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DISEMBODIED SOVEREIGNTY:

POWER AND PERSONHOOD IN RAWLSIAN LIBERALISM

by

RHEUBEN BUNDY

A thesis submitted in partial fulfillment
of the requirements for the degree of
Masters of Science
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John R. LeBlanc, Ph.D., Committee Chair

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This is to certify that the Master's Thesis of

RHEUBEN BUNDY

has been approved for the thesis requirement on
October 16, 2013
for the Master of Arts degree in Political Science

Approvals:

Thesis Chair: John Randolph LeBlanc, Ph.D.

Member: Amentahru Wahlrab, Ph.D.

Member: R. Stephen Krebbs, Ph.D.

Chair, Department of Political Science and History

Dean, College of Arts and Sciences

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Abstract

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Rheuben Bundy

Thesis Chair: John R. LeBlanc, Ph.D.

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The works of John Rawls manifest a deep concern with developing a stable, well-ordered society that is built on a reciprocal understanding of justice. In Rawlsian thought, however, the very forms of power that Rawls seeks to ameliorate are recreated in more pernicious forms, as they are ubiquitous, rather than localized in the person of a sovereign. This work explores the impact of power operations on the person in political space in Rawls thought through the works of contemporarian and post-modern theorists. In doing so, it not only offers a critique of the operations of power in Rawls' well-ordered society it further seeks to hinge political understandings on open political spaces in contemporary thought. By doing so, this paper offers a counterweight to the notions of society and citizen found in the ideal thought of John Rawls.

Introduction: Political Life

The political thought of John Rawls synthesizes two distinct understandings of the idea of "the political." In Rawlsian theory, "the political" denotes both the organization of political structures and the relationships, conflicts and tensions that arise when a group of people shares a specific space. For Rawls, the latter definition is secondary to the first. Structural political life, for Rawls, is the legitimate object of political theory (Rawls, 1977, 163-165). The political theorist's role is to ensure the stability of a constitutional democracy by ensuring that the elements of the basic structure are linked by sound principles of justice. By ensuring that sound principles link the institutions of a society together, Rawls argues, political theory is able to create a stable field for cooperation in the shared space of political life.

The preference for structures as the legitimate object of political theory leads Rawls to conflate the two concepts of "the political" in his work. For Rawls, the well-ordered society is *the* space in which political relationships occur. It is only through a commitment to his Principles of Justice that underlies the well-ordered society that cooperation is possible. Structure, in other words, creates the sole possibility for political life in the relational sense. In pursuing structure as the sole guarantor of political possibility, Rawls limits the field of political inquiry by insisting on a one–to-one relationship between structure and "the political." Furthermore, his theory creates the possibility of biopolitics or the management of life within the society as the object of power in his well-ordered society.

Rawls seeks to ensure an equal social field for all competing doctrines to coexist and cooperate. This equality is guaranteed, he argues, through securing a well-ordered society, as it presents the best means for generating social cooperation in a liberal society typified by competing doctrines. Rawls' individuals necessarily adhere to their own conception of the good and pursue this concept to the detriment of others if not directed by a suitable conception of justice (Rawls, 2001, pp. 10-11). The capacity to conceive of the good and pursue it is central to Rawls' concept of human nature, as this capacity is indicative of our innate rationality. Related to the rational capacity is the aptitude for reasonability, or the ability to propose and/or accept limits on behavior in reference to the "other". For Rawls, these twin capacities provide the foundation for individual political life. They are twin capacities, as reasonability limits rationality without unduly burdening ones ability pursue a life plan (Rawls, 2001, pp.10-11).

Only a society whose institutions are linked together in a just way can sufficiently ameliorate the rational impulse. For Rawls the tempering of the rational impulse begins to create a reasonable political psychology: the understanding that one is necessarily dependent on the society for one's pursuits, and that the principles of justice that further these pursuits are equally binding on all members of the well-ordered society (Rawls, 2001, 10-11). Through the rational and reasonable, or twin moral, capacities acting in unison on the institutions of political life, a stable political society is created. This society is able to meet the needs of its members by ensuring that the institutions are sufficiently strong to mediate conflicting rational drives. The principles of justice create the well-ordered society by ensuring that the institutions of society are linked into a comprehensive whole. Members come to link their doctrines of the good to the

Principles of Justice that operate on the society, as it is recognized that these principles offer the best means for pursuing individual ends by offering a stable space to pursue them (Rawls, 2001, 169-171).

Rawls argues that his endeavor is in keeping with the Kantian understanding of Classical Liberalism in that it creates a society in which members are "symmetrically situated" or equally represented in reference to the Principles of Justice (Rawls, 2001, 16-18). As these members are equally represented in the original position, the outcome of deliberation is a conception of justice that meets with Kantian understandings of universal justice. For Rawls, rational deliberation creates a publicly upheld conception of justice, one that all rational/reasonable agents can agree to as members of the society. Justice, for Rawls, is only secured within a society, in that it alone is capable of sustaining the order necessary for cooperation. Justice is equally applied to all members so long as they are symmetrically situated in reference to the institutions of political life.

Rawls' conflation of structural and relational politics, however leads him to create a Hobbesian sovereign rather than a Kantian republic in that the principles of justice form a necessary presence that defines the society and membership in it. In Kant's understanding, rights affix to individuals pre-politically, as members of the human community. Rights represent, not something for government to protect and uphold, but rather real limits to sovereign power. To breach these rights, according to Seyla Benhabib's reading of Kant, is to end the political arrangement, as this breach marks a fundamental rupture the concept of the person that politics necessitates. What emerges in Rawls is a Hobbesian sovereign rather than a Kantian Cosmopolis or universal society of

rights-bearing persons (Benhabib, 2004, 110-111). Rawls' theory of a well-ordered society is contingent on membership, a concept that is defined by the institutions of political power rather than the concept of justice that operates these institutions. Rawls' well-ordered society becomes problematic as a Kantian endeavor because the institutions that mediate justice do so based on membership rather than personhood. For Kant, Benhabib argues, rights come affixed to the human as moral person. They are not bestowed as part of a membership scheme (Benhabib, 2004, 110-111).

The construct of membership, I argue, creates what Saul Newman refers to as "the place of power". The idea of the place of power, as Saul Newman argues for it, is twofold (Newman, 2001, 2-3). On the one hand, it marks the idea that there is a force external to a society that must be maintained if the society is to continue (Newman, 2001, 2-3). In my chapter on Foucault below, the concept of "member" manifests as a semi-transcendental concept that provides a political discourse with continuity. Semi-transcendentals act as an ordering principle for that field. In Rawls, the concept of the member comes to act on the field of politics to create an understanding of what the politics is, and how to order the shared space. It is only through the concept of the member as a "rational/reasonable agent" that politics is possible in Rawls' well-ordered society. Members are able to interact in the well-ordered society because they are rational and reasonable. This is evidenced, he argues, by their ability to adhere to the principles of justice. As members act on these principles over time they form a shared political psychology that both creates the possibility for cooperation and ensures stability in the society, as people cooperate in the shared space.

As Foucault argues, however, semi-transcendentals build a circular justification of themselves in the body of knowledge they produce that makes their dominance seem self-evident. By acting both as the limit on inquiry, and at the same time the empirical content of a discourse, semi-transcendentals become a focal point of power operations. Semi-transcendental concepts provide a stable field of knowledge, which acts as the basis for and the source of juridical norms and power. For Foucault, in other words, Rawls' assessment of the reasonable political psychology above ignores the power operations that both create and maintain power through the very background ideas he insists are neutral.

The "place of power" provides the sovereign with a series of norms on which the juridical power of a society rests. As Foucault argues, it is the deep connection between the sovereign and the production of knowledge that maintains the society (Foucault, 1994b, 430-431). The production of discursive knowledge provides the technical foundation of power, in that it gives the sovereign articulable concepts on which to act. Sovereignty, for Foucault, becomes the willful act of directing and managing the members of a society as a whole, which he calls "biopolitics." The state, in Foucault's argument, is the solidification of the institutions of a society into a sovereign entity. It acts, he argues to manage life. Sovereignty acts to direct and deploy the members of a society always in reference to state ends, rather than the supposed good of the members themselves (Foucault, 1994b, 430-431).

In the work of Giorgio Agamben, Foucault's image of sovereignty becomes the defining feature of modern political life. Biopolitics, or the management of "bare life", for Agamben, defines the interaction between the sovereign state and the members of

society (Agamben, 1998, 3-5). For Agamben, the sovereign becomes the essential presence in the society. The sovereign, through what Agamben calls "the ban," or the sovereign capacity to outlaw people, acts, or modes of being, literally defines the contours of the society. Through the ban, he argues, the sovereign comes to draw the lines between membership and exclusion. In doing so, the sovereign creates the community that it operates on, and the subjects of punitive power. The sovereign defines the border of the society through the exclusions that it makes. Thus, without the sovereign presence, the concept of society would have no meaning, as there would be nothing to demarcate inside and outside.

The place of power, in reference to Agamben's arguments on "bare life", also denotes the object of power. Life is the place that power returns to again and again as the site of political operations (Newman 2001, 2-3). The location of life as the place of power is borne out in contemporary theory. For instance, in Judith Butler's understanding of power, juridical power comes to act directly on the body as the site of power. For Butler, juridical power is meaningless without presence; this presence she argues is manifested in the body. Political meanings, for Butler are inscribed on the body. The presence of particular features in a body is the de facto presence of particular political meanings, thus specific power operations (Butler, 2005, 153). For Hannah Arendt, it is the life of the person that becomes the object of power. A publicly recognizable life must be removed from the person in order to create the continuous concept of the citizen. The capacity for rights articulation, morality, and spontaneity, all hallmarks of public life in Arendt's theory, must be removed in order to create a continuity of a society: a biomass of purely

private life whose actions and interactions can be both predicted and controlled by the sovereign (Arendt, 2000c, 126-127).

Foucault and Agamben, each in their own way, treat this second understanding of the place of power as biopolitics: the political management of life in a society. For Foucault, the management function of the state gives rise to micro-sovereigns that organize and mobilize the person as a citizen, that is, as a constructed entity that exists as a unit of state power (Foucault, 1994b, 430-431). For Agamben, the idea of biopolitics is the literal line between life and death in the society based on the sovereign ban. Agamben's sovereign views all life in the society as bare animal life. Biopolitics becomes the manner of sorting this life between member and threat and parsing these two out between the society and the camp. Thus, sovereign power, for Agamben, becomes biopower, as it deploys bare life to its appropriate sphere in the matrix of power relations (Agamben, 1998, 63-64).

In the following chapters, we will see how Rawls' conflation of political understandings necessitates the creation of a sovereign through his Principles of Justice. In doing so, I argue, the only possible outcome of the well-ordered society is the biopolitical management of both member and non-member. The well-ordered society becomes a society predicated on exclusionary practices that upholds power in society, as it separates the "rational/reasonable individual" from those who are not. Theorists like Seyla Benhabib, Hannah Arendt, Giorgio Agamben, and Judith Butler offer conceptions of decentralized political space that challenge the political order sought by Rawls in his conceptualization of the well-ordered society. The works of these theorists further suggest an idea of political life that counterbalances the need for the juridical category of

citizen to guide it. A space is decentralized when it lacks the need for a place of power to uphold it. It is decentralized, in other words, to the extent that it allows the person to bring the full force of their personhood to bear on the formation and perpetuation of political arrangements, rather than requiring a sovereign presence to bestow rights on a citizenry.

The three chapters that follow will present both a reading and a critical analysis of the project we can find in these theorists. Saul Newman's understanding of the place of power, as the site on which power operates and returns, will be central to my understanding of sovereignty in Rawls' *Justice as Fairness*. The first chapter offers a reading of *Justice as Fairness*, as Rawls understands it, as well as a critique of this theory based on the work of Carl Schmitt, Seyla Benhabib, and Giles Deleuze and Felix Guattari. Through these theorists I will develop the idea of the person as the place of sovereign power in both senses: it is both the place where power operates and the place that it must return to for its definitive features. The critiques found in this chapter will be carried through the text as they point to the problematic nature of sovereignty in Rawls' theory as well as offer key insight into the idea of the society that is at play in Rawls' text.

The second chapter will develop the methodology of utilizing the body as the site of sovereign power through Foucault's arguments on discursive regimes and the normalizing power of central concepts that create these regimes. This discussion will critique the methodology of power as it transverses the social space, producing a methodology of sovereignty based on centralizing concepts, which Foucault refers to as "semi-transcendentals." Adapting the arguments of Judith Butler, this chapter will then develop a methodology of the application of power directly to the body of the person

through "juridical power," or the legal norms of sovereign society. I will utilize this methodology as an operative model of biopolitical power. Schmitt's conceptualization of the sovereign power, as one that makes distinctions and acts on those distinctions, is critical to this understanding of biopolitics. Schmitt's theory provides a point of connection between Rawlsian ideal theory and the methodologies of power provided by Foucault and Butler.

