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Hannah Arendt, the Problem of the Absolute and the Paradox of
Constitutionalism, or: ‘How to Restart Time within an Inexorable Time
Continuum’

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Abstract:

Contemporary theorists of constituent power recognise a tension in which the omnipotent novelty of constituent power is necessarily policed by constituted power. Beginning with Arendt’s claim that the categories of constitutional stability and political novelty should be thought together rather than treated as oppositional, this article presents an interpretation of her work that seeks to address this ‘paradox of constitutionalism’. Whilst commentators have come to assert that Arendt repudiates ‘absolutes’ in favour of an account of ‘relative beginnings’, this article demonstrates that Arendt’s argument involves a critical redescription of the absolute, rather than a repudiation. This is significant, for it illuminates the manner in which her account of founding seeks to dismantle the commonplace temporalisations we attribute to our political vocabulary. This is employed to argue that particular stylings of absolutes naturalise the appearance of the new only as temporal ruptures, allowing us to get a handle upon the paradox of constitutionalism, and to think tentatively beyond this paradigm.

Keywords:

Arendt, constituent power, paradox of constitutionalism, founding, temporality

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INTRODUCTION

In the final chapter of *On Revolution*, in which she draws attention to the lost treasures of the revolutionary tradition, Hannah Arendt writes that 'the spirit of revolution contains two elements which to us seem irreconcilable'. The experience of founding brings forth an 'exhilarating awareness of the human capacity of beginning', an exhilaration which is tempered through a pressing concern with the 'stability and durability of the new structure'. That in our contemporary political vocabulary we recognise stability and the spirit of the new as opposites is 'a symptom of our loss'.¹ This loss is especially germane to the apparently perplexing relation between constituent and constituted powers in contemporary constitutional thought.

Across its diverse formulations, constituent power has recently been framed as a 'paradoxical' concept. Emmanuel Sieyès, writing in the formative years of the French Revolution, did not see the concept as paradoxical. The Nation, as the rightful body to draw up the new constitution of France, was the constituent power, though this power was only enacted through a complex account of representation intended to temper the unbridled ethical will that was later seen in the Terror.² The treatment of constituent power in contemporary thought, however, has reneged on of Sieyès' fateful insights. For a number of contemporary writers, constituent power evokes a pressing tension between the generative and expansive constituent power of the people, and the necessity to divide and constrain it if it is to offer up a viable constitutional form.³ By interpreting constituent power as 'paradoxical', these theorists come to read the concept through the theoretical lens that Arendt wishes to critique, for the founding act is bracketed into two opposed elements: the intense novelty of constituent power against the stability of constituted powers. Though their conclusions differ, this conceptual framework organises the positions of theorists as diverse as David Dyzenhaus and Antonio Negri. For liberal constitutionalists like

Dyzenhaus, constituent power must immediately give way to a stable constituted power, and with it the rule of law, once the moment of founding has passed.⁴ Negri, who seeks to move beyond the tension, celebrates the radical freedom of a constituent power that remains permanently in excess of constitutional form.⁵ The effort to stabilise the constitutional order necessarily implies an execrable containment of the creative potential of the multitude. Despite their unalloyed political differences, each of these theorists retains the antagonistic relation' between stability and novelty, with implications for the conceptual relation between politics and law, for the innovation or unruliness of 'the political' is positioned against the surety of the symbolic order of law.

This article takes up Arendt's assertion that to recapture the lost spirit of revolution consists in 'the attempt at thinking together and combining meaningfully' the opposed temporalities of stability and novelty.⁶ Others have undertaken similar tasks by focusing upon her council system, though this has amounted to a theorisation of the persistence of constituent power within the constituted order.⁷ It is vital also to consider this in the act of founding itself if the opposition is to be challenged effectively. In order to do so, this article re-examines the political temporality that is evoked in the activity of founding. This is developed with attention to her account within *The Life of the Mind*, where she revises her position from *On Revolution*. Here she confronts what she calls 'the riddle of foundation', or, 'how to restart time within an inexorable time continuum'.⁸ The new always emerges within a world that preceded it in time, and so appears to disrupt our received understanding of stability. In constitutional theory, this tension is augmented by a peculiar superhuman need to begin political life with a new calendar. This, Arendt recognises, is achieved most readily through appeals to extra-temporal absolutes that, in mimicking divine genesis, undo the human achievement of founding.⁹ Within this article, I argue that Arendt's response is not to repudiate absolutes in politics but instead to offer a critical redescription of them. Rather than a 'resolution' to the riddle, her response is more appropriately framed as a 'disruption' to the commonplace temporalisations we attribute to our political vocabulary, allowing us to approach the relationship between stability and novelty as compatible rather than antagonistic ideas. In

doing so, we are more appropriately placed to navigate the conceptual make-up of the paradox of constitutionalism and theorise an alternative relation between constituent power and constitutional form.

This argument is built in three parts. In part I, I parse three distinctive readings of the Arendtian account of founding, arguing that they each employ absolutes as tools of political theology, a position which has important implications for the manner in which they relate politics to law.¹⁰ This is problematic for two reasons: first, this retains the bifurcation between stability and novelty, and second, through this manner of thinking it imports a thin conception of law as command into their argument. Whilst Arendt certainly does employ the term ‘absolute’ in this manner, it is by no means exhaustive. Greater sensitivity to her other uses highlights that she does not exclusively consider them tools of political theology. The significance of this is developed in part II, in which I argue that her Augustinian reflections on a predicament of beginning anew in Kant’s *First Critique* illuminates the limitations of a conventional manner of understanding beginnings as a rupture in time. I develop this theme in part III by critiquing the temporal vocabulary employed by the paradox of constitutionalism. Arendt also leaves open the possibility of considering how temporality weighs upon our actions. By reading her thoughts on the temporality of the thinking ego against her position on the temporality of action, one possibility is that our mental reflections on time disentangle our actions from commonplace assumptions of linear continuity, so disrupting our association of the new with rupture. This strategy of disrupting the temporalities we associate with political action assists in reconsidering the ‘paradoxical’ relation between constituent and constituted powers, by challenging the theoretical lens through which a constituent power is made necessary.

THE PROBLEM OF THE ABSOLUTE

Arendt’s reflections on revolutionary beginnings have an ambiguous relation with the term ‘absolute’. She is deeply troubled with the manner in which they are employed as recourse to God,

for power within a political realm attentive to human plurality can never amount to omnipotence.¹¹ Such omnipotence, as is found in her considerations of sovereignty and totalitarianism, compresses the space between humans destroying their capacity to act and to begin.¹² And yet, she nevertheless recognises their importance in the case of laws by which political communities are founded.¹³ Whilst she affirms that ‘the absolute...spells doom for everyone’ when it enters the political realm’,¹⁴ she celebrates the absolute that is engendered in the *principium*.¹⁵

Andreas Kalyvas has recently sought to overcome this tension by dismissing Arendt’s use of the terms ‘altogether new’ and ‘absolute novelty’ as ‘misleading expressions’, in favour of an account of a ‘relative beginning’.¹⁶ Whilst his reading is insightful, I am unconvinced that one can write off Arendt’s language so straightforwardly. Arendt’s choice of words strikes me as more ambiguous; whilst she wishes to refute a groundless will, she does not subsume the absolute under this term, but applies the word ‘absolute’ in manners that pull in different directions. Attentiveness to this is integral to the manner Arendt relates novelty to stability rather than treating them as countervailing tendencies. On occasion, she employs the term ‘absolute’ as a noun, which stand in for authority by appearing as a transmundane object, whilst on others, when for example she talks of ‘absolute novelty’, it is employed as an adjective that modifies the intensity of the novel act. There is, in addition, an important interaction effect between these two employments if the mundane intensity of an ‘absolute beginning’ is betrayed when it appeals to a transmundane or divine absolute. This is evident if we take two examples. The first is clearest in her polemic against Emmanuel Sieyès.¹⁷ It is the substitutional problem of conferring upon the Nation the authority that they might act as a stand-in for the divine absolute: the positing of a ‘Creator-god who creates time along with the universe and who as legislator remains outside His creation’.¹⁸ The great virtue of this mode of the absolute was to be found in its ability to break the vicious circle of law-making for the political temporality of the divine absolute locates the Will beyond the temporal realm altogether, residing ‘in’ eternity. The second is the temporal absolute of rupture—that is, an absolute break with the past. This, she refers to as an ‘absolute beginning’. It is, however a more

problematic construction for it encapsulates this tension between the mundane and transmundane employments of 'absolute'. In utilising 'absolute' as an adjective, it qualifies the action in such a way as the absolute appears to be generated by the act itself. Nevertheless, this appears to be betrayed for though it does not cite God directly, it nevertheless imitates his capacity to create time itself. In doing so, one destroys the distinctive temporality of politics as the will overrides the other faculties of the mind, allowing the actor to believe in the unthinkable, that Man born in time could restart it.¹⁹

