power. In the neoliberal period, political and legal power has migrated to corporations and the executive and military centers of power have gradually merged, forming one juridico-militaristic site of violence. Thus, rather than three sites of institutional power, we have two, and rather than each serving their classical functions, they have traded and merged to form completely new constellations of power.

*The Neoliberal Power Elite I: The Corporate-Juridical Directorate*

Scholars disagree about the proper starting point for the neoliberal era of Amerikan history,<sup>14</sup> but because neoliberalism is, for the purposes of a Millsian analysis of the power elite, a social structure, it is useful to trace its development back to the events that set it in motion. While no single starting point captures the advent of the corporate-juridical directorate, I follow David Harvey and locate the beginning of programmatic neoliberalism with the distribution of Lewis F. Powell’s 1971 memo to the U.S. Chamber of Commerce, *Attack On American Free Enterprise System*. For Harvey’s Marxist analysis, the Powell Memo provides a strategic starting place for his analysis of the coordinated effort on the part of capital to defend its class interests. But

for a Millsian analysis, Powell himself represents a certain disposition on the part of the elite, and in order to understand the memo, it is necessary to understand the man.

Powell's memo initiated a renewed solidarity among the corporate elites who systematically organized themselves to recapture control not only over the economic realm but also over the political realm. Within two decades, the corporate-juridical directorate held a virtual monopoly over both the legislative process and judicial review.

Powell, a Virginia native, was a key player in state politics during the 1950s and 60s. As a successful business lawyer, chair of the Richmond Chamber of Commerce, chair of the Richmond Board of Education, and member of the state Board of Education, Powell had made a name for himself among Republican politicians and business leaders. Powell's biographer John Jeffries explains that while Powell was an accomplished and respected individual, he remained modest. Powell's "aversion to self-promotion," Jeffries writes, was partly driven by his respect for the contributions of others. "More fundamentally," Jeffries adds, "Powell's restrained in disagreement reflected his idea of himself as a team player and as a member in a good standing of a meritocratic ruling class. His penchant for compromise was never stronger than when confrontation threatened the solidarity of the elite" (221). Incidentally, Jeffries neglects to even mention Powell's infamous memo anywhere in the biography, but we can easily conclude that Powell represents the elite personality type: someone who believes in the inherent goodness of American institutions and who is willing to set aside his own interests in favor of the group interests of the elites. He was a team player whose pride was never a factor when it came to defending the collective status of his peers.

Powell took a strong stance against the radicals of the 1960s, and his Memo to the Chamber of Commerce outlined his recommended strategy for combatting the anti-capitalism of the Left. Many radicals of the late 1960s announced their intent to destroy the capitalist system. For example, Huey P. Newton, the Black Panthers' Minister of Defense, insisted, "We must destroy both racism and capitalism" ("An Interview" 269), and the Weather Underground took action, bombing several banks in 1970. Powell considered this state of affairs and decided to respond to the "revolutionaries who would destroy the entire system, both political and economic." Unlike Harvey, who reads the Powell Memo primarily as a declaration in defense of economic power, Powell is clear that both the economic *and* the political structures were threatened. Such a total threat to American society was only possible because the political and economic elites had failed to properly coordinate with each other for their mutual protection. In the 1960s, liberal Democrats desired to reform the free market system, and President Lyndon Johnson actually attempted to work with some New Left activists to achieve these reforms (Woods 711). Thus, when Powell writes, "Business has been the favorite whipping-boy of many politicians for many years," he is calling attention to the fact that the political directorate was increasingly allied with the enemies of the economic directorate. In this light, his call to action takes on a very specific meaning: "the time has come — indeed, it is long overdue — for the wisdom, ingenuity and resources of American business to be marshalled against those who would destroy it."

Though Powell was declaring war on the enemies of capital, he was not rash, illogical, or stupid, for he carefully distinguished between the true enemies of business

and its true – but confused – allies. Powell is sympathetic to the politicians who have taken seriously the public’s criticisms of capitalism, consumerism, and environmental degradation, for politicians are supposed to listen to their constituents; insofar as they have responded to the will of the people, no one can blame them. However, in order to break this pattern, Powell argues that business must proceed on two fronts: on the one hand, it must effect a reform of both the media and the university in order to “enlighten public thinking”; on the other hand, it must take “more direct political action.” The two strategies, Powell thought, would complement each other: “while awaiting the gradual change in public opinion to be effected through education and information,” he says, the economic directorate must wrestle political power away from those who are using that power to destroy capitalism.

Business must learn the lesson, long ago learned by labor and other self-interest groups. This is the lesson that political power is necessary; that such power must be assiduously cultivated; and that when necessary, it must be used aggressively and with determination — without embarrassment and without the reluctance which has been so characteristic of American business.

Because the economic directorate could not rely on the political directorate to spontaneously align itself with capital, the economic directorate began to tear asunder Amerika’s political institutions and their functions.<sup>15</sup>

Such political power could not be effectively captured if it were pursued by one corporation at a time; it was necessary for business leaders to set aside their individual

interests, even if only partly, in order to protect the group as a whole. On this point, Powell is insistent:

Strength lies in organization, in careful long-range planning and implementation, in consistency of action over an indefinite period of years, in the scale of financing available only through joint effort, and in the political power available only through united action and national organizations.

Powell suggested that the National Chamber of Commerce could be used as a center for organizing, for it could consolidate resources, systematize action, and protect individual businesses from criticism. One might doubt the practicality of Powell's plan, but within one decade, membership in the Chamber of Commerce quadrupled from 60,000 to a quarter million. And the Chamber was not the only business organization to organize at this time. The Business Roundtable, founded in 1972, represented corporations that collectively accounted for half of the Gross National Product, and it spent approximately \$900 million annually (Harvey 43-44). These organizations funded a number of influential think tanks, and they led the reforms of the media and the university that Powell recommended. Corporate power had thus learned from Powell the power of group loyalty, and it learned from its enemies the power of collective action.<sup>16</sup>

The fact that a social group organizes itself does not necessarily mean that its attempts to gain power and influence are successful; however, much to the chagrin of Mills's liberal critics, there is evidence that Powell's strategy was successful, at least in part, in consolidating political and legal power in the hands of the corporate directorate.



As early as 1977, Milton Friedman was celebrating the effects of the corporate reform of the media and the university, observing what he believed was “the awakening of the public at large to the true situation,” namely, that individual freedom can only be preserved by limiting government intervention in the everyday lives of citizens (xiv). Perhaps this “awakening” contributed to Ronald Reagan’s election, leading him to declare in 1984: “It’s morning again in America.”

With public opinion turned around, the politicians were once again receptive to the desires of capital, and political scientists have argued that the United States is less democratic and more oligarchic. Martin Gilens and Benjamin I. Page have studied the connection between desired policy outcomes and actual policy outcomes at the federal level between 1981 and 2002. They found that when the population is divided at the ninetieth income percentile – that is, divided between the top ten percent, whose income is over \$146,000, and the bottom ninety percent, whose income is below that amount – those in the top income tier have more causal influence over federal policy making. In fact, those citizens who constitute the bottom ninety percent have statistically insignificant influence – nearly zero. As Gilens and Page state, “Not only do ordinary citizens not have uniquely substantial power over policy decisions; they have little or no independent influence on policy at all” (572). It is true, they add, that sometimes elites and average citizens desire the same policies, and in these cases, the people may get what they want, but they did not cause it. “In the United States,” they state unequivocally,

the majority does not rule—at least not in the causal sense of actually determining policy outcomes. When a majority of citizens disagrees with economic elites or with organized interests, they generally lose.

Moreover, because of the strong status quo bias built into the U.S. political system, even when fairly large majorities of Americans favor policy change, they generally do not get it. (576)

And for those who might question the accuracy of their findings, Gilens and Page clarify that their data set could most accurately measure average citizen influence, and yet they found none. Furthermore, they believe that if the demarcating income level was changed from, say, the ninetieth percentile to the ninety-ninth percentile, isolating the one percent, that there would be an even larger disparity between the influence of the extremely wealthy and the rest of society.

Building on the analysis by Gilens and Page, Nicholas Stephanopoulos has corroborated their findings using a similar method. For his part, Stephanopoulos describes his analysis in terms of powerlessness, which he defines in this way: “A group is relatively powerless if its aggregate policy preferences are less likely to be enacted than those of similarly sized and classified groups” (3). Noting that several other studies have reported similar findings, namely, that economic elites have a disproportionate influence over federal policy (40-42), he argues that this is “a clear sign that powerlessness can be quantified—and that, if any group is powerless, it is the poor” (42). Running similar analyses for race, gender, and education, Stephanopoulos determined (unsurprisingly) that primarily rich white men constitute the elite. However,

his findings regarding education were surprising: on the one hand, there is little difference in influence between those with a high school diploma and those with college degrees; on the other hand, there is a negative correlation between the policy preferences of those with postgraduate degrees and the actual policy outcomes. These findings suggest that one's education level has less to do with political influence than the extent to which one shares their preferences with the elites.<sup>17</sup> They also suggest that the corporate directorate was able to successfully consolidate political power through the control of legislation and policy making.

The methods by which the corporate directorate usurped political power will be further discussed in Chapter IV, but it is important to return here to Powell, for there is an intimate connection between his biography and American history. Weeks after he distributed his memo to the Chamber of Commerce, Powell was nominated to the Supreme Court by Richard Nixon. Powell was originally reluctant; he thought he was "too closely linked with business" to have his nomination confirmed, and he turned down Nixon several times (Jeffries 4). When Nixon consulted Powell's friends for advice, they told him to appeal to Powell's sense of duty, a tactic that ultimately worked. Powell's acceptance of the nomination is significant, but it is revealing that he did so from a sense of duty. In his memo, Powell argued, "the judiciary may be the most important instrument for social, economic and political change." While he does not mention the appointment of justices, he may have felt that his duty was to join the Supreme Court and defend the elites from his position there. And in a way, he did. In 1978, Powell wrote the majority opinion for *First National Bank of Boston v. Bellotti*, in

which the Court struck down a Massachusetts law prohibiting corporate donations to ballot initiative campaigns. *Bellotti* was the first case to define corporate speech rights, and it was used a precedent in the 2010 case *Citizens United v. Federal Election Commission*, in which corporate “speech rights” were defended from legal restrictions. From his seat on the Supreme Court, then, Powell collaborated in the corporate directorate’s seizure of political power.

Thus, the corporate directorate successfully intervened in the political process and, though not completely, began the process of separating the powers to make and interpret law from the state institutions that formally house them. By capturing the political realm, the corporate directorate transformed into the corporate-judicial directorate, imposing its will through the law. While it might be tempting to believe that Powell’s inspiration to organize was an isolated effort on the part of the corporate directorate, Jane Mayer’s recent exposé of Charles and David Koch, commonly referred to as the Koch brothers, demonstrates the persistence of purposive organizational efforts on the part of the corporate directorate to maintain their monopoly on political power in neoliberal Amerika. While the corporate wing of the neoliberal power elite hold all political power, the members of the postmodern mass society have none.

#### *The Neoliberal Power Elite II: The Military-Judicial Directorate*

If the disparity between the political power of the power elite and the mass society is evident in the legislative realm, then it is also apparent in the executive realm, that is, the realm of law enforcement. While the Powell memo represents the beginning of programmatic neoliberalism in regard to the corporate legislators, then Los Angeles

Police Department Inspector Daryl Gates's creation of the first SWAT Team in 1965 represents the beginning of programmatic neoliberalism in the military-executive realm. While Mills separated the executive and the military directorates, granting the military more autonomy than may have been warranted (Domhoff "50 Years Later" 548), in the neoliberal era, we cannot maintain a separation between the military and executive directorates, for the executive itself has been subsumed into what Mills called the "military metaphysic." Just as the corporate directorate became the corporate-judicial directorate through its seizure of political power, the military and executive directorates have merged through the increased militarization of American society, transforming into the military-judicial directorate. And just as the corporate-judicial directorate monopolized legislative and judicial power at the expense of the average citizens, the military-judicial directorate has monopolized executive authority through the criminalization of dissent and the exclusion of the public from the modes of law enforcement.

While the Powell memo initiated the development of the corporate-judicial directorate after 1971, the military-judicial directorate had its beginnings in the 1960s with the first serious attempt to militarize the police, namely, the development of the first SWAT Team. In *Rise of the Warrior Cop: The Militarization of America's Police Forces*, Radley Balko explains that police departments nationwide have increasingly been subjected to the process of "indirect militarization." While "direct militarization" is defined as the use of the military in domestic policing needs, Balko defines "indirect militarization" as the process by which regular police departments are increasingly given

access to military grade weapons and training (35). This indirect militarization began in 1965 when, in response to disturbances like the Watts Riots and the Delano Grape Strike, the LADP's Daryl Gates designed a special team trained to respond to crises, the SWAT team – which stands for Special Weapons and Tactics but originally meant Special Weapons Attack Teams. Gates's SWAT team made its debut in December 1969 when they executed a planned raid of the Black Panther headquarters in Los Angeles. For Gates, a SWAT team was “a quasi-militaristic operation” designed to suppress urban riots and violent political protests (qtd. in Balko 62). Of course, the unrest of the 1960s was the immediate inspiration for the new police units, but when the unrest subsided in the 1970s, the SWAT teams were reconfigured as part of the emerging War on Drugs. In just four short decades, the use of SWAT raids increased exponentially, and in 2005, eighty percent of average sized cities had SWAT teams, and there were at least fifty thousand SWAT raids nationwide that year alone (Balko 308).

The development and the proliferation of SWAT teams and other militaristic tendencies of domestic police over the last several decades depended on two trends: a collapsing distinction between federal and local law enforcement and a collapsing distinction between the police and the military. As Balko explains, nearly every president since Nixon has incentivized the militarization of the police through grants, whether in money, training, or equipment. Because local police departments are increasingly brought into the federal executive fold, law enforcement strategies and efforts are increasingly made uniform nationwide. Gates arranged for military training and military equipment for his original SWAT team, and these trends continue today.

For example, at the 2014 uprisings in Ferguson, Missouri, police officials carried both military equipment and training with them. In the last fifteen years, American police officers have found in Israel a new a new site for military training. Tens of thousands of dollars in private capital are being spent to send American police to learn counterterrorism skills from Israeli's military division, including the national police, the Israel Defense Forces, and the border patrol (Winston). Balko notes that SWAT teams have been using military-grade flash-bang grenades for decades, but in Ferguson, standard officers were seen using them, among other military weapons, to disperse crowds (Nehring). Of course, police departments could not afford such resources without substantial financial support, and in 2014, the *New York Times* reported that two federal programs, the Urban Areas Security Initiative and the State Homeland Security Program still contribute billions of dollars to state and local police departments, enabling them to purchase riot gear, helicopters, armored vehicles, and other military gear (Parlapiano). These programs have contributed to collapsing the distinction between federal and local law enforcement efforts and domestic policing and national defense.

The militarization of the nation's local police forces has created a divide between the police and the people in more way than one. The militarization of the police has not only affected the work of the officers involved; it as also affected their attitudes about the work. On the one hand, vendors of gear and weapons market their products using military rhetoric because they know it will sell. As Balko summarizes,

There's now a dominant military culture within modern police agencies. Go to one of the many SWAT conferences and SWAT team competitions held

throughout the year and you'll find exhibit halls teaming with military weapons, gear, clothing, and imagery. The vendors at these events know their market. They use war imagery to ply their goods because that's what makes cops and police departments want to buy them. Many sell the same products to both the military and civilian police agencies. (xii)

On the other hand, officers have developed an antagonistic relationship with the public. One spokesperson for the Philadelphia Police Department stated, "Officers' safety comes first, and not infringing on people's rights comes second" (qtd. in Balko 333). The militaristic attitude and the us-versus-them mentality of police today are two sides of the same coin: because the police increasingly view the public as a threat and as an enemy, they desire more protective and effective equipment, and because they have internalized the military mentality, they view the public with suspicion (Balko 336).<sup>18</sup>

Not only do the police think of themselves as opposed to the people, they are also given special privileges and immunities in order to protect them from punishment. Noting the reluctance of the courts to hold police officers to a legally rigorous standard of behavior, Balko argues that "Police officers today are a protected class, one no politician wants to oppose. Law enforcement interests may occasionally come up short on budgetary issues, but legislatures rarely if ever pass new laws to hold police more accountable, to restrict their powers, or to make them more transparent." "Even if the officer *does* violate the citizen's rights," he continues, "the officer is protected by qualified immunity" (335). Here, the legal privileges of the police stand in direct opposition to the punitive effect of the law on the average citizen. The formalistic



disposition of most institutions connected to the justice system results in an unwavering commitment to executing the law. Poor citizens often get caught in cycles of fines and fees they cannot pay. Political protestors are often treated like national security threats. Petty, non-violent criminals are often brutalized or killed. While the federal government keeps a close watch on the number of police officer killed by citizens each year, it keeps no record of the number of citizens killed by police officers, even though the frequency of the latter is much higher (see “The Counted”; *Killed By Police*). “We have,” Balko concludes, “elevated police officers above the people they serve” (336). By integrating the local and national executive institutions of the nation, we have created a militarized society in which the military-judicial directorate stands in diametric opposition to the mass society of the Amerikan public.

### *Conclusion*

Mills’s power elite model of social analysis provides a non-Marxist means to illuminate the foundational separation of the power elite and the mass society in neoliberal Amerika. In the 1950s, Mills observed the consolidation of power in the higher circles of the economy, military, and government, arguing that a few privileged elites occupied decision-making positions in the economic, military, and political directorates. While some have doubted the existence of such a power elite, both in the 1956 and in 2016, there is evidence that the power elite has survived from Mills’s time to today; however, in response to the radical movements of the 1960s, the elites reorganized the power structures of Amerikan society, producing the neoliberal structure that governs our lives today. Whereas the power function of an institution used to

correspond with the realm of society in which it existed, in the neoliberal age, political power has begun to migrate to the corporate directorate and military power has engulfed the executive (or perhaps the reverse). This means that we are left not with three centers of power, as Mills observed, but with two: the corporate-juridical directorate and the military-juridical directorate. In neoliberal Amerika, the corporate-juridical directorate governs both the economy and the juridical order while the military-juridical directorate controls the police state apparatuses, all of which is increasingly separate from and in opposition to the average citizens of the postmodern mass society.

Having established the existence and form of the neoliberal power elite, it is now possible to turn our attention to a strand of Mills's theory that remained underdeveloped in *The Power Elite* but must nevertheless be understood: the question of sovereignty. In response to the liberals who insisted that Amerika was governed through the principle of popular sovereignty, the idea that the people are the ultimate source of authority, Mills argues that the public "is sovereign only in the most formal and rhetorical sense" (*PE* 324). Amerikan society, he contends, no longer consists of a set of free publics but is only a mass society, and "the masses, in their full development, are sovereign only in some plebiscitarian moment of adulation to an elite as authoritative celebrity" (*PE* 323). If the mass society of the 1950s was no longer sovereign, then the postmodern mass society of the twenty-first century does not wield sovereign power in the face of the neoliberal power elite. In fact, given the political, military, and economic power of the power elite, it makes more sense to think that the elite are sovereign. Thus, we need to develop an adequate theory of sovereignty for neoliberal Amerika, one that can describe

the structure of the power elite's sovereignty, and for this, we (re)turn to early modern political theory.