The final chapter will center in on the conflation of society and space in Rawlsian political theory. This chapter argues that the idea of society as the space of political life is necessitated by the conflation of structural and relational definitions of politics. These two terms speak to separate spheres of political life, yet are used interchangeably by liberal theorists like Rawls. Society, I argue, has to do with the institutions and structures of power and how these structures and institutions interact with both members and "others." Space, on the other hand speaks to the relational aspect of political life: it is composed of the natural connections that form and bind peoples to each other. Given the problems with the conflation of society and political space, this chapter will separate the two terms in order to fully develop the extent of power operations in Rawlsian thought, and offer an alternative political formation based on the presence of a person, rather than the citizen/non-citizen binary.

First I will offer an understanding of the society as found in the works of Benhabib, Hannah Arendt, and Agamben. Each of these thinkers develop an idea of a sovereign society as one that is bound together solely by the power that institutions exert on individuals. They do so in order to seek a remedy for a purely power-based society. The next section of this chapter will then assess Rawls's well-ordered society in light of

these theorists' readings of the power-based society. In doing so I will point to the ways in which Rawls' conceptualization of the well-ordered society fits with Arendt, Benhabib, and Agamben's understanding of the power-based society. Finally I will offer a sketch of a decentralized political space as envisioned by Benhabib's arguments on Kantian cosmopolitanism, Arendt's idea of the public sphere, Butler's understanding of coalition politics, and Agamben's theorization of open-ended personhood. A concept of decentralized political space can serve as a counter weight to the sovereign society. Arendt and Butler add a public political dimension to the ethical framework that Benhabib provides for Cosmopolitanism. Arendt's arguments on the public dimension of political life will be used to argue that access to the space of articulation is a basic political need. Butler's work on the nature and methods of coalition politics will further add to this by providing a methodology for the guarantee of access in light of the need to mediate demands. Agamben, finally, will be used to fully develop a more open-ended idea of what it means to be person in a political setting, and thus his work forms the building block of what I refer to as decentralized political space: the person.

My reading of Rawls is central to my reading of these theorists. The impasse that is created by my reading of Rawls and Foucault generates my understanding of the politics of life and the political life in general. The idea of "decentralized political space" is born out of the impasse between these theorists. On the one hand Rawls is correct in his arguments for a politics that is a space of mutual cooperation. On the other, the very structures he puts in place stifle that cooperation by replacing personal connection with centralizing definitions and institutions. Foucault, Benhabib, Butler, Agamben, and Arendt, each offer an image of political life based on the commonality of the human

experience. Whereas Rawls' structures isolate members and treat their demands as individual, the image of decentralized political space provided by the above theorists provides a method for developing political capacities based on relationships rather than demands. This is important to my political project because, as each theorist points out, mutuality is something that is missing in modern political discourse.

Liberal theory, as typified by Rawls, seeks to begin with the sovereign individual, and build a political order around it. What critiques of Liberalism point to, is the problematic nature of discourse of the individual. Discourse, as Foucault, Benhabib, Butler, Arendt, Schmitt, and Agamben, all point out is a function of power. It is the capacity to say what a thing is and how it fits into the "world." This power, as these theorists argue, is necessarily coupled to political power. The sovereign acts by defining the inside and the outside of political space. It further orders that political space through the concepts of member, citizen, or individual. Liberal theory, on my reading opposes these concepts to the idea of the "other" as a threat to the political order. What astructural understandings of politics and political power offer are space for contested meanings to come to bear on the political process itself. As seen through the works of Benhabib, Foucault, Agamben, and Butler, this requires a space in which those affected by political concepts garner a large measure of authority in deciding what these concepts mean and how they are to be deployed in the political discourse.

Chapter I: *Justice as Fairness*: Elements of a Disembodied Leviathan

I.

Rawls sees his project as an exercise in Kantian liberalism. He argues that Kantian liberalism requires basic understandings about political principles that must be present in order for justice to operate within a well-ordered society. For Kant, in order for first principles of justice to operate in a society, they must achieve three ends. They must be universal, that is, equally applicable to all members. They must be comprehensible and agreed to without coercion. Finally, they must treat all members as ends rather than means. I will begin by briefly sketching these understandings and will fit them together into the Rawlsian framework to point to the necessity of the Kantian devices Rawls uses in order to derive his specific Principles of Justice[1].

First, in conceiving of society as a fair system of cooperation, Rawls embraces the Kantian political project in the sense that each member of the social system agrees to cooperate with the system through his own reason (Rawls, 2001, pp. 5–8). Kant develops this principle through the process of abstraction:

> Now since laws determine ends as regards their universal validity, we shall be able—if we abstract from the personal difference between rational beings, and from the content of their private ends—to conceive a whole of all ends in

[1] I capitalize Principles of Justice to denote the specific principles that Rawls puts forward in his theory. I will also capitalize Justice as Fairness to denote it as a specific theory of justice. When referring to the title of Rawls' text I will italicize Justice as Fairness in order to avoid confusion.

> systematic conjunction…that is we may conceive of a kingdom of ends which is possible only through the above principles. (Kant, 1964, 100–101)

In Rawls' understanding, abstraction has two meanings that force his theory to start in a specific place, i.e. with a constitutional democracy. This starting point is important for Rawls' objectives, he argues, because it allows us to derive operative principles of justice from existing democratic institutions (Rawls, 2001, 8-9). For Justice as Fairness, the operative principles arrived at in Rawlsian theory, to offer viable Principles of Justice; it must start with the idea of reasonable pluralism. Justice must take seriously the fact that citizens in a political system pursue multiple and sometimes incommensurate goals (Rawls, 2001, 7–8). For Rawls, the idea of a society as a fair system of social cooperation, that is, a system by which each is able to pursue his or her own ends, necessitates a political understanding that takes these ends seriously. Taking human agency seriously requires Rawls to take, as a given, democratic society as we find it and to derive the Principles of Justice from the way it works. Assuming that the existing institutions are the products of rational deliberation, he finds, we are able to work backwards to the Principles of Justice that link them together to form the basic structure of society (Rawls, 2001, pp. 5–6). By seeking to understand the Principles of Justice based on what rules are operative within a basic structure, political philosophy is able to probe the limits of the possible through ideal theory. Ideal theory is able, he argues, to derive universal principles from a functioning constitutional democracy, thus making the project realistically utopian. The hope of realistic utopianism, Rawls argues, is the hope of deriving the best possible Principles of Justice as they operate in a society with multiple, disparate concepts of the good (Rawls, 2001, pp. 12–13).

Rawls' notion of society as a fair system of cooperation rests on a specific liberal idea of the individual. Rawls embraces the Kantian conception of individuality found in the latter's famous dictum of man as an end unto himself. For Kant,

> …Man, and in general every rational being, exists as an end in himself, *not merely as a means* for arbitrary use by this or that will: he must in all his actions, always be viewed *at the same time as an end. (*Kant, 1964, p. 95; italics mine)

For Rawls, this foundational principle undergirds his idea of the free and equal citizenry that comprises a constitutional democracy. The freedom of citizens consists in their capacities of conceiving rational plans of life and pursuing them. This idea of individual autonomy, however, is limited by the autonomy of fellow citizens (Rawls, 1977, p. 121). In this regard, he argues, citizens are free, that is, unhampered in the exercise of their moral powers except in reference to other citizens who must also be regarded as free (Rawls, 1977, p. 121; 2001, p. 7–8). Rawlsian freedom is in keeping with Kant's understanding in that it takes seriously the reciprocal nature of autonomy. One is considered free to pursue one's ends but not to the detriment of fellow members of society.

Citizens are free to pursue rational ends relatively unencumbered[2] within the constitutional democratic framework. They must, however, be able to recognize this capacity in other members in order to be in full possession of their rights. Citizens are

[2] This idea is fully developed by Michael Sandel in his extensive critiques of Rawls' *Justice as Fairness.* For Sandel the term unencumbered refers to the lack of connection to preexisting cultures, which the representatives manifest in the original position. For Sandel, the representative nature of the original positions dictates how Justice as Fairness will approach its citizenry: as if their pre-existing commitments and cultural understandings were secondary to the requirements of Justice as Fairness (Sandel, 1984, pp. 86-88).

said by Rawls to be reasonable to the extent that they are capable of accepting the freedom of nonmembers. Citizens must be capable of and expected to propose or accept limits on their pursuits in reference to other citizens. The Principles of Justice derived from such a society could be expected to situate all members symmetrically in reference to one another (Rawls, 2001, pp. 19–20). Symmetrical situation is Rawls' conception of Kantian equality. For both, members are fully equal only in reference to each other in society (Kant, 1964, p. 98; Rawls, 2001, p. 24).

The Principles of Justice create, for Rawls, political space in a double sense. First, they demarcate the line of inquiry he pursues as "the political," separating it from larger moral frameworks so that justice can be conceived of in political rather than moral terms. This distinction is important for Rawls. The political requires consensus to achieve its ends, while moral claims represent totalizing understandings of right and wrong. By demarcating the political from moral doctrines, Rawls argues, Justice as Fairness is able to create a buffer space between the Principles of Justice and the moral doctrines it links together. It does so, Rawls argues, by allowing space for these comprehensive moral doctrines to operate in the well-ordered society. The Principles of Justice act only to mediate disputes between these doctrines. By normalizing the field of competition between doctrines, Rawls argues, Justice as Fairness acts in the background to create a stable field for cooperation amongst actors in the well-ordered society (Rawls, 2001, pp. 7–9; pp. 196–197).

Further, the Principles of Justice define and develop Rawls' concept of the well-ordered society as the site of political cooperation. The well-ordered society denotes the political space in which one both lives and pursues one's ends. For Rawls, the well-

ordered society is defined by the presence of stable Principles of Justice that operate specifically to ensure neutral dealings between members and the institutions that mediate disputes and rights claims. Consequently, in Kant's understanding of society, a state must be viewed as an aggregate, governed by laws based on external principles:

> A state is a union of an aggregate of men under rightful laws. Insofar as these laws are necessary a priori and follow automatically from the concept of external right in general (and are not set up by statute), the form of the state will be that of a state in the absolute sense, i.e., as the idea of what a state ought to be according to pure principles of right. (Kant, 1964, p. 294)

The state, for Kant, is a space of interaction structured by the law. At the same time, in order to ensure that the categorical imperative is not violated, the state must be removed from the law in order to ensure that the laws structuring the interactions are based on first principles, not on mere conventions of social relations found in the state. This is done, he argues, to ensure that laws are based on the idea of justice rather than on mere statute or on laws derived from the convention of interactions. In doing so, Kant seeks to alleviate the potential of a particular conception of the good gaining and maintaining dominance over other modes of being in the political society (Kant, 1964, pp. 294–295).

Rawls too takes considerable care to ensure that his society is governed by overriding Principles of Justice. These principles are overriding, for Rawls, only to the extent that they govern the interactions between members and institutions (Rawls, 2001, pp. 7–9). For Rawls, the object of Principles of Justice is to ensure a well-ordered society. In order for a society to be a *fair* system of cooperation, it must be governed by a just basic structure, which is a series of institutions that are linked together through Principles

of Justice. By linking institutions through the Principles of Justice, Rawls argues, we are able to ensure a fair distribution of advantage (Rawls, 2001, pp. 8–9). A well-ordered society is built upon Rawls' conception of fairness. The institutions that comprise a well-ordered society—family, church, government, and the like—must link up in a way that allows for fair interactions amongst citizens (Rawls, 2001, pp. 9–11). The principles that regulate how these institutions come together cannot come from this society but must be arrived at through rational deliberation. The insistence on rational deliberation is made in order to develop principles that are neutral or without bias for a particular conception of the good (Rawls, 2001, pp. 12–13).

The principles, once agreed upon, act in conjunction specifically to ensure a well-ordered society. First of all, these principles must take seriously the idea of free and equal citizens, so they are limited in their reach. In this way, the Principles of Justice are not seen by Rawls as a comprehensive doctrine but rather as a publicly justified principle. For Rawls, public justification entails that Principles of Justice must be sufficiently tailored to speak to the political rather than being conceived of as a totalizing claim on the good in society. Such a principle therefore cannot propose any particular comprehensive doctrine of goods, but it must seek to mediate among these competing doctrines as they interact (Rawls, 2001, pp. 26–27).

Principles of Justice must operate to ensure that interactions amongst competing doctrines of the good are orderly and fair. Justice as Fairness achieves this end, for Rawls, by taking the basic structure as the subject of its discourse. For Rawls, the basic structure is comprised of the institutions that have formed through fair agreement over time. The role of the basic structure is to secure background conditions in which the interactions of

citizens and associations can take place freely and fairly (Rawls, 1977, pp. 159–160). If these structures are not properly regulated by a background idea of justice, social processes within the basic structure will cease to be just. Without a background idea of justice, these processes will merely be a matter of social convention rather than the products of well-founded principles. Justice as mere convention cannot help but undermine the stability of the well-ordered society by creating the possibility that the institutions in society reflect the conventions of a particular time rather than a stable sense of just interaction (Rawls, 1977, pp. 160–162).