Each of these engage in what Michael Freeden has recently referred to as the 'arrogance and arrogation of politics'—that those political decisions that claim finality do so unduly by appropriating authority from elsewhere. Ostensibly conclusive decisions endeavour to occupy a 'godly role of boundary setting' in the commencement of political time, which corresponds to the 'finality of initiation' in order to control the trajectory of political life.²⁰ This practice of political arrogation is vital to Arendt's critique of the unwieldy uses of absolutes within politics. They secure the foundation through the imitation of a transmundane principle allowing secular government to retain the political instruments of Christian political theology.²¹ In section two, I will argue that theologico-political absolutes are not exhaustive of Arendt's thought on the subject. It first serves to examine the consequences that follow when treated as if they were. In order to do so, I take three distinctive readings of Arendt's constitutional founding. These are Bonnie Honig's Derridean rereading, Andreas Kalyvas's account of 'relative beginnings' and Mark Wenman's affirmation of constituent power as absolute rupture. What remains intact in each account is an employment of 'absolutes' as tools of political theology. In treating absolutes in this fashion, each of them persists with a theorisation of law as a symbolic order that is 'against' politics. As such they each conceptualise the relation between politics and law inadequately. The implication is an inability to consider the categories of novelty and stability together in the manner in which Arendt calls for.

In her impressive comparative reading of Arendt's *On Revolution* with Jacques Derrida's *Declarations of Independence*, Bonnie Honig identified in Arendt an attempt to address the question of how to 'establish lasting foundations without appealing to gods, a foundationalist ground, or an absolute'.²² In place of an appeal to an extrapolitical source of authority, Honig places stress on an act of performative writing that is the most exemplary form of being-in-the-world; the 'we hold' of the declaration was the actualisation of freedom in action, that 'requires no appeal to a source of authority beyond itself'.²³ Against this, she contrasts Derrida, who demonstrates the 'we hold' of the declaration to be caught up in the undecidability of the constative utterance of a people who are yet to come into being. Her solution is neither to deny nor succumb to the constative moment of founding, but instead calls for Arendt to 'resist' this undecidability.²⁴ In appealing to resistance, Honig sets up the initial intervention into the problem of the absolute. Absolutes are illicit because they are irresistible, though the peculiar undecidability may be exploited in order to resist the irresistible absolute. This 'resistance', however, reworks the relation between law and politics. Though it resists the act of putting the law of laws above humankind, law remains associated with the divine command that nevertheless holds the absolute in its place as a 'law of laws'.²⁵ This is the heritage of the Derridean strand of Honig's interpretation for which absolutes, like constative utterances, are structural necessities of our language that cannot simply be abandoned.²⁶ This has pressing implications for the Arendtian activity of augmentation, for there are acute differences between the Arendt and Derrida. For Arendt, augmentation, derived from the Roman conception of law as an alliance, is an activity of 'adding to the original foundation' through which law and politics appear together as mutually compatible categories.²⁷ The Derridean undecidability, however, undoes this compatibility for he conceives of law as command.²⁸ This is not to diminish the innovation of Honig's interpretation, but rather place emphasis upon the manner in which her Derridean inflection configures the relation between law and politics, for the structure of resistance is not only a resistance against the absolute, but a resistance against the law. The deconstructive move converts augmentation, an activity of 'being-alongside', into resistance, that is, as 'being-

against'.²⁹ Stability and novelty are agonistically related in a precarious, open-ended struggle between politicisation and depoliticisation.³⁰ Though the opposition is transformed into a generative tension, stability nevertheless remains antithetical to the spirit of the new.

More recent revisionary interpretations of *On Revolution* have challenged Honig's breakthrough reading. Andreas Kalyvas takes Honig's reading to task, instead arguing that Arendt celebrates the American revolutionaries who were able 'to avoid the language and practices of absolute rupture' that a purely performative politics entails, for they relied upon pre-existing contracts, charters and self-governing public bodies, thus escaping the 'lawlessness and power vacuum that a complete break would have necessarily created'.³¹ Through the 'relative' nature of beginning in *On Revolution*, he argues, Arendt's story of the American founding drew its strength from the ability to remain in continuity with the preceding democratic culture of the colonies. While this was an instance of 'extraordinary politics', no absolute beginning arose for authority was derived from the legal traditions and institutions that persisted. Though Kalyvas's interpretation offers the critical insight that a thread of temporal continuity remains, this is styled as a legal continuity in order to avoid the proximity to Carl Schmitt by 'repudiating the notion of an *ex nihilo* beginning'.³² There is certainly good reason to think Arendt is replying to Schmitt,³³ though this need not be so straightforward as a repudiation of absolutes, and the inversion of Schmitt's argument. To suggest this is the case is troublesome for it tempers the manner in which Arendt rethinks the significance of law. For Kalyvas, the appropriate action is to take guidance from existing laws, and not to throw oneself into the abyss of freedom. A relative beginning ensures that the absolute does not emerge, but only *in this instance*, a position enhanced by his emphasis upon the exceptionally good laws of colonial American. The absolute, as the spectre of a Schmittian conception of commandment, remains conspicuous in its absence, for it is excluded from the particular case though not overcome generally, and so Kalyvas's thesis retains the phenomenological makeup that associates law with stability, and politics with the new, though a new inflected with decisionism. To escape this decisionism, the novelty of politics is subordinated

to the law through which it is harnessed and contained.³⁴ Rather than an antagonistic relation, or an agonistic struggle, politics is inscribed within the law though the distinctive conceptual functions of each are retained.

It is for this reason that Mark Wenman has celebrated what Arendt recognises as the 'specific revolutionary pathos of the absolutely new'.³⁵ Noting Kalyvas's effort to advocate only 'relative beginnings', Wenman has interpreted Arendt's argument instead as an endorsement of a form of action that manifests in the ruptural temporality of radical innovation.³⁶ On his account, that Arendt keeps alive this connection between constituent power and temporal rupture is precisely what separates her thought from her agonistic heirs. Wenman wants to take Honig's interpretation without its Derridean gloss. Instead, by placing the stress upon the 'absolute priority' of constituent power as revolutionary rupture he interprets Arendt as 'stress[ing] unequivocally the moment of radical innovation' which he connects with an absolute beginning.³⁷ Whilst Wenman reads Arendt as opening up an abyss of freedom, he suggests she does so only by radically rupturing the historical time continuum. Though he appreciates the phenomenological importance of the act of founding, the insightful distinction that he sketches between constituent power as revolution and augmentation, along with his preference for the former, urges us to engage in a politics that does not concede to the closure of law. In order to do so he styles this rupture in the form of a messianic break.³⁸ That is to say, for Wenman theologico-political absolutes are necessary to overcome the law and mobilise the brand of militant cosmopolitanism he demands.

None of this is intended to diminish the innovation of their readings, for the positions of Wenman, Honig and Kalyvas strike upon crucial elements of Arendt's thought, though I wish to emphasise that in utilising absolutes as theologico-political tools, they are encouraged to think of law and politics as opposed categories, and so cannot get a handle upon a complementary relation between novelty and stability. In the process of doing so, the temporal experience of founding is drawn in one of three ways; it is either a continuity with the past, a radical break from it, or an

agonistic struggle against the despotic though stabilizing absolute. Each of these readings lead us back into the paradox of constitutionalism, for the temporal lens through which they approach founding associates constituent power's novelty with a political break, and stability of constituted power with continuity.