### CHAPTER III

## THIS AIN'T YOUR GRANDPAPPY'S SOVEREIGN: RETHINKING THE HISTORY OF SOVEREIGNTY FROM JEAN BODIN TO *THE FEDERALIST*

“[S]cholars, knowingly and unknowingly, have been seeking suitable ideas about [the] elite. They have not found them and they have not managed to create them. What they have found is an absence of mind and of morality in the public life of our times, and what they have managed to create is a mere elaboration of their own conservative mood.”

– C. Wright Mills, *The Power Elite* (326)

“We often go on discussing problems in terms of old ideas when the solution of the problem depends on getting rid of the old ideas, and putting in their place concepts more in accord with the present state of ideas and knowledge.”

– John Dewey, “The Historic Background of Corporate Legal Personality” (657)

In order to theorize the sovereignty of the neoliberal power elite, it is necessary to develop a new conception of sovereignty, for our existing conceptions are insufficiently descriptive of the dividing line of social ontology in neoliberal Amerika. The two dominant conceptions of sovereignty are the liberal conception and the radical conception. The liberal conception of sovereignty as the sovereignty of the people – that is, popular sovereignty – can be traced back to at least John Locke’s *Second Treatise*, in which he argues that the people retain the power to decide whether the government is expressing their will. John Rawls states the same principle in a slightly different way, insisting that popular sovereignty is not only expressed by the right to revolution, but more importantly by “an available institutional expression” of the will of the people (*LHPP* 86). The liberal conception of sovereignty, then, posits a direct link between the

will of the people and the operations of the government, and many liberals go beyond advancing this conception as a normative ideal and argue that it is also an accurate descriptive account (Connolly; Bell; Rawls). Unlike the liberal conception, the radical conception of sovereignty emphasizes the extra-legal positionality of the sovereign, usually conceived as a single individual, often the head of the executive branch of government. Carl Schmitt offers one famous formulation of this conception, stating his definition as such: “Sovereign is he who decides on the exception” (5). For Schmitt, whoever has the power to suspend the juridical order without thereby abolishing it becomes the sovereign when they announce a state of exception. In the early 1990s, leftist critical theorists turned to Schmitt, and in the decades since his definition has become the cornerstone of leftist theories of sovereignty. Giorgio Agamben, Jacques Derrida, and Judith Butler have all developed criticisms of sovereign power based on the formulation provided by Schmitt. Thus, when we discuss sovereignty today, we are often caught between those who insist Amerika is a popular and participatory democracy governed by the rule of law and those who denounce (or praise, for those radicals on the right) what seems to be the increasing tendency of the executive to usurp the sovereignty of the people and pursue their will outside the legal order.

Yet, if the neoliberal power elite is sovereign in contemporary Amerika, then neither the liberal nor the radical conceptions of sovereignty can adequately describe this sovereignty. On the one hand, if the power elite is sovereign, then the popular conception of sovereignty is false; on the other hand, if the power elite is sovereign, then defining sovereignty only in relation to the state of exception is *too narrow* of a

conception, for the President is only one member of the elite, and the military-executive directorate only one of two primary institutions of centralized elite power. If the liberal notion of popular sovereignty makes sovereign power too inclusive, then the radical notion of the state of exception makes sovereign power too exclusive. What we need, then, is a conception of sovereignty that accounts for the two most important modalities of sovereign power: legislative sovereignty and executive sovereignty. By tracing the development of the legislative and executive modes of sovereignty through the early modern period, we can reinterpret the so-called “separation of powers,” which is often thought to be the most important mechanism with which liberalism limits “absolute” sovereign power. Because we are mostly concerned here with Amerika, we must use this new understanding of the separation of powers to reinterpret the political principles that influenced the founding of the nation, which can be done by turning to *The Federalist*. Contrary to the dominant understanding, the Framers of the Constitution separated the powers of government but did not divide the powers of sovereignty, and even though sovereign power was bestowed on “the people” nominally, the Amerikan aristocracy maintained control over both legislative and executive powers.

#### *Legislative and Executive Sovereignty in Early Modern Political Theory*

It is often assumed that the early modern period is defined by the opposition between two dominant traditions of political theory: absolutism and liberalism. Absolutism is commonly believed to have granted unlimited and unchecked power to the individual sovereign monarch. Liberalism is commonly believed to have limited political power by dividing it and proscribing it with institutional checks, such as the balance of

powers and the rule of law. Both liberals and their critics often accept this distinction without question, the former celebrating their ideology for inhibiting tyranny and the latter condemning the former for grounding society upon weak foundations. In the following two sections, however, we will call into question the opposition between absolutism and liberalism, arguing that there is indeed far more continuity than most political theorists suppose. First, we will see that the two basic principles of so-called absolutist theories of sovereignty – legislative sovereignty and executive sovereignty – are passed down to liberal theorists without much substantial change. Second, we will see that the separation of powers, as it develops into the eighteenth century, is consistent with the unity principle of sovereignty, the idea that sovereignty cannot be divided. The distinction between absolutism and liberalism is not so much a sophisticated theoretical notion as it is a topos of liberal propaganda, one that paints liberalism as a symbol of progress and the defender of liberty.

The modern conception of legislative sovereignty, which has been called “the central principle of modern state theory” (Engster 47), is often traced back to Jean Bodin’s 1576 work *Six Books of the Commonwealth*. Schmitt has argued that Bodin primarily defined sovereignty by its “authority to suspend valid law” (8-9), but this interpretation is patently false. For Bodin, sovereignty is defined by the power to make law; in fact, he states this rather plainly: “The first attribute of the sovereign prince... is the power to make law binding on all his subjects” (43). Bodin modeled his philosophical conception of sovereignty on his theological conception of God: just as God creates the laws of nature, the sovereign of the commonwealth creates the civil

laws. It is true for Bodin that, just as God stands outside the laws of nature, the sovereign of the commonwealth stands outside the civil laws; however, neither God's nor the sovereign's extra-legal status can be conceived apart from their respective legislative powers. It is *because* God creates the laws of nature that God remains outside those laws, and it is *because* the sovereign announces the civil law that he remains outside that law. Unlike most medieval political theorists, who placed supreme authority in the existing legal tradition, Bodin placed supreme authority in the legislating sovereign. Thus, Bodin's "theory of sovereignty represented a conceptual breakthrough in the history of political thought that shifted the fundamental ground of legitimate order from the existing laws to the law-making prince" (Engster 48). While Bodin's conception of sovereign power was original when it first appeared, nearly every political theorist who followed him either explicitly or implicitly adopted the principle of legislative sovereignty (Tooley xxxviii).

In the social contract tradition, the principle of legislative sovereignty appears in the works of nearly every key figure, including seemingly diametrically opposed thinkers like Thomas Hobbes and John Locke. Like Bodin, Hobbes argues that "the sovereign is the sole legislator" and lists the power to make law among the various rights of the sovereign (*Leviathan* 114, 173-174). Moreover, just as Bodin's sovereign retains the right to suspend the law because it has the power to make the law, Hobbes's sovereign likewise retains its power to "abrogate a law...because a law is not abrogated but by another law that forbiddeth it to be put into execution" (*Leviathan* 174). It may be no surprise that two figures from the so-called "absolutist" tradition agree on something



like legislative sovereignty, but the importance of the principle of legislative sovereignty becomes even more apparent when it is acknowledged in Locke's writings. As he writes in the *Second Treatise*, "the first and fundamental positive law of all commonwealths is the establishing of the legislative power... This legislature is not only the supreme power of the commonwealth, but is sacred and unalterable in the hands in which the community have once placed it" (158). Not only is legislative sovereignty supreme in Locke's philosophy, "all other power is derived from and subordinate to it" (166). While it is true that Locke placed legislative sovereignty in the hands of an assembly rather than a monarch, this change must be contextualized. Bodin and Hobbes favored monarchy for its perceived stability, and thus insisted that legislative power must be invested in one person, but they recognized that legislative authority could be vested in an assembly, either aristocratic or democratic. Locke's change therefore denotes not a transformation of the principle of legislative sovereignty but a transformation of its institutionalization, a transformation with many ramifications, as we will see. Locke retained the theological connotations of legislative power that Bodin had imputed, but just as God would gradually fade from Western metaphysics in general (Gillespie), the divine attributes of legislative power would wither out of rhetorical existence over the eighteenth and nineteenth centuries.

Like legislative sovereignty, executive sovereignty can be traced back to at least Bodin, but executive sovereignty has a slightly more complex structure than its legislative counterpart, for it consists of two principles. On the one hand, executive sovereignty includes the principle of executive enforcement, or execution of the law; on

the other hand, it includes the principle of executive prerogative, or the power to suspend the law to preserve order. Of these two principles of executive sovereignty, executive enforcement is the least controversial, and it appears in most works of political theory. Bodin argues that the sovereign retains the right of executive enforcement but delegates it to the magistrate, who is responsible for enforcing the laws enacted by the sovereign. “After the sovereign,” he writes, “the magistrate is the chief personage in the commonwealth, for upon him the sovereign devolves his authority and his power of commanding obedience” (84). Hobbes makes a similar argument regarding the appointment of officials who are entrusted to enforce the law on behalf of the sovereign. For Locke, the power of the executive depends on its relationship to the legislative power. If the executive is a member of the legislature, one who, when the legislature is not in session, remains behind to enforce the laws made, then the executive is immune from deposition by the legislature; however, if the executive is distinct from the legislature, he may be “at pleasure changed and displaced” (167). While Bodin, Hobbes, and Locke construct the principle of executive enforcement in different ways, they each present that principle as necessary mechanism of law enforcement.

While executive enforcement seems to be a relatively banal principle of political theory, executive prerogative has caused much controversy in recent years. But in order to understand the nature of this controversy, it is necessary to understand the history of the concept. Political theorists of all stripes – right-wing, liberal, and leftist – have associated executive prerogative and the corresponding state of exception with so-called absolute state theory, implying that the absolute sovereigns of the early modern period,

who insisted upon their authority to exercise extra-legal power, have been replaced by a restrained executive. But a mere glance at the table of contents for Locke's *Second Treatise* would demonstrate that prerogative remains alive and well in the liberal tradition. In Chapter XIV, "Of Prerogative," Locke includes provisions for extra-legal executive action, but his mechanism of prerogative is slightly different than those advanced by the royalists and so-called absolutists, for unlike Bodin and Hobbes, for whom the power of the *sovereign* to act outside the law was an extension of legislative sovereignty, Locke's executive is granted prerogative because the world is contingent and unpredictable (Fatovic 49). For the earlier political theorists, executive prerogative was a theologically derived notion, but for Locke, it was purely practical. Whereas Bodin and Hobbes constructed their singular, unified sovereign on the model of a singular, unified God, Locke begins to stretch the theological metaphor by separating the executive and legislative powers. Locke's definition is worth quoting at length:

This power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it, is that which is called prerogative: for since in some governments the lawmaking power is not always in being, and is usually too numerous, and so too slow for the dispatch requisite to Execution; and because also it is impossible to foresee, and so by laws to provide for all accidents and necessities that may concern the public, or to make such laws as will do no harm, if they are executed with an inflexible rigour on all occasions, and upon all persons that may come in their way; therefore there is a latitude left to the

executive power to do many things of choice which the laws do not prescribe. (172)

For Locke, the executive's prerogative to act outside the law – and even against it – is not derived from his already extra-legal position as a legislator; rather, it is derived from the unpredictability of social and political life. The legislature cannot anticipate every political issue, and since it is not always in session, the executive, as the one perpetually active branch of the government, must be granted the power to respond to crises.

The principle of executive prerogative found in Locke's philosophy is not a unique construct. Daniel Engster has noted that Gabriel Naudé's 1639 *Considérations politiques sur les coups d'état*, one of the most sophisticated and representative works of the *raison d'état* tradition, offers the first developed example of the theory of executive prerogative (100). Locke owned a copy of Naudé's *Considérations*, and he incorporated many of its ideas into his *Second Treatise* (112). Both Naudé and Locke argue that even though the executive may act outside the law, he nevertheless remains subject to informal personal and natural restrictions. Engster interprets the personal restriction as form of rationalistic rule, while Clement Fatovic interprets it as a form of personal virtue, but both agree that the source of these restrictions is the natural law principle *salus populi suprema lex esto*: the good of the people is the highest law. While executive prerogative was originally formulated by Naudé and inherited by Locke, he would in turn pass it down to later political theorists. In *The Spirit of the Laws*, Montesquieu argues that prerogative is necessary for protecting the existing constitution (159, 209). In his essay "On the Common Saying: 'This May be True in Theory, but it does not Apply

in Practice,” Immanuel Kant insists that the head of state is both not subject to positive law and can determine which actions are necessary for the good of the people, guided only by the rational precept of an *a priori* original contract (75, 80). Even Rawls, in *A Theory of Justice*, suggests that liberalism will have to rely on executive prerogative, saying, “a coercive sovereign is presumably always necessary, even though in a well-ordered society sanctions are not severe and may never need to be imposed” (240). It is, therefore, not clear what Schmitt might mean when he says that “The exception was something incommensurable to John Locke’s doctrine of the constitutional state and the rationalist eighteenth century” (13-14). By the late-eighteenth century, executive prerogative had, alongside executive enforcement, become a standard principle of liberal political theory. Thus, John Locke, the father of liberalism, bequeathed both legislative sovereignty and executive sovereignty, including its two principles, to the eighteenth century.

#### *Social Ontology and the Separation of Powers*

Leo Strauss once declared, “A radical critique of liberalism is...possible only on the basis of an adequate understanding of Hobbes” (“Notes on Carl Schmitt” 122). While Strauss’s pronouncement may be intuitively correct, it would be more accurate to say that a radical critique of liberalism is only possible on the basis of an adequate understanding of Locke. An adequate understanding of Locke does, no doubt, require an adequate understanding of Hobbes, but it also requires us to reconsider two things: the separation of powers and the historical context of social ontology. Even if we readily grant what I have tried to demonstrate above, namely, that “The central principles of

Locke's political theory were drawn straight out of absolute state theory" (Engster 5), we still face the problem of the separation of powers, which are usually called upon to justify the absolutism-liberalism distinction. Even Engster, who argues that liberalism is an extension of absolutism and not its opposition, still accepts Locke's separation of powers as a unique liberal innovation (189-191). However, even if we acknowledge the separation of powers and an important liberal contribution to political theory, we must be cautious about overstating its function, and we must beware attributing to it false paternities, namely, John Locke. Regarding the first issue, Rawls, for example, has argued that, in a regime created through a constitutional convention and structured around both a separation of powers and judicial review, "there is *no* absolute sovereign in Hobbes's sense. Presumably Hobbes would not deny this," he adds, "since he regards the idea of *mixed* government with a *balance of powers* as violating his principle of good government." In Rawls's assessment, Hobbes believes that "the rights and powers of the Sovereign should lie in the *same* hands and be inseparable" (*LHPP* 86). Rawls's equivocation, however, is patently false, for once the distinction between a tripartite social ontology and a monist social ontology comes into play, we can reconsider the meaning of the "separation of powers" and recognize how this concept obfuscates sovereign power.<sup>19</sup>

To understand why we cannot equate the notions of "mixed government" and "separation of powers," we must first acknowledge that there was a transformation in the philosophical conception of social ontology during the seventeenth and eighteenth centuries. Michael Hardt and Antonio Negri have identified this difference between the

political ontology of the late sixteenth century and that of the late-eighteenth century. At the beginning of the early modern period, nearly every political theorist believed that society was constituted by distinct ontological groups, and in most cases, this takes the form of what Hardt and Negri call a “*tripartite* model” of social ontology (315). For Bodin, “In nearly every state in Europe citizens are divided into three orders of nobles, clergy, and people.” “Even Plato,” he adds, “divided [citizens] into the three orders of guardians, soldiers, and laborers. All this goes to show that there never was a commonwealth, real or imaginary, even if conceived in the most popular terms, where citizens were in truth equal in all rights and privileges. Some always have more, some less than the rest” (22). Decades later, and slightly differently, Hobbes blamed the English Civil War on those who believed that sovereign power should be “divided between the King, and the Lords, and the House of Commons” (116), suggesting that these three distinct ontological entities could not share sovereign power. Because the Lords and the Commons were separate bodies, Hobbes insisted that the right to be tried by a jury of one’s peers meant that one should be tried by members of one’s own class; because the king had no equal, he could not be tried (158). Though Hobbes introduces a certain form of equality in the state of nature that Bodin never considered and would have likely rejected, he retains the tripartite distinction between three ontologically separate groups.

It is not until Locke that, at least rhetorically, the tripartite model of social ontology is replaced with a monist social ontology embodied by “the people.” Unlike his predecessors, Locke avoids virtually all language of class distinctions that might divide

the unity of the people, and this synthesis was not lost on the eighteenth century, for as the decades rolled on, political theory came to increasingly embrace this monist social ontology. As Hardt and Negri write,

In modern political science...from Montesquieu to the Federalists, this synthesis was transformed into a model that regulated *not bodies but functions*. [Before the shift,] Social groups and classes were themselves considered embodying functions: the executive, the judiciary, and the representative. [After the shift,] These functions were abstracted from the collective social subjects or classes that enacted them and presented instead as pure juridical elements. The three functions were then organized in an equilibrium that had previously supported the interclass solution. It was an equilibrium of checks and balances, of weights and counterweights, that continually managed to reproduce the unity of the state and the coherence of its parts. (315)

The ontological implications here are clear, for as Negri has written elsewhere, “Insofar as the people were considered an undifferentiated mass, the ‘classist’ assumption of classical politics and of the Polybian tradition, which understood as univocal the relation between class stratification and forms of government, was overcome” (*Insurgencies* 141).

While the ontological implications are clear, we must pay close attention to the governmental implications, for as Hardt and Negri conclude, when social ontology becomes singular instead of multiple, we must understand the separate branches



differently. When Hobbes adamantly opposed a “mixed government,” it was because he understood a “mixed government” as the division of sovereignty across ontologically separate groups. But one hundred and fifty years later, when United States was reconstructing the federal government into its current form, they did not think of the executive, legislature, and judicial branches as representing ontologically distinct entities; rather, they understood them all to represent one entity – the people. In Hardt and Negri’s terms, the seventeenth-century *tripartite* model of the state mutated into the nineteenth-century “*trifunctional* model” of the state (315). No longer could or should any political theory that appealed to “the people” refer to a “mixed government,” for there were no longer distinct social groups. Instead, each branch of the liberal state served a single *function* in the name of the whole. Rawls’s unsophisticated equivocation of “mixed government” and “separation of powers,” therefore, reveals not only a lack of understanding regarding the shift in social ontology during the early modern period; it is also indicative of a fundamental misreading of Hobbes. Hobbes identifies democracy as one possible form of government, and in such a state, the people would be sovereign and the functions of the state would, presumably, reflect their will. Thus, a Hobbesian conception of popular sovereignty is possible, the logical extension of which could be a trifunctional government: an executive, a legislature, and a judiciary that, collectively, carry out the will of the people.