The Principles of Justice act only as a means to link institutions and associations together in the society. The principles do not represent a comprehensive doctrine of the good, but rather, they only operate in the background of social relations to ensure the fair ordering of social institutions (Rawls, 2001, pp. 32–33). The principles properly link the basic structure in such a way as to allow for a wide range of competing doctrines to exist without threatening the stability of the society. By ensuring toleration of other competing systems in reference to equal access to public goods, Justice as Fairness is able to sustain a well-ordered society (Rawls, 2001, pp. 11–12; 30–31; 34–35).

The ability to make space for other competing doctrines, Rawls argues, allows for what he calls the "overlapping consensus." Overlapping consensus is the process by which comprehensive doctrines find points of similarity between themselves and Justice as Fairness, and are thus able to agree to its terms (Rawls, 2001, 11-12). Justice as Fairness, by operating as a background idea, leaves the citizens free to find the appropriate linkages between a comprehensive doctrine and the Principles of Justice through the use of their twin moral powers of reason and rationality. By placing political

principles outside of the social space, he argues, Justice as Fairness allows for a multiplicity of linkage points between its Principles and the principles found in a particular doctrine of the good. Over time, citizens come to view Justice as Fairness as an essential part of any comprehensive doctrine. The Principles of Justice provide the necessary political foundation, which allows for the pursuit of those ends in the well-ordered society
(Rawls, 2001, pp. 194–195).

The basic structure comes to hold a central position in political understandings within a well-ordered Rawlsian society. It is through the institutions found in the basic structure that the Principles of Justice act to promote stability. Justice as Fairness allows for both freedom and equality within the society, and in doing so, is able to relate comprehensive doctrines back to the Principles of Justice through overlapping consensus. By not acting directly on the citizenry, Principles of Justice move to the center of political life by articulating fundamental principles of relation rather than by providing an essentialist and totalizing doctrine that can only be maintained through violence (Rawls, 2001, pp. 196–197*)*. Justice as Fairness creates a reasonable political psychology, or the capacity to abide by the Principles of Justice, within its citizenry by bolstering shared ends and common goals amongst competing doctrines (Rawls, 2001, pp. 197–198).

While this image of justice does do much to ameliorate essentialism in political understanding, it also does much to foment it. Rawls seeks a political understanding that takes reasonable pluralism seriously, but he neglects certain fundamental aspects of the nature of power, which are identified by Carl Schmitt and Seyla Benhabib. Negative aspects of power relationships, such as dominance and exclusion, are almost absent from

Rawlsian theory in the sense that he glosses over the ways in which his own theory recreates these practices in new forms. Rawls creates a center that comes closer to Hobbes' leviathan than to Kant's kingdom of ends. In the well-ordered society, as read by Benhabib, justice acts only for the benefit of members. The sovereign power acts to separate the citizen from the noncitizen, bestowing rights on the one while placing the other in a subhuman category inasmuch as the noncitizen does not meet the legal requirements of membership. This exclusionary function of power is sovereignty, as Schmitt understands it. The sovereign acts to define and rigidly border the society it operates on. Once it marks the space of its dominance, it further separates the member from the nonmember, bestowing rights on the one and mobilizing society against the other.

Rawls' attempt to mediate conflict amongst comprehensive doctrines merely recreates the possibility of dominance in two telling ways. First, it ignores the exclusionary practices necessary to construct the well-ordered society. Secondly, by utilizing an empty concept, such as the citizen as the sole possessor of rights, Rawls limits the scope of the Kantian political framework.

II.

Rawls seeks a framework that minimizes conflict among comprehensive doctrines. In his understanding, Justice as Fairness seeks an overlapping consensus among these doctrines, and the Principles of Justice accomplish this goal through reconciliation. Rawls uses this term in the Hegelian sense where reconciliation amounts to the ability of citizenry within the system to understand the reasonableness of the structures in place and the fairness of their dealings with each other. Reconciliation, then, is central to the

political project for Rawls (Rawls, 2001, pp. 3–5). The task of reconciliation is the task of ensuring that the members of a society can find reason, in a well-ordered society, to cooperate with it.[3] For Rawls, the method of choosing, the idea of public justification, and the fact of reasonable pluralism accomplish Hegel's end by providing an underlying rational framework that guarantees that a citizen's capacities are not unduly hampered by the institutions of that society (Rawls, 2001, pp. 26–27). The task of political philosophy, for Rawls, is the task of creating and maintaining a political citizenry that can pursue their ends, yet accept these ends as necessarily connected to the political system in which they are engaged (Rawls, 2001, pp. 199–201).

However, in terms of his task of reconciliation, Rawls' framework becomes problematic in at least two ways. First, it misses what Carl Schmitt would argue is the fundamental nature of politics, and in doing so, fails to see the very exclusionary practices necessary to sustain a "well-ordered" citizenry[4]. For Schmitt, the task of politics is not finding operative Principles of Justice or mediating conflict between competing doctrines, but rather, it is the naming of the exception (Schmitt, 1985, p. 5). The task of politics is the formation of society and the recognition of threats to the relationships that make it up. Like Rawls, Schmitt argues that the birth of political power in a society comes from the sovereign separating himself from the society that he operates on (Schmitt, 1985, pp. 6–7). The sovereign is capable of protecting the society, for Schmitt

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[3] Consider Rawls' use of reconciliation here in reference to Charles Taylor's argument, in *Sources of the Self,* about the nature of political being. For Taylor, we exist in a field of mutual interlocution. As such, reconciliation must necessarily entail the ability to articulate a sense of self in reference to the structures that we come in contact with (Taylor, 41–52).

[4] For a more in depth discussion of the mechanics of reconciliation and the process of politicization in Rawlsian Liberalism, see Bonnie Honig's "Rawls on Politics and Punishment". pp. 101-104

after Hobbes, only by being outside of the normal series of relationships. Only by being outside of the society, he argues, is the sovereign able to see threats to the system as a whole. Political power is a dynamic power that acts on the society it is attached to. In defining and removing the threat, the sovereign acts as a positive force. The sovereign creates the confines of the society through the removal of systematic threats.

The sovereign acts on the society in a manner similar to that which we see in Justice as Fairness. First, Schmitt argues, by declaring himself an exception, the sovereign removes himself from the normal series of relations that form a political society. This self-removal allows him to draw a border around a particular series of normal relations (Schmitt, 1985, pp. 14–15). It is through this act of bordering that the sovereign defines the society. He takes for himself the power to declare what falls inside of and outside of the borders of sovereign power. By taking the authority of declaring the exception, the sovereign becomes the source of law. Law, Schmitt argues, does not deal with the normal series of relations that form a society, but rather, it deals with instances that fall outside of that normal series. For Schmitt, law operates only on those individuals or groups who the sovereign has marked out as a threat to the normal situation. It is purely punitive, as it attempts to protect the normal series of relationships from systemic threats (Schmitt, 1985, pp. 12–13). These exceptions come to form the border of society, for Schmitt, marking what is not acceptable and, thus, threatens the society.

The essence of political power, for Schmitt, lies in declaring where the normal rules do not apply (Schmitt, 1985, pp. 25–26). The sovereign recognizes and names the exception, defines the threat that the exception poses to the normal series of relationships, and mobilizes the society against that threat. All law acts on threats to the society. The

sovereign exists, for Schmitt, only to define and remove exceptions from the normal series of relations (Schmitt, 1996, pp. 14–15). The state is not the sum total of institutions that connect together in a basic pattern; rather, it must be viewed as the sovereign. The state is the line that separates members from threats and which mobilizes the former in defense against the latter through the laws and institutions that make it up (Schmitt, 1996, pp. 15–17). Concepts like citizenship, rights, and law come to reside within the series of normal relations as defined by the sovereign state. The state becomes a unity comprised of the normal series of relationships, which presupposes the need (and justification) for these relationships to be defended (Schmitt, 1996, pp. 19–20). When the state acts as a sovereign force, this force acts to remove threats from the society and place them outside the normal series of relationships (Schmitt, 1985, pp. 20–21; 1996, pp. 26–27).

Schmitt's image of political power raises interesting questions regarding Rawls' conception of the state as a mediator of conflict. First, when read against Schmitt's idea of sovereignty as positive force acting directly on the society to define and excise threats, one finds an ontological presence necessary to give concepts their validity in political society. In order for the sovereign to be capable of acting, it must be an entity that is capable of knowing. It must, for Schmitt, be able to know what constitutes both the normal series of relations that make up a society and what constitutes a systemic threat to it. The representatives, in Rawls' original position, fulfill this role[5]. Representatives in

[5] In his article "John Rawls: Between Two Enlightenments" Michael Frazier points out that while human norms such as empathy and compassion are present in Rawlsian theory, they are largely obscured by his deployment of contractarian language. As a result, the political person in Rawls' view becomes a "single-minded seeker of self interest,

Rawls' original position imbue Rawls' concepts of reason and rationality with a permanent character. The representatives choose the Principles of Justice solely on the basis of their own moral capacities. The act of representation implies that these specific capacities form the image of what it means to be in the well-ordered society. All citizens, then, display the same capacities to the same degree. All reasonable individuals, Rawls argues, if placed in the original position, would choose the same principles, because they are the best possible outcome in light of our moral capacities (Rawls, 2001, pp. 107–110).

Rawls' starting point in the original position requires taking seriously the idea that the Principles of Justice themselves are a priori components of the basic structure. This idea suggests that the validity of these concepts is subject to a homogeneous conceptualization of human moral capacities. In Schmitt's work, political power acts in such a way as to define each of the elements that make up the society through exclusion. Rawls seeks to strip his conceptualization of the twin moral powers of rationality and reasonability of their political force. The Principles of Justice are not a function of external force, but rather, of merely externalized deliberation. For Rawls, the Principles of Justice are not linked to a power that defines and protects them, but they rely on their apprehension through rational deliberation. Each Principle, however, forms a preexisting series of norms that are a priori to the institutions and citizens they operate on.[6] The

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creatures that are radically unlike the human beings that Hume and Smith describe, but not unlike the *homo economicus* of the rational choice tradition (Frazier, 2000, pg. 764)

[6] For Communitarian Theorists like Michael Sandel, the existence of a priori political commitments as Rawls has envisioned them requires members to ignore preexisting ties to family, space, and religion. For Sandel, the binding nature of the Principles of Justice requires that citizens become "unencumbered." Commitments to other forms of being than the political must be considered secondary if the well-ordered society is to remain stable. This requirement makes Rawls' undertaking suspect at best for Sandel, who

Principles of Justice exist as background ideas, a priori sources of stability and cohesion on which the well-ordered society is based. Without the Principles of Justice, Rawls argues, the idea of society as a stable field of cooperation is impossible (Rawls, 2001, pp. 5–7).

Schmitt would argue that Rawls ignores the power dimensions that his theory creates by disregarding how these principles come to define (in Schmitt's terms) the normal series of relationships (the basic structure), the threats to it (comprehensive doctrines), and the removal of this threat from the society (overlapping consensus), all in order to protect the well-ordered society. While Rawls' ontological argument seeks to undo the need for violence by relying on consensus to uphold the Principles of Justice, for Schmitt, this would in fact recreate the violence in new forms. By defining the exceptions to the normal series of relations, in Schmitt's understanding, the sovereign exercises power. This is the power of defining the acceptable. It is in and of itself a form of violence, as it requires a fight to the death between the acceptable and the exception (Schmitt, 1996, pp. 28–29). Definitions set guidelines for who is protected and whom the sovereign can destroy. The power to define, in other words, is the power to create a de facto opposition between the society defined and the threat, which is then subject to the sovereign ban. Thus, for Schmitt, the political is defined by a simple binary between the threat and the member, as defined by the presence of the sovereign.

Membership, for Schmitt, is defined through the act of exclusion. Membership is not granted by agreement to first principles that govern. Membership in society, as Schmitt understands it, is to *not* be marked out as a threat to those relationships.

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argues that space commitments are not as easily disentangled from being as Rawls would have us believe (Sandel, 1984, pp. 86–87;90–91).

Membership, for Schmitt, is defined by the sovereign, rather than by an agreement amongst equals, and this poses an interesting challenge to the idea of overlapping consensus. If membership, found in Rawls' theory as citizenship, is a matter for sovereign definition, then it is defined from outside rather than being a preexisting category within society. Overlapping consensus operates as sovereign power, in Schmitt's terms. It acts to define membership in the well-ordered society by requiring that the Principles of Justice must mediate any comprehensive doctrine that one holds.