OF RELATIVE ABSOLUTES

The term 'absolute' plays a far more distinguished role in Arendt's account of constitutional founding than has thus far been acknowledged. In attending to it, we can appreciate that it is precisely this common distinction, which maps continuity on to stability and associates rupture with radicality, that Arendt reworks. In addition to these theologico-political uses, there is another 'absolute' which conceives of temporality of founding differently. Here, Arendt establishes the grounds for a peculiar construction she refers to as 'relatively absolute spontaneity', which she employs to critically rewrite the valence of the term 'absolute' in order to reintegrate it into her political vocabulary by scrambling the terms of temporal experience in modern Western thought that bind novelty to futurity and rupture. This appropriately frames her characterisation of the absolute as it applies to the establishment of principles in and of politics. The purpose of this is to undo what both Honig and Kalyvas, in their own ways, take to be the despotic moment of the absolute that places the law above and against politics. This oblique argument can be discerned if one first appreciates that through her often experimental and eclectic writing the meaning and valence of words such as 'authority', 'foundation' and 'absolute' shift radically. She exploits this strategy of reading as a means of disrupting the commonplace distinctions that the political vocabularies of the 'Western tradition' attribute to absolutes.

As a way into this disruption of our temporal register, Arendt considers Kant's 'embarrassment' in dealing with the problem of bringing something new into a world already in motion. There is an apparent tension in which Kant describes a chain of causation beginning in the moment he rises from his chair. In doing so, she quotes Kant, a new series has 'an *absolute*

beginning in this event, although as regards time this event is only the continuation of a preceding series'.³⁹ What is 'so very troublesome' is the 'notion of an *absolute* beginning, for "a series occurring in the world can have only a relatively first beginning, being always preceded by some other state of things"'.⁴⁰ This is to suggest a perplexing tension is in place between the act being at once relative and absolute. In rising from a chair, the act can be said to be an 'absolute beginning' insofar as causality is concerned, if not time, for though time does not begin anew, something new is initiated in willing that act. Despite this, due to our received relation between causation and temporality, it is not at all straightforward whether such a beginning can be interpreted as an 'absolute beginning'. Kalyvas has taken this passage to indicate a reproach on Arendt's behalf of Kant's failure to distinguish absolute from relative beginnings, in order to affirm his interpretation of her as a theorist of the latter.⁴¹ This, however, seems to paper over precisely the temporal difficulty at stake, for she does not turn to Kant in order to resolve the problem of willing, but to prise it open. It is certainly the case that humans cannot commence time anew as if they were gods though it diminishes the thrust of Arendt's account of the will and of action, each with their 'miraculous' qualities,⁴² if the beginning is treated as only *relatively* new. The discussion points to something more profound. The manner in which we take for granted the appearance of the new within politics does not so much conflate temporality with causation, but privileges the former over the latter. Our common sense dictates that the absolutely new is not only unprecedented, but that it attains its unprecedented significance by appearing *ex nihilo*, and so a problem follows: the absolutely new may only emerge as an event unconnected with the past, an activity that, short of an arrogant gesture to the tools of political theology, is beyond the scope of human action. In doing so, it also naturalises the phenomenological opposition between novelty and stability, in which the absolutely new appears only as a punctuated temporal break that, insofar as it is to be perceived as an absolutely new event, must break from that which existed before.

Rejecting the absolutely new in favour of a relative beginning does little to address this naturalised opposition. It is, however, possible to identify an attempt on Arendt's behalf to

redescribe the temporality and valence of an absolute beginning in order to square this difficulty. In Augustine, she finds a distinction between two beginnings, the *principium* of heaven and earth, and the *initium* of humankind, a distinction that points to the phenomenon that Kant draws between those temporally absolute and relative beginnings.⁴³ Arendt returned to this distinction often throughout her body of work, and the employment is significant for not only does she consider him the only philosopher who, through this distinction, adequately explains Genesis in a manner sensitive to the human capacities to begin, but in doing so he sufficiently complicated the relation between what we take to be relative and absolute beginnings. Though *principium* amounted to the beginning of the world and time, time only became meaningful through the *initium* of humankind without whom the movement of time was unthinkable. Prior to the creation of humankind, time turned in a ‘purposeless way’, and so it was for the ‘sake of *novitas*... that man was created’.⁴⁴ Whilst *principium* may readily have been called the ‘absolute’ beginning in the Kantian manner, in that it successfully commenced time, that time was created *in principio* is of only relative consequence, for the new only attained its meaning as a beginning in relation to the *initium* of Man who could conceive of time in a purposeful fashion. The vital point, as Arendt recognises in a footnote to her discussion of natality, is that Augustine’s notion of *principium* has a ‘much less radical meaning’ than the standard translation of the bible’s first verse.⁴⁵ This evaluation more appropriately frames the phrase that she often quoted from *City of God* that demonstrates the enormous capacity of humankind to act as beginners, ‘that there was a beginning [*initium*], man was created before whom nobody was’.⁴⁶ The capacity to begin does not follow from a humankind created in God’s image, or the arrogation of a god-like capacity as a Schmittian decision might, nor does it imply Scotian univocity.⁴⁷ Rather, it was with *initium*, and not *principium* that a new event was made intelligible *as a beginning* which, in accordance with her conception of human plurality, could be meaningful only when recognised as one by humans who perceive time by breaking the temporal continuum into tenses.

This clarification is crucial, for it reveals the manner in which Arendt's account of natality is geared in *The Life of the Mind* toward disrupting our sense of the absolute beginning as it appears in Kant. The predicament that Kant cannot square between an absolute causal beginning and a relative temporal beginning is seemingly dealt with in Arendt's argument by inverting the relation between them. The creation of time, in Arendt's interpretation of Augustine, is not ontologically superior to the creation of man within time, for the former, *principium*, can only be fully comprehended following the latter, *initium*. That is to say, in Augustine's philosophy, there is an intensity to the human will *vis-à-vis* creation that is not found elsewhere in the philosophical tradition with which she is concerned. Arendt continues that had Kant known of Augustine's philosophy of natality, he might have recognised that 'the freedom of a *relatively* absolute spontaneity is no more embarrassing to human reason than the fact that men are *born*'.⁴⁸ At the heart of this claim is a peculiar construction. To say an act is 'relatively absolute' is contradictory, though it reveals the sort of ontological bracketing she wishes to challenge. The grave problem, for Arendt, is that the very hypothesis of the absolute beginning goes back to the biblical doctrine of Genesis in which the beginning is bound to *principium*, and so the vocabulary of the absolute is always interpreted through, and judged against the standard of *ex nihilo* creation. Such, however, necessarily encloses the absolute within the confines of a divine will. As Kant examines the idea of the absolute beginning, he too renders it meaningful only by judging it against the principles of biblical genesis.⁴⁹ It is in Augustine that Arendt finds the tools to unhook this commonplace relation. This contradictory construction of the 'relative absolute' in contradistinction to the divine absolute cuts to the heart of Arendt's dilemma. The divine absolute is wholly inattentive to the fragile human capacity to begin anew. Not only is it wholly inaccessible to human action short of an arrogant gesture of imitation, but it also frames human activity in partial or relative manner, so diminishing its reception. In contrast, the 'relative absolute' captures the *human* capacity of beginning 'absolutely'. That is to say, her position does not amount to a repudiation of the absolute, but the recovery of an alternative manner of employing that is sensitive to human plurality.

This excavation from *Willing* appropriately frames an otherwise abstruse comment in *On Revolution*, in which Arendt offers the affirmative statement that the search for an extra political absolute that might break the vicious circle of lawmaking is ‘futile’ for ‘this absolute lies in the very act of beginning itself’.⁵⁰ She relates this to the concept of the principle which is the ‘solution to the otherwise unsolvable problem of an absolute in the realm of human affairs’.⁵¹ Like the lost Roman *auctoritas*, principles are critical for politics insofar as they establish criteria for normative judgement.⁵² In recognising the principle as the absolute that lies in the act of beginning, Arendt draws an elementary distinction not between absolute and relative beginnings, but divine and worldly absolutes that map on to the two Augustinian capacities to begin.