Identifying the transformation of social ontology during the early modern period calls into question the separation of powers, but rendering a new vision of Locke’s so-called separation of powers against this ontological background reveals the fundamental

unity of powers that remains implicit in his thought. Locke's distinction between the legislative and executive is merely a byproduct of his conception of the sovereign legislative assembly. In Chapter XI of his *Second Treatise*, Locke argues that a sovereign assembly, meeting only occasionally, mitigates the threat of tyranny against the people. According to Locke, legislative assemblies that remain in session perpetually pose the same threat as an unchecked monarch: "in governments where the legislative is in one lasting assembly always in being, or in one man, as in absolute monarchies, there is danger still that they will think themselves to have a distinct interest from the rest of the community; and so will be apt to increase their own riches and power, by taking what they think fit from the people" (162). Thus, he favors a legislative assembly that meets only periodically over an assembly that is always in session. As he writes, tyranny "is not much to be feared in governments where the legislative consists, wholly or in part, in assemblies which are variable, whose members upon the dissolution of the assembly, are subjects under the common laws of their country, equally with the rest" (162). So long as the representatives in the assembly hold temporary office, and as long as the assembly itself is not perpetually in session, then those who participate in legislative sovereignty will be subject to the laws they create. Here, Locke has devised a clever mechanism for subjecting the sovereign to law: so long as the (legislative) sovereign only appears in the occasional assembling of elected representatives, it will not develop distinct interests from the community for which it legislates.

Insofar as Locke has solved the problem of subjecting the sovereign to the law, he has created a new problem, namely, the problem of law enforcement. Having

constructed a temporary legislative assembly in order to avoid the development of a legislative power distinct from the community, Locke must provide for the consistent execution and enforcement of the law. He therefore separates the principle of executive enforcement from the legislative mode of sovereignty, vesting it in a different branch. Because “it is necessary [that] there should be a power always in being, which should see to the execution of the laws that are made, and remain in force...the legislative and executive power come often to be separated” (164). Locke’s executive branch is not created as a means to separate two modes of sovereign power, to provide “balance” in or a “check” on the government; it is the result of his institutionalization of legislative sovereignty. Nowhere does Locke suggest that a separation of powers is in itself a good thing; in fact, his insistence on uniting the executive and the federative powers – the power to enforce law and the power to conduct international relations – suggests that his separation of legislative and executive powers was practical, not principled.

There is still, however, a sense in which the powers are not separate. First, Locke conceives of at least two types of executive: one who is a member of the legislative and one who is subordinated to it. Here, Locke’s “king-in-parliament” conception of the executive is most interesting because it points toward a slight-of-hand in the separation of powers renderings of the *Second Treatise*. When the executive is a member of parliament, of the legislative, they too are part of the supreme power of the commonwealth; the “king-in-parliament” notion refers to the joint legal entity of the executive and the legislative. Second, in *The Spirit of the Laws*, Montesquieu limits the executive’s power to veto only, but he still explains it as a participation in the legislative

process (161). Unlike Locke, who relies on the dissipation of the legislative assembly to curb tyranny, Montesquieu argues that the separation of powers is the mechanism by which oppression can be avoided. As he states, “power must check power by the arrangement of things,” and a constitution can achieve such checks (155-156).

Ultimately, though later thinkers would take up Montesquieu’s separation of powers, we must remember that though these legislative and executive powers are vested in different branches of the governmental institution, they nevertheless cannot exist without each other. Bodin states this principle very clearly: “The magistrate is the life of the law because he accomplishes [its ends]. The commands and prohibitions of the law would be useless were it not for the penalties for contravention, and the magistrate who gives them effect” (90). Though the legislative and executive powers may be assigned to different *individuals*, their various interactions nevertheless constitute a necessary unity. It is not a matter of separating them, but of defining how they will relate.<sup>20</sup>

#### *The Legacy of Early Modern Political Theory in The Federalist*

In the early months of 1787, political leaders in what was about to officially become the United States looked on as piracy, internal rebellion, government corruption, debtor defaults, and general disorder swept the newly formed nation. The Articles of Confederation, the original constitution to the United States, was failing. Its weak Congress could barely regulate interstate and international affairs, and it could do nothing to enforce the laws it made. Each state considered itself sovereign, and all refused to relinquish their sovereignty to a potentially tyrannical centralized government. When the Congress met to revise the Articles, they were forced to rethink their entire

theory and strategy of government, and they did so from their historical position: standing at the end of the early modern developments in political theory. They posited a monist social ontology. They considered the structures of legislative and executive sovereignty. They considered the relations between the potential branches of the government. Very much a product of their time, the Founding Fathers constructed a central government with separate legislative and executive functions and grounded it in “popular sovereignty.” Or so the story goes. Rather, the trifunctional government created by the Framers of the Constitution represented a synthesis of legislative and executive sovereignty that represented only an elite class of property-holding white men. Even if American society was in fact ontologically monist, the legislative and executive powers of government represented only the few, creating a de facto power divide in America. The Framers of the Constitution introduced the notion of ontological monism in order to justify the structure of the federal government, but then they betrayed the principles of popular sovereignty and established an informal aristocracy.<sup>21</sup>

The Framers were faced with several dilemmas during the Constitutional Convention, and each one folded into the next; thus, the answer to one dilemma necessarily affected the others. The first dilemma faced by the Framers was the problem of national law enforcement. Because the Articles of Confederation provided only for a Congressional legislative body, the national government had no means for enforcing the laws it made. Echoing Bodin’s point that legislative sovereignty and executive sovereignty necessitate each other, Alexander Hamilton laments in *Federalist 15* that the Articles of Confederation provide no means of enforcement: “Government implies the

power to make laws. It is essential to the idea of law, that it be attended with a sanction; or, in other words, a penalty or punishment for disobedience. If there be no penalty annexed to disobedience, the resolutions or commands which pretend to be laws will in fact amount to nothing more than advice or recommendation” (69). Given that the states had not too long before fought a revolution against what they took to be excessive executive power, any proposal for the creation for an executive would be controversial; indeed, extensive executive power was one of the Anti-Federalists’ main concerns. The earliest proposals defined the executive merely as the agent who would carry out the will of the legislature, but this was vague and seemed to undermine the desired separation of powers. A stronger executive, therefore, would be needed.

Conceptualizing a strong executive was difficult at first because it was generally accepted that the national government represented the states, and this introduced the dilemma of social ontology. The Framers struggled to articulate a coherent understanding of the executive’s role in representing the state governments, but once James Wilson proposed that state’s sovereignty be replaced with popular sovereignty, understanding the role of the executive became much easier (Fatovic 180). Hamilton understood the direct connection between the theory of popular sovereignty and the justification for the executive; in *Federalist 15*, in the passage immediately prior to his lamentation regarding unenforceable laws, Hamilton insists that citizens, and not states, are “the only proper objects of government” (69). The ultimate outcome of all this would be a monist ontology and a trifunctional government. As Clement Fatovic observes,

If the executive branch ultimately derives its authority from the people by way of the Constitution, then it becomes easier to reconcile the idea of a vigorous executive with the principles of republican government. That is why the mode of presidential election... was such a decisive step toward the notion of popular sovereignty and away from the idea that the legislature was the sole repository of sovereignty or the exclusive representative of the people (much less the states). If the people were the ultimate fount of sovereignty, then any and all powers exercised by the different branches of government sprang from the same – hopefully unadulterated – source. (181)

Here we have a web of conceptual dilemmas both weaving themselves together and unraveling the theoretical impasse. Legislative sovereignty was found inert without executive sovereignty. Executive sovereignty made no sense without a monist social ontology. Once a monist social ontology was introduced, neither the legislative nor the executive could claim exclusive representation of the people. Thus, the Founders constructed a tripartite (including the judiciary) model of government in order to represent “the people.”

The ultimate solution to the development of the executive only led to further theoretical dilemmas, for the Framers also understood the new government would have to respond to emergency situations. In 1786, Shay’s Rebellion, a series of uprisings in protest of the harsh economic conditions being imposed by merchants and bankers on the farmers, alarmed the Framers and inspired their appeals to rewrite the constitution.

Given the utter failure of the Congress under the Articles to respond to the rebellion, it was clear to the Framers that any new government would have to be prepared and able to react to such emergencies. In *Federalist 23*, Hamilton explains that the new government must be enabled to raise armies so that it might effectively address concerns of social stability and order. Such an “energetic” government would be able to provide common defense and ensure internal order, but Hamilton argued that the powers required for defense should be unlimited because “it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent & variety of the means which may be necessary to satisfy them” (73). In the context of eighteenth-century America, one might think that the Framers would endow the legislature with this power “without limitation,” but they had become skeptical of legislatures. They felt that political power had become too diffuse and that legislative institutions had been over run by vicious mobs (Fatovic 172-175). In fact, Madison dedicated *Federalist 48* to explaining why *legislatures* – not executives – were the most dangerous branch of republican government. His reason: the passions of the multitude use the legislature to magnify the power of its inconstant and arbitrary will (126).

Because the Framers could not rely on the legislature to handle the unlimited responsibility of emergency measures, they turned to the executive branch. In *Federalist 70*, Hamilton demonstrates “the necessity of an exegetic executive,” represented by one man and subject to no council (173). During the drafting of the Constitution, Fatovic explains, the Framers presented the new executive in ambiguous and undefined terms, often defining its powers negatively rather than positively. However, some contributors,



especially Hamilton, were clearly in favor of prerogative powers for the executive. As Fatovic writes, “The thrust of Hamilton’s entire argument concerning executive power and emergencies was that *extralegal* exercises of power were not necessarily *extra-constitutional*” (189). Locke had introduced the principle of emergency response in order to justify executive prerogative, and here, Hamilton resorts to the same justification in the absence of the more strictly theological language used by Bodin and Hobbes. Thus, the development of a government grounded in early modern theory comes full circle with the introduction of executive prerogative as the supplement to executive enforcement.

While the Framers may have resolved most of the overlapping dilemmas they faced, in the process of constructing the government, they produced a very important contradiction in their conception of civic virtue. They abandoned their belief in the republican principles of cultivating virtuous citizens and encouraging their participation in political affairs, opting instead to locate and cultivate an exclusive elite class of worthy of political office (Diamond 673). “Rather than look for [civic] virtue in the citizenry as a whole,” Fatovic writes, “they restricted their search to those few who would occupy the highest offices of government” (209). Madison’s *Federalist 10* is often read for its defense of republican over democratic governments, but his defense of republicanism rests specifically on its ability to select honorable individuals for office. Because a republican government tends to promote “men who possess the most attractive merit, and the most diffuse and established characters,” the resulting body of political leaders who will “refine and enlarge the public views,” understanding the

interests of the people better than the people themselves (56-57). The elite virtuosos of government are able to see the common good because they would be endowed with “a uniquely far-ranging” historical and geographical perspective (Fatovic 213). Unlike the members of Mills’s mass society, who are inhibited from grasping the social structure both nationally and locally, Madison and Hamilton’s ruling elite would not only view but also administer and direct the American social structure from their political offices.

The Framers, however, were influenced by more than moral psychology and philosophical anthropology, and it is impossible to fully understand their political concerns without appreciating the economic context in which they were writing. In *An Economic Interpretation of the Constitution of the United States*, Charles A. Beard famous argues that the Framers were predisposed by their various economic interests to certain political principles, and inevitably, these interests influenced the shape of the Constitution. Both critics and supporters alike have misinterpreted Beard’s analysis, either imposing a Marxist framework onto the text or overemphasizing the distinction between the propertied and the propertyless (Beard x; see also R. Brown; McDonald; Parenti).<sup>22</sup> Beard’s account of the economic origins of the Constitution more closely resembles Mills’s power elite theory, for it identifies *both* the divide between the haves and the have-nots *and* the internal conflicts among the propertied. Madison himself acknowledged the primacy of economic conflict in *Federalist 10*, arguing, “the most common and durable source of factions, has been the *various* and *unequal* distribution of property” (54; emphasis added). He is clear that the distribution of economic resources in both degree and kind can cause political conflict. According to Beard, while slaves,

non-whites, women, and poor white men were generally excluded from the drafting and the ratification of the Constitution through various exclusionary impediments to voting and the like, the various propertied economic interests organized themselves into two camps. On the one hand, there were those with personalty (mobile property) who supported the Constitution; on the other hand, there were those with realty (landed property) who opposed to the Constitution. Because Beard's account reflects the structure of Mills's power elite theory, it is possible to say that the Constitution was subjected to debate *and* that this debate was limited to the economic elites, a faction of which eventually won out.

But the Framers did more than vote from their economic interests – they also sought to protect those interests with the institutional mechanisms of government. Again, in *Federalist 10*, Madison provides a plan for precluding the development of class-consciousness among the propertyless and powerless. For Madison, property ownership – in both degree and kind – are indicative of one's natural abilities, and these abilities, not the just the property they accumulate, should be subjected to the protections of the state. Here is how he formulates this point:

The diversity in the faculties of men from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. *The protection of these faculties is the first object of Government.* From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the

sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties. (54; emphasis added)

There are two lessons to learn from Madison's statement. The first lesson is that the primary function of government is the protection not just of property but of the abilities of those who accumulate property. Madison's sentiment perfectly reflects the general tendency among the Framers to support property qualifications for voting and for office (Beard 152-188), and it inspires the need of the haves to protect themselves against the have-nots.

The second lesson is that, for Madison, economic conflict is built into human nature, but because such conflict has to be regulated, Madison is compelled to develop a strategy for ensuring that no resulting faction can impose its will on society. In terms of both property and virtue, the poor ignorant masses would, of course, be the most likely threat to the government created by the Framers. For Madison, the answer to the problem of the poor majority was cultivated pluralism. In *Federalist 10*, "the essay that sounded the death knell of republicanism in America" (Fatovic 24), Madison even proposes a method for impeding "the superior force of an interested and over-bearing majority" (53), the type that might be constituted by an unreasoning, selfish public. In order to reign in a majority seeking to impose its interests "averse to the rights of other citizens" (53) and "secure the public good, and private rights, against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government" (55), he argues that such a faction can be limited in one of two ways. First, "the existence of the same passion or interest in a majority at the same time, must be

prevented”; second, “the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression” (56). Madison’s second strategy is responsive, while his first strategy is preemptive. If it is possible, he says, a majority should be *prevented from forming*, and if that fails, a majority should be *prevented from acting*. In either case, the aim would be to divide up the people into as many distinct interests as possible, or a Fatovic puts it, for Madison, “the best way to deal with factions was to allow them to multiply” (225). Thus, political theorists committed to the accuracy of descriptive pluralism, even if they are right, risk praising a pluralistic context produced by the elite in order to impede the collective action of the people. The project of the Framers, then, as illustrated in the *Federalist*, was to “preserve the spirit and the form of popular government” without preserving its *substance* (Parenti).

### *Conclusion*

Having traced the trajectory of legislative and executive sovereignty through the early modern period from Bodin to the Founding Fathers, we can conclude that both the liberal and radical conceptions of sovereignty are insufficient for understanding the sovereignty of the neoliberal power elite in Amerika. Unlike the radical conception of sovereignty, which defines sovereign power only in terms of executive prerogative, and unlike the liberal conception of sovereignty, which defines sovereign power as a direct expression of popular will, a power elite theory of sovereignty identifies the two dominant modes of sovereign power – legislative and executive (which itself consists of two principles, enforcement and prerogative) – and conceives of their unity in functional

rather than individualistic terms. Though the modes and principles of sovereignty were originally based on explicit theological notions in Bodin and Hobbes, the “separation” of powers promoted by later liberal thinkers did not so much limit those modes and principles as change their structures (Engster 10, 195). Because the modes and principles of sovereignty stood in a new relation to society after the tripartite social ontology transformed into a monist social ontology, the unity of sovereign power was preserved, even if it would have been incomprehensible to so-called absolutists. And as the preceding discussion of *The Federalist* demonstrates, neither the liberal nor the radical notions of sovereignty can account for the dynamics of sovereign power in the American Constitution: both too willingly accept it at face value, and the latter looks for so-called abuses of power in the wrong places.

Despite the incessant rhetoric about democracy in Amerika, spouted by all the nations’ most patriotic skins, the United States was not at its founding a democratic society. The elitism of the powerful and the exclusion of the propertyless and others resulted in a society that more closely resembles an *aristocracy* than a democracy. Nearly every early modern philosopher regarded aristocracy as a legitimate social structure, and the concept of aristocracy was formulated in a revealing way. Montesquieu explains the structure of an aristocratic government quite plainly: “In aristocracy, sovereign power is in the hands of a certain number of persons. They make the laws and see to their execution, and the rest of the people mean at best no more to these persons than the subjects in a monarchy mean to a monarch” (15). Here we have both legislative sovereignty and executive sovereignty in the hands of an elite group who

rule over the rest of society, the dispossessed populace. For Kant, this social arrangement resulted in no contradiction at all, for each non-citizen, that is, each person ineligible to participate in law-making, was a “co-beneficiary” of the social order, governed paternalistically by their citizen caretakers (77). In the early American republic, the Framers constructed a social and political order designed to exclude the vicious members of society from power, and it just so happened that the excluded were already the most destitute. It should come as no surprise, then, that Mills observed an aristocratic power structure in the 1950s, and that the neoliberal revolution resulted in a reaffirmation of that aristocracy’s status as the power elite. Thus, champions of popular sovereignty theories of society are correct that access to sovereign power expanded in the early modern period, stretching beyond the monarch to encompass a greater number of individuals; however, it has not expanded as much as they think, for “popular” implies the people in general. Amerika is not a nation founded upon popular sovereignty – it is a nation founded upon aristocratic sovereignty, then and now.

## CHAPTER IV

### TRIUMPH OF THE SWILL: SEPARATION THEORY, SOVEREIGN POWER, AND

#### THE NEOLIBERAL POWER ELITE

“When we descend from the level of grand theory to historical realities, we immediately realize the irrelevance of monolithic Concepts.”

– C. Wright Mills, *The Sociological Imagination* (44)

“American society, if I may put it this way, is like a painting that is democratic on the surface but from time to time allows the old aristocratic colors to peep through.”