On Schmitt's account of sovereignty, Rawls seems to downplay the exclusionary nature of overlapping consensus. He does so by downplaying the extent to which comprehensive doctrines are a threat to the well-ordered society. In Justice as Fairness, the central tendency of comprehensive doctrines is to seek a position of dominance. Their very presence in the well-ordered society threatens it unless they are mediated by a stable principle that overrides them (Rawls, 2001, pp. 7–9; 34–35; 169–171; 196–197). Rawls is able to produce a rational agreement in place of violent conflicts between the well-ordered society and the doctrines that threaten to upend it only through the capacity of the Principles of Justice to mediate positions and create a reasonable political psychology. The presence of doctrines that cannot be mediated threaten the stability of the Principles of Justice and the concepts they rest on, and thus the stability of the well-ordered society, as it is only through these principles that the drive to power is neutralized. Thus, as Schmitt would understand it, to hold incommensurate doctrines in the well-ordered

society is to be a threat to the well-ordered society and to be subject to the sovereign ban[7] (Rawls, 1997, pp. 155–156; 2001, pp. 196–197; Schmitt, 1996, pp. 87–88).

Schmitt's understanding of the nature of politics opens a gaping hole in Rawlsian liberalism. Rawls, Schmitt would argue, in no way seeks to account for the coercive nature of the political. In Rawlsian realistic utopianism, Schmitt's friend/enemy distinction is simply glossed over by appeal to universal reason. What Rawls' appeal to reason excludes is the need for an ontological presence, or the presence of an absolute authority, necessary to anchor the normal series of relationships, and provide stability to the well-ordered society[8]. Further, Rawls' theory lacks an account of the exclusionary practices necessary to create the reasonable political psychology required to engage in overlapping consensus (Schmitt, 1996, pp. 87–88). By glossing over exclusionary practices, Schmitt argues, the liberal state merely covers up its particular brand of violence in economic terms, exchanging the figure of competitor for that of enemy (Schmitt, 1996, pp. 87–88).

Whether by casting conflict in economic terms such as rational choice or in political terms such as reasonable deliberation, however, liberalism creates a center that defines both the member and the nonmember. Through the ontological presence of the sovereign, the citizen is defined, and through the necessary attributes such as reflective equilibrium and reasonable moral psychology, liberalism recreates the friend/enemy

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[7] Sandel furthers this point. For Sandel, the Rawlsian individual exists as a political subject first and as a member second (Sandel, 1984, pp. 93–94).

[8] George Klosko seconds this point in " Rawls' Arguments from Political Stability". As Klosko points out Rawls theorization of political stability is at odds with traditional political discourse. Traditional discourse, he argues, seeks stability in the instituions of power that are needed to maintain them, rather than, as in Rawls, through appeal to universal principles of reason (Klosko, 1994, pp. 1883-1885).

distinction. In Schmitt's argument, the language of liberalism, while seeking to connect all modes of being to its central tenets through "reason," in fact merely hides the bodies of those it could not connect (Schmitt, 1996, pp. 91–93).

While Schmitt may take issue with a liberal such as Rawls attempting to cover the violent nature of the political with appeals to reason and rationality, he himself offers no understanding of the methodology of violence in the liberal project. In Schmitt's conceptualization, the state acts decisively. Political power operates in such a way as to define a threat and to remove the threat from the normal series of relationships. However, the liberal state, he argues, lacks this decisiveness; in the place of violence there is only negotiation (Schmitt, 1996, pp. 97–98). Instead of the life and death struggle of a nation against a common threat, liberalism presents politics as a series of technical organizational problems that can be solved through parliamentary debate (Schmitt, 1996, pp. 96–98). Schmitt's analysis suggests that what a well-ordered society needs is an empty category, or juridical subject, on which it can act and on which rights come to rest. In Rawls, these rights are arrived at through deliberation. The liberal state, for Schmitt, simply creates the binary of citizen/noncitizen in place of member/threat.

This dichotomy becomes problematic for Benhabib in her reading of Rawls in that it requires a dangerous misreading of the Kantian framework Rawls' liberalism purports to rest on. In the creation of the Principles of Justice, she argues, Rawls moves away from Kantian understandings in order to create a closed liberal society. As she points out, Kant envisioned his rights scheme as applicable to all moral persons. In the Rawlsian framework, however, this scheme is a privilege tied to membership in a liberal society (Benhabib, 2004, p. 75). Rawls creates a rigid border around the liberal society, enforced

by its sovereign capacity to bestow rights on members. The concept of membership-based rights is a significant departure from Kant in that the rights of man were seen as a de facto part of their existence (Benhabib, 2004, pp. 77–78). This conceptual device of a "people" comprised of yet another conceptual device, the "citizen," Benhabib argues, creates a closed political system revolving around the Principles of Justice. Rawls uses the political category of the state, as an aggregate of citizens organized in a geographical space, and the category of a people almost interchangeably. Rawls, she argues, seeks to get around the in-group/out-group problem that liberalism creates in reference to rights by creating an assumed connection between a people and the liberal state, which upholds the scheme of rights (Benhabib, 2004, pp. 78–79).

For Benhabib, it is the responsibility of a state to recognize the rights of its citizens, in the Rawlsian framework. The state, on her reading of Rawls, is the natural organization of a people. It is through the state that a people are able to protect and guarantee rights to its members. While this coupling of a people and the state is unproblematic in Rawls, as she points out, it violates the universal nature of rights, as Kant would have understood it. Kant saw the basic rights as preceding any political organization, stemming only from the presence of a moral person. Benhabib understands this to mean that the presence of a person inside a state is the presence of certain guarantees, regardless of the person's membership status in that state (Benhabib, 2004, pp. 77–78). Rawls, however, seeks to make them a function of two organizational steps: a people who organize and define them and a state that orders and protects them (Benhabib, 2004, pp. 76–79).

In seeking a structural framework to define and protect rights, Benhabib argues, the Rawlsian framework engages in exclusionary violence. First, by placing the guarantee of rights within the dense construct of membership, Rawlsian liberalism leaves nonmembers exposed to state violence by lacking any recognizable traits of a rights bearing individual. If the state has the sole capacity to define and defend rights guarantees, then stateless people and other nonmembers are left vulnerable to violations of those rights by their host state. In the Rawlsian framework, Benhabib points out, noncitizens are left outside of the scheme of rights and responsibilities merely for their lack of status. The Rawlsian framework, by resting its Principles of Justice on the citizen, creates the out-group of noncitizen, which seems, on Benhabib's reading of Rawls, to be owed no moral consideration whatsoever by the mere fact of its presence (Benhabib, 2004, pp. 76–79).

The construction of the juridical category of a citizen to replace the Kantian person is a further method of exclusion in the Rawlsian framework. The concept of a people, Benhabib argues, becomes a normative category that distorts more than it explains. In her understanding, a Rawlsian "people" is a homogeneous category. This category removes all difference within a particular group (Benhabib, 2004, pp. 76–79). While there are differences in the comprehensive doctrines, these differences are not properly played out in the political society Rawls creates. On Benhabib's reading, a Rawlsian people is created by a priori political commitment in the original position rather than through mediating the real differences that arise in communal life (Benhabib, 2004, pp. 79–81). The creation of a homogeneous people ignores very crucial rifts within a society in favor of an entity with shared sentiment and common moral

nature (Benhabib, 2004, pp. 80–81). The creation of a people through the dismissal of actual differences, in favor of political orthodoxy developed in the original position, denies both interpersonal difference and the way cultures work through these differences (Benhabib, 2004, pp. 80–82).

A people, holds Benhabib, cannot be created through philosophical categories, but rather, a people develops over time, through the very intrastate conflicts that Rawls seeks to manage through adherence to first principles (Benhabib, 2004, pp. 82–83). In seeking to hinge the idea of the state on the existence of a common moral sympathy, Rawls denies the very groups that developed this sympathy in that he denies the very sites of contested meaning that give rise to both a people and to a shared political psychology (Benhabib, 2004, pp. 84–85). What emerges, then, is an ahistorical "people" with no other bond to each other than a shared moral sentiment that itself springs from nowhere. The question then becomes, for Benhabib, who does the Rawlsian framework represent? She finds an answer in the creation of the citizen in the original position.

In the original position, she argues, all adequate means of understanding difference are hidden behind the veil of ignorance (Benhabib, 2004, pp. 108–109). As such, the primacy of the representative act revolves around Rawls' twin moral capacities. Within the original position, the veil of ignorance acts in such a way as to obscure any meaningful connections within a group, leaving the basic structure bereft of any means to negotiate actual difference in the society.[9] What is created is a complete and closed

[9] Consider Annette C. Baier's reading of Rawls. By stripping representatives of their human attributes, she argues, Rawls creates a political framework that is incapable of seeing human difference. "Nonmembers," then, are forced to wait for the constitutional system to "catch up" to the specific problems that different modes of being pose to the neutral constitutional system. In doing so, fundamental rights

system, not based on personhood, but rather, on the concept of the citizen, with the particular traits that are arrived at in the original position. In other words, the concept of the citizen is a composite of components that are not in themselves prediscursive, but they are rendered so by their connection to the original position, and they are seen as acting only in the background of a political order (Benhabib, 2004, pp. 85–86). In this regard, by relying solely on the reasonable and rational to create a sense of justice, the Rawlsian conceptual device leaves the representative without a concept of a person to whom to ascribe these principles. Instead, what emerges is a citizen as free and equal and rational and reasonable, who operates within a closed liberal system, as the very idea of citizenship is fundamentally tied to the state that bestows it.

Inside this hermetically sealed space, the rational, reasonable citizen becomes the predominant image of personhood for the simple reason that any other images have been obscured (Benhabib, 2004, pp. 84–87). The framework of the state comes to rest on the disembodied concept of the citizen. For Benhabib, Rawlsian concepts are not neutral, but rather, are inhuman. Stripped of any connection to the people that they operate on, Rawlsian Principles of Justice are only able to act on a conceptualization of the person, one that is sufficiently tailored to meet the legal needs of rights claims. What emerges from the original position, rather than an image of a people who are diverse and have overlapping and porous commitments and responsibilities, is a one-sided concept of a citizen whose rights are connected to the existence of a neutral state (Benhabib, 2004, p. 87).

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commitments are halted while the constitutional system recognizes these nonmembers (Baier, 2005, pp. 245–247).

Neutrality, on Benhabib's reading of Rawls, is nothing more than a form of exclusion in the sense that it purports to treat all members equally, regardless of positioning. Rawlsian equality, for Benhabib, is an impossible to realize denial of what it means to be in the world. This denial requires political thought to ignore the situations that can alter a life and can even force one to leave one's "people" and one's home state. As Rawls has necessarily tied his conception of rights to the state, this entails stripping nonmembers of any rights claims (Benhabib, 2004, pp. 84–85). The homogenization of intrastate differences leads Rawls to a peculiar place, where his framework must operate in such a way as to deny difference as a fact of being in the world in favor of a constructed equality. Constructed equality can only act to disenfranchise "nonmembers" whose modes of being do not mesh with the conceptualization of the citizen arrived at in the original position. In Benhabib's argument, this conception is far from neutral in its assessments, but rather, represents a stable concept of personhood inside the state. The concept acts, in other words, to limit who receives rights inside the state through affixing them to membership, and in doing so, acts to define who is a person.

The Rawlsian notion of citizenship rests in an artificial unity and in a rendering of the person into the juridical category of a citizen that represents only legal understandings of being. Rawls' conception of justice cannot act through the person, and therefore it must act by creating a structured concept of the self: the citizen. The state, itself the function of an artificial unity, can only act on the citizen. As the citizen is an empty category, it can be defined, operationalized, and augmented to mean different things at different times in reference to state needs. The Rawlsian framework does not represent people, let alone a people, but rather, it moves through a series of exclusionary practices

to a space for "pure reason," by which the citizen as empty category replaces or stands for personhood in political understanding (Benhabib, 2004, pp. 84–89; 108–109).

For Benhabib, these fundamental conflations, of state and people and of citizen and human, disregard the Kantian dictum that rights attach to humans as such, in favor of making them a part of a political structure (Benhabib, 2004, pp. 75–76).[10] Rawls' framework of political justice sits on shaky ground for Benhabib in that it seems to ameliorate Kantian requirements of the political by seeking to redefine political concepts rather than by seeking to rectify the conflicts they create. In this context, concepts like citizen, people, and even rights seem to be merely empty categories that fulfill Schmitt's arguments about the conflictual nature of political life. These concepts do so by requiring an emptying of the person and a redefinition of that presence in favor of the juridical concepts that the sovereign can act on in the political space. Rawls replaces the negative effects of a comprehensive doctrine gaining power over a society with a faceless set of principles that dominate the doctrines themselves. These principles create society through the basic structure and the concept of the citizen. Sovereignty, in Rawls' theory, acts by defining political being through the citizen. The citizen, for Rawls, is a mode of being tied directly to the state[11]. As such, it is within the power of the state, as the natural

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[10] While Benhabib relies heavily on the idea of "Kantian Cosmopolitanism" for her conceptualization of universal rights guarantees, it is important to note that Kant also separated society into first- and second-class citizens in regard to rights access (Kant, 2003, pp. 295–296).