When understood in this way I am not encouraged, as George Kateb is, to understand the principle as that which ‘comes to one from outside and inspires “from without”’, for it then appears to us as quasi-transcendental normative standard that derives its binding force from its location outside of the world.⁵³ Conversely, Lucy Cane’s insight that the principle comes into being through cycles of repetition and regeneration, though agreeable, diminishes the ‘event-character’ Arendt associates with the relatively absolute beginning.⁵⁴ The temporality projected by *initium* intends to disrupt the contrasting of the two. Instead, the principle is closely related to the concept of *archê*, endowed with a particularly human capacity to begin. Though she recognised this to be typically associated with sovereign rule, Arendt wished to resume the lost etymological connection that splits the act of ruling from that of ‘setting in motion’.⁵⁵ In recovering this ancient meaning of *archê*, Arendt affirms the thread of continuity between the act of initiation and the activity of ruling that is inaugurated. Ruling does not separate ruler from ruled by conceiving of the beginning as a temporal break between sovereign and subject, but conceives the activity of politics under a principle that, coeval with the beginning, ‘inspires the deeds that are to follow and remains apparent as long as the activity lasts’.⁵⁶ In doing so, Arendt attends to the manner in which stability springs from the beginning, rather than emerging subsequently—in the activity of ruling—to suppress its novelty.⁵⁷

There is a spatializing phenomenology of law that proceeds from this. Through the lens of *principium*, the beginning of law serves as a partitioning device that commences time and space, with the explicit purposes of securing the inside from the out and reducing politics to peace, an ability amplified by the command-authority emanating from the ‘power monopoly of the state’, itself an imitation of the divine creator who prohibits human actions through commandment.⁵⁸ The lens of *initium*, in conceiving of beginnings as activities sensitive to human plurality, conceptualises law differently. Insofar as the beginning is not conceived as a radically punctuated rupture in time and space, but an activity within time that is inaugurated and augmented, the creation of law serves not as a wall to separate one from another, but, in accordance with the Roman *Lex*, seeks formal relationships and ties between individuals.⁵⁹ To this effect, Law served as a means of forging an alliance or *rapport* to relate things, in order to bring individuals face-to-face.⁶⁰ The spatial inflection of this is to see *Lex* not as the preservation of a space, but the reduction of distance between individuals in order to foster political interaction and forge a common world. The correlated effect is to conceive law alongside politics as complementary tools that augment the founding act.⁶¹ That is to say, the implication of the temporality associated with the relatively absolute beginning of *initium* is to alter one’s relation to law. Politics is not a disposition of being-against the law, nor does Arendt contrast constituent with constituted power. This conceptual nesting is the legacy of interpreting the absolute beginning as *principium*.

BEYOND THE PARADOX OF CONSTITUTIONALISM: THE TEMPORALITY OF THE RELATIVE

ABSOLUTE

The overlooked, and relatively finely-tuned difference over the temporality Arendt associates with the term absolute is not only thoroughly relevant to her own account of political founding, but also allows us to get a handle upon the phenomenological make-up of the paradox of constitutionalism. Doing so appropriately situates her response in a manner that devises an account of founding that reconciles stability with the emergence of the new by disrupting our

common-sense temporalisations of these categories. Loughlin and Walker's paradox of constitutionalism presents the elementary tension of modern constitutionalism in the relation between the people as constituent power and the constitutional form that they bring into being. The unconditionally generative constituent power of the people must, for it to successfully establish a constitutional regime, be 'divided' and 'constrained' through the instituting act.⁶² To frame the problem differently, constitutionalism appears paradoxical for it relates constituted power to the stability associated with legality and continuity, and constituent power with the punctuated novelty of politics.

When Loughlin and Walker identified this problem in their 2007 volume, they presented four possible solutions.⁶³ Irrespective of the political bearing ascribed to the constituent power under each thesis, the meaning and function of constituent and constituted powers are kept intact. In each instance, it is accepted that the latter captures and constrains the former in order to preserve—or police—politics. What goes unaddressed is the manner in which we are encouraged to view constitutionalism through the narrow scope of such a paradigm. The excavation of the problem of the absolute presents an elementary perspective as to why this is the case. By *The Life of the Mind*, Arendt seems to have recognised that the problem of the absolute cuts in both directions. It is insufficient to contend that the conventional manner of *employing* politico-theological absolutes in politics undermines the activity of founding, for absolutes condition our politics irrespective of our appeal to them, insofar as they assist in organising the temporal relations within which our political language operates. So long as the activity of beginning is associated with *pricipium* in this manner, we anticipate that the emergence of the new can only have radically disruptive consequences, a claim that seems to hold even once the overt theologico-political connotations have been shed. This is illustrated in Andrew Arato's recent efforts to move beyond the paradox of constitutionalism by developing a paradigm of 'post-sovereign' constitution-making. Here the concept of constituent power is 'de-dramatize[d]' by conceiving of constitutional founding as a process of legal revision, though this activity nevertheless organises itself around the

familiar temporal clustering of law, stability and continuity in order to temper the unruly constituent power.⁶⁴ The stability ensured by legal continuity is necessary so long as the activity of constituent power is conceived through the lens of a theologico-political absolute. The corollary is that the elementary bracketing between stability and the new remains intact. Though this may provide a viable constitutional form, its solution to the paradox of constitutionalism is to invert the bifurcation through which stability is given preference over novelty in even the first instance.

This diagnostic point demonstrates that it is not enough simply to reject or resist the concept of the absolute when conceiving of the activity of founding. So long as we associate the absolute beginning with temporal rupture—one that is imitative of the divine creation of the world—our vocabulary fosters conceptual bifurcations and ‘automatic thought-reactions’ that Arendt wished to do away with, bracketing off stability against novelty, by pairing them with continuity and rupture respectively.⁶⁵ Practically, moreover, it only allows the radically new to appear in predictable ways, namely, as a break from the past. Arendt’s solution, at least by *The Life of the Mind*, is not an endorsement of ‘relative’ beginnings, for she would be led back into the problem. It is the notion of relatively absolute spontaneity that allows her to reconsider this. If it is to allow us to conceive of stability and novelty together, however, the temporal structure of this activity requires discerning. In reading her account of the temporality of the thinking ego against the temporality of action, a ‘relatively absolute’ beginning within time springs from creative reflection on the past, displacing assumptions of linear continuity that associate the new with rupture. This elaborates the finer points of difference between my interpretation of Arendt and Kalyvas’s ‘relative beginnings’ thesis in order to demonstrate how this temporality can be put to work to reconsider the terms of paradox of constitutionalism.

Toward the end of *Thinking*, Arendt returns to a parable by Kafka entitled ‘He’.⁶⁶ Here she envisions the location of the thinking ego upon a ‘battleground’ between the forces of past and future. That they are ‘forces’ is pivotal to her conceptualisation of temporality, for each of them presses upon the mind in order to shape the world of the thinker. Passively, it is within this

rectilinear temporality that an individual life rises out of 'natural' life, characterised by cyclical time.⁶⁷ Actively, however, the forceful nature of past and future operate as a springboard for innovation. This is clearest in her modification of the parable in which she dismisses the notion that the protagonist might 'jump out of this world altogether', for to do so would be to absolve past and future of their meaning.⁶⁸ Rather, as the forces of past and future meet, his presence causes 'the stream of time to deflect from whatever its original direction'. The ensuing 'third force', having resulted from past and future whose origins are infinite, is projected diagonally from a point of origin in the present outward in an 'infinite' direction.⁶⁹ The modification that Arendt draws is significant for two reasons. First, she identifies the location of the thinking ego within the world, rather than within the *nunc stans* of Christian philosophy, the thinking equivalent of the unreflexive theologico-political will of constituent power. Second, it is when situated within the world that the absolute condition of human creativity is affirmed. The diagonal force is a thought process that, building upon the mind's location between past and future, reaches out into infinity, the avowal of the ontological intensity of thinking, an activity that gives rise to the absolutely new without transgressing the temporal continuum.

Though this is characterised as 'a perfect metaphor for the activity of thought',⁷⁰ one should be careful in bracketing it to this arena alone.⁷¹ The striking opposition between *vita activa* and *vita contemplativa* developed in *The Human Condition* was largely rethought by *The Life of the Mind*.⁷² Thought is not a practice that occurs outside of the temporal world, but is one deeply connected to 'experience'.⁷³ Whilst the practice of thinking remains a solitary activity, the two additional faculties of the mind, willing and judging remain responsive to the realm of appearance.⁷⁴ These three faculties were to be kept in correspondence to prevent what she saw as the perennial problem of the philosophic tradition—the retreat of the thinking ego.⁷⁵ Critically, the relation between thought and action is a recursive one; to be puzzled by the temporality of founding is a perspective that confronts the life of the mind before it confronts the realm of appearance. Paul Ricoeur grasps

this reflexivity when arguing that ‘it is *vita contemplativa* which allows *vita activa* to understand itself and to reflect upon its own temporal condition’.⁷⁶