– Alexis de Tocqueville, *Democracy in America* (51)

Having traced the development of aristocratic sovereignty through the early modern period and into the foundations of Amerika, it would be easy to infer that the neoliberal power elite simply is a sovereign aristocracy, and to a point this would be correct. However, critical theorists have begun to question the relationship between sovereignty and the state. On one side, some theorists have argued that state sovereignty is eroding, but they disagree about the details and the hopes of the process. For example, some have taken an anti-globalization approach to the decline of state sovereignty, insisting that the increasingly globalized market, run by corporations, is destroying localities and undermining citizenship globally (Barnet and Cavanaugh). Others have celebrated this transformation, arguing that, as a result of the Information Revolution, “sovereign individuals” will reclaim their freedom from nation-states, which will become subject to the market forces that allow individuals to freely contract with states for protection (Davidson and Rees-Mogg). On the other side, scholars insist that state



sovereignty is not eroding but changing. Many scholars, John Agnew writes, “talk about the ‘erosion’ and ‘relinquishing’ of sovereignty in the face of globalization, when sovereignty is actually only being redefined in terms of a balance between different agencies and their geographical scope” (90-91). Given the militarization of the American executive during the War on Terror, some may conclude that “in many respects the contemporary state system is becoming more firmly entrenched rather than declining” (Spruyt 192). There simply is no consensus among scholars regarding the status of nation-state sovereignty.

There is, however, a way out of this impasse, and in order to pursue it, we must reject the erosion-transformation dichotomy in favor of a more theoretically sophisticated approach. What we might call the *separationist theory* of sovereignty argues that sovereignty is neither deteriorating nor remaining solely attached to the state – rather, it is being *transferred* to other entities. On this view, the decline of the nation-state does not entail the decline of sovereignty; rather, the decline of the nation-state is simply a symptom of the movement of sovereignty to other sites of institutional organization, namely, corporations. While the separationist thesis grants us some important insights, the existing versions of it have failed to identify the ways in which sovereignty is being transferred because they have assumed that sovereignty is a singular monad of socio-political power. But as we have seen, legislative sovereignty and executive sovereignty can exist apart and nevertheless be unified. What we are seeing today is not the simple transference of sovereignty from the nation-state to transnational capital, but the transference of *legislative sovereignty* from the nation-state to

transnational capital. While capital increasingly consolidates its power to legislate, the state retains its executive function; as the American government loses its legislative authority, it transforms into a police state designed to enforce the legislative will of capital. The distribution of executive and legislative sovereignty to the military-judicial directorate and the corporate-juridical directorate respectively does not entail the fracturing of sovereignty, for its unity is guaranteed through the mechanisms that unite the power elite.

*Separation Anxiety: On the Bifurcation of Sovereignty and the State*

The separation theory of sovereignty argues that sovereignty is migrating from the nation-state to other institutions, particularly corporations, but if this theory is to serve as the starting point for understanding the current transformations of neoliberal sovereignty, then it is necessary, first, to start with the best iteration of the theory and, second, amend it so that the different modalities and principles of sovereignty are accounted for.

Michael Hardt and Antonio Negri's *Empire* offers an account of separation theory of sovereignty, recording the transition from modern imperialism, in which individual nation-states competed for control over territory beyond their primary borders, to postmodern Empire, in which sovereignty gradually supersedes its nation-state form through its transfer to international organizations, such as the United Nations, and overcomes territorial and temporal restrictions, portending the end of history. For Hardt and Negri, "sovereignty has taken a new form, composed of a series of national and supranational organisms united under a single logic of rule. This new global form of

sovereignty is what [they] call Empire” (xii). Taking a cue from the anti-globalization approach, they note the inability of nation-states to control capital, but rather than erode sovereignty, capital takes it up. “Today,” they state, “large transnational corporations have effectively surpassed the jurisdiction and authority of nation-states...transnational corporations and global networks of production and circulation have undermined the powers of nation-states,” while “state functions and constitutional elements have effectively been displaced to other levels and domains” (306-307). Drawing on classical political theory in order to construct a tripartite model of global social ontology, Hardt and Negri identify the various power structures that correspond to the global monarchy, aristocracy, and democracy. This “supranational sovereignty,” what they call The Pyramid of Global Constitution, has three distinct tiers: first, the monarchy, a power represented by the United States and other nation-states that dictate global policy; second, the aristocracy, represented by the transnational capitalist corporations that organize the global economy; and third, the democracy, represented by the “juridical” institutions that symbolize multitude in Empire, namely, the UN General Assembly, national governments, the media, religious groups, and certain non-governmental organizations (NGOs) (309-314).

There are several problems with Hardt and Negri’s approach, but two are principally important here. First, their separation theory provides no consistent principle of transfer. On the one hand, the globalization of the capitalist market is seen as responsible for the resulting transfer of sovereign functions “to other levels and domains”; on the other hand, their tripartite model of global social ontology offers no

central repository for that sovereign power. For example, if the monarch (the U.S.) is sovereign, then transnational capital does not have the power they presume it to have and the multitude have no “juridical” authority. After all, their global ontology is tripartite, and sovereignty cannot be divided among ontologically distinct entities. Second, Hardt and Negri hold out the hope that the new global community will usher in a new era of human civilization, uniting citizens across borders and inaugurating the first pangs of Communism. But this view forces some questionable interpretations of global events, such as Negri’s position that the War in Iraq was a progressive war for democracy and not an imperial endeavor (Boron 20-21).

In addition to Hardt and Negri, Wendy Brown offers a version of the separation theory of sovereignty in *Walled States, Waning Sovereignty*. Brown rejects both the argument that we are entering a post-sovereignty era and the argument that the nascent desire to build walls is evidence that nation-states are reasserting their strength. States are indeed losing their sovereign status, but the walls symbolize the state’s irreversible displacement from sovereignty, not its regeneration. “The new walls iterate,” she concludes, “a vanishing political imaginary in a global interregnum, a time after the era of state sovereignty, but before the articulation or instantiation of an alternate global order” (39). Thus, for Brown, we are in a time of transition, a time after the old global order has broken down but before a new global order has set in. The defining characteristic of this transitory period is the movement of sovereignty to two non-state entities: capital and fundamentalist religion. In the early modern period, Brown explains, the modern state developed as a means to check both unruly economic practices and

religious conflict, but today the state is losing control of its sovereignty as economic and religious actors attempt to reclaim their independence. As she writes, “As nation-state sovereignty wanes, states and sovereignty do not simply decline in power or significance, but instead come apart from one another. States persist as non-sovereign actors,” while the “key characteristics of sovereignty are migrating from the nation-state to the unrelieved domination of capital and God-sanctioned political violence” (23). Sovereignty is, in Brown’s view, departing from the state in two directions: on the one hand, it is pursuing the local path of grassroots religious extremism; on the other hand, it is ascending to the global level of transnational capital.

Brown’s version of separation theory is useful and robust, but it requires several amendments before it can achieve its fullest explanatory power. Though no global political order is ever a single, stable organization of principles and power, we do seem to be experiencing the breakdown of the old order without yet finding ourselves within an identifiably new one; Brown’s observation that we are currently in a transition period between regimes of sovereignty seems, therefore, quite apt. And the notion that sovereignty is migrating toward the institutions of transnational capital is compelling; however, for our purposes here, we will bracket her argument regarding sovereignty and religious fundamentalism. Despite these strengths, introducing the distinction between legislative and executive sovereignty can enhance Brown’s separation theory, for it enables us to track the location of the law-making and law-enforcing powers of sovereignty independently of each other.

Most immediately, introducing the distinction between legislative and executive sovereignty into her theory helps resolve a puzzling tension in her argument. Brown argues both that sovereignty is drifting from the state to the corporation and that the state is becoming increasingly militarized, which is represented by the recent proliferation of state-centered wall-building projects. On Brown's view, the walls are mere expressions of the desire of an increasingly impotent state to regain its former supremacy. Yet, if we interpret the walls as an expression of executive sovereignty and the policing function that it serves, then the walls are no longer vestiges of a dying past but a transformation in the deployment of executive sovereignty. Through executive enforcement, the state pursues its policing agenda both at the border and on the street. Walls are but one example of the current police state. But if the state has retained executive sovereignty, then it is the legislative modality of sovereignty that is migrating to transnational capital. Corporate interests, wealthy individuals, and financial institutions exert excessive influence over the law-making process in Amerika, and they do so in multiple ways. On the one hand, campaign donations and advertisements make possible the careers of virtually all politicians at the national level, and a combination of lobbying efforts and think tank propaganda directly influence the production of legislation; sometimes, corporate representatives write the laws themselves. On the other hand, capital has been able to circumvent the sanctioned legislative institutions – that is, local and national congresses – and impose policy through economic coercion. Though Brown's separation theory points us in the right direction, we must analyze the legislative sovereignty of the

corporate-judicial directorate and the executive sovereignty of the military-judicial directorate in order to understand the structures of sovereignty in neoliberal Amerika.

*Legislative Sovereignty and the Neoliberal Corporate-Judicial Directorate*

Given the anti-state rhetoric of so-called free market supporters, it would be easy to conclude that capital is allergic to political power, but this conclusion fails to distinguish state power from sovereign power, and it fails to account for the historical development of political economy. During the eighteenth century, political economy developed alongside state theory, and many philosophers assumed that the economy was an effective means for restricting the state. As Albert O. Hirschman explains, Montesquieu, Sir James Steuart, and John Millar represent a tradition of political economy that sought to improve the political order through the promotion of commerce. Because the economy was thought to be a realm independent of state control, these thinkers believed that commerce would reduce what Steuart called “the folly of despotism” (qtd. in Hirschman 85). For these political economists, through the development of mobile property and the creation of bills of exchange, commerce limited the tendency of the state to unduly intervene in issues of property. Mobile property, they argued, could not be controlled as easily as landed property, for it could be moved from location to location and even out of the country. This principle still exists today, most obviously in the scandals involving “off-shore tax havens,” and in our world of so-called digital finance capitalism, the power to electronically and instantaneously transfer capital internationally further reduces the power of the state to regulate or appropriate mobile (now immaterial) property.

Montesquieu famously made the case for the ability of commerce to protect freedom in his *The Spirit of the Laws*. Advancing a notion of *le doux commerce*, roughly translated as *the gentile exchange*, Montesquieu argued that economic activity civilized not only citizens but also rulers. On one side, citizens learned to tame their passions and participate in the rational pursuit of their interests; on the other side, rulers learned not to impose too much on society, to refrain from immoderate actions. This last point is so important it is worth turning to Montesquieu's text itself. Since the advent of capitalism, he writes,

princes have had to govern themselves more wisely than they themselves would have thought, for it turned out that great acts of authority were so clumsy that experience itself has made known that only goodness of government brings prosperity... There must be more moderation in councils. What were formerly called *coups d'état* would at present, apart from their horror, be only imprudences. And happily, men are in a situation such that though their passions inspire in them the thought of being wicked, they nevertheless have an interest in not being so. (389-390)

This passage is rich with meaning, but it is possible to extract a few important insights. Notably, whereas Locke sought to limit sovereign power by transferring legislative authority to a frequently dispersed assembly, Montesquieu introduces the principles of political economy. In a direct reference to Gabriel Naudé, he insists that sovereign power – whether vested in a monarch or an assembly, whether the legislature or the executive –



would be compelled to refrain from too much governing, for it is not only politically horrible but also economically impractical. Foucault captures Montesquieu's argument quite succinctly in *The Birth of Biopolitics*: "You cannot because you do not know, and you do not know because you cannot know" (282-283).

If Montesquieu limits his argument to the restriction of the sovereign, calling for the moderation of councils, Millar goes one step further and insists that through collective action, an economic class could control the councils of government. As Hirschman explains, Millar differed from Montesquieu precisely because he was interested in how classes reacted to political infringement in the economy (88). Millar was particularly interested in the merchant class, for while the farmers and nobles generally remained isolated in their interests and their activities, "the merchant, though he never overlooks his own private advantage, is accustomed to connect his own gain with that of his brethren, and is, therefore, always ready to join with those of the same profession, in soliciting the aid of government, and in promoting general measures for the benefit of their trade" (qtd. in Hirschman 91). For Millar, this strategy could be very successful, for "The voice of the mercantile interest never fails to command the attention of government, and when firm and unanimous, is even able to control and direct the deliberations of the national councils" (qtd. in Hirschman 91). On Montesquieu's account, neither merchants nor any other economic interest group has to solicit the government, for the economy itself is an independent sphere over which the sovereign cannot impose. But for Millar, who had observed the success of British merchant

organizing, coordinated efforts and collective action could ensure good government and economic prosperity.

The optimism of the eighteenth century political economists was tempered by the industrial revolution and the spread of a growing economic elite. The inability of the state to regulate mobile property was confirmed by the Physiocrats in the late-eighteenth century. The Physiocrats, who favored the opposite of Montesquieu, that is, the “legal despotism” of an omniscient and omnipotent economic sovereign, insisted that the republic could not control the owners of mobile capital. “The wealthy merchant, trader, banker, etc., will always be a member of a republic,” write two leading Physiocrat theorists, but “It would be useless for the authorities to try to force him to fulfill the duties of a subject: they are obliged, in order to induce him to fit in with their plans, to treat him as a master, and to make it worth his while to contribute voluntarily to the public revenue” (Quesnay and Mirabeau qtd. in Hirschman 95). During the nineteenth and twentieth centuries, their fears would prove justified.

While the owners of mobile capital were increasingly understood to stand above or outside the state, they were also increasingly seen as standing above or outside the people. In *Democracy in America*, Alexis de Tocqueville argues that industrial economy and the division of labor threatens to create a manufacturing aristocracy. For Tocqueville, citizens are transformed into mere laborers through repetitive work, for repetition of unskilled tasks reduces the capacity of the citizen to think as it perfects the capacity of the worker to produce. As the citizen-become-worker is increasingly confined to an economic role, the owner of the factory becomes increasingly aristocratic.

As Tocqueville states, “While the worker increasingly concentrates his intellect in the study of single details, the master daily surveys a much vaster range of things, and his mind expands as the worker’s contracts...One comes more and more to resemble the administrator of a vast empire, and the other to resemble a brute” (650). Tocqueville’s observation regarding the power of labor to result in a transformation of one’s civic abilities resembles similar distinctions we have seen before. The members of Mills’s power elite can see and shape the social structure, while the members of the mass society cannot. The virtuous political leaders envisioned by the Framers would “enlarge the public views,” whereas the members of the general public were too narrow-minded. And here, Tocqueville’s manufacturing aristocracy develops the capacity to understand broad structural and intellectual issues, while the laborer knows only a single task. Tocqueville was not altogether worried about the formation of a manufacturing aristocracy, for he understood them to be largely inert and isolated, but the last two centuries have demonstrated that the economic elite can both circumvent state control and develop interests diametrically opposed to the people.

This survey of the history of political economy allows us to look with fresh eyes upon the neoliberal corporate-juridical directorate, for we can understand its relation not only to the state but to sovereignty. Unlike the economy in Montesquieu’s political theory, neoliberal capital does not merely seek to limit the state. Unlike the neoliberalism described by Foucault, our neoliberalism is also not merely the desire to model all realms of society on the market structure. Nor should we view it as the privatization of governmentality (Lazzarato 11). And we must also go beyond the

Marxist position that the state is a superstructural phenomenon that reflects the organization of the base, or that the government is merely being “taken over,” as it were, by corporations. The corporate-juridical directorate is not limiting the state or taking over the government, it is *becoming the state by becoming the sovereign*, at least legislatively. While these distinctions may seem trivial, understanding the difference between limiting, taking over, and becoming the state permits us to acknowledge the sovereignty of capital and its structural significance. In order to understand its increasingly sovereign status, we must carefully analyze the relationship between capital and law.

As we saw in Chapter II, Gilens and Page have argued that the power elite holds a monopoly on legislation, and while it is well known that wealthy individuals and business interests influence legislation through lobbying efforts and financing campaigns, they have also been able to circumvent legislatures altogether and impose policy autocratically. Globally, the power elite of transnational capital has used the International Monetary Fund and the World Bank to impose “structural adjustment” policies on smaller states with debt troubles. These institutions offer loans with conditions: the state will be provided the money they need in the form of a loan, but it is required to enact so-called “austerity” measures, which force it to cut spending on social programs for citizens and, in most cases, re-write laws in order to foster a good business climate (Harvey 92-99). But even before this strategy was deployed internationally, it was used during the New York City debt crisis of 1975, when financial interests usurped the elected government and imposed austerity measure on the city. The Emergency

Financial Control Board was imposed upon the city, and it retained control over all municipal operations, from city college operations to garbage collection. Social programs were cut and public employees were forced to put up their benefits as collateral for the banks. The entire event revealed the power of capital to circumvent the established political process and impose their favored policies. As William K. Tabb argues, “New Yorkers had been disenfranchised and the political process had become an empty ritual” (28). Tabb adds that the handling of New York City during the crisis became the model upon which the neoliberal policies of the Reagan administration would be based several years later. While this strategy of the power elite is well disguised behind so-called democratic procedures even to the point where it is denied (Shefter), the New York City debt crisis offers a liminal case in which the legislative sovereignty of the corporate-juridical directorate reveals itself in its true form.

If the power elite is able to control the law in these various ways – either through or in spite of the legislatures – then law ceases to be “closely related to liberty,” as Rawls argues, and becomes something that citizens are *subjected* to. Hirschman, taking a cue from Tocqueville, points out that if deferral to the economy is our first principle, then not only intrusive monarchs but also rabbleroising citizens can and must be pressured into submission to the market. As Hirschman writes, “If it is true that the economy must be deferred to, then there is a case not only for constraining the imprudent actions of the prince but for repressing those of the people, for limiting participation, in short, for crushing anything that could be interpreted...as a threat” (124). If “the people” are supposed to be the sovereign power, and they begin to oppose

the operation of capital, then capital and the market must be subjected to their sovereign decision. But anti-capitalist protestors have never been treated as citizens with grievances; they have been treated as criminals and terrorists. As Robert McChesney has argued, of the many things that are up for public debate in Amerika, capitalism is not one of them.

Extending Hirschman's observation, Marc de Wilde has recognized that the elite make use of law rather than prerogative to subjugate individuals. Against Giorgio Agamben, who uses Schmitt's definition of sovereignty to theorize the legal status of detained "enemy combatants" of the War on Terror, de Wilde argues that "the law is not absent at all" in the process of detaining these individuals (199). It is not that sovereign power is exercised directly onto bare life in a normalized state of exception; for de Wilde, rather, it is that "the detainees are subjected to law without being subjects of law" (199). After all, Congress delegated most of the recent emergency powers to the executive, and the Supreme Court ruled that, in essence, "enemy combatant" is a legal term used to strip individuals of legal protections. While de Wilde's observation will be further investigated in the next section, the most important point here is that there can be a hybrid situation of law: there is the situation in which citizens who are subjected to the law also enjoy its protections (normal legal functioning), and there is the situation in which bare life is subjected to the sovereign decision (the state of exception); here, however, there is the situation in which the detainees are subjected to the law (through which the sovereign will act) without being protected by the law.