[11] J. Judd Owen furthers this point. In his argument, Sovereignty in Rawls is a tolerant sovereignty, such as found in Hobbes. On his reading sovereignty in Rawls is "capable of tolerating incorrect worldviews, even respecting them as reasonable, provided they return the favor." For Owen, the Sovereignty displayed in Rawls is much more subtle than traditional concepts of sovereignty, in that it only requires the worldview of its individual citizens to be commensurate with the Principles of Justice (Owen, 2005, 146-148).

organization of a people and the sole rights bestowing entity, to deny rights claims to "nonmembers." This leaves nonmembers, as Benhabib points out, vulnerable to having their existence written off in the legal context as well as in the Kantian moral context, as they do not fit the predefined concept of personhood.

III.

Recall that through Schmitt's arguments, we find that Rawls' Principles of Justice operate as a sovereign in the well-ordered society. First, they link the disparate institutions of social life into a coherent pattern; Rawls' principles create the very territory of operation on which political power is exercised. Political power in Rawls moves in what Deleuze and Guattari find to be the chess-like patterns that reinforce domination rather than ameliorate it. Political power operates first to define its borders and then to expand these borders through connecting disparate pieces (Deleuze & Guattari, 1987, pp. 374–375). Political power, for Deleuze and Guattari, reinforces itself through connections within the borders of society. Institutions and individuals are connected back to the sovereign as political subjects. Subjugation is the mark of political dominance for these authors, as it marks the redefinition of being in favor of power operations. Rather than the presence of a person requiring moral consideration, they argue, the presence of a person marks the capacity of the sovereign to reinforce itself. It is the ability to expand its reach over the social space that is, for Deleuze and Guattari, the hallmark of domination. All aspects inside the border are connected to each other and to the sovereign, forming a dense field that is impenetrable by nonmembers.

The sovereign comes to enforce its image of being by relegating everything that is not connected to the outside. Rawls' Principles of Justice act as a sovereign power in the argument of Schmitt as well as Deleuze and Guattari in the following way. First, by separating these principles out from the normal series of relationships and demarcating them as political, Rawls creates an ontological category that is beyond the scope of the normal series of relationships. Once arrived at, Rawls argues, these principles can speak to how these relationships and institutions fit together into a cohesive whole, as those relationships remain stable in the face of a changing society. Rawls' principles act as a sovereign presence precisely by normalizing relationships and ordering them. In demarcating a whole on which the principles act, the sovereign creates a rigid border around its space of operation. The Principles of Justice define their scope (the basic structure) and their limit (ensuring a stable field of cooperation). In doing so, they create the field of operation for the sovereign and the limits of membership (a reasonable moral psychology).

Further, as Deleuze and Guattari see it, through the very act of creating the connections that uphold the basic structure, the sovereign manifests itself as central to the functioning of that society. As they point out, by operating on social space in such a way as to connect everything in that space back to itself, the sovereign ensures that this cohesive picture is naturally sustained by the sovereign's presence (Deleuze & Guattari, 1987, pp. 376–377). The sovereign is a necessary presence in order to secure the existence of the social space and to protect it from outside. In this sense, we find a peculiar spatiality in Rawls in that, while seeking principles of justice that operate through existing institutions, yields instead a Hobbesian center that is created by the

principles. The Principles of Justice, while existing outside of the normal series of relationships, nevertheless form the center of those relationships by relating all institutional apparatuses back to those principles for operational criteria.

This organization of space around a center gives us the second functioning of the sovereign in the analyses of both Schmitt and Deleuze and Guattari. By drawing a rigid territorial border around the social space and connecting it to the principles as the center of that space, Rawls in fact creates a margin outside of which only threats to the stability of the just political order can exist. The core of sovereign power is the capacity to name the exception or to make the friend/enemy distinction
(Schmitt, 1985, pp. 5–6; 1996, pp. 25–27). The state is imbued with the sole power to grant recognition of members. The state decides who makes up the body of the people by defining who the institutions of the basic structure may or may not act on. This approach defines membership as a body of humans in a direct relationship with the sovereign through the institutions that it has connected to itself. As Deleuze and Guattari point out, however, this sovereign act of subjectification, or creating political subjects, pursues a specific pathway. The sovereign only reigns over what it can interiorize and recreate itself in. The sovereign can only govern, they argue, by being able to relate all interactions within the society back to itself. Only by being able to recreate these instances in its own image is the sovereign capable of maintaining its position of dominance (Deleuze & Guattari, 1987, pp. 375–377).

The concept of overlapping consensus becomes the very exercise of sovereign dominance, as it marks both the connection and recreation of interactions in a society in

reference to the Principles of Justice[12]. The concept of citizenship acts in such a way as to create the lines of connection between the sovereign and the citizen through the basic structure by linking them to the center through the willful act of lining up doctrines of the good in reference to the sovereign. The sovereign is the center of the society, Deleuze and Guattari argue, because it sets itself up as the only means for coherence inside the boundaries of the social order (Deleuze and Guattari, 1987, pp. 376–378). Here, the overlapping consensus becomes the hallmark of sovereign power in that it requires both the sovereignty of Justice as Fairness and the recognition of that sovereignty by those engaging in the contract. The Rawlsian state, for Deleuze and Guattari, becomes the focal point of sovereign power in at least three critical ways. First, it defines and expands borders in such a way as to internalize and connect disparate parts into a cohesive whole: the creation of the basic structure. Second, in doing so, it centers itself in this space through the very connections made between institutions from a prediscursive space, that is, through background ideas. And finally, it connects members to the center by internalizing and recreating itself through the very doctrines held by the membership, that is, by insisting on the overlapping consensus. Through these operations, Rawls' liberal state creates the sovereign body, which forms the locus of power operations through the basic structure (Deleuze & Guattari, 1987, pp. 376–379).

What Deleuze and Guattari bring to light is how the mechanism of sovereign power acts to connect, rather than to excise, the disparate parts that form a political society. For Deleuze and Guattari, political power acts directly on the relationships that form the social, directing them in reference to the sovereign image of the acceptable. The

[12] Again, consider the argument made above by J. Judd Owen in reference to the tolerant nature of sovereignty in Rawls' theory.

sovereign creates the normal series of relationships, in other words, through connecting the relationships that make up society back to the preferences of power. Citizenship, in Deleuze and Guattari, is not a mark of consensus, but rather, as we shall see in the next chapter, a mark of mobilization by the sovereign. Justice as Fairness speaks to what is reconciled, for these authors, through its abandonment of the human in favor of a juridical category. This movement, they argue, makes possible the creation of the sovereign subject in a very real way.

Through Deleuze and Guattari, we can understand the mechanics of filling the empty concept of citizenship, as Benhabib understands it, and can tie it directly back to the Rawlsian framework. Citizens, in Rawls' argument, are to be seen as both free and equal. They are able both to conceive of and pursue a rational life plan and to accept limits placed on their planning in reference to other members. In this sense, to be a citizen is to be able to uphold the Principles of Justice through overlapping consensus (Rawls, 2001, pp. 27–29). For Rawls, one becomes a citizen through the very act of intimately connecting individual plans with shared conceptions of the good, that is, the Principles of Justice. On Deleuze and Guattari's reading, however, one becomes a citizen when one is inscribed with the political meanings that the sovereign recognizes as membership. Citizenship is a concept of power, which is granted and rescinded by the sovereign. It is only through the concept of the citizen, in other words, that the sovereign is able to restrict and control the membership of the society.

The category of citizen, created in the original position through the theoretical construct of representation, supplants the person as the existential basis for rights. Benhabib argues that the Rawlsian framework creates states as closed entities which are

the sole guarantors of rights, rather than the Kantian moral requirement of personhood being that guarantee. Only those who are capable of rational deliberation, that is, assenting to the Principles of Justice, are admitted to membership in the well-ordered society. Only members of the society are granted rights. Nonmembers, as Benhabib has pointed out, become nonpersons in the legal sense, as they are bereft of rights claims. It is the humanness of the other, she argues, that threatens the homogeneous citizen. It does so by bringing to the surface all the conflicts that were covered up by Rawls' original position (Benhabib, 2004, pp. 86–87; Deleuze & Guattari, 1987, pp. 376–379).

As will be seen in the next chapter, these critiques of Rawls point to a methodology of political power, which Michel Foucault refers to as discursive power. Discursive power, he argues, operates on a field of knowledge by first creating the suitable subjects for that power operation and second, by drawing a border around those subjects so that they can be defined, studied, and deployed by the sovereign. Power operates on the subject through the "semi-transcendental concept," a concept that operates on a field of knowledge from both outside and inside the field. The semi-transcendental acts to order the space of operation. In Benhabib's argument, the Rawlsian concept of the citizen acts as just such a concept. It operates to define the political subject, and it further orders the political space through rights bestowal. Citizens have rights and thus are subject to the interactions of the institutions of the basic structure. Noncitizens and nonmembers, however, are bereft of rights claims. They are not human in the political sense because they lack access to a scheme of rights that is the precursor to the juridical category of personhood: the citizen.

The homogeneous category of the citizen becomes an empty concept that is filled only by power. This allows the state considerable control over who is and who is not a member and thus a person in the legal sense. Nonmembers, for whatever reason, are thus nonpersons in a foreign state, as they exist outside of the political definition of personhood. As we shall see in Foucault, this circular understanding of what it means to be is itself a function of discursive power. In keeping the definition of nonpersons sufficiently opaque, he argues, the semi-transcendental is imbued with the power to deploy through definition and redefinition of the categories. By keeping the definitions of semi-transcendental concepts like "citizen" and "individual" vague, Foucault argues, liberalism achieves the ability to manage the literal life of the state. It is able, in other words, to manage its members through deploying and defining the terms of "the political," an ontological category that is itself the product of power relationships. The concept comes to act, he will argue, just in the way that Deleuze and Guattari argued sovereignty does, by defining personhood in such a way as to connect the conceptualization to power.

Chapter 2: Power as Dominance: the Mechanics of a Disembodied Sovereign

I.

Rawls' framework of justice forms a central thesis by which the political is understood and normalized. The Principles of Justice, by operating as this central thesis, act as a sovereign presence as Schmitt understands the term. The principles act as the source of order in Rawls' society. Rawlsian sovereignty, however, is not localized into a personal presence, but rather manifests itself in a diffuse series of institutions and concepts that act on the citizens to create an ordered society. The mechanics of Rawlsian sovereignty must be sought, then, through the elements that make it up: the Principles of Justice. Conceptions of sovereignty in political thought tend to focus on the structures or people in a political society who hold and wield power. In the Rawlsian context, we find a classical liberal approach to sovereignty, by which an amount of personal power is given up to form a well-ordered society based on reciprocity of ends. Classical liberal understandings of political life begin with the sovereign individual and move outwards to the formation of a sovereign society.

In classical liberal theory, power is normalized or controlled by the arrangements of a social contract in which members turn over a small part of their sovereignty in exchange for the benefits of mutual protection. Sovereignty for Rawls is a banal power operating only to order and arrange the comprehensive doctrines at work in a society, making it into a stable whole. Stabilizing the exchanges between doctrines mitigates the chances that one doctrine will gain total power and damage the well-ordered system of cooperation. Sovereignty serves this stabilizing function, Rawls argues, by relating the

aims of these doctrines back to the Principles of Justice and to the institutions of the basic structure, which act directly on the society through the principles (Rawls, 2001, pp. 5–6).

However, when we begin to view the Principles of Justice as a sovereign, a sovereign not formed by people or structures but rather by ideas and values that permeate the society in question, we are presented with a series of problems in reference to our usage both of sovereignty and power in the political context. Are ideas and values capable of operating as a sovereign, as Schmitt understands the term? Can arguably neutral institutions manifest preferences and operate to pursue these preferences in the well-ordered society? Finally, can the idea of the citizen manifest the exclusionary practices that are manifest in the understanding of power that both Schmitt and Benhabib develop? Michel Foucault provides us with a new understanding of power that focuses on the act of domination. He argues that what must be sought in order to understand how power operates in society is the mechanics of that power. What, he asks, are the pathways that allow dominative practices to move through a society and to reorder it in reference to the sovereign? More concisely, he asks us to look at how the idea of society is formed and at the exclusionary practices that make this idea a reality. His conception suggests how a framework like Rawls' acts to create a citizenry by permeating all interactions with precoded meanings.

For Foucault, power must not be viewed in terms of legitimacy through investment of individual power into the structures of the state, but rather, it must be thought of in terms of domination or the capacity to reshape and develop based on a central thesis (Foucault, 1994a, pp. 142–143). He argues that classical liberal theory is faced with a problem in reference to its theorizing of sovereignty as something that acts

from outside of the political society. Sovereignty speaks to those citizens that operate in and on the social group in reference to the demands of the sovereign state. He calls this form of power the pastoral power of the state: the ability to direct, define, and develop members of the political society for its ends (Foucault, 1997, pp. 92–93).

Political thought, for Foucault, is now faced with the task of tracing the lines of the micro-sovereignty of nongovernmental institutions as they transverse the social space, realigning and augmenting it in reference to dominant ideas permeating from the center. The micro-sovereign model of power and the nature of sovereignty are particularly problematic for our understanding of Rawls' Justice as Fairness and the political framework that it produces. Foucault's model calls into question the power implications not only of the linking of institutions and doctrines together to form the well-ordered society, but further, the mechanics of disembodied sovereignty as it acts to uphold these linkages.