Certainly this interface between thinking and acting can be enlarged if her reflections upon Walter Benjamin are considered.⁷⁷ For Benjamin, the past appears in the present not as ‘homogenous, empty time’, but as *jetztzeit*, a moment pregnant with transformative potential, in which the past is received in order to amplify the creativity of action.⁷⁸ Critically, for Arendt, this utilisation of the past involves a strategy of ‘citability’, which she distinguishes from ‘transmissibility’.⁷⁹ Whilst the latter is the thread of narrative continuity that ties the past to the present through the authority of tradition, citability makes use of what she elsewhere calls a ‘fragmented past which has lost its certainty for evaluation’.⁸⁰ There is a timeliness to this appropriation of Benjamin for, like the loss of tradition, activities of founding throw us into a protean universe.⁸¹ Short of exceptional circumstances, when the founding of a new constitution is necessary the pre-existing political landscape is rarely capable of providing the requisite legitimacy to secure the founding, for if authority were intact there would be no need for a new constitution.⁸²

In the instance of founding, it is not enough to replace the security of tradition with what Benhabib calls ‘narrativity’ for this nevertheless remains within the conceptual frame of a transmissible past that can be utilised unproblematically.⁸³ Kalyvas appears to have narrativity in mind when he turns to preceding laws to stabilise the founding. For him the narrative of legal continuity secures the grounding of the constitutional beginning, through which the old is in position to place ‘self-limitation and stability’ upon the new, operating in a manner not dissimilar to the transmissibility of tradition.⁸⁴ Arendt’s Benjaminian offering presents a thought-practice that is a little more complex; after all, storytelling is only one aspect of what Arendt does.⁸⁵ This, she combines with an experimental writing, which turns to the past to ‘pry loose the rich and the strange’.⁸⁶ The Benjaminian gift of thinking poetically entails the playful combination of thought-fragments in order to evoke novel and serendipitous experiences. Whilst Raluca Eddon suggests that one would be ‘hard-pressed to imagine a more effective neutralisation of the messianic

dimension of Benjamin's thought',⁸⁷ she it fails to recognise the sophistication of Arendt's move. Arendt reads Benjamin against Benjamin in order to disentangle the thought-fragment from its messianic-revolutionary surroundings. The 'citability' she identifies in Benjamin's work is one that is bound neither to authorial intentionality nor a narrative totality. The cited thought-fragment might creatively misread the intention behind the cited act, though this is due to its essayistic styling of prising open the gap between past and future in order to give birth to a new beginning. This fleshes out her reflections on Kafka, for the act of beginning is not defined in opposition to the old. The passing of judgement upon these thought-fragments recovered from the past means that the old is transformed into the radically new through the practice of thinking—the deflection of both tenses into an infinite present. It raises the past to open the present up to the new: 'the genuine picture may be old, but the genuine thought is new. It is of the present'.⁸⁸

There is good reason why we should be careful of this distinction between a transmissible and citable past, for when in *Life of the Mind* she reconsiders the American founding, Arendt recognises that the founding fathers were caught once again in the problem of temporality. She highlights that they 'renege[d] on the very experience of freedom and novelty' in seeking a justification for their actions 'which will have to show the act as a continuation of preceding events'.⁸⁹ A narrative resolution circumvents the riddle by ensuring all foundation is the re-foundation of a prior political arena, so whilst it never confronts the problem of temporal boundary setting, it comes at a cost. In doing so, the Founding Fathers denied themselves the 'hope of founding a new Rome'; instead they were forced to 'repeat the primeval foundation and found Rome anew'.⁹⁰ The subtle distinction drives to the heart of Arendt's position. What is sure is that the absolutely new need not dismantle the old in order to attain its meaning, but whereas Kalyvas's extraordinary politics, like Arato's post-sovereign constitution-making, puts guides in place to ensure self-limitation, Arendt refuses this trope of the Western tradition. The former founds Rome anew by re-establishing the old in its image, the latter founds a new Rome by judging the new against the exemplar. The temporal difference between the two is acute—whilst the former

is bound to the past, the action of the latter draws from the past, though its action is not rendered meaningful through its relation to the past. The founding, whilst not a temporal beginning, could claim to be an act of ‘absolute novelty’ that initiates a new space in the world. It is not simply ‘the new as an improved re-statement of the old’.⁹¹

It is here that a distinctive conceptualisation of political temporality emerges. Unlike process-driven activities, in which time appear to transition imperceptibly between tenses, the ‘gap’ that is opened in the present—the infinite diagonal generated when self-consciously located between the weight of past and future—represents a moment of unending possibility. It is here that we might locate this conception of ‘relatively absolute spontaneity’. This moment is by no means one that appears *ex nihilo*; it is not an emergence from sheer voluntarism but an absolute generated from an application of the three mental faculties in concert. In doing so, Arendt reconceptualises absolutes as tools that are not bound to political theology. In response to the Kantian predicament that events of this world can only have ‘relatively first beginnings’,⁹² these parables build upon Arendt’s Augustinian claim that men are born, ‘newcomers again and again in a world that precedes them in time’.⁹³ The capacity to begin in a ‘relatively absolute’ manner respects the finitude of humankind, and the limitations upon our worldly capacity to begin. To act otherwise—to begin *as if* that beginning was *ex nihilo* is to invoke the very Schmittian tool of political theology, and with it, a troubling conception of law as command.⁹⁴ By contrast, her reformulation of an ‘absolute’ activity retains the properly temporal experience of politics by experimentally retrieving from the past those imperfect thought-fragments that might be put to a new and innovative use to prise open an absolutely new beginning. To be sure, the absolutely new is not a straightforward continuation of past events for the past does not appear to the thinking ego as an unproblematic narration. It is a fragmented past that has lost its certainty. Jacques Taminiaux writes of Arendt, ‘it is the past itself that launches an appeal to the invention of the new...of a future way of inhabiting the world’.⁹⁵ This requires clarification, for the past is only meaningful through experience of it. The past is ‘launched’ into the absolutely new only through

the interface of thinking and acting. The characteristically infinite trajectory of thought projects the past toward the initiation of a new act, through which the quality of the absolute is not to be established in its origin, but in its trajectory. By locating the will between past and future, the absolutely new emerges not as a break from the old but what Patchen Markell has called an agent's 'attunement' to the act's character as an irrevocable event.⁹⁶ The old is not the context from which the act breaks but the context that provides the tools for its amplification.

In thinking through beginnings in this fashion, we go some way to addressing the paradox of constitutionalism, for it allows us to think through the will of the founding act differently. In place of the rigid distinction between constituent and constituted power, in which the former appears as an uncompromising willfulness against which all positive law falls silent,⁹⁷ the will of Arendt's founding has a reflexive character. By locating the will in the state of nature, Sieyès' constituent power is absolved of its temporal bindings. If I am correct in the case that I have presented, it is not so much its intensity, but the detemporalisation and isolation of Sieyès' constituent power that characterises its willfulness in an uncompromising manner. Doing so is precisely the imitative strategy of a theologico-political absolute to which Arendt wants to draw our attention. Conversely, in Arendt the will is related to the constellation of human freedom, plurality and temporal finitude, and so whilst her reflexive account manifests in a resistance against any attempt to be commanded,⁹⁸ it does not do so in an uncompromising manner that throws out of joint our experience of time. Arendt, rather, is attentive to the manner in which the will can reconcile novelty with stability, for it is not only located in time, but aware of that location. In doing so, one reflects upon the situation in order to take responsibility for the chain of events initiated. This is not to say that the will is self-limiting, but rather that, like *archê*, the new does not appear as a discrete or unencumbered moment but a trajectory that builds upon itself, in concert with law, in order to develop upon stable grounds for politics.

The critical point is that the concept of constituent power is absent from Arendt's normative vocabulary, and with good reason.⁹⁹ Constituent power is necessarily bound up with an unreflexive

modality of action that requires the pairing of a constituted power tasked with constraining the absolutely new. It is not enough to devise a relative conception of the will alone in order to escape the dilemmas associated with constituent power. Her solution is to correct the theoretical lens of the absolute through which the need for a constituent power manifested. The paradox is addressed by placing the relation between law and politics within a fundamentally different field of commitments. Consider, for example, the question over the illegality of the founding act, which is an alternative expression of the paradox of constitutionalism. In excluding the conceptual framework of constituent power through her redescription of the absolute, the relation between law and politics is conceived differently, as a mutually enabling, rather than antagonistic pairing. Arendt's relatively absolute beginning is coeval with the spirit of the law engendered by the founding principle. One might say the founding act is already legal, as if it 'anticipates' the law that is inaugurated. Such a conclusion remains internal to the terms of the paradox.¹⁰⁰ Rather, the legality of founding does not trouble Arendt for it already inappropriately conceives of the law as a 'catalogue of prohibitions' that primarily serve to partition the political from the non-political and the legal from the illegal.¹⁰¹ The Roman-inspired law to which Arendt appeal in *On Revolution* and *The Life of the Mind* does not commit to such spatial, temporal and legal *boundaries*.¹⁰² Like the relatively absolute beginning that occurs within the world, it is ultimately of little consequence that the act of founding occurs 'outside' of the law. What *is* of consequence is that the activity of founding, like the law, serves to connect, rather than to divide.