When we juxtapose the status of the enemy combatant with the status of the corporation, the sovereign status of capital comes manifestly into view, particularly in an understanding of corporate legal personality. John Dewey explains that corporate legal personality has two different origins, each of which served different purposes. First, there is the “fiction theory” of corporate personality, which was promulgated by Pope Innocent IV in the thirteenth century. The fiction theory of corporate personality applied to ecclesiastic bodies, which could not be punished because they had no soul and no corporeal body. Second, there is the “concession theory” of corporate personality, which coincided with the advent of the national state in the sixteenth and seventeenth centuries. The concession theory was intended to legally define the powers of entities that might challenge the state, such as religious groups and corporations. As Dewey elaborates, “The fiction theory is ultimately a philosophical theory that the corporate body is but a name, a thing of the intellect; the concession theory may be indifferent as to the question of the reality of a corporate body; what it *must* insist upon is that its legal power is derived” (667). According to Dewey, these distinct doctrines merged in the late-nineteenth century, when the Supreme Court ruled in *Santa Clara County v. Southern Pacific Railroad* (1886) and *Pembina Consolidated Silver Mining Co. v. Pennsylvania* (1888) that legal persons were entitled to all of the natural rights to which “real” persons were entitled. Through the merger of the fiction and concession theories, corporations were granted the benefits of both, namely, natural rights and protection from punishment. As the inverse of de Wilde’s understanding of combatants who are subjected to the law without being protected by the law, corporations today are protected

by the law without being subject to the law. And if corporations are punished in order to save face with the public, the “real” individuals of the power elite who make decisions regarding corporate actions are rarely punished; and even when “real” people are punished, it is usually the case that one person takes the fall for the group.

Corporations have come a long way from Montesquieu’s theories of political economy, and today they stand in relation to the law as a sovereign monarch did in the days of so-called absolute theory. Dewey acknowledges the theological origins of corporate legal personality, but he does not follow this connection to its logical conclusion. As we saw in Chapter III, for Bodin, just as God is outside the laws of nature because God creates the laws of nature, the sovereign is outside the civil law because he creates the civil law. With the modern sovereignty of the neoliberal corporate-judicial directorate, there is a return of the theological structure of legislative sovereignty: because capital increasingly creates law, it must not be subject to that law. However, the tangled web of sovereignty and law is only comprehensible once we understand the contemporary structure of executive sovereignty.<sup>23</sup>

*Executive Sovereignty and the Neoliberal Military-Judicial Directorate*

As we know, legislative sovereignty cannot exist without executive sovereignty, particularly the principle of executive enforcement. But as legislative sovereignty migrates from the state to the corporation, executive sovereignty takes on a new form, and it is not the form of prerogative as many have recently argued. Instead, executive sovereignty has become increasingly militaristic and increasingly legalistic *at the same time*. This claim will be counterintuitive for those accustomed to describing the current



police state in Schmittian terms, but such descriptions do not take into account the important historical shift toward legalism in American society. America has always been a legalistic nation (Issac 133; Tocqueville 80), but since the eighteenth century, “there has been a dramatic shift away from reliance on extralegal exercises of prerogative toward the use of formal grants of legal authority when it comes to dealing with emergencies” (Fatovic 254). Even Agamben, the Schmittian that he is, acknowledges this trend in *State of Exception*. Explaining the executive powers exercised by Woodrow Wilson during and after World War I – censoring and imprisoning various “seditious” individuals – Agamben notes how Wilson operated differently from other presidents, such as Abraham Lincoln, who simply took on the sovereign responsibility:

instead of ignoring Congress, as Lincoln had done, Wilson preferred each time to have the powers in question delegated to him by Congress. In this regard, his practice of government is closer to...the current one, which instead of declaring the state of exception prefers to have *exceptional laws* issued. (21; emphasis added)

Because Agamben is committed to the state of exception understanding of sovereignty, he grants, at least in some regard, the neutrality of the rule of law, which is why he struggles here to theorize the current state of executive sovereignty. The power elite do not rely so much on the suspension of law as they do the legal delegation of powers to the executive (Posner and Vermule 7; Fatovic 258).<sup>24</sup>

The roots of legalistic approaches to executive power can be found in the conservative movement of the 1960s, especially in the campaign of Barry Goldwater and

the policies of FBI director J. Edgar Hoover. Though earlier politicians appealed to legalistic ideals, Goldwater created a political paradigm around “law and order” rhetoric that would eventually engulf both major political parties. While he was an advocate of limited government in general and states’ rights in particular, Goldwater was adamant that “the federal government could and should play a large role in the *local* fight against violence and disorder” (Flamm 33; emphasis added). By conflating urban riots, political demonstrations, and everyday street crime, Goldwater’s rhetoric transformed political dissent into criminal activity. But Goldwater did not appeal to executive prerogative as the appropriate response to the apparent crisis; instead, he appealed to the law, arguing that the law that needed to be enforced, not suspended (Flamm 36). Likewise, Hoover transformed the FBI from “a kind of ideological security police” into a crime-fighting agency (Stanford J. Ungar qtd. in Newton “Response” 338). As Huey P. Newton explains, because the FBI could no longer legitimate their extra-legal operations in the eyes of public opinion, “A better rationale or cover for the public would have to be employed,” namely, “a crusade against criminals and terrorists” (“Response” 339). In order to deal with the Black Panthers and other dissident groups, the Nixon White House created “a series of highly unorthodox federal agencies” and programs (Edward Jay Epstein qtd. in Newton “Response” 341). While COINTELPRO is probably the most famous program created during this time, the Office of Drug Abuse and Law Enforcement (ODALE), created in 1971, is even more notable, for it operated “with the authority of court-authorized no-knock warrants and wiretaps” and “could strike at will in any of the target cities against virtually anyone selected as a target,” including citizens

(Epstein qtd. in Newton “Response” 344). The ODALE was an unprecedented agency in its day, but it set the standard for later executive programs and agencies designed to enforce law and order (Balko 122).

During the 1970s and 80s, the campaign for law and order was transformed into the War on Drugs, which masked the true purpose of law and order, namely, the suppression of political dissent. As the law approving ODALE expired, it was replaced by the Drug Enforcement Administration (DEA) and remained a part of the Justice Department. But while the War on Drugs maintained the legalistic tone of law and order, it more efficiently criminalized political dissenters. In a recent article for *Harper’s Magazine*, journalist Dan Baum quotes John Ehrlichman, a Nixon aide and Watergate co-conspirator, admitting the political motives behind the War on Drugs:

The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people.... We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news.

Not surprisingly, Reagan would follow suit, using the drug war to target political opposition, only Reagan supplied a moralistic righteousness that fueled his support (Balko 139-143). And Reagan’s version of the War on Drugs best represents the simultaneous militarism *and* legalism that dominates executive sovereignty today. On

the one hand, Reagan pushed through Congress the 1981 Military Cooperation with Law Enforcement Act, which facilitated cooperation between the police and the military by authorizing the sharing of both intelligence information and weapons and training. As Radley Balko explains, “The law essentially permitted the military to work with drug cops on all aspects of interdiction short of making arrests and conducting searches” (145). On the other hand, Reagan worked with state governments to pass drug laws at the state level that reflected federal drug laws, promising funding and resources for the expansion of police forces and prison systems (147). Those who define sovereignty in terms of the state of exception would find it difficult to criticize the militarization of American society through the expansion of the legal system.

Today, the neoliberal military-judicial directorate stands at the culmination of these historical developments. The tendency to use the law rather than suspend it, what Fatovic calls “the legalization of emergency powers” (255), eliminates any modicum of judicial oversight and risks both conflating supposed threats and expanding executive power. As Balko warns, the civil rights established by the Supreme Court in the 1950s and 60s have all but eroded in the decades since the neoliberal turn; both the Supreme Court and lower courts have continually ruled on the side of the executive and its ghostly police presence. Such judicial sanction accords with de Wilde’s observations regarding the legalism inherent to the War on Terror. But there is an even more direct connection between the drug war and the terror war, for after 9/11, the Bush administration associated drugs with terrorism and afforded federal agents and police officers “moral license to treat suspected drug offenders as enemy combatants not as citizens with

rights” (Balko 251). Because all of this is done under the guise of the law, deliberation about these policies and practices – either by the elites *or* the public – is virtually absent, and the result is almost always the expansion of the executive’s power to police society. As Fatovic argues, “Formal rule *by* law provides no guarantee that the substantial rule *of* law is actually being upheld... The consequence of legislative authorization in many cases is to accustom the public to the exercise of unprecedented powers, create dangerous consolidations of power, or provide a fig leaf that conceals a shameful and unwarranted infringement of individual liberties” (263). Thus, it is not enough to be on the lookout for declarations of martial law, for the real threat today is not the suspension of law but its use as a tool of suppression.

There are a number of lessons to be learned from this understanding of the neoliberal military-juridical directorate. First, its reliance on the law represents the direct opposite of the Schmittian state of exception. Contra Agamben, the structure of the military-juridical directorate does not represent kenomatic emptiness of law but a pleromatic fullness of law (*SE* 48), not in the sense of a fullness of powers – as if the separation of powers reduced power in any way – but in the swelling of the juridical system itself. Second, because the power elite increasingly operates under the guise of law, not even traditional appeals to legitimacy should put us at ease. As we have seen, Posner and Vermule argue that public opinion decides the legitimacy of uses of power (201-202, 208), but because they are primarily concerned with prerogative, they offer no insights into public checks on the use of legal power. “As long as the public informs itself and maintains a skeptical attitude toward the motivations of government officials,”

they insist, “the executive can operate effectively only by proving over and over that it deserves the public’s trust” (209). Given the legalistic culture of the Amerika, Fatovic’s concern is more likely to come true, namely, that increased military violence will be viewed as legitimate because it is legal. Third, executive enforcement is good business for the corporate members of the power elite. Not only does the executive branch – including its elected officials, appointed positions, and independent agencies – make up ninety-eight percent of the U.S. government (Posner and Vermule 6-7), private sector prisons have become an effective means of capital accumulation (Alexander 230-231). In 2005, the Corrections Corporation of America issued a statement explaining that its profits “could be adversely affected by the relaxation of enforcement efforts” (qtd. in Alexander 231).<sup>25</sup>

Finally, we must return to Foucault, for he gestures toward the legalistic mood of neoliberalism in his analysis of Friedrich Hayek in *The Birth of Biopolitics*. Foucault famously argues that neoliberalism is not the mere reaffirmation of classical *laissez-faire* liberalism but an paradigm that models all realms of society on the economic realm. Noting Hayek’s legal formalism, a position that views the law as a formal and neutral system of regulations, Foucault suggests that the economic conception of law would also be the conception of law of all realms of society. Not coincidentally, he sees neoliberalism putting its legalism in terms of law and order: “*Law and order* means that the state, the public authorities, will only ever intervene in the economic order in the form of the law” (174). Law, neoliberals insist, is the only way to intervene in economics; the state must never intervene with a “plan” in mind, a desired ultimate

economic achievement. But if the state may only intervene in the economy through law, and all other realms of society are modeled on the economy, then the state may only intervene in society through law. Thus, if Foucault is correct about neoliberalism, then the Schmittian paradigm of sovereignty, defined by the state of exception, is anathema to the structure of sovereignty in the neoliberal era. And of course, since law is a formal system, it cannot be judged by the effects it produces: “if a law is to respect the principles of the Rule of Law in the economic order, then it must be conceived a priori in the form of fixed rules and must never be rectifiable by reference to the effects produced” (173). Buried in the texts of neoliberalism’s foremost theorist is a legalistic disposition that, once placed in the context of executive sovereignty, reflects the actual state of law and executive enforcement used by the military-judicial directorate in neoliberal Amerika.

### *Conclusion*

When considering the relationship between sovereignty and the nation-state in the twenty-first century, we should be cautious regarding our optimism or pessimism over the ostensibly waning power of the state, for it is not at all the case that “sovereign individuals” are reclaiming their autonomy, and it is not merely the case that sovereignty is migrating to other sites and institutions. Today, legislative sovereignty is migrating toward the corporate-judicial directorate, allowing capital to both influence legislation through political pressure and funding and to control the legislative process through extra-legal interventions, such as the New York City debt crisis. As the holders of legislative sovereignty, transnational capital are both protected by the law and exempt

from its force, just as the theological sovereign was in the early modern period. And unlike the Schmittian paradigm, which connects the state of exception to the executive, this view suggests that the power of corporations to bypass the established legislative body and impose “emergency” measures better represents the use of sovereign prerogative. Executive sovereignty, though, the metaphysical Siamese twin of legislative sovereignty, remains vested in the military-judicial directorate, which is in the process of overcoming the open use of prerogative in favor of a legalistic approach to emergency power and crisis response. While classical liberalism relied upon the virtuous executive to carry out the public good when the law failed to do so, neoliberalism relies upon the rule of law to enforce a market society when the public will refuses to do so. Thus, we should not conclude that law is increasingly irrelevant, nor should we think that the state’s power is dwindling. Rather, we should understand how the corporate-juridical directorate imposes law upon the people through its exercise of legislative sovereignty and how the military-judicial directorate enforces the will of legislating capital through its exercise of executive sovereignty, particularly the principle of executive enforcement.

The power elite is sovereign in neoliberal Amerika. From the center of its corporate-juridical directorate, the power elite imposes law upon the people by either influencing the sitting legislature or circumventing the legislature and imposing policy through what Gabriel Naudé would call a *coups d’état*. From the center of its military-juridical directorate, the power elite enforces its law upon the people through an increasingly militarized police system designed subjugate the people as if the people and the elite were at war. But for all the ways that the sovereign neoliberal elites resemble



the classical sovereign of the early modern period, it is different in one important respect. For Hobbes, society was only stable and secure if the people were subjected to a “visible power to keep them in awe” (106), but the power elite is often invisible, hidden behind the veil of the institutions that constitute its bases of power. The power elite “may be conceived as omnipotent, and its powers thought of as a great hidden design,” Mills writes, for “the elite is never an entirely visible agency” (*PE* 16). Just as God faded in to the background of Western metaphysics without fully disappearing (Gillespie), sovereign power faded into the background of Western politics without thereby vanishing. The problematic assumption we make today is that if power is not visible, it must not be power. Rather than assume that things are exactly how they appear – democratic, pluralistic, participatory – we must rely on our utopian normative ideals as a guide for assessing the existing state of political and social affairs. The more they diverge, the more critical we must become.

## CHAPTER V

### CONCLUSION: LETTER TO THE NEW NEW LEFT

“I’m sick of writing about academic stuff, and want badly to get back to writing about realities.”

– C. Wright Mills, “Letter to Ralph Milliband, Sept. 1959” (273)

“I have tried to be objective. I do not claim to be detached.”

– C. Wright Mills’s Epitaph<sup>26</sup>

“Men are free to make history,” Mills writes in the concluding chapter of *The Sociological Imagination*, “but some men are much freer than others. Such freedom requires access to the means of decisions and of power by which history may now be made” (181). If the condition of democratic freedom is the power of the people to determine their own history, to possess collective self-control over the structural mechanics of history itself, as Mills puts it, then one must conclude that democratic freedom does not exist in neoliberal Amerika. As we saw in Chapter II, the power elite, as a sovereign aristocracy, exercises unrestricted control over the history-making institutions of our day: the corporate-juridical directorate and the military-juridical directorate. Following Mills’s intimation that the power elite is sovereign, we turned to early modern political theory in Chapter III in order to rethink our conceptions of sovereignty, which provided the basis for the two principle conclusions of Chapter IV. First, from the heights of the corporate-juridical directorate, the power elite not only organizes the economic realm through their control over wealth and production but also exercises legislative sovereignty over the Amerikan public. Second, from the zenith of

the military-judicial directorate, the power elite exercises its executive sovereignty through a network of local, state, and national law-enforcement institutions designed more to control the people than to protect them. Though the members of the power elite do not always agree among themselves, there is a demonstrable qualitative difference between the power enjoyed by the members of the elite and the lack of power suffered by the members of the mass society, and the elite often uses its power to maintain its status.

To understand the historical significance of both Mills's account of the power elite and our extension of his account, we must situate these observations within two historical registers, national history and Western history. On the one hand, Mills argues that the American power elite entered its fifth stage after World War II. The first stage (1776-1800) is defined by an identifiably networked elite, represented by the Framers of the Constitution. The second stage (1801-1865) is defined by a very loose set of groups, which eventually reified into two sectional camps and produced the Civil War. The third stage (1866-1900) is defined by the "supremacy of corporate economic power" during the Gilded Age. The fourth stage (1901-1945) is defined by the progressive movement's creation of centers of power that competed with corporate power. The fifth state, which emerged out of the ruins of WWII, is primarily defined by the desire of corporate power to reassert its supremacy, and it was the beginnings of this stage that Mills observed in the 1950s (*PE* 269-274). On the other hand, Mills argues that Western history entered "The Fourth Epoch" after WWII. Whereas there had been an ancient, medieval, and modern periods, Mills argued that the post-WWII "Fourth Epoch" is the *postmodern*

period (*SI* 166). Thus, for Mills, the fifth stage of the American power elite coincides with the advent of the postmodern epoch. Though some scholars have remarked on the coincidence of neoliberalism and postmodernism, Mills takes it further, grounding both in the development of the power elite.