For Foucault, the operations of normalizing institutions, knowledge production, and sovereignty are inextricably linked; they inform, redirect, and act on citizens in reference to power preferences. The semi-transcendental concepts that are employed in power operations come to define the nature of the division between citizen and noncitizen (Foucault, 1994a, pp. 142–144). The sovereign definition in turn creates the well-ordered society by populating it and defining the limitations of rights and privileges. The definition, limitation, and granting of rights and privileges, for Foucault, become the hallmark of what he refers to as biopolitics: the management of life in a society.

In order to understand the implications of Foucault's analysis on Rawls' theory, this chapter will proceed in three parts. First, I will explore Foucault's understanding of

power through *The Order of Things* and other texts, in order to explore the methodology of power that he argues is at work in our political understandings. Second, I will apply Foucault's understanding of the mechanics of power directly back to Rawls' arguments in an attempt to reread the political landscape that Rawls creates. Lastly, I will interrogate Rawls' ideas of distributive justice in light of Foucault's arguments about the biopolitical functions of the modern state in order to show that the Principles of Justice exert a management power over the well-ordered society.

II.

Foucault first and foremost develops a critique of the modern discourse of political power. In our contemporary understanding, he argues, power is a thing that is both neutral and containable (Foucault, 1980a, pp. 1–3). Power can be sufficiently normalized by ensuring that the structures that contain it are themselves neutral, so it can be seen as being wielded only for the popular will (Foucault, 1980a, pp. 1–2). On this understanding, power has no agenda. It is seen by classical liberal thought, he argues, as a tool used through the structures of the state for the pursuit of particular agendas. This is certainly the case in Rawls for whom power is the capability of the Principles of Justice to maintain the well-ordered society. They are able to do so, Rawls argues, only if they are made sufficiently strong to link comprehensive doctrines together in a meaningful way (Rawls, 2001, pp. 137–138). Power, in Justice as Fairness, is not the force of a personal sovereign, but rather, it is the benign capacity to convince. In the absence of the use of violence, Rawls argues, the Principles of Justice are strengthened in their capacities only by ensuring that they themselves are stable. For Rawls, in order for this benign power to operate as a stable entity, it must be placed outside of the normal

discourse in order to ensure that it is able to operate without interruption on political understandings inside the well-ordered society
(Rawls, 2001, pp. 137–139; 1977, pp. 67–68; 2007, pp. 25–27).

From Foucault's perspective, however, Rawls' modern understanding of the nature of power would be faulty on two counts. First, the understanding of power as a neutral "thing" that is possessed by the structures of government provides us with an image of power as only operating outside of the well-ordered society, when in fact power permeates every aspect of the society (Foucault, 1980a, pp. 1–3). Power is not isolatable as neutral, but rather, it manifests as the capacity to dominate. Power is the capacity to enforce. Power is the ability to close off possibilities and alternative modes of being by referring all life in the society back to itself through the creation of law
(Foucault, 1980a, pp. 20–21). Power, he argues, creates the very subjects it operates on, what Foucault refers to as "the juridical subject."

For Foucault, the capacity to mark out the individual as being subject to the law is the basic operation of power. One becomes dominated by the law, as one finds oneself always under the law yet lacking any real means to say what the law is
(Foucault, 1980a, pp. 20–23). It is through the distance that exists between the law and the subjects of the law that power is able to operate on the juridical subject. Power operates, Foucault argues, to bridge this gap between the legal concept of the individual and the existential person by recreating the person in the image of the juridical subject. Power acts, in other words to create a legal concept and then to normalize the person in reference to that concept (Foucault, 1980a, pp. 23–24).

For Foucault, placing distance between the subject and power does not undo the negative effects of power on a society; rather, it exacerbates them. Placing the repositories of power outside of the network of relationships that make up Rawlsian society allows these repositories to link all interactions to them as an a priori requirement of social life (Foucault, 1980a, pp. 24–25). To illustrate the mechanics of power, Foucault uses the spatial arrangement of a courtroom. In a court, he argues, one comes face-to-face with juridical power without coming into direct contact with it. The defendant sits behind a table, which is separated by an open space from the high bench on which the judge sits. The judge looks down on the subject and uses the definitions of the law in order to operate on the defendant (Foucault, 1980a, pp. 23–25). In this illustration, the spatial separation and the limitations on discourse placed on the subject by legal conventions operate in such a way as to secure the law's power over the subject rather than to secure the subject from its operations (Foucault, 1980a, pp. 24–26).

What emerges from Foucault's assessment of power is a phenomenon in modern political understandings that he calls "deposing the sovereign, without beheading him" (Foucault, 1980b, p. 93). This characterization of modern political power raises the question of the nature of right, for Foucault. The origin of the idea of right rests not in fundamental limitations on power but rather on the idea that it is centered on the right of the sovereign and his ability to rule (Foucault, 1980b, pp. 94–95). The power implications of the sovereign understanding of right can be seen operating even in the context of limitations, like Rawls' scheme of fundamental rights enshrined by law, because these rest on the juridical power to define and uphold them. Rights speak to the power of the sovereign state, not to the limitations on the state in reference to the rights of

its members. It is for this reason, Foucault argues, that the simple binary of sovereignty, utilized by modernity since Hobbes, no longer works in understanding the operations of power in the social body (Foucault, 1980b, pp. 93–96).

Modern thought places a strict dividing line between the social body and the state (Foucault, 1997, pp. 92–93). The sovereign exists with the threat of the permanent conflict of the state of nature in the background of the social body. The sovereign offers protection against this conflict through the exercise of its power (Foucault, 1997, pp. 92–94). For Foucault, state power comes to rest on the fear of endless conflict, overtly in Hobbes, but in a much more refined fashion in later classical liberal thought (Foucault, 1997, pp. 93–94). What classical liberalism makes possible with the idea of the social contract isn't the mediation of conflicts, as we find in Rawls, but rather, the legitimization of conquest (Foucault, 1997, pp. 93–94). For Foucault, the social contract in Hobbes legitimizes the conquest of the social body by the sovereign through an appeal to a rational consensus grounded in fear or violence. This legitimization of conquest marks the birth of the society, for Foucault. It marks the creation of permanent structures of power that govern through the legitimization of domination found in the social contract. The social contract marks a "one and done" founding moment of consensus that places the question of the sovereignty of law in a prediscursive space (Foucault, 1997, pp. 94–96).

For Foucault, the right of law becomes solidified in the social contract through a double movement. On the one hand, he argues, the sovereignty of law is agreed upon by those engaged in the contract; thus, the sovereign is erected at that moment, and all parties are immediately subject to it (Foucault, 1997, p. 95). On the other hand, as the

state of nature is the permanent backdrop of the state, law moves through society, normalizing relations based on the fear of the return of permanent conflict. Thus, power is not contained outside of the social body protecting it, but must permeate it at every turn, redeveloping its members in reference to this fear (Foucault, 1997, pp. 96–97). Power, for Foucault, must be assessed through these mechanics if we are to get an adequate picture of the relationship of power and the social body. His analysis means rejecting the binary model of the state and society in favor of tracing these lines of micro-power throughout the social body (Foucault, 1980b, pp. 92–94; 1997, pp. 93–96).

For Foucault, preoccupations with founding moments lead directly back to the problematic nature of power highlighted above. The focus on origins seeks a pristine moment in which domination is once and for all placed outside of the social body. Origins, for Foucault, take on mythical characteristics. He argues that the conflicts and disputes that create the social body are covered up in favor of the emergence of a dominant force, which is able to unify the social field either through discursive, physical, or juridical means. This force then recreates the society in its own image by minimizing "otherness" in favor of a homogeneous presence that can be both controlled and augmented by the sovereign power (Foucault, 1977, pp. 143–144). Rawls tries to anchor our political present on a founding moment. Origins, however, are by their nature messy. They are the sites of conflicts in which particular values and norms set themselves up over all other values and norms in the social arrangement, thus allowing them to direct the discourse of power to ensure their perpetuity (Foucault, 1977, pp. 145–146). Foucault seeks a shift in the gaze of theory from a historical context, in which history is told along

the axis of the origin, towards an archeological model, which traces the lines of conflicts and tendencies to devalue knowledges as they are excised from the social body (Foucault, 1980b, pp. 95–97; 1997, pp. 15–17; 1977, pp. 142–145). Foucault's methodological shift allows us to trace the lines of discursive power as they develop and become dominant in our understandings. It allows us to interrogate the line between ideal theory and empirical evidence as it pertains to the nature of political power.

Foucault begins tracing the development of what he refers to as semi-transcendental ideas. Semi-transcendentals are concepts that develop within a discourse and come to order the discourse in reference to itself (Foucault, 1994a, pp. 147–148). These concepts are emergent, he argues, in that they are drawn out of a particular discourse and are used to typify the field of knowledge that a discourse operates on. They come to exercise power over a discourse, Foucault argues, as they both limit and describe what falls "inside" of a discourse. They operate in his argument precisely as Schmittian sovereignty operates on a society. Semi- transcendental concepts separate the world into distinct categories of knowledge by relegating particular knowledges as inside the discursive field, and others outside that field. For Foucault, discourse and sovereign power are inextricably linked, as the exercise of one requires the presence of the other to legitimize its endeavors
(Foucault, 1980b, pp. 93–97; 1997, pp. 44–46; 1994a, pp. 148–151).

Sovereign or juridical power, for Foucault, rests on knowledge for the simple reason that knowledge forms the conduit through which juridical power acts on the individual (Foucault, 1980b, pp. 105–106). Knowledge produces the very means of developing a political individual as a subject of power by providing power with a model

on which to base its actions. Knowledge, he argues, directs sovereign power by developing the idea of the individual that juridical power creates. For Foucault, discourses in the human sciences wield tremendous power because they are inextricably linked to the sovereign endeavor of developing individuals for its own ends (Foucault, 1994b, pp. 403–405).

The ordering principle employed by juridical power, Foucault argues, is based on the necessity of a semi-transcendental concept (Foucault, 1994a, pp. 238–240). Semi-transcendental concepts like "citizen," "society," and even "justice," come to wield enormous power over the production of knowledge for two reasons. First, Foucault argues, once postulated they begin to develop organically from within the discourse itself and are drawn out as defining factors. Semi-transcendental concepts become empirically verifiable within the discourse, as they exist within the field of a particular knowledge as a reference point. Secondly, they also operate from outside the discourse, limiting the field of inquiry by subjugating information to their preexisting criteria. For example, in the field of political science, the discourse is limited to aspects pertaining to the political, as opposed to the mythological or the literary. While the latter are used by political science to gain information, the study of literature and/or folklore is not itself a political science. Thus, he argues, the semi-transcendental comes to define the field of inquiry through the limits it places on what falls inside and outside of the discursive framework (Foucault, 1994a, pp. 245–248).

At the center of the political discourse is the person: a living human being that is not created by discursive knowledge but rather is operated on by it. The person is a double subject in the production of knowledge

(Foucault, 1994a, pp. 305–307; 1994b, pp. 403–407). On the one hand, the person is the knower. In this sense, a space is opened up within the discursive framework whereby all knowledge is related back to the person, as it is only the person who is capable of knowing (Foucault, 1994a, pp. 305–307). On the other hand, the privileging of the person as both the source and the apprehender of knowledge also makes the person the subject of discourse. The human sciences are born, Foucault argues, in order that the person itself can be placed on the tables of knowledge (Foucault, 1994a, pp. 307–308). Discourse begins to operate on the person, developing the concept of "man" to order and limit the person in discursive space (Foucault, 1994a, pp. 308–309).

The creation of the semi-transcendental "man," which is an empty concept that is filled by the discourses of the human sciences for Foucault, marks the birth of juridical power (Foucault, 1994a, pp. 317–319). For Foucault, "man" becomes both an empirical instance and a transcendental norm. On the one hand, this allows for the concept of "man" to be related back to the person in that it is a composite of fragmented knowledges about the person found within the discourse of the human sciences. On the other hand, the semi-transcendental concept of "man" wields enormous disciplinary power as it acts through these discourses (psychology, political science, economics, medicine, etc.) to normalize the person in reference to the image created by the semi-transcendental concept of "man" (Foucault, 1994a, pp. 339–342; 1997, pp. 5–9; 1980b, pp. 105–107).

It is through the discourse of "man" that Foucault finds the inextricable link between discursive dominance and juridical power (Foucault, 1994b, pp. 403–405). Sovereignty acts not *through* the members that make up the political society in a democracy, but rather, it acts *on* these members through the discourse of the individual,

of the person (Foucault, 1994b, pp. 404–405). For Foucault, the semi-transcendental "man" covers up the person by offering an image of human nature. The presence of the semi-transcendental concept gives power a model to operate through. Thus, Foucault argues, the semi-transcendental becomes essential to the operations of political power. The semi-transcendental concept provides a specific type of knowledge about the person: its distance from "man." This allows sovereign power to act to normalize or bring the person back in line with the model. In this way, Foucault argues, sovereign power orders society by bringing its "citizens" in line with the image of the "man," rather than as a subjective person that is convinced of the reasonability of the semi-transcendental (Foucault, 1994b, pp. 407–408; 1994a, pp. 339–342). Disciplinary power acts directly through the distance between the person and "man" to create the "citizen." The goal of power, Foucault argues, is bringing the person in line with the sovereign's image of "man" through normalization.