CONCLUSION

My reading of Hannah Arendt's constitutional founding has sought to draw attention to an overlooked aspect of her argument. Within *On Revolution*, and, to a greater extent, the revisions to that argument in *The Life of the Mind*, Arendt is engaged not only in a theorisation of founding, but also a reconsideration of the political temporality that is associated with it. This is not, as has been argued by others, the celebration of legal continuity over the ruptural mood of the French

Revolution. Rather, I have argued that within the course of her argument, one can discern crucial elements through which she rewrites the meaning and valence of the term 'absolute' in order to disrupt the manner in which the absolutely new is associated with the commencement of time itself. This move is more than just a linguistic sleight-of-hand in attributing the term 'absolute' to an act that is only relatively new. Instead, the reworking is a phenomenological one that intends to disrupt the commonplace temporalities through which we associate creation with a decisionistic brand of political theology. The implicit intention in doing so is to alter the theoretical lens that relates the new to temporal origins, the lens through which the need for a constituent power manifests.

The argument developed has presented two significant insights. First, I have sought to demonstrate that, when viewed from the perspective of temporality, the problem of the absolute may be employed as a diagnostic device in order to navigate the paradox of constitutionalism. Through this lens it is possible to see why the paradox of constitutionalism appears paradoxical for it naturalises an opposition between stability and novelty around which our political vocabulary clusters concepts. This is only because novelty is conceived through the ruptural temporality of *principium*. This is carried over into thinking about constituent power irrespective of any overtly theologico-political connotation attached to the concept. To this effect, the various possible formulations of the paradox of constitutionalism, whether a constituent power tempered by a constituted power, the question over the (il)legality of the founding act, or the people who are both creator and creation of the law, are each consequences of our thinking of the beginning as *principium*, through which we are encouraged to consider the new as a ruptural or *ex nihilo* beginning that institutes a temporal boundary, partitioning the political from the non-political, and the legal from the illegal. All of this requires a conceptualisation of political agency arrogated from God.

Arendt's wager is that humans are temporal creatures who recognise our finitude in the world. Although we try, humans are unable to begin as if we were God. The upshot of our being

hominem temporalem is that time is conceivable only in our presence. Arendt's brilliant conclusion to this was to recognise the priority of the Augustinian *initium* over *principium*; correspondingly, beginnings are meaningful only in our reception of them. The important conclusion that follows is that we are not held captive by the picture of the theologico-political absolute, for though our whole vocabulary is shot through with temporal aspects we nevertheless have the capacity to rethink the manner in which temporality weighs upon our actions. Part three of this paper examined one way in which Arendt achieves this, through which the absolutely new event of *initium* emerges from the interface between thinking and acting that creatively draws from the past and projects into the future, one that is attentive and responsive to the world. This relatively absolute modality of founding is not only characterised by a reflexive formulation of the will, but also the political will's relationship with law. In forgoing the aspects of division that are carried over from the account of *principium*, Arendt is able to conceive of law to a different end, namely as a *rapport* that enable and augments the connection between individuals. Once this aspect of her argument is discerned, a distinctive temporalisation of founding emerges that opens the possibility for a politics distinct from either what James Muldoon has called a 'middle path' between liberal constitutionalism and radical democracy,¹⁰³ or Antonio Negri's belittling depiction of a 'perfectly conservative' model of legal continuity and American exceptionalism that is 'more appropriate to a neophyte than a Heideggerian philosopher'.¹⁰⁴ Whether Arendt's relatively absolute spontaneity conceives of a sufficiently radical politics for theorists of constituent power such as Negri is a question that can remain open. What *is* clear, however, is that her considerations of the problem of the absolute introduces an interpretive apparatus for considering political founding that prises apart the conventional associations of stability with 'conservatism' and novelty with 'radicalism'.

ENDNOTES

¹ Hannah Arendt, *On Revolution* (Harmondsworth: Penguin, 1963), 222-23.

² See especially Emmanuel J. Sieyès, “What is the Third Estate?,” in *Political Writings*, ed. Michael Sonenscher (Indianapolis, IN: Hackett, 2003); Emmanuel J. Sieyès, “Views of the Executive Means,” in *Political Writings*, ed. M. Sonenscher (Indianapolis, IN: Hackett, 2003). Constituent power was here employed to resolve, rather than inaugurate a tension. See István Hont, “The Permanent Crisis of a Divided Mankind: ‘Contemporary Crisis of the Nation State’ in Historical Perspective,” *Political Studies* 42, no. s1 (1994); Pasquale Pasquino, *Sieyes et l’Invention de la Constitution en France* (Paris: Odile Jacob, 1998); Lucia Rubinelli, “How to Think Beyond Sovereignty: On Sieyes and Constituent Power,” *European Journal of Political Theory* (2016, OnlineFirst).

³ See especially Martin Loughlin and Neil Walker, *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (Oxford: Oxford University Press, 2007). I stress that this article is principally concerned with the phenomenological relation between stability and novelty that follows from this apparent paradox. Others focus upon a distinct problem of the retrospective authorisation of constituent power. Hans Lindahl, “Constituent Power and Reflexive Identity: Toward an Ontology of Collective Selfhood,” in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*, ed. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007); Andrew Arato, *Post-Sovereign Constitution Making: Learning and Legitimacy* (Oxford: Oxford University Press, 2016), 1-3; Emiliós Christodoulidis, “The Aporia of Sovereignty: On the Representation of The People in Constitutional Discourse,” *King’s College Law Journal* 12, no. 1 (2001). The second issue, though related, cannot be adequately addressed in the scope of this paper.

⁴ David Dyzenhaus, “Constitutionalism in an Old Key: Legality and Constituent Power,” *Global Constitutionalism* 1, no. 2 (2012).

⁵ Antonio Negri, *Insurgencies: Constituent Power and the Modern State* (Minneapolis, MN: University of Minnesota Press, 1999). Illan Wall provides a similar assessment. See Illan rua Wall, *Constituent Power and Human Rights: Without Model or Warrant* (London: Routledge, 2012).

⁶ Arendt, *On Revolution*, 224.

⁷ For example, James Muldoon, "Arendt's Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form," *Constellations* 23, no. 4 (2016).

⁸ Hannah Arendt, *The Life of the Mind, Volume II: Willing* (London: Harcourt, 1977), 214. For an alternative analysis of the riddle, see Andrew Schaap, *Political Reconciliation* (London: Routledge, 2005), 85.

⁹ Arendt, *Willing*, 208.

¹⁰ For the purpose of this paper, I take political-theology to refer to its decisionistic variants. The question of whether Arendt is a political-theologian of another form can remain open. On this issue, see Paulina Ochoa Espejo, "Does Political Theology Entail Decisionism?," *Philosophy and Social Criticism* 38, no. 7 (2012); John Wolfe Ackerman, "The Memory of Politics: Hannah Arendt, Carl Schmitt and the Possibility of Encounter," in *Concentrationary Memories: Totalitarian Terror and Cultural Resistance*, ed. Griselda Pollock and Max Silverman (London: I.B. Tauris, 2013).

¹¹ Arendt, *On Revolution*, 39.

¹² Hannah Arendt, *The Origins of Totalitarianism*, 2nd ed. (New York: Harcourt, 1967), 466.

¹³ Arendt, *On Revolution*, 39.

¹⁴ *Ibid.*, 84.

¹⁵ *Ibid.*, 212.

¹⁶ Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt and Hannah Arendt* (Cambridge: Cambridge University Press, 2008), 224. For use of these expressions see Arendt, *On Revolution*, 212, 32.

¹⁷ Arendt, *On Revolution*, 161-65.

¹⁸ Arendt, *Willing*, 208.

¹⁹ *Ibid.*, 108.

²⁰ Michael Freedman, *The Political Theory of Political Thinking: The Anatomy of a Practice* (Oxford: Oxford University Press, 2013), 95-97.

²¹ Arendt, *Willing*, 209-10.