*Liberal Mood, Liberal Fascism: The Imitation of Strife*

This letter to the New New Left, then, is designed to reflect upon the current state of the Left in an era defined by the power elite's creation and perpetuation of a neoliberal social structure. And like Mills's "Letter to the New Left," which wondered why some members of the New Left clung to the "labor metaphysic" of Old Left Marxism, we must wonder why so many members of the New New Left remain engulfed in the liberal mood, clinging to the pluralism and legalism of post-war liberalism. Mills fought against the pluralism and legalism that defined liberal complacency after WWII, but the New New Left has adopted these paradigms as their own. Despite the attractiveness of normative pluralism, which would ideally provide space for the respect of difference and the celebration of diversity, real methodological and political concerns arise when we accept descriptive pluralism as an accurate account of the fundamental structure of American society. When we accept bare pluralistic descriptions of American society, we problematically conflate a desirable normative pluralism with a facile descriptive pluralism, concealing the social structure from view. Because pluralists have eliminated the critical distance between their normative ideals and their descriptive accounts, they have eliminated the chance to actually criticize the status quo – they are in danger of buttressing the existing power structures rather than

challenging them. Assuming *a priori* that an elite does not exist, pluralists struggle to develop a robust account of neoliberalism and sovereignty adequate for leftist structural criticism.<sup>27</sup>

Like pluralism, legalism also distracts leftists from producing proper structural analyses of society because it assumes that institutional checks on power are all that we need. But this assumption is problematic once we realize that institutions are not neutral and independent entities but created and maintained by specific social actors, in our case the power elite. As we have seen, legalistic conceptions of sovereignty are too narrow to capture the full power of the elite, but we must also remember that checks on the use of power are more often political than institutional. Posner and Vermeule acknowledge the role of public opinion in liberalism, arguing, “law does little to constrain the modern executive, contrary to liberal legalism’s hopes, whereas politics and public opinion do constrain the modern executive, contrary to liberal legalism’s fears” (15). The law has little to no power to restrain executive actions, but the executive is unlikely to pursue an extra-legal course of action if the public will find it illegitimate. Because “legitimacy rather than legality is the main determinant of authority – and of power – in the administrative state” (5), they conclude, “The major check on the executive’s power to declare an emergency and to use emergency power is – political” (208). It is, for example, the popularity and the perceived trustworthiness of the executive that determines his or her ability to declare a state of exception. Because Schmitt provides an essentially liberal understanding of sovereignty, that action outside the law indicates sovereign power, those who rely on his definition of sovereignty as the foundation of

their political theory also assume a liberal conception of sovereignty. These critical theorists are in danger of incorporating the very liberalism the Left should seek to oppose; in fact, they are often more liberal than liberals themselves.<sup>28</sup>

Behind the pluralism and the legalism of the New New Left's liberal mood lies a more fundamental philosophical assumption that grounds them both: individualism. One of the underlying concerns of pluralism is the ostensible danger of subsuming the particular into the universal. If society is not understood to be irreducibly diverse, the pluralists say, we run the risk of negating individuality and disrespecting difference. Likewise, legalist conceptions of sovereignty assume that sovereign power is present whenever an individual acts outside the law (in the form of any prescribed norms). Just as the freedom of the Cartesian-Kantian transcendental subject depends on its existence outside the mechanistic laws of nature, the freedom of the New New Left's individual depends on its ability to transgress the norm.<sup>29</sup> We live in the age of social construction, an age that purportedly eschews any attempt to "naturalize" socially-created phenomena; yet, it is also an age that refuses to conclude that every last characteristic of the individual is derived from the social structure. If those aspects of individuality that are irreducible to social structure are also not reducible to nature, then they must spring forth directly from the subject's individual freedom. While there are no quick and easy answers to these issues, Mills suggests an attractive alternative. Rather than merely replace naturalism with individual autonomy, he recommends scrutinizing individual expressions in terms of the expressions made possible by the social structure. "But if the individual's very nature cannot be understood without close reference to social reality,"

he writes, “then we must analyze it in such reference. Such analysis includes not only the locating of the individual, as a biographical entity, within various interpersonal milieux—but the locating of these milieux within the social structures which they form” (*SI* 160-161). Once we understand the types of views and behaviors the social structure promotes, we can better understand individual experiences within their personal milieu.<sup>30</sup>

The importance of Mills’s alternative to individualism becomes even more clear once we understand how the power elite used neoliberalism to reconfigure the Left and make it complicit in a sort of liberal fascism, which aims to direct social and political unrest toward forms of expression that do not threaten the social structure. In “The Work of Art in the Age of Mechanical Reproduction,” Walter Benjamin explains the process by which fascism controls the masses produced by modern capitalist society. Because the masses constitute a potential threat to existing property relations, fascist politics turns the proletariat’s attention away from property and production and toward aesthetic expression. As Benjamin writes,

The growing proletarianization of modern man and the increasing formation of masses are two aspects of the same process. Fascism attempts to organize the newly created proletarian masses without affecting the property structure which the masses strive to eliminate. Fascism sees its salvation in giving these masses not their right, but instead a chance to express themselves. The masses have a right to change property relations; Fascism seeks to give them an expression

while preserving property. The logical result of Fascism is the introduction of aesthetics into political life. The violation of the masses, whom Fascism, with its *Führer* cult, forces to their knees, has its counterpart in the violation of an apparatus [film production] which is pressed into the production of ritual values. (241)

Under fascism, the masses are inspired to direct their self-expression toward the same object – the *Führer*, who represents the *nation* – and in this way a unified and ostensibly homogenous society is created. Liberalism, of course, stands in direct opposition to the fascist practice of unifying the people toward a single object of admiration; in fact, one of the best arguments that a liberal could make regarding liberalism's superiority to fascism is that liberalism allows individuals to pursue their own interests and create their own values and aims. However, there is a deceptive underside to this argument, especially when it takes on its practical form in the neoliberal age.

In general, the Left has long been constituted by a coalition of those who advance structural criticisms of society, demanding egalitarian economic distribution and inclusive political participation, and those who advance cultural or social criticisms of society, demanding greater freedom of individual expression (see Bell, *Contradictions*). But in the 1970s, the neoliberal turn fostered a bifurcation of these leftist programs, allowing the elite to eliminate the structural demands of the Left while permitting the continuation of cultural or social demands for individualism. As David Harvey explains, neoliberals of the 1970s had no misgivings about the cultural individualism of the New Left; what they feared was the anti-capitalism of the New Left, and close attention to the



Powell Memo indicates the neoliberal preoccupation with economics, not culture (41). In an effort to tear asunder the two primary concerns of the New Left – individual freedom and social justice – neoliberal rhetoric harnessed the cultural individualism of the New Left and turned it against the New Left’s social justice concerns, arguing that government deregulation in *all* realms of society – economic as well as cultural – would promote the most individual freedom. As Harvey summarizes,

By capturing ideals of individual freedom and turning them against the interventionist and regulatory practices of the state, capitalist class interests could hope to protect and even restore their position.

Neoliberalism was well suited to this ideological task. But it had to be backed up by a practical strategy that emphasized the liberty of consumer choice, not only with respect to particular products but also with respect to lifestyles, modes of expression, and a wide range of cultural practices. Neoliberalization required both politically and economically the construction of a neoliberal market-based populist culture of differentiated consumerism and individual libertarianism. As such it proved more than a little compatible with that cultural impulse called ‘postmodernism’ which had long been lurking in the wings but could now emerge full-blown as both a cultural and an intellectual dominant. (42)

Thus, neoliberalism sought to mitigate anti-capitalism, not cultural individualism.

Apparently, the strategy worked, for as Daniel Bell noted as a first-hand witness in 1976, “What some liberals and some New Leftists have rediscovered [in the exhaustion of

Keynesian economics] are the virtues of decentralization and competition”

(*Contradictions* 276).<sup>31</sup>

This sociology of knowledge, then, allows us to both bring together several trends in the neoliberal age and understand why the liberal mood of the New New Left participates in neoliberal fascism. At the same time that the power elite was reasserting its control over American society and building the neoliberal social structure, “philosophies of dispersion,” to use William R. Schroeder’s phrase, became the dominant theoretical paradigms in the university. Powell’s memo explicitly addressed the university as the main source of anti-capitalist sentiment, and as we will see, there is good reason to think that the elite successfully transformed the university from a site of relatively unrestrained critical social thought into an institution designed to disseminate ideologies of complacency. When we compare the proliferation of intellectual “movements” like poststructuralism and postmodernism, neither of which make substantial demands for the redistribution of economic resources or an increased access to substantial political power, to those more radical movements of the 1960s that met their fate at the hands of the police state, we should become suspicious. If the philosophies that now constitute the intellectual basis of the New New Left survived during a time when the elites were actively eliminating intellectual dissent, we are, on the one hand, forced to question the extent to which they actually threaten the status quo and, on the other hand, obliged to consider the fact that they might even *advance* the neoliberal project of the power elite.<sup>32</sup> The transformation of the New Left into the New New Left is denoted by the absence of structural demands, political and economic,

leaving only the demand for individual self-expression and resulting in the imitation of strife. In this way, the New New Left has succumbed to the fascist strategy of the neoliberal power elite: it has accepted *expression* in exchange for a transformation of the social structure. Neoliberal fascism does not promote a fascist form of expression toward one object, but it does permit expression in order to maintain the existing relations of property, power, and privilege. Because both neoliberalism and the New New Left advance pluralistic, legalistic, and individualistic conceptions of society, *the liberal mood constitutes the greatest threat to radical leftist political thought and action today, for it moderates the distance between our descriptive accounts and normative ideals in a manner that produces not only complacency with but also the celebration of certain features of neoliberalism that undermine our ability to comprehend its structural realities.*

*Mood Swings: Research Agendas for a Revival of the Radical Left*

Abandoning these three flawed analytical principles and changing our mood from an apologetic liberalism to a defiant radicalism, we can reassess our methodological approaches and reinvent our aspirational ideals. *Bedtime for Democracy* is a prolegomenon to any future radical politics because it provides a foundation from which we can assess the structure of Amerikan society and determine the relationship between the power elite and the mass society, but there are many questions left unanswered. If the Powell Memo represents the beginning of programmatic neoliberalism in Amerika, then it is necessary to investigate all three branches of the strategy it advances. Here, we have primarily focused on the explicitly political strategy

of conquering political power through legislation and the courts, but Powell also recommended that the corporate elite use the two basic social sources of information to control public opinion: the schools and the media. By analyzing trends in both public education and higher education since the early-1970s, we can determine the extent to which the power elite was successful in reorganizing the education system to promote loyalty to its rule. In *How the University Works*, Marc Bousquet makes a compelling argument that the elite have been very successful in their endeavor to control the university; by inflating the administration and complicating the bureaucracy, the elites have alienated faculty and students from the operations of the university and justified exponential tuition increases, all of which results in a reduction of power on the part of those the university is supposed to work for. In *A Brief History of Neoliberalism*, David Harvey mentions both the transformation of economics departments, which became vehicles for neoliberal ideology, and the proliferation of business schools, which became training grounds for future defenders of elite power, both of which Powell explicitly recommended. And, in the closing pages of *Patrons of Enlightenment*, Edward G. Andrew notes that neoliberal propagandists repeatedly insisted that anti-capitalist intellectuals and academics have no right to demand funding from capitalist elites.

In addition to education, we must investigate the extent to which the neoliberal elite has also harnessed the power of the media and other cultural means of disseminating ideas and values. In *Rich Media, Poor Democracy*, Robert W. McChesney provides convincing evidence that the elite basically control the major media outlets in the U.S. There is disagreement among the elites, which often manifests itself as partisan

conflict, and McChesney is clear that these issues can and do get presented to the public; however, there are two underlying problems with our so-called national public discourse. On the one hand, the options presented to us are less up for debate than they are emotive mechanisms designed to convince the public to support one faction of the elite over another; on the other hand, it is still the elite who decides *what* topics can even come up for “debate.” As Mills observed, in the age of an elite-dominated mass media, public discourse ceases to be a rational discussion of ideas and becomes a controlled sphere of media markets, saturated with information designed to produce a predetermined affect and promoting passive reaction not active response (*PE* 298-306). The information media is not, however, the only conduit for the dissemination of ideas, for Hollywood’s movie-industrial complex also advances support for political ideologies through the subtle (and sometimes not-so-subtle) use of narrative structures and formal techniques (see Anderson, “Skyfall”; Rogin). In the 1970s, a transformation of Hollywood film production coincided with the rise of the neoliberal elite and postmodern ideology, so it is only reasonable to investigate these simultaneous trends in relation to each other.

Once we have investigated the strategies used by the power elite to maintain its control, we can turn to the mass society in order to understand how it is affected by those strategies. We have seen that the mass society has virtually no political power in relation to the power elite, but if the elite have been able to effectively assert its *ideological sovereignty* in addition to its legislative and executive sovereignty, then the supposed power of public opinion may not be what some scholars think it is.<sup>33</sup> Both Gilens and Page and Posner and Vermule have argued that public opinion is able to act as a sort of

veto power over elite policies; that is, the elite must make their policies palatable to the public in order to gain approval for those policies. However, if the public's opinion is shaped by the information it receives through the media and the schools, and the power elite has disproportionate control over those institutions, then the power elite can, at least in large part, *create the very public opinion it must satisfy*. As the public becomes increasingly dependent upon the elite for its information, its resulting opinion becomes less and less an independent check on the elite's power, executive or otherwise. Thus, Jean Baudrillard's claim that the public has *chosen* entertainment and consumption over political participation and social criticism must be rejected: if the elite control the dominant sources of information in society, then we cannot say that the public has freely chosen anything. And if we consider the protests of the 1960s examples of the people trying to choose something other than the status quo, then it is safe to say that the elite will not hesitate to use the violence of the police state to make sure the people *cannot* choose democracy over entertainment.<sup>34</sup>

Not only does the elite shape public opinion about the pressing issues of the day, the elite also shapes the idea that the public has of itself. If we recall, James Madison argued that pluralism could be used to break the public up into as many distinct interests and identities as possible in order to preclude mass organization on the part of the people against the elite. One of the most effective means of dividing the mass society in Amerika has been racial ideology and white supremacy. As I have argued in "Supporting Caste: The Origin of Racism in Colonial Virginia," the cycle of labor resistance in seventeenth-century Virginia, which culminated in the interracial revolt known as

Bacon's Rebellion, inspired the planter elites to distinguish between at least two classes of labor: indentured servants of European descent and slaves of African descent. White laborers eventually accepted their subjugation to the elite because they were racially and economically privileged in relation to Black slaves. While slavery has been abolished, white racial supremacy retains its efficacy as a divider of the mass society. Anticolonial theory, represented by, for example, the works of Frantz Fanon and the later W. E. B. Du Bois, stands as a useful tradition of radical thought upon which the Left can construct new understandings of racialized social ontologies and colonialist social structures. So long as the white members of the mass society continue to accept the white supremacist ideals of the power elite, they will remain mired in an allegiance to their oppressors.<sup>35</sup>

Not only must we consider the domestic relationship between the power elite and the mass society, we must also consider the international relationship between the power elite of various nations. "Within the higher circles of the power elite, factions do exist; there are conflicts of policy; individual ambitions do clash," Mills admits. "But more powerful than these divisions are the internal discipline and the community of interests that bind the power elite together, *even across the boundaries of nations at war*" (PE 283; emphasis added). By better understanding these relationships, we can better comprehend war, imperialism, colonialism and neocolonialism, and the clandestine operations of the CIA and other government agencies in foreign lands. In the last few years of his life, Mills became increasingly concerned with international issues; in fact, his work on the power elite was the precursor for his later internationalism. Thus, we can extrapolate from our understanding of the Amerikan elite to an understanding of the

global network of elites. We must resist the fetishization of the individual and the law and begin investigating the elite's mechanisms of control, both domestically and abroad.

### *Democracy Goes to College*

In 1986, at the height of the neoliberal turn in the power elite's control of Amerika, the San Francisco hardcore punk band Dead Kennedys released their final studio album, *Bedtime for Democracy*, the title of which was a parody of Frederick de Cordova's 1951 film *Bedtime for Bonzo* starring Ronald Reagan. In the original film, Reagan plays a psychology professor who, taking on a parenting role, attempts to teach human morals to a chimpanzee. The Kennedys's parody draws an analogy between Reagan's role in the film and his role as a member of the neoliberal power elite: just as Reagan's character in the film sought to instill what he thought were the "proper values" in his subordinate, Reagan as president led the reform of Amerikan society by enforcing the values necessary to maintain the power of the elite against its subordinates. It is somewhat ironic that just as Reagan was announcing that "It's morning again in America," he was helping put democracy to bed. There was, however, a sequel to *Bedtime for Bonzo*; in 1952, Cordova's *Bonzo Goes to College* followed Bonzo the chimpanzee as he became a college football star. Of course, the sequel is filled with slapstick hijinks, and Bonzo remains at the mercy of his human keepers. Here, we have taken *Bedtime for Democracy* as our title in a effort to remind ourselves, as members of the mass society, that the power elite remains in control of the political and economic social structure of neoliberal Amerika, but the story need not end there, for just as Bonzo went on to college, the mass society, too, can undertake new adventures. But the shape



of these adventures is entirely up to us. If the Left continues to be overwhelmed by the liberal mood, then our fate will resemble Bonzo's – we will end up becoming a source of entertainment and an object of derision for an elite who seeks to use us only in a manner that pleases them. However, if the Left overcomes its enthrallment with the values indicative of the liberal mood – individualism, pluralism, legalism – its trip to college will result in a renewed consciousness of the structure and mechanisms of elitist social control in Amerika.

To ensure our status as a force of change, the Left must reformulate its programmatic demands, and therefore it must reformulate its aspirational ideals. The first thing we must remember is that appeals to the elite are likely to fall on deaf ears; unless the elite believes it can benefit from some change, all of our supplications remain mere requests. As Mills reminds us, “To appeal to the powerful, on the basis of any knowledge we now have, is Utopian in the foolish sense of that term. Our relations with them are more likely to be only such relations as they find useful, which is to say that we become technicians accepting their problems and aims, or ideologists promoting their prestige and authority” (*SI* 193). Thus, we must carry on our leftist projects with two fundamental demands in mind. First, *full political participation for every member of society*, and such participation should not be defined as voting rights or free speech. Full political participation means public control over the means of making history, that is, legislative and executive sovereignty. Alexis de Tocqueville has described it nicely:

Suppose that all citizens take part in government and that each has an equal right to do so. Since no man will then be different from his fellow

men, no one will be able to exercise a tyrannical power. Men will be perfectly free, because they will all be entirely equal, and they will all be perfectly equal because they will be entirely free. This is the ideal toward which democratic peoples tend. (581)

To many – even to many members of the New New Left – this demand will appear unrealistically utopian, but such demands ensure that our descriptive accounts of the social structure and our normative ideals diverge widely enough for us to remain vigilant against stratifications of political power.

Second, *an equitable distribution of economic resources among all members of society*, and such distribution should not be defined as unemployment benefits or higher minimum wages. Equitable economic distribution means public control over the means of producing and distributing goods and services, that is, the economic organization of society. Some may argue that our nation simply is not rich enough to implement economic equality of this sort, but as Maurizio Lazzarato reminds us, compared to forty years ago, “We are two times richer, but money is short everywhere except on the stock market, in tax havens, the bottom lines of multinationals, and the bank accounts of a tiny portion of the population” (241). Not only do we have wealth to distribute democratically, the democratic distribution of wealth is the *only* thing that ensures our first demand of political participation. Just as the law has little influence over executive action, political constitutional documents also have little power to ensure democratic political structures. In *Democracy and Redistribution*, Carles Boix studied the relationship between constitutional forms and political revolution and found that among

the relevant variables, constitutional provisions had the least effect on the preservation of democracy. “Contrary to the received wisdom,” Boix says, “constitutions do not sustain democratic equilibria because the latter simply result from the fact that no actor has any incentive to deviate from a democracy-compliance strategy” (15). Boix found that economic equality was the most important criterion for ensuring a stable democracy. As he writes, “Highly unequal countries remain primarily authoritarian, and, whenever they do go through a democratic phase, they revert very quickly to dictatorial rule” (129). There is a tension, then, between appealing to abstract systems of norms and written documents as the sustaining authority of democratic culture and their recorded and theoretical inability to ensure democracy. Political equality is only possible if it is backed by a material economic equality, and material economic equality can only be protected by democratic political equality; thus, these two utopian leftist demands cannot be made independently of each other without undermining both.