The purpose of government, he argues, becomes securing state power by operating on the individual and developing it for state ends (Foucault, 1994b, p. 408). Discursive power creates the very subjects that juridical power operates on by creating operable models. Through the micro-veins of power such as the clinic, the mental hospital, the prison, and the police, the person is created based on the discourse of "man" found in the human sciences (Foucault, 1994a, pp. 338–339). Micro-sovereigns operate to train and develop the person in reference to the model of the "citizen." In doing so, Foucault argues, these normalizing institutions create not only the citizen, a person who has been developed by power, but also the society, the sum total of the institutions of power that operate on and develop the "citizen" (Foucault, 1994b, pp. 410–414).

The function of a state isn't merely ensuring just interactions, but it is the management of all life within the society (Foucault, 1994b, pp. 411–412). What is important about the emergence of police power, for Foucault, is that it marks the beginning of the disciplinary society. For Foucault, the development of the management state is the beginning of biopolitics, in which the function of political power becomes one of normalizing and developing the "citizen" for state ends (Foucault, 1994b, pp. 413–414). Modernity, on Foucault's reading, is not typified by the state understood as the passive repository of power, but rather by the state understood as a dynamic force managing the life of a society. The state acts to break up, define, and develop the social relationships that form a society along the axis of power and state need (Foucault, 1994b, pp. 410–413).

The disciplinary state relies on the continuity function that the semi-transcendental provides for discourse. First the semi-transcendental concept of "man" allows power to rigidly border the field of operation by defining the population on which it acts (Foucault, 1994b, pp. 414–415). Those inside of this border become the subjects of study in the social sciences, which create knowledge that substantiates the disciplinary capacity of the state (Foucault, 1994b, pp. 415–416). Second, those within this border are ordered along the governing principle of the semi-transcendental concept, "man." The concept "man" can be developed and changed over time in reference to furthering the state. Power acts to define its scope based on an empiricism that is always linked back to "man," allowing the state to define the contours of citizenship (Foucault, 1994b, pp. 415–416; 1994a, pp. 334–342).

The concentration on the model provided by the semi-transcendental "man" marks the birth of the social sciences, by which the person is removed from the field of operation in favor of society as a whole and the citizens who comprise it. The birth of the social sciences allows for the person to be displaced within the society, based on its distance from the defined value of "man" (Foucault, 1994b, pp. 415–416). For Foucault, then, the semi-transcendental image sustains disciplinary power on two fronts. First, it creates the very subjects on which disciplinary power will come to operate. Second, it removes those power is unable to normalize from the social field: to the clinic, to the mental hospital, or to the prison.

III.

As we have seen in the previous section, the capacity to define is central to the task of sovereign power for Foucault. Schmitt's understanding of how sovereignty operates on the social body, therefore, is central to our understanding of the connection between knowledge and power. It is important to cover these similarities and an important difference before applying Foucault's understanding of power to Rawls' discursive framework. For Foucault, ideas come to act as the person of the sovereign does in Schmitt. On Foucault's reading, it is the concepts that form political society that exercise dominance over it. As with Schmitt's sovereign personage, the semi-transcendental concept comes to form society by defining its limits. This has important implications for our understanding of how sovereignty operates in Rawlsian thought, as for Foucault; the dominance of concepts is more pernicious, because exclusion becomes the product of social convention rather than the overt violence of the personality of the sovereign.

Semi-transcendental concepts such as “man” are removed from the field of knowledge that they operate on, just as Schmitt’s sovereign is removed from the normal series of relationships. They exist, however, both outside and inside of the discourse, providing coherence from outside and empirical validation from within. Semi-transcendental concepts are sovereign in knowledge production, Foucault argues, precisely because they can be seen at work in the field they purport to explain (Foucault, 1994a, pp. 238–240). As Schmitt points out, separation is a fundamental adjunct to power in that it removes the sovereign from the normal series but keeps it connected to the thing that it rules over (Schmitt, 1985, pp. 5–7). The semi-transcendental concept fulfills the role of sovereignty in that it is removed from the normal field of inquiry. The semi-transcendental concept is removed to a prediscursive space from which it provides meaning to knowledge produced within that field. The semi-transcendental concept also remains intimately connected to the field, however, in that it is found throughout it, both providing meaning and empirical data for the discourse to order itself around (Schmitt, 1985, pp. 5–7; Foucault, 1994a, pp. 303–305).

Secondly, Schmitt suggests that it is from this external vantage point that the sovereign comes to define the society it operates on by marking out the exceptions, or the places where the normal series of relationships do not apply, and removing them (Schmitt, 1985, p. 6). These exceptions are to be viewed at all times as a threat, because their presence necessarily damages the continuity of the normal series of relationships, thus fundamentally undermining the stability of the sovereign society. Exceptions are to be viewed, in Schmitt, as enemies of the overall system (Schmitt, 1996, pp. 26–27). Foucault’s semi-transcendental concept fills this second role of sovereignty as well by

rigidly demarcating the suitable field of inquiry within the discourse. The semi-transcendental concept defines the binary oppositions that juridical power comes to rest on: normal/abnormal, natural/unnatural, sick/healthy, sane/insane, etc. By creating these oppositions, discursive knowledge develops the locus of power: the normalizing gaze of juridical power through which the person is conceived in terms of the semi-transcendental "man" (Foucault, 1994a, pp. 303–305).

While Foucault's understanding of the mechanics of semi-transcendental knowledge bears close similarities to Schmitt's sovereign, his understanding of the nature of the power/knowledge connection is far more nuanced than Schmitt's. Foucault's approach allows for a richer reading of Rawls' framework of justice. In Schmitt, the requirement of decisionism means that sovereign power must be vested in a unitary source. For Foucault, the connection between the semi-transcendental concept and the field that it operates on is much more intimate. In Schmitt, we find an image of a sovereign removing itself from the normal series of relationships in order to define them from outside (Schmitt, 1985, pp. 5–7). For Foucault, however, the semi-transcendental concept demarcates a field from the outside and is also at work within the discourse as well. The process of ordering the field of knowledge is an internal process that reorients a body of knowledge towards the semi-transcendental concept that governs it. This process mimics the operations of political power on the citizens of a society (Foucault, 1994b, pp. 411–412; 1994a, pp. 339–342; 1997, pp. 5–9; 1980b, pp. 105–107). Sovereignty is a force that permeates the entire social body, defining, normalizing, and developing the empirical instances based on its prediscursive concepts. Juridical power, for Foucault, is linked to this kind of sovereign knowledge production. Discursive

knowledge, he argues, allows the sovereign state to operate in such a way as to normalize the citizens of a society in reference to the concept of "man." For Foucault, the semi-transcendental concept of man acts as a model. The model allows the state to produce "citizens" who are suitable subjects of state power
(Foucault, 1994b, pp. 411–412; 1994a, pp. 339–342; 1997, pp. 5–9; 1980b, pp. 105–107).

Foucault's understanding of the connection between knowledge production and sovereignty provides theory with a methodology that allows us to interrogate power operations within Justice as Fairness as based on the capacity to dominate discursively, rather than on the conventional understandings of overt force. Foucault's insistence on understanding power as the capacity to dominate supplies us with four questions for analyzing power operations in Justice as Fairness. First, does Rawls create a semi-transcendental concept in Justice as Fairness that he then uses to demarcate the political from other fields of knowledge? Second, does this demarcation imply a rigid border through which certain modes of being and/or understanding must necessarily be removed from the arrangement lest they threaten to undermine it? Third, does the framework of justice require the presence of totalizing concepts in reference to the person in order to sustain itself within the society it creates, and if so, does this image tie back to the concept of "man" as Foucault understands it? Finally, does the use of totalizing concepts such as rational/reasonable agent, citizen, and the well-ordered society create the possibility for benign power operations such as the juridical power, outlined by Foucault, to come to bear on the individual within the social space and effectively to normalize, define, and develop the concept of membership within that society? These four questions offer an opportunity to analyze the elements of Rawls' theory, using mechanics of

sovereignty as outlined by Foucault to understand the extent of power operations within the well-ordered society.

In reference to the first question, we have seen that Rawls, in fact, does utilize a semi-transcendental concept to demarcate the "political" from other fields of inquiry. As he points out in the beginning of the text, the political must be removed from all other spheres of consideration if justice is to be apprehended on its own merits (Rawls, 2001, pp. xvii–xviii; 2–3; 12–13). He does so in order to ensure that the conception of justice reached is a political one, rather than a moral one. For Rawls, this division is important, due to the nature of comprehensive doctrines. Moral theory, he argues, presents totalizing claims of right and wrong that, while valid, cannot compromise with other theories of the good. The tendencies in moral theory are problematic for political justice, due to the fact that political conceptions of the good must be reached by rational consensus, whereas comprehensive doctrines can only be maintained by force (Rawls, 2001, pp. 33–3).

Rawls offers the original position as a means of creating the Principles of Justice by choosing them from a menu of available options available in the original position. In this way, he argues, the principles that are viewed as best can be arrived at by rational consensus without reference to factors, like status, that otherwise influence political procedures of choice and their outcomes (Rawls, 2001, pp. 15–16). These principles are applied to the arrangements within the well-ordered society through a process of overlapping consensus. Overlapping consensus is the mechanism through which the comprehensive doctrines that compete in a society find points of commonality between

their principles and the Principles of Justice, allowing for agreement among these doctrines through the idea of justice (Rawls, 2001, pp. 192–193).

While Rawls proposes overlapping consensus as a method to ensure an agreement on the Principles of Justice that operate on a society, he in fact creates a semi-transcendental concept, as Foucault outlined the term. "Justice" is an ideal concept in Rawlsian theory in that it is removed from the normal interactions that it presides over in order to be "discovered" amongst various competing theories. Justice is removed from the society so that it may act as a defining feature of the political arrangements of a society from the outside (Rawls, 2001, pp. 5–7).

"Justice," for Rawls, is also an empirically verifiable thing, as Foucault understood it. Through the idea of overlapping consensus, the Principles of Justice connect the various disparate parts of a society to itself, thus creating the political field. Consequently, the political field marks both empirical instances where "justice" is to be found within the society and also the demarcated space of political inquiry made up of the sum total of these instances within a social body. The Principles of Justice come to both define the political by relegating political inquiry to the presence or absence of "justice" in a specific series of relationships, while also creating the possibility of a continuous ordering of these relationships. Order here is manufactured through a triangle of demarcations that relegate knowledge back to the semi-transcendental concept for continuity in Foucault's analysis[13]. The lines of continuity operate on the one hand to

[13] George Klosko furthers this point in his reading of what he refers to as Rawls' "sociological defense" of Justice as Fairness. As he points out, Rawls envisions Justice as fairness as providing two distinct but connected roles in public political culture. On the one hand, the principles of Justice as Fairness are derived from the workings of political institutions inside a liberal democracy. On the other, Justice as Fairness

demarcate the political from other moral considerations. This demarcation of the political creates continuity within the field of political inquiry through the Principles of Justice. By ensuring that political knowledge is based on presence of the semi-transcendental concept of "justice," as defined by Rawls, the Principles of Justice in fact limit the scope of what constitutes political considerations, creating an inside (the "political") and an outside (what Rawls refers to as "the larger moral context").[14] The creation and maintenance of continuity, Foucault would argue, is the central task of Justice as Fairness. The Principles of Justice operate within the well-ordered society to create stable concepts that necessitate their presence in order to ensure the stability of the well-ordered society. Anything that cannot be reordered based on the concepts employed by the Principles of Justice must be removed from the field of inquiry, lest the well-ordered society become destabilized.