²² Bonnie Honig, "Declarations of Independence: Arendt and Derrida on the Problem of Founding a Republic," *American Political Science Review* 85, no. 1 (1991): 98.

²³ *Ibid.*, 101.

²⁴ *Ibid.*, 108.

²⁵ *Ibid.*

²⁶ Jacques Derrida, "Declarations of Independence," *New Political Science* 7, no. 1 (1986): 9. For a fuller elaboration of Derrida's position with regard to speech act theory see especially Jacques Derrida, "Signature Event Context," in *Limited Inc.* (Evanston, IL: Northwestern University Press, 1988).

²⁷ Hannah Arendt, *Between Past and Future: Eight Exercises in Political Thought* (Harmondsworth: Penguin, 1968), 120-24.

²⁸ In addition to those cited above, see especially Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority'," *Cardozo Law Review* 11 (1990). Arendt's rejection of law as commandment is elaborated clearly in her critique of Thomas Hobbes. See Arendt, *The Origins of Totalitarianism*, 139-47.

²⁹ Even Arendt's much later discussions of civil disobedience do not amount to a clearly distinguishable activity of being-against the Law, but remains in accordance with the 'spirit of the law'. See Hannah Arendt, *Crises of the Republic* (Harmondsworth: Penguin, 1972), esp. 67.

³⁰ This conceptualisation of law is developed more thoroughly in Honig's more recent work, see Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton: Princeton University Press, 2009).

³¹ Kalyvas, *Politics of the Extraordinary*, 227.

³² *Ibid.*, 224.

³³ The association between Arendt and Schmitt is a now well-rehearsed one. See Andrew Arato, “Forms of Constitution Making and Theories of Democracy,” *Cardozo Law Review* 17(1995); Martin Jay, *Permanent Exiles: Essays on the Intellectual Migration of Germany to America* (New York: Columbia University Press, 1985), 240; Andreas Kalyvas, “From the Act to the Decision: Hannah Arendt and the Question of Decisionism,” *Political Theory* 32, no. 3 (2004); Samuel Moyn, “Hannah Arendt on the Secular,” *New German Critique* 35, no. 3 (2008); William E. Scheuerman, “Revolution and Constitutions: Hannah Arendt’s Challenge to Carl Schmitt,” *Canadian Journal of Law and Jurisprudence* 10, no. 1 (1997). Arato and Cohen, in particular, effectively demonstrate that Arendt’s interpretation of Sieyès is heavily influenced by Schmitt’s own revisionist interpretation. Andrew Arato and Jean L. Cohen, “Banishing Sovereignty? Internal and External Sovereignty in Hannah Arendt,” in *Politics in Dark Times: Encounters with Hannah Arendt*, ed. Seyla Benhabib (Cambridge: Cambridge University Press, 2010), 144.

³⁴ Jason Frank acknowledges this point when arguing that in defending an account of ‘relative beginnings’ its implication is for Arendt to subsume constituent power into the judiciary. Jason Frank, *Constituent Moments: Enacting the People in Post-Revolutionary America* (Durham, NC: Duke University Press, 2010), 57.

³⁵ Mark Wenman, *Agonistic Democracy: Constituent Power in the Era of Globalisation* (Cambridge: Cambridge University Press, 2013), 37.

³⁶ *Ibid.*, 65-73.

³⁷ *Ibid.*, 68. Others have criticised Arendt for her *failure* to do precisely this. See Miguel Vatter, “Legality and Resistance: Arendt and Negri on Constituent Power,” *Kairos* 20, no. 1 (2002).

³⁸ Wenman, *Agonistic Democracy*, 67.

³⁹ Immanuel Kant, *Critique of Pure Reason*, trans. Paul Guyer and Allen W. Wood (Cambridge: Cambridge University Press, 1998), B478; Arendt, *Willing*, 29.

⁴⁰ Arendt, *Willing*, 29; Kant, *Critique of Pure Reason*, B478-79.

⁴¹ Kalyvas, *Politics of the Extraordinary*, 225. Linda Zerilli, by contrast, has more satisfactorily evaluated this passage, though she too explicitly treats it as a relative claim. Linda Zerilli, “Castoriadis, Arendt and the Problem of the New,” *Constellations* 9, no. 4 (2002).

⁴² Arendt, *Between Past and Future*, 168. Space prohibits evaluating her account of miracles fully. Though the theological imagery is evident, Arendt’s intention is to appeal to miracles not as supernatural events but as activities of human making.

⁴³ Arendt, *Willing*, 110.

⁴⁴ Hannah Arendt, *Love and Saint Augustine* (Chicago, IL: University of Chicago Press, 1996), 55. As the editors note, this passage is one that Arendt inserted during the 1960s as she translated the text to English.

⁴⁵ Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 177, fn.3.

⁴⁶ Arendt, *Willing*, 217. See Augustine, *City of God*, trans. Henry Bettenson (Harmondsworth: Penguin, 1984), bk.11, ch.21. See also Arendt, *The Human Condition*, 177; Arendt, *Love and Saint Augustine*, 55. Additionally, this same quote closes all but the first edition of *The Origins of Totalitarianism*. Arendt, *The Origins of Totalitarianism*, 479.

⁴⁷ Arendt, *Willing*, 135.

⁴⁸ *Ibid.*, 110.

⁴⁹ *Ibid.*, 29.

⁵⁰ Arendt, *On Revolution*, 204.

⁵¹ *Ibid.*, 213.

⁵² *Ibid.* Cf. James Muldoon, “Arendtian Principles,” *Political Studies* 64, no. s1 (2016).

⁵³ George Kateb, *Hannah Arendt: Politics, Conscience, Evil* (Lanham, MD: Rowman & Littlefield, 1987), 12. Similarly, Habermasian revisions provide a quasi-transcendental normative standard through which the novelty of founding is tempered. See David Ingram, “Novus Order Seclorum: The Trial of (Post)modernity or the Tale of Two Revolutions,” in *Hannah Arendt:*

Twenty Years Later, ed. Larry May and Jerome Kohn (Cambridge, MA: MIT Press, 1996); Kalyvas, *Politics of the Extraordinary*, 241-53. For a critique of Habermasian interpretations of Arendt, see Dana Villa, *Arendt and Heidegger: The Fate of the Political* (Princeton, NJ: Princeton University Press, 1996).

⁵⁴ See Lucy Cane, “Hannah Arendt on the Principles of Political Action,” *European Journal of Political Theory* 14, no. 1 (2015): 68-71. I take the position that is advanced in part three is wholly reconcilable with Cane’s important insights. On the event-character of *initium*, which should not be conflated with a ruptural character, see Arendt, *The Origins of Totalitarianism*, 479; Hannah Arendt, *Denktagebuch, 1950 bis 1973: Erster Band* (Munich: Piper, 2002), 115. Näsström recognises the ‘absolute’ nature of the principle’s origin though does not elaborate the conditions of its appearance. Sofia Näsström, “The Rights of Have Rights: Democratic, Not Political,” *Political Theory* 42, no. 5 (2014).

⁵⁵ Arendt, *The Human Condition*, 189.

⁵⁶ Arendt, *On Revolution*, 213.

⁵⁷ With reference to *The Human Condition*, Patchen Markell has similarly argued, though in a far more perceptive manner, that Arendt’s use of *archê* was able to disturb the manner in which we associate regularity and continuity with a hierarchical relation of command-obedience, and rupture with subordination, whilst drawing attention to the novelty that occurs whilst following patterns. “The Rule of the People: Arendt, *Archê*, and Democracy,” *American Political Science Review* 100, no. 1 (2006).

⁵⁸ Arendt, *The Origins of Totalitarianism*, 141; Arendt, *On Revolution*, 189. Though Arendt identifies similar partitioning in the Greek *nomos*, this is not underwritten by the image of the sovereign-protector and so its purpose is to clear a space for politics, rather than to reduce that tumultuous encounter to peace. See Arendt, *The Human Condition*, 63-64. For a detailed engagement with Arendt’s account of *nomos*, see Hans Lindahl, “Give and Take: Arendt and the *Nomos* of Political Community,” *Philosophy and Social Criticism* 32, no. 7 (2006).

⁵⁹ Arendt, *The Human Condition*, 63, fn.62.