In Amerika today, there is a crisis of the Left – if we can be called that any longer. Because our social theories are insufficiently descriptive, we are unable to describe the means through which the power elite exercise their power over the social structure and therefore over the mass society. Because we have been engulfed in a liberal mood that replaces structural analyses with individualistic explorations, we are unable to understand the extent to which the power elite has usurped the power of the people. As W. E. B. Du Bois once wrote, “It is a bit frightening for one who considers himself as fairly intelligent to realize how much of the present he does not know and does not know that he does not know” (*Correspondence* 395). The leftists of today should share Du

Bois's trepidation, but the New New Left is not, in general, concerned with knowing the present; it is satisfied with maintaining the imitation of strife. However, we need not settle for marginal reforms. We need not lose our revolutionary determination. We need not capitulate to the elite. If we revive the radical leftist demands for economic equality and political participation, we can challenge the elite power of the power elite. Through meticulous analyses, we will be able to situate our biographies within our history, and through dedicated organization, we will be able to take control of that history. "Our immediate and continuous fight," Mills reminds us, "must be a fight inside the U.S. power system over who is going to determine the uses of this nation's fabulous means of power and over the reshaping of these means into more democratically responsible instruments" (*Causes* 117). If we work, then, in Amerika someday, there will be a crisis of the elite – if it will be called that any longer.

## NOTES

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<sup>1</sup> The reader may, no doubt, be confused by the spelling “Amerika.” This spelling was popularized in the 1960s among the counterculture and the New Left, and I think it is appropriate to use in this context. The Amerika that I refer to in this thesis is not the America that most people imagine: the latter is the land of the free and the home of the brave, while the former is the land of the corporate elite and the home of the war profiteers. But the difference in spelling is not meant to denote a mere reversal designed to produce a rational response from the reader. I have in mind something more like the Situationist International’s method of *détournement*: “The distortions introduced in the detoured elements must be as simplified as possible, since the main impact of a *détournement* is directly related to the conscious or

<sup>2</sup> John H. Summers has noted that in 1968, the Central Intelligence Agency identified C. Wright Mills, Herbert Marcuse, and Frantz Fanon as “the three principle leaders of the international left,” even though Marcuse was the only one of the three still living (10). Because Marcuse and Fanon have received much more attention from scholars than Mills, I find it useful to explore his work for its relevance for radical politics today.

<sup>3</sup> The term New New Left is inspired by David Colker and Jack Virrel’s concept New New Hollywood, their designation for the era of the blockbuster that replaced New American Cinema in the 1970s. The rise of neoliberalism in the 1970s coincided with the rise of poststructuralism, postmodernism, and post-Marxism in theory, on the one hand, and the transformation of Hollywood cinema, on the other. In future projects, I will explore the relationship between neoliberalism, theory, and film, but here, I merely allude to the simultaneous shifts in the realms of political economy, popular aesthetics, and critical theory.

It is important to note that the designations Old Left, New Left, and New New Left are imperfect and contested. Christopher Phelps has documented the similarities and continuities between the Old and New Lefts, and Grant Farred has argued that the roots of the New New Left – especially identity politics, a dominant, or even definitive, strand of contemporary leftist thought – are buried in the ideas of the New Left. While Phelps seeks to demonstrate that the New Left created the Old Left as a way to legitimize itself, Farred seeks to convince critics of identity politics, such as Wendy Brown and Todd Gitlin, that identity politics is merely a transformed version of the New Left politics they both value. While Phelps and Farred may be correct in some of their observations, they both ignore what is, for us here, the most important differences between these three periods of the Left. Whereas the Old Left labor leaders defended American society and the American way of life, essentially becoming Cold Warriors, the New Left challenged Amerika both domestically and internationally, rejecting anti-democratic and imperial politics (Levy 99-102). In essence, the Old Left was in some ways reactionary. Likewise, whereas the New Left sought democratic power in the political and economic spheres, the New New Left desired merely to include “excluded” or “marginalized” identities; total critiques of political economy were replaced by local critiques of interpersonal interactions. Thus, while New Left political ideas – including those of C. Wright Mills – were not and are not perfect, they represent a constellation of concerns and concepts that are readily useful for investigating neoliberal sovereignty.

John D. Brewer has argued that, because society is changing so rapidly, facing new concerns everyday, “it will not be Mills whom newer generations of sociologists will turn in order to address these normative questions...my generation is making way for others who are plotting their careers by different lights” (221). This may be true, but not because “newer” theories are more correct; it is only true because these newer theories are more frequently disseminated in university curricula. There is a reflexive equilibrium between the dissemination of current theories and the culture in which they participate: the theories help produce our current cultural mood, and they thus resonate with that mood, making them more likely to be accepted by readers. While there is not space in this thesis to fully explore the continuities between neoliberalism and the prevailing leftist theories of our time, the conclusion will gesture toward some ways in which future research can pursue these explorations.

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<sup>4</sup> Pluralism, as a philosophical concept, can be traced back to seventeenth century liberalism, and while not every pluralist is a liberal and not every liberal is a pluralist, there is a strong connection between pluralist values and the dominant strains of modern liberal thought. John Locke's *A Letter Concerning Toleration* represents an early example of pluralism in the sphere of religious belief; it argues that no harm will be brought to society if each individual decides how to practice Protestant Christianity. Over the next few centuries, other thinkers would extend Locke's Protestant pluralism to all forms of religious thought, and John Stuart Mill would extend it to other aspects of social life. In *On Liberty*, Mill argues that religious freedom is the historical precedent and the theoretical model for all other rights, extending pluralism to the social and cultural realms of political life. American liberalism has been remarkably consistent in its pluralism, which can be found in the writings of major thinkers including James Madison, Alexis de Tocqueville, Robert Dahl, Daniel Bell, and John Rawls, among others. Having expanded pluralistic toleration beyond to encompass nearly all aspects of social life, pluralists insist that society consists of neither a monolithic or homogeneous public nor a dualistic opposition between the powerful and the powerless.

Michel Foucault is quite possibly one of the most influential pluralists of the late twentieth century, not necessarily because he is a pluralist, but because he is an innovative thinker. Foucault is not the kind of thinker we typically imagine when we think of liberalism, but pluralism remains a constitutive feature of his thought. Foucault's pluralism is most obvious in his identification of various modes of power. He rejects the standard move of political theory to reduce all power to sovereign power, which emanates from the state and is enforced through the law. In addition to sovereign, juridical power, Foucault identifies both disciplinary power, which is imposed onto individual bodies in order to train them, and biopower, which is employed to manage the biological well being of whole populations. Foucault also rejects the idea that history is defined by continuity rather than ruptures. Historical periods are defined, for Foucault, not by their development from earlier periods but by the extent to which they break from those periods. In addition to modes of power and historical trends, Foucault also pluralizes discourse systems by distinguishing various discursive tactics through their formations, transformations, and correlations ("Politics" 54). There is no doubt that Foucault's principled nominalism informs his pluralism, for he insists on emphasizing the discontinuities in power, history, and discourse.

Foucault's pluralism also inhabits his political views, and there is an intimate connection between his views on power, discourse, and politics. In "*Society Must Be Defended*," Foucault argues that the dualist discursive tactic of seventeenth century race war conceptions of history broke up the hegemony of Roman histories, which were designed to reinforce sovereign power. Whereas Roman histories traced sovereign power back to the legitimacy of Rome, recording historical and contemporary events as reflections of the glory and legitimacy of existing sovereigns, race war histories emphasized hidden, on-going wars that existed beneath the surface of society, which projected a false image of unity and peace. For example, in England, political radicals opposed the monarchy on the grounds that the Norman invaders had illegitimately imposed their rule on the Saxons; in France, the nobility wrestled power away from the monarchy by reinterpreting the social conflict between the three estates. For Foucault, the advent of the race war discourses marked the appearance of historico-political discourses as a challenge to the classical philosophico-juridical discourses of the pre-modern West. War, he argued, was the only principle that could make history intelligible, which meant that no historical or political totality was possible: sovereign power, therefore, was displaced by other modes of power better suited for societies marked by an insurmountable and incessant war. While Foucault praised the historico-political mode of discourse, he rejected the dualism of the original race war histories, choosing instead to advance a more strictly pluralistic social ontology. In *The History of Sexuality: An Introduction*, Foucault defines power in nominalistic, pluralistic terms (92). In strict opposition to conflict theories of society – those theories like Marxism, which took their inspiration from the original race war discourses – Foucault insists that social antagonism rarely, if ever, resolves itself into an identifiable dichotomous power relation.

<sup>5</sup> Like pluralism, liberal legalism has become a constituent part of leftist thought, but caution has only been raised regarding one of its two forms. The first form of liberal legalism emphasizes the use of law for

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social change. Laura Kalman explains that liberal legalism in this form places its trust in the governing apparatus – particularly the judicial branch, and especially the Supreme Court – to institute progressive social change through legal reforms (2). In the introduction to their edited volume *Left Legalism/Left Critique*, Wendy Brown and Janet Halley caution leftists who rely on legalistic reforms, writing, “the left’s current absorption with legal strategies means that liberal legalism persistently threatens to defang the left we want to inhabit, saturating it with anti-intellectualism, limiting its normative aspirations, turning its attention away from the regulatory norms it ought to be upending, and hammering its swords into boomerangs” (5). Brown and Halley acknowledge the practical, strategic use of the law toward leftist ends, but they insist that a commitment to legalism as *the* mode of social reform, rather than the use of legalism as a contingent means, tends to bind leftists to the liberal social order they seek to challenge.

However, none of the essays included in *Left Legalism/Left Critique* discuss the problematic reliance of the Left on the second form of legalism, namely, the belief that law restrains political actors, including (and especially) the executive branch. Like pluralism, the second form of liberal legalism can be traced back to at least John Locke’s *Second Treatise on Government*, in which he proclaims: “Wherever law ends, tyranny begins” (189). John Rawls’s *A Theory of Justice* provides a contemporary iteration of this position, since for Rawls, the rule of law is a guarantor of liberty because law is the “final authority” of society (236). According to these legalists, the law is sovereign, and all extra-legal action is either criminal or tyrannical. During the late 1980s and early 1990s, critical theorists turned to Carl Schmitt to reformulate their political ontologies, a move that revived theoretical interest in the concept of sovereignty but did so in a particularly legalistic way. Schmitt argues in *Political Theology* that one cannot identify a sovereign, the “highest power,” within a constitutional democracy without making the concept “infinitely pliable,” since “no single factor can be picked out and accorded such a superlative” (17). Constitutional provisions and the separation of powers created a situation of political confusion and disorder. This is why Schmitt insists on establishing an identity between the sovereign and the suspension of the law. Schmitt’s conception of sovereignty has been instrumental in contemporary critical theory’s reflections on politics, including Giorgio Agamben’s *Homo Sacer: Sovereign Power and Bare Life* and *State of Exception* and Jacques Derrida’s *The Beast and the Sovereign* lectures and their corresponding manuscript *Rogues*.

<sup>6</sup> As Foucault puts it, “Are there no great radical ruptures, massive binary divisions, then? Occasionally, yes. But more often one is dealing with mobile and transitory points of resistance, producing cleavages in a society that shift about, fracturing unities and effecting regroupings” (*HSI* 96). Foucault’s decision to pass on power dualism in favor of power pluralism, therefore, represents not only his general commitment to pluralism but also his reluctance to even entertain the notion that one powerful group dominates society as sovereign or otherwise.

<sup>7</sup> Some of the leading pluralists of critical theory, especially Michel Foucault, William E. Connolly, and Chantal Mouffe, find themselves conceding too much to neoliberalism, each in their own ways. Foucault’s opposition to the attempts to make sovereignty the organizing principle of power and his commitment to political pluralism influence his relationship to neoliberalism. In *The Birth of Biopolitics*, Foucault assesses an emergent neoliberalism from the context of the history of modern Western political theory. Identifying two models of political theory – *raison d’Etat*, which organizes all social and economic resources to grow and perpetuate the state, and liberal political economy, which abandons theories of the state in the attempt to proscribe government action – Foucault rejects the “police state” model of the former and praises the ability of the latter to break up absolute sovereign power. While Thomas Hobbes represents the police state model, liberal philosophers from John Locke to Adam Smith represent the liberal model, which presents a philosophical anthropology of individuals over whom the government must not loom. However, remaining consistent with his own anti-humanism, Foucault favors the economic subject and the invisible hand of Smith over the rights-bearing man of Locke (282-283). Because *homo œconomicus* challenges the hegemony of the sovereign without appealing to juridical principles of right, this economic subject challenges all governmental power. As Foucault writes,

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*Homo œconomicus* strips the sovereign of power inasmuch as he reveals an essential, fundamental, and major incapacity of the sovereign, that is to say, an inability to master the totality of the economic field...To that extent I think the emergence of the notion of *homo œconomicus* represents a sort of political challenge to the traditional, juridical conception, whether absolutist or not, of the sovereign. (292-293)

While Foucault does mention that neoliberalism implies constant intervention rather than laissez-faire aloofness (132), he seems to support neoliberalism in at least two very important ways. On the one hand, neoliberalism does not pathologize the criminal; unlike the delinquent of *Discipline and Punish*, which represents a natural type of person, the neoliberal criminal is a rational actor responding to market forces. On the other hand, neoliberalism is able to provide for the poor and unemployed in “a very liberal and much less bureaucratic and disciplinary way” than does Keynesian interventionism (207). In fact, through technocratic discipline, Foucault argues that Keynesian policies threaten to eliminate the very freedoms it purports to defend.

what appears on the horizon of this kind of analysis is not at all the ideal or project of an exhaustively disciplinary society in which the legal network hemming in individuals is taken over and extended internally by, let’s say, normative mechanisms. Nor is it a society in which a mechanism of general normalization and the exclusion of those who cannot be normalized is needed. On the horizon of this analysis we see instead the image, idea, or theme-program of a society in which there is an optimization of systems of difference, in which the field is left open to fluctuating processes, in which minority individuals and practices are tolerated, in which action is brought to bear on the rules of the game rather than on the players, and finally in which there is an environmental type of intervention instead of the internal subjugation of individuals. (259-260)

In the context of the late-1970s, Foucault’s comments clearly connote a critique of Keynesian economics, *not* just Marxism, and place him on the side of the neoliberals in their condemnation of the welfare state. While Foucault’s comments can hardly be taken as a clear endorsement of neoliberalism – either in part or in full – and while we cannot know what he would have said about it had he lived another twenty or thirty years, his comments do reveal one level at which his philosophy accords with, and thus would remain uncritical of, neoliberal thought.

Just as Foucault’s pluralism leads him to criticize sovereignty and praise neoliberalism’s pluralism, William E. Connolly argues that sovereignty itself is pluralistic while criticizing neoliberalism for being insufficiently pluralist. For Connolly, existence is thoroughly nominalistic, and being unfolds in an unending process of becoming, and his nominalist process philosophy has specific implications for his political thought. In *Pluralism*, Connolly argues that sovereign power circulates in society, migrating from the state, to the people, to the cultural norms of American society, and back again, never resting in one site. “In American democracy,” he writes, “sovereignty circulates uncertainly between a Supreme Court now sanctioned *positionally*...to decide contested issues authoritatively, a populace marked by an uneven distribution of power, and orientations to religious life and other traditions into which the populace is inducted” (145). Thus, sovereign power is unstable insofar as it transfers from one entity to another depending on the issue at stake and the social forces that come to bear on the outcome. In this way, citizens participate in what Connolly names “the micropolitics of sovereignty” (143), namely, a form of “expressive sovereignty” that reflects the values that result from the clash of a plurality of forces that comprise the foundations of American politics. “Decisional sovereignty,” a purely positional, administrative form of sovereignty, does not and cannot operate without the sovereign power of the matrix of social forces produced by citizens (*A World of Becoming* 132). Thus, Connolly ascribes real efficacy to the public and their values in American society, while insisting that the site of influence is constantly shifting.

Connolly insists that, in a liberal democracy, sovereignty never settles in one place, but when he turns to neoliberalism, which he treats separately from the question of sovereignty, he admonishes neoliberalism for not being pluralistic enough. In *The Fragility of Things: Self-Organizing Processes, Neoliberal Fantasies, and Democratic Activism*, Connolly argues, contra neoliberal theorists, that even if the market



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is a spontaneously self-organizing system, it is only one of many such systems. The environment and the policies sphere, for example, are also self-organizing systems, and when they come into contact with the economy and with each other, they exert mutual pressures that transform the ways each system operates. Like Foucault, Connolly prefers to use the term “system” in the plural because “the system” in the singular fails to acknowledge that social organization “is replete with too many loose ends, uneven edges, dicey intersections with nonhuman forces, and uncertain trajectories to make such a wholesale project plausible” (42). While Connolly approves of neoliberal individualism and pluralism, but criticize it for failing to extend beyond the economic realm in to the political, making it a fundamentally undemocratic system. Thus, unlike Foucault, who seeks limit sovereign power, Connolly defines it as shifting, but neither believes that it does or should exist as an absolute centralized authority. However, both appreciate the pluralist orientation of neoliberalism.

Coming to a pluralist position from a slightly different angle, Chantal Mouffe argues that democratic pluralism is threatened by both a lack of political options and the abandonment of equality as a social and political goal. In *The Democratic Paradox*, Mouffe argues that pluralism is necessary for a properly functioning democracy; as she states, “Without a plurality of competing forces which attempt to define the common good, and aim at fixing the identity of the community, the political articulation of the demos could not take place” (56). Accordingly, we should seek, she says, to multiply “the institutions, the discourses, the forms of life that foster identification with democratic values” (96). Referring to “the multiplicity of voices that contemporary pluralist societies encompass” (105), Mouffe suggest that we already live in a pluralistic society; however, the sovereignty of the people and the plurality of political choices are being undermined by neoliberal hegemony. Neoliberalism, which abandons equality and pulls all political positions to the center, threatens to negate democracy. On the one hand, she posits the need to fight unemployment and implement minimum wage reform as means to correct inequalities; on the other hand, she says that the “centrist” hegemony of neoliberalism and Third Way politics eliminates political options and leads not to a stratified political power structure but the appeal of extreme right-wing ideologies (114-116). To be sure, Mouffe does argue that there are power inequalities and that we need structural analyses in order to under those inequalities, but she continues to assume that popular sovereignty exists but is under attack, and that basic liberal economic reforms can challenge neoliberal hegemony. (To be sure, Jan Smoleński has argued that Mouffe has no theory of sovereignty; however, the supposed lack of a notion of sovereignty is entirely consistent with Mouffe’s pluralistic popular sovereignty.