The requirement of a semi-transcendental concept such as "justice" leads us directly to the second question, because the implementation of Rawlsian Justice requires a specific presence to act on. Does the creation of the Principles of Justice require that certain modes of being be removed from the field of inquiry lest they threaten to undermine it, or, put in Schmittian terms, are the Principles of Justice political in the

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provides the foundations of political liberalism that are needed in order to sustain the public culture that the principles are derived from. Justice as Fairness, in reference to Foucault's understanding of how semi-transcendentals exercise power, limits the scope of public political life to the institutions that it derives its principles from, while at the same time maintaining the coherence of public political life through its presence as an operative principle (Klosko, 1994, pp. 1882-1883)

[14] Rawls argues for the hope that Justice as Fairness can be linked back to larger moral considerations that make up ethical theories. It is not a necessary part of Justice as Fairness to link itself to a larger moral context; it must only meet the political requirements of consensus to be binding on a society (Rawls, 2001, pp. 5–7).

sense that they are capable of making the friend/enemy distinction? The answer here comes from Rawls' understanding of what the original position and the veil of ignorance accomplish in the setting up of a discourse on "justice." Rawls finds that in order to arrive at the Principles of Justice, a representational scheme is required in which all competing doctrines are given fair consideration (Rawls, 2001, pp. 16–17). For fair consideration to be possible, representatives must be removed from the normal series of relationships so that Principles of Justice may be chosen on their own merits. Behind such a veil, Rawls posits, representatives are symmetrically situated (Rawls, 2001, pp. 18–19). Behind this veil, the wants, needs, and desires, as well as social positioning, sex, race, and/or sexuality of the representatives are obscured from the field of consideration in order that the members can engage in a pure act of choosing, whereby the Principles of Justice, once arrived at, will produce the best possible results for those on whom they operate, regardless of the circumstances that the subjects find themselves in on the other side of the representative arrangement (Rawls, 2001, pp. 15–19; 84–89). Further, Rawls points out, this segregation is necessary in order that a particular type of reason be employed within the original position. Public reason must be used to produce the Principles of Justice, rather than any "special psychologies" coming to bear on the representative process (Rawls, 2001, pp. 84–89). These psychological problems include emotive pulls that might change public reason into purely rational choosing. Citizens, in other words, might cease to accept reasonable limitations on their actions and seek only their immediate good, to the detriment of the well-ordered society, if allowed to choose based on emotive pulls (Rawls, 2001, pp. 86–88).

A person, however, is made up of a flux of "special psychologies" that are situational in nature. A person manifests itself as an emotional and vulnerable presence in the social space that must mediate said space based on these attributes rather than in spite of them. These special psychologies, however, are a threat to the representational framework that Rawls puts forward, and they must be excised by the veil of ignorance in order to arrive at the Principles of Justice. The capacity for personality found in these "special psychologies," those of envy, spite, and other emotional states, "are prone to instability" and manifest a "strong will to dominate others." As such, they are fundamental threats to the well-ordered society that Justice as Fairness creates, and they must be removed from the representational scheme (Rawls, 2001, p. 87). It is our personality, then, that poses the threat to the series of ordered relationships that Justice as Fairness creates. The person, in Rawls, fills the role played by the enemy in Schmitt's argument. The person, absent a unifying theory of justice to override "special psychologies," only seeks to dominate and subordinate the society to its will. The person must be supplanted by the "citizen" in order for political deliberation to take place in the original position. The presence of an emotional person in the original position would undo the requirements of symmetrical situation and the predominance of the twin moral powers by allowing other factors than reasonability and rationality to come to bear on the political framework[15].

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[15] Bonnie Honig strengthens this point in her article. As she points out, the restraints that Rawls puts on the original position actually subvert his goals. The original position, she finds, is purportedly a "meeting place for fair agreement". The constraints placed on it by Rawls, however make fare agreement impossible. Fair agreements amongst equals, she notes, is the product of the very plurality and diversity that Rawls systematically write out of his formulation (Honig, 1993, pp. 104-105).

The problematic nature of "special psychologies" in Rawls brings us directly to our third question: Do the Principles of Justice rest on a concept of "man" in order to sustain themselves? As seen above, the answer is yes. Rawls relegates a large part of the person's experience to the realm of "special psychologies" that must not be allowed to hold sway over the social arrangement lest these psychologies manifest a capacity to dominate. The person, then, is a thing, which, while capable of exercising reason, is nonetheless subject to these emotive states, and personhood must be placed outside of the original position if the Principles of Justice are to be reached and maintained within a well-ordered society. This avoidance of personhood suggests the question; on whom do the Principles of Justice operate? Rawls provides an answer in a concept of human nature based solely on political understandings. For Rawls, human beings are rational moral citizens; they conceive of a good and create a plan to pursue that good over a complete life. Further, they are reasonable, that is, they are capable of accepting limitations on this plan based on the presence of others (Rawls, 2001, pp. 18–19).

Rawls uses the "twin moral powers" of rationality and reasonability to develop his concept of free and equal persons on which the concept of a "citizen" can rest (Rawls, 2001, pp. 17–19). As a political person, the citizen moves within the society, guided by the moral psychology outlined above, and in so doing, manifests the capacity for social cooperation through the Principles of Justice (Rawls, 2001, p. 20). It is the citizen, comprised of the ability to act rationally within reasonable limits, which forms the juridical subject of Justice as Fairness. It is through the citizen that the capacity for overlapping consensus comes to bear on the society. Overlapping consensus creates the

possibility of a stable order by linking all rational doctrines to the Principles of Justice as the reasonable limitations one must adhere to in order to be a citizen (Rawls, 2001, pp. 20–21).

Adherence to the Principles of Justice gives them the historicity necessary for them to endure over time, that is, to achieve continuity. As citizens act on the principles, these principles become self-evident within the political psychology of the society. Citizens come to see them as the best possible arrangement for social cohesion over time. Adherence to the Principles of Justice creates the reasonable political psychology needed to sustain them as operative principles for the well-ordered society (Rawls, 2001, pp. 194–197). The citizen, then, possessed of the basic moral features necessary for political life, becomes the subject of political justice. It is through the Principles of Justice that these basic features can be drawn out and strengthened by acting on them in the social context. The citizen is a juridical category, rather than a person with its problematic "special psychologies," which makes up Rawls' well-ordered society. Only the twin attributes necessary to sustain Rawls' political theory are permitted as indicators of personhood in the political context[16].

The negation of other aspects of personhood raises the question of how citizens are created. How is the concept of the citizen developed? How is it used as a model for the normalization of a person? I am addressing this question separately because I feel it speaks doubly to our overall project of tracing the lines of sovereignty created by Rawls.

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[16] For Honig, Rawls creates the subject that the Principles of Justice operate on by systematically deleting all aspects of personhood that do not meet his predetermined criteria from the Original Position through the veil of ignorance. In doing so, she argues, he not only prefers a specific image of the self, but by ensuring that this self is the only one present in the original position make the outcome of deliberation a forgone conclusion (Honig, 1993, pp. 106-109)

On the one hand, Foucault's critique of benign power operations in society speaks to a direct connection to power operations within the Rawlsian framework by analyzing how the juridical subject comes into contact with biopower in Rawls' thought. On the other, this line of interrogation allows us to trace these lines of power from the citizen to the sovereign, based on the very limitations on power that Rawls' adherence to rights language creates. Distributive justice is a function of power, by which recognition is granted in the form of citizenship. This recognition creates a relationship where the sovereign comes to act on the citizen and noncitizen through the schema of rights produced by Rawls.

IV.

As we have seen, Rawls' Justice as Fairness operates as a sovereign presence in terms articulated by Foucault. Justice as Fairness is predicated on the presence of a semi-transcendental—justice—through which the political is demarcated from other fields of inquiry. This reliance on a semi-transcendental concept requires Rawls to obscure certain attributes of the human person in favor of those he wants to be the operative features of his citizenry. What is lacking in our assessment of Rawls, however, is a connection between the sovereign, which creates and limits interaction within the well-ordered society, and the subject of these interactions, the citizen. In order for us to fully understand the extent of power operations in Rawlsian theory, we must be able to show the Principles of Justice as they act directly on the citizen as a subject of political discourse. The final question of sovereignty, then, speaks to how power comes to act on persons who have been constituted as citizens by juridical norms.

We find that the citizen is constituted along two lines: the juridico-legal line, in which rights, privileges, and responsibilities are applied to the citizen through the Principles of Justice, and the biopolitical line, through the elements of distributive justice. Juridical power is not the power of force; it is the power to constitute a subject. Juridical power, by creating a semi-transcendental concept through which it operates, dominates a social field through the power of normalization (Foucault, 1994b, pp. 411–412; 1994a, pp. 339–342; 1997, pp. 5–9; 1980b, pp. 105–107). From this understanding of the mechanics of power, the Principles of Justice themselves emerge as the "place of power,"[17] or the point at which power comes to rest on the juridical subject through the concept of the citizen. As Judith Butler finds, the sovereign creates the citizen by applying the concepts of discursive power to the person, favoring useful attributes while obfuscating non-useful aspects of personhood in reference to the needs of power (Foucault, 1994b, pp. 411–412; Butler, 2005, pp. 145–148).

Juridical power, Butler argues, rests on the person's body as the literal site of the inscription of the norms and values of a political order (Butler, 2005, pp. 145–146). Through the capacity to demarcate the citizen as the sole object of sovereign power, juridical power acts as the Schmittian sovereign. Juridical power creates the scope of the society through its capacity to define the confines of the citizen. In the creation of the citizen, the human body becomes the site in which political norms are applied (Butler, 2005, pp. 146–147). Power acts, Butler argues, to recreate the person as the citizen both in terms of legal and self-understanding, as the two become inextricably

[17] See Saul Newman's discussion of "the place of power" in *From Bakunin to Lacan*. For Newman, the place of power constitutes both the necessary site for power operations to take place and the place to which all power analyses must return (Newman, 2001, pp. 2–3).

linked in the functioning of power. Juridical norms come to form the sole means of relating to one's self. These norms become the sole source of descriptive language for the person (Butler, 2005, pp. 146–147).

Juridical power creates the juridical subject through the laws, codes, and values that it applies to bodily presence. Law acts not on ideas but directly on bodies (Butler, 2005, pp. 146–148). To be a legal subject is to be a body in political space. The legal concept of personhood, for Butler, has a direct effect on the sense of self, as it becomes the sole means for articulating presence in political space (Butler, 2005, pp. 147–148). Here, the juridical categories created by law come to be the authoritative means for understanding personhood. To articulate presence, for Butler, is to code the self with preexisting values and norms previously packed into legal categories (Butler, 2005, pp. 148–149). Juridical power operates on two lines simultaneously, on the one hand creating the subjects that it operates on through law, and on the other, recreating these citizens through the inscription of the juridical values on which the law is based directly on the bodily presence (Butler, 2005, pp. 146–148).

We can see the two Principles of Justice operating in just such a way. Through the first principle, we find the creation of the citizen as the juridical subject. Each person, Rawls argues, must have an equal claim to a fully adequate scheme of liberties compatible with the liberties of all (Rawls, 2001, p. 42). This first principle marks the juridico-legal line of power operations. What constitutes a person under the Principles of Justice is the presence of access to the scheme of liberties available to all other persons within the well-ordered society. To be a citizen in Rawls' theory requires that one be able to exercise the twin moral powers of rationality and reasonableness in order to ascertain

and lay claim to these rights. The citizen takes on this role in Justice as Fairness precisely *because* Rawls' concerns are political rather than moral[18]. As Rawls points out, only the presence of the twin moral powers, which are decidedly political in that they speak to a way of relating to others in a constitutional democracy, are the markers of personhood in political life. The twin moral powers exist as a precursor to overlapping consensus, thus forming the complete image of the citizen, in which one possesses the capacity to reconcile oneself to the institutions of the well-ordered society
(Rawls, 2001, pp. 20–21; 26–27; 159–161).

Political rights, as they attach to political persons, necessarily come to rest on bodily presence as Butler outlines it. The presence of a citizen is a bodily presence in a political context. The law must develop this presence if it is to become the bearer of rights under that law. If we consider our constitution, we bear the rights of both privacy and protection against unreasonable searches and seizures. These are physical rights, which apply directly to a bodily presence, that is, they exist in order to secure the physicality of the political person. In addition, the mentality of the political person is secured as well. The rights of political conscience, of religious preference, and speech ensure that one is reasonably free to conduct and articulate one's inner life. The scheme of rights, as conceived by classical liberalism, speaks only to the political movements of a citizen. Rights language speaks to how this political body navigates the law that forms it and to the limitations on that law, but more importantly, it speaks to what personhood amounts to under law. The juridical sovereign inscribes these rights on our very physicality.

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[18] See Honig pp. 106-109.

To be a legal person is to be protected from invasions by the law on that personhood. Power acts here to define what constitutes the personal and to protect it from intrusion
(Foucault, 1994b, pp. 411–412; 1994a, pp. 339–342; 1997, pp. 5–9; 1980b, pp. 105–107; Butler, 2005, pp. 145–148). The concept of the citizen, for Rawls, acts as a marker for a particular type of bodily presence within the social space, which must be secured and protected but which also must bear the responsibility of protecting these rights in other citizens (Rawls, 2001, pp. 20–21).

Juridical power comes to act on the citizen through the biopolitical line in the second principle of justice. Here, any socioeconomic inequalities must be attached to offices and positions that are open to all and must directly benefit the least advantaged (Rawls, 2001, p. 42). The Principles of Justice operate biopolitically inasmuch as the goal of the second principle is the management of the life of the citizenry. In Rawls' conception of the second principle, the distributive function of justice operates in such a way as to ensure the best possible outcome for the least advantaged in a society (Rawls, 2001, pp. 42–43). Here, the onus is on the maximum/minimum rule in which the least advantaged are raised to the highest possible level without unduly disadvantaging the most advantaged