⁶⁰ Arendt, *On Revolution*, 188. Arendt's account of law as *rapport* is drawn from Montesquieu. She displays concerns over the figure of the 'Creator and Preserver' who remains within Montesquieu's account. See also Charles de Secondat baron de Montesquieu, *The Spirit of Laws*, trans. Anne M. Colher, Basia C. Miller, and Harold Stone (Cambridge: Cambridge University Press, 1989), 8. For further elaboration of the three accounts of law, see her lectures first given in 1953, Hannah Arendt, "The Great Tradition I. Law and Power," *Social Research* 74, no. 3 (2007); Hannah Arendt, "The Great Tradition II. Ruling and Being Ruled," *Social Research* 74, no. 4 (2007). Inevitably, the historical relation between Roman law and modern sovereignty is far more complex than Arendt's distinction allows. See Ben Holland, "Sovereignty as *Dominium*? Reconstructing the Constructivist Roman Law Thesis," *International Studies Quarterly* 54, no. 2 (2010); Daniel Lee, *Popular Sovereignty in Early Modern Constitutional Thought* (Oxford: Oxford University Press, 2016).

⁶¹ Being fragile and contingent, some have taken Roman Law to be a 'relative' conception of law. See Peg Birmingham, *Hannah Arendt & Human Right: The Predicament of Common Responsibility* (Bloomington, IN: Indiana University Press, 2006), 54-62. There is some precedent for this, for Arendt refers to Roman Law as 'relative', though this relativity is due to its capacity to forge relations, rather than a partial or non-binding character. Arendt, *On Revolution*, 188. This description is absent from the corresponding passage in *The Life of the Mind*, where she is more sensitive to the connotations of the term. Arendt, *Willing*, 199-200. The qualities of fragility and contingency, however, all seem to be bound up in the manner in which Arendt reconceives of a human absolute of *initium*.

⁶² Loughlin and Walker, *Paradox of Constitutionalism*, 1.

⁶³ *Ibid.*, 6. The four theses resolve themselves in the following ways: (1) Within Dyzenhaus's juridical containment, constituent power is absorbed into the constitutional form in the instance of founding; (2) Habermasian cooriginality constrains the constituent power through a

background commitment to quasi-transcendental presuppositions of liberality; (3) Negri's radical potential demonstrate the manner in which the creativity of constituent power always exceeds constitutional form; and (4) the irresolutionist thesis, not dissimilar to Honig's interpretation of Arendt, takes constituent and constituted powers to struggle against one another agonistically.

⁶⁴ Arato, *Post-Sovereign Constitution Making*, 91.

⁶⁵ Arendt, *On Revolution*, 223.

⁶⁶ Hannah Arendt, *The Life of the Mind, Volume I: Thinking* (London: Harcourt, 1977), 202; Franz Kafka, *The Great Wall of China and Other Short Works*, ed. Malcolm Pasley, trans. Malcolm Pasley (London: Penguin, 1991), 105. She had previously discussed the parable in *Between Past and Future*, and alluded to it in a much earlier book review from 1946. See Arendt, *Between Past and Future*, 7-15; Hannah Arendt, *Essays in Understanding, 1930–1954*, ed. J. Kohn (New York: Schocken, 1994), 158-62.

⁶⁷ Arendt, *Between Past and Future*, 42.

⁶⁸ It is noteworthy that this parable is constructed from various fragments taken from Kafka's diary by his editor, Max Brod. In particular, the desire to jump from this world was originally a separate fragment to the temporal parable. In the original, Kafka's He did not in fact act in the conflict between past and future. See Kim Lane Scheppele, "A Constitution Between Past and Future," *William & Mary Law Review* 49, no. 4 (2008): 1391, fn.50. This *bricolage*, however, attests to the emergence of the absolutely new from the past that I discuss with reference to Walter Benjamin below.

⁶⁹ Arendt, *Thinking*, 209.

⁷⁰ *Ibid.*

⁷¹ As is done, for example, by Vivian Liska, *When Kafka Says We: Uncommon Communities in German-Jewish Literature* (Bloomington, IN: Indiana University Press, 2009), 211-12.

⁷² Leah Bradshaw goes so far as to suggest her final work is an ‘implicit refutation’ of much of *The Human Condition*. See *Thinking and Acting: The Political Thought of Hannah Arendt* (Toronto: University of Toronto Press, 1989), 71.

⁷³ Arendt, *Essays in Understanding, 1930–1954*, 20; Hannah Arendt, *Hannah Arendt on Hannah Arendt*, ed. Melvyn A. Hill, *Hannah Arendt: The Recovery of the Public World* (New York: St. Martin’s, 1979), 308.

⁷⁴ Arendt, *Thinking*, 213.

⁷⁵ *Ibid.*, 69.

⁷⁶ Paul Ricoeur, “Action, Story and History: On Re-reading *The Human Condition*,” *Salmagundi* 60 (1983): 62.

⁷⁷ Hannah Arendt, *Men In Dark Times* (Harmondsworth: Penguin, 1973), 162-63.

⁷⁸ Walter Benjamin, “Theses on the Philosophy of History,” in *Illuminations*, ed. Hannah Arendt (New York: Schocken, 2007), 261.

⁷⁹ Arendt, *Men In Dark Times*, 190.

⁸⁰ Arendt, *Thinking*, 212.

⁸¹ Arendt, *Between Past and Future*, 95.

⁸² Arendt is perfectly aware of this point. See Arendt, *On Revolution*, 115.

⁸³ Seyla Benhabib, “Hannah Arendt and the Redemptive Power of Narratives,” *Social Research* 57, no. 1 (1990): 187.

⁸⁴ Kalyvas, *Politics of the Extraordinary*, 225.

⁸⁵ Steve Buckler, *Hannah Arendt and Political Theory: Challenging the Tradition* (Edinburgh: Edinburgh University Press, 2011), 38; Hanna Fenichel Pitkin, *The Attack of the Blob: Hannah Arendt’s Concept of the Social* (Cambridge: Cambridge University Press, 1998), 277-78.

⁸⁶ Arendt, *Men In Dark Times*, 203. On this experimental writing, see Ari-Elmeri Hyvönen, “Tentative Lessons of Experience: Arendt, Essayism, and ‘The Social’ Reconsidered,” *Political Theory* 42, no. 5 (2014).

⁸⁷ Raluca Eddon, "Arendt, Scholem, Benjamin: Between Revolution and Messianism," *European Journal of Political Theory* 5, no. 3 (2006): 268.

⁸⁸ Arendt, *Men In Dark Times*, 196. Peg Birmingham describes Arendt's interpretation of this allegory as a means of envisioning the Angel as a 'future-anterior'. This is a grammar that escapes the present. I interpret Arendt's use as a radical redescription of presence through the interface between thinking, judging and willing. Birmingham, *Hannah Arendt & Human Right*, 17-22..

⁸⁹ Arendt, *Willing*, 210.

⁹⁰ *Ibid.*, 214-15.

⁹¹ *Ibid.*, 216.

⁹² *Ibid.*, 29.

⁹³ *Ibid.*, 110.

⁹⁴ Arendt, *On Revolution*, 163.

⁹⁵ Jacques Taminiaux, *The Thracian Maid and the Professional Thinker: Arendt and Heidegger*, trans. Michael Gendre (Albany, NY: SUNY Press, 1997), 217.

⁹⁶ Markell, "Rule of the People," 7.

⁹⁷ Sieyès, "Third Estate," 138.

⁹⁸ Arendt, *Willing*, 69.

⁹⁹ Within her work, all uses of the *pouvoir constituant* are negatively framed as theologico-political tools. The English term 'constituent powers' appears once, to identify the representative relation between constituents and the National Assembly. Arendt, *On Revolution*, 126.

¹⁰⁰ Indeed, it is effectively the Habermasian accounts of cooriginality.

¹⁰¹ Arendt, *The Human Condition*, 63.

¹⁰² Arendt, *On Revolution*, 188; Arendt, *Willing*, 199-200. Arendt takes some license with Roman Law when drawing such conclusions for she draws only from public law. Boundary setting was a critical aspect of Roman private law. See Merio Scattola, "Die Grenze der Neuzeit: ihr

Begriff in der juristischen und politischen Literatur de Antike und Frühmoderne,” in *Die Grenze: Begriff und Inszenierung*, ed. Markus Bauer and Thomas Rahn (Berlin Akademie Verlag, 1997), 64-65. Elsewhere she recognises the reverence with which boundaries were held in Roman Law. Arendt, *The Human Condition*, 63.

¹⁰³ Muldoon, “Arendt's Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form,” 596.

¹⁰⁴ Negri, *Insurgencies*, 16-17.