<sup>8</sup> Mills had, in general, a contempt for rigid disciplinarity, and this contempt is reflected in his decision to name his approach the *sociological* method: “I hope my colleagues will accept the term ‘sociological imagination.’ Political scientists who have read my manuscript suggest ‘the political imagination’; anthropologists, ‘the anthropological imagination’ — and so on. The term matters less than the idea, which I hope will become clear in the course of this book. By use of it, I do not of course want to suggest merely the academic discipline of ‘sociology.’ Much of what the phrase means to me is not at all expressed by sociologists. . . . Nevertheless, I use ‘sociological imagination’ because: (1) every cobbler thinks leather is the only thing, and for better or worse, I am a sociologist; (2) I do believe that historically the quality of mind has been more frequently and more vividly displayed by classic sociologists than by other social scientists; (3) since I am going to examine critically a number of curious sociological schools, I need a counter term on which to stand” (*SI* 19).

<sup>9</sup> Mills was heavily influenced by the sociology of Max Weber. He co-edited and co-translated a volume of Weber’s works with Hans Gerth, *From Max Weber: Essays in Sociology*, and he also collaborated with Gerth on *Character and Social Structure*. According to Max Weber’s “ideal types” methodology, though there may be no existing individuals who completely represent *every* aspect of a given analytical personality type, it is helpful to examine political and historical phenomena “in their most consistent and logical forms” (*Protestant* 56).

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<sup>10</sup> In addition to being influenced by Weber, Mills was more generally influenced by late-nineteenth and early-twentieth century German sociology. As Stanley Aronowitz explains, “Mills’s dissertation, *Sociology and Pragmatism*, completed in 1943, was an explicit attempt to draw the implications of European sociological theory for the United States” (“Mills”). Given Mills’s anti-Hegelian historicism and his rejection of Comtean positivism, Wilhelm Dilthey’s *Pattern and Meaning in History: Thoughts on History and Society*, Ernst Troeltsch’s *Der Historismus und Seine Probleme*, and especially Karl Mannheim’s *Ideology and Utopia* also constitute part of the relevant background of Mills’s intellectual development and disposition.

<sup>11</sup> Mills laments the *bureaucratic-advisor-to-the-king* role to which disciplinary specialization leads. In this role, the intellectual or the scholar cannot develop the sociological imagination. As Mills explains, “The individual social scientist tends to become involved in those many trends of modern society that make the individual a part of a functionally rational bureaucracy, and to sink into his specialized slot in such a way as not to be explicitly concerned with the structure of post-modern society. In this role, we have seen, social science itself often tends to become a functionally rational machine; the individual social scientist tends to lose his moral autonomy and his substantive rationality, and the role of reason in human affairs tends to become merely a refinement of techniques for administrative and manipulative uses” (*SI* 180).

<sup>12</sup> G. William Domhoff has been an important supporter of and contributor to the Millsian tradition of elite theories of power. Domhoff’s most notable work is his 1970 text *The Higher Circles: The Governing Class in America*, but his other important include *Who Rules America?*, *The Powers That Be: Processes of Ruling Class Domination in America*, *The Power Elite and the State: How Policy is Made in America*, *State Autonomy or Class Dominance? Case Studies on Policy Making in America*, and *Diversity in the Power Elite: How It Happened, Why It Matters*. While Domhoff has explore the implications of Mills’s elite theory in relation to policy formation, federalism, capitalism, diversity, and other areas of concern for social and political theory, he has not explored the implications of *The Power Elite* for neoliberalism. In the spirit of Domhoff, then, *Bedtime for Democracy* extends Mills’s thought into uncharted territory. For a list of other figures and works that work in the spirit of Mills, see Alan Wolfe (381).

<sup>13</sup> Marxism has many virtues; most importantly, it avoids the pitfalls of the liberal mood. For example, Marxism rejects the capitalistic version of pluralism, which insists that all workers are individuals competing in the market, choosing instead to acknowledge the power difference between the proletariat and the bourgeoisie. In recent decades, however, under the pressure of the liberal mood, Marxism has retreated a bit from its more radical iterations. Many Marxists today would rather discuss cultural hegemony than economic exploitation, and while this tendency does share some similarities with a Millsian elite theory, Marxism has not developed a framework as dynamic as Mills’s elite theory. To put it simply, Marxism’s heart is in the right place, but its conceptual categories are not quite sufficient for the type of analysis we intend to undertake here. For an analysis of the relationship between the New Left and Marxism, see Wilhelm.

<sup>14</sup> Depending on how neoliberalism is conceived, different starting points have been identified. Johanna Bockman argues that the roots of neoliberalism extend back to the advent of neoclassical economics in the 1870s, even though it only triumphed with the fall of the Soviet Union in 1989. Michel Foucault identifies the Walter Lippmann Colloquium in 1938 as one possible origin. Philip Mirowski and Dieter Plehwe suggest that the creation of the Mont Pèlerin Society in 1946 represents the beginning of neoliberalism’s organized phase. In the Amerikan context, Al Campbell points to 1979 when fiscal policy took on its neoliberal form. These authors regard neoliberalism as an *ideology* or *discourse* that circulates until it achieves hegemony.

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<sup>15</sup> Mills observed this trend even before Powell announced his strategy. Quoting Harry Carman and Harold C. Syrett, who write, “Before World War I, businessmen fought each other; after the war they combined to present a united front against consumers” (qtd. in *PE* 167), Mills adds, “The several corporations which are commanded by the individual members of such cliques are themselves instruments of command, public relations, and pressure, but it is often more expedient to use the corporations less openly, as bases of power, and to make of various national associations their joint operating branches. The associations are more operational organizations, whose limits of power are set by those who use them, than final arbiters of action and inaction” (*PE* 247).

<sup>16</sup> Powell’s personality illustrates the elite personality type that Mills described, and his recommended strategy represents the sort of elitist maneuvers Mills predicted. Powell was able to transcend his personal milieu in order to offer proposals for defending the corporate directorate. As Mills puts it, “those in command of great corporations must be able to broaden their views in order to become industrial spokesmen rather than merely heads of one or the other of the great firms in the industry... They move from the industrial point of interest and outlook to the interests and outlook of the class of all big corporate property as a whole” (*PE* 121). Likewise, Mills predicted that corporations would use front organizations to advocate on their behalf: “it is often more expedient to use the corporations less openly, as bases of power, and to make of various national associations their joint operating branches” (*PE* 247). Thus, framing Powell’s memo as an artifact of bourgeois self-defense makes it difficult to appreciate for its full meaning.

<sup>17</sup> Corporate power is not only demonstrated by the elite’s ability to monopolize legal power; it is also demonstrated the increasing concentration of wealth its corresponding power. In 1956, Mills defined wealth as \$100,000+ per year, which was the demarcating line separating the 1% and the 99% in the 50s (*PE* 149). Mills’ definition of 1% wealth translated to 2012 dollars as \$882,555. The actual average income of the 1% in 2012 was \$717,000, while the top 10% min income was \$146,000 (see Gilens and Page). While the numbers seem to stay roughly consistent or even relatively decrease for the elites, it is important to remember that over the last three decades, the top 1% saw a 150% increase in their wealth, while the 99% saw an increase of only 15% during the same period, and the 1% still controls approximately 40% of *all wealth* (Lazzarato 28). And, as Mills reminds us, there are many ways for the elite to exonerate themselves from taxes and other social obligations, namely, the exclusion of income from tax declarations and from formal legal exclusions, such as capital gains, depletion allowance, municipal bonds, trust funds, and foundations. Other arrangements are also options for the wealthy: payment in stock options, deferred pay contract (*PE* 152-156) and a host of fringe benefits (*PE* 158). Given the Panama Papers scandal of early 2016, we can safely conclude that these evasive practices are still widely popular among the power elite in all nations.

<sup>18</sup> Mills captured the tendency of military and police personnel to develop an us-against-them mentality with his notion of “the military mind.” As Mills writes, “The military world selects and forms those who become a professional part of it. The harsh initiation at The Point or The Academy—and on lower levels of the military service, in basic training—reveals the attempt to break up early civilian values and sensibilities in order the more easily to implant a character structure as totally new as possible... He must be made to lose much of his old identity in order that he can then become aware of his very self in the terms of his military role. He must be isolated from his old civilian life in order that he will come eagerly to place the highest value on successful conformity with military reality, on deep acceptance of the military outlook, and on proud realization of success within its hierarchy and in its terms. His very self-esteem becomes quite thoroughly dependent upon the appraisals he receives from his peers and his superiors in the chain of command... The caste feeling of the military is an essential feature of the truly professional officer corps... The military mind also indicates the sharing of a common outlook, the basis of which is the metaphysical definition of reality as essentially military reality” (*PE* 193-195).

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<sup>19</sup> This section takes up Mills's criticism of "the theory of balance," which is a species of descriptive pluralism. "Not wishing to be disturbed over moral issues of the political economy," Mills writes, "Americans cling to the idea that the government is a sort of automatic machine, regulated by the balancing of competing interests. This image of politics is simply a carry-over from the official image of the economy: in both, an equilibrium is achieved by the pulling and hauling of many interests, each restrained only by legalistic and amoral interpretations of what the traffic will bear." Because the political and economic conceptions of pluralistic balance have the same origins, "The ideal of the automatic balance reached its most compelling elaboration in eighteenth-century economic terms: the market is sovereign and in the magic economy of the small entrepreneur there is no authoritarian center. And in the political sphere as well: the division, the equilibrium, of powers prevails, and hence there is no chance of despotism" (*PE* 242). Such "romantic pluralism," however, forgets to move beyond the microscopic levels of power and analyze the larger trends.

<sup>20</sup> G. Bingham Powell, Jr. notes that Locke and his compatriots of the Glorious Revolution ushered in an era of aristocracy. "After 1688 the landed proprietors had assumed virtually total control of Parliament" in both Houses, bankers, merchants, and military represented to some degree, either directly or through pressure they placed on elected officials (109-110). Eighteenth-century Britain had, he explains, "a tradition of national loyalty, lower class deference, and legalism that strongly supported the aristocratic system"; in all, the Whigs enjoyed virtual one-party domination (107).

<sup>21</sup> Mills argues that the power elite of America had gone through four stages between the founding of the republic and World War II. During the first phase, approximately between the American War for Independence (which we should not, for good reason, call the American "Revolution") and Thomas Jefferson's victory in the election of 1800, "the social and economic, the political and the military institutions were more or less unified in a simple and direct way: the individual men of these several elites moved easily from one role to another at the top of each of the major institutional orders. Many of them were many-sided men who could take the part of legislator and merchant, frontiersman and soldier, scholar and surveyor" (*PE* 269). As we will see, the unity of the Founding Fathers as an elite of their day was reflected in their construction of the Constitution. But unlike George Mace, who argues that the U.S. Constitution is more Hobbesian than Lockean, my argument does not hinge on which philosopher's thought more closely resembles the contents of the Constitution, but that whatever the difference between Hobbes, Locke, and the Framers, they all rely upon the same underlying conceptions of executive and legislative sovereignty. See Mace, *Locke, Hobbes, and the Federalist Papers: An Essay on the Genesis of the American Political Heritage*.

<sup>22</sup> Beard's work has been the subject of some controversy for over a century now, but those who believe his thesis has been disproven must acknowledge the impressive quantitative work done in Robert A. McGuire's *To Form a More Perfect Union: A New Economic Interpretation of the United States Constitution*, which substantiates many of Beard's original claims and even takes some of them farther.

<sup>23</sup> Mills recognized the sovereign power of the corporate rich. As he writes, "The Constitution is the sovereign political contract of the United States. By its fourteenth amendment it gives due legal sanction to the corporations, now the seat of the corporate rich, managed by the executives among them. Within the political framework of the nation, this corporate elite constitutes a set of governing groups, a hierarchy developed and run from the economic top down. The chief executives are now at the head of the corporate world, which in turn is a world of economic sovereignty within the nation's politically sovereign area. In them is vested the economic initiative, and they know it and they feel it to be their prerogative" (*PE* 165).

<sup>24</sup> In some ways, the legalistic aspect of American militarization is the most overlooked Mills feature of the power elite's rule. Quoting Elmer Davis, Mills argues that "changes in the power system of the United States have not involved important challenges to its basic legitimations...they have not involved the 'resort to the guns of a cruiser, the dispersal of an elected assembly by bayonets, or the mechanisms of

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a police state” (PE 269). He does acknowledge that “in any serious disturbance of human affairs, real or imagined, societies do tend to revert to military rule” (PE 172), as it did in the aftermath of the 1960s, but he thinks of this military rule not as strictly legalistic but in need of bending the rules. “[T]he future warlord,” Mills explains, “will try to live by the book (‘Standard Operating Procedure’) but know just how far to stretch its letter” (PE 197). While he gestures toward the legal codification of executive prerogative, Mills misses the extent to which the law would replace the exception. Because he was writing in the 1950s, when he refers to “a ‘emergency’ without a foreseeable end” (PE 184), he refers to the Cold War; the criminalization of dissent in the 1970s, the War on Drugs, mass incarceration, and the War on Terror require us to rethink the strictly foreign police orientation that Mills had in mind.

<sup>25</sup> Given the economic incentive of militarization, not only through the government contracts that represent the military-industrial complex but the extending system of privately-owned prisons, it is helpful to remind ourselves of Mills’s commentary on the connection between military and corporate interests: “This trend in economic men is, of course, facilitated by war, which thus creates the need to continue corporate activities with political as well as the economic means. War is of course the health of the corporate economy; during war the political economy tends to become more unified, and moreover, political legitimations of the most unquestionable sort—national security itself—are gained for corporate economic activities” (PE 167). The connection comes through whether we frame the analysis in terms of the power elite (Chapter II) or sovereignty (Chapter IV).

<sup>26</sup> Mills’s epitaph was taken from *The Marxists*: “Throughout I have tried to be objective, but I do not claim to be detached. No political philosopher can be detached; he can only pretend to be” (10).

<sup>27</sup> G. William Domhoff offers a clever criticism of the pluralist position: “The world,” he writes, “is pluralistic – if we take a very short time span, deal with a myriad of specific issues of varying importance on a moment-by-moment basis, make little or no attempt to interrelate interest groups or identify the social standing and occupational backgrounds of the ‘actors,’ and, most important of all, ignore a wealth distribution in which 200,000 households have 22% of all wealth and 60-70% of the corporate wealth” (*The Higher Circles* 354-355).

<sup>28</sup> Legal theorists of the 60s and 70s understood that the law is made by the elites. Robert Lefcourt, for example, argues that the Left can attack the supposed neutrality of the law by understanding its elite origins: “Because the legal superstructure is largely powerless against the pervasive abuses of the corporate world and its oppression of the large segment of the population, it opens the way for popular attacks directed at its most valued assumption, its impartiality” (“Law Against the People” 35). In “Law, the Breakdown of Order, and Revolution.” Stanley Aronowitz calls for the “demystification of the law” (154) because, as he so directly states, “The law *is* against the people” (182).

<sup>29</sup> Sergei Prozorov has analyzed the problem of individualism in thinkers such as Foucault, Derrida, and Agamben. He argues that each one has a notion of individual freedom structured in the same way as the legalistic conception of sovereignty. For Derrida, *the* sovereign and the individual both exercise their freedom through their *ipseity*; while *the* sovereign must be constrained through law, individuals must remain free to exercise their freedom. For Agamben, *homo sacer* and *the* sovereign both have the same relation to law, and once *the* sovereign is abolished through the refusal to move from potentiality to actuality, individuals will be free to pursue their own projects without the threat of legal violence.

The same problem is also apparent in the work of Judith Butler. In “Is Kinship Always Already Heterosexual?,” Butler follows Brown and Halley in cautioning us against relying too heavily on the first form of liberal legalism, namely, relying on legal reforms to promote progressive change. However, in *Precarious Life*, she unquestioningly relies on the second form of liberal legalism, the insistence that law restrain the executive. Like other Schmittians, she posits an inverse relationship between sovereignty and the rule of law, which makes the exercise of executive prerogative unaccountable, illegitimate, and

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dangerous. The fundamental disconnect between these two forms of liberal legalism in Butler's work signals the inability of critical theory to sort out its relation to the law: because the law restrains, it should not be relied upon too much in reform, but precisely because it restrains, we can rely on it to check abuses of power. Until the left overcomes its legalism, it will remain trapped within the same political demands and the same notions of freedom.

On a related theological note, for Hobbes and Bodin, the sovereign is outside the law because he makes the law (this is modeled on God). For the transcendental tradition, the individual subject exists outside the law but does not *make the law*. Unlike Hobbes's sovereign, Schmitt's sovereign exists outside the law without being the maker of those laws. Thus, Schmitt's sovereign is based on a liberal subject and not on an early modern political theology.

<sup>30</sup> Here, it is important to remember that, for Mills, the members of the mass society are not "naturally" ignorant or subservient; they are trained to be that way through their socialization within the social structure. As he puts it, "publics are *becoming* politically indifferent; they are rapidly *transformed* into masses; and these masses are *becoming* morally as well as politically insensible" (*Causes* 74; emphasis added). The process of transformation in this passage demonstrates that we are who we are primarily by virtue of how the social structure creates us.

<sup>31</sup> One might say that politics in the neoliberal age are called the "culture wars" because the question of the New Left's cultural individualism is the one strand of its program that, according to neoconservatives, has not been adequately addressed by the elite. The neoliberals and the neoconservatives *agreed* that the New Left's anti-capitalism had to be stopped, but they took different stances on the New Left's cultural individualism. Neoliberals used it to their advantage, while neoconservatives opposed it. To the extent that the New New Left accepts the transmutation of political and economic demands into mere cultural demands, it accepts political questions as framed by the elites.

<sup>32</sup> For example, Daniel Zamora and Michael C. Behrent's volume *Foucault and Neoliberalism* (Polity, 2015) brings together a series of convincing essays aiming to demonstrate that Foucault was less critical of neoliberalism than most scholars have assumed. In fact, on this view, Foucault actually entertained, if not advanced, many neoliberal ideas.

<sup>33</sup> I owe the term "ideological sovereignty" to Kirsten Worden.

<sup>34</sup> The problem of reflective thought is also apparent in the realm of political theory. "Theory arises when men criticize existing political systems, George Mace argues. "When the existing situation is perceived as not in need of such criticism, theory does not develop. I suspect that the reason so little theory has evolved in the United States is that, for the most part, the *grand* issues have been resolved" (121-122). He is optimistic – or rather, naïve, for he assumes that a lack of thinking means that there is a lack of things to think about.

<sup>35</sup> Some may argue that, since members of the elite disagree about the racism – for example, liberals are against racism while conservatives appeal to it, or the reverse, that liberals perpetuate racism by continuing to take race seriously while conservatives seek to move beyond the use of race for anything (neither of these positions are true, for the record) – it cannot be said that the power elite as a whole perpetuates racism and that racism is not a mode of the elite's power maintenance strategy. However, the liberal rhetoric of inclusion and tolerance gets us no closer to a so-called post-racial society; at best, it creates the illusion that racism can be overcome by changing how everyone feels about each other, when in fact, racism can only be overcome through the fundamental reordering of American society.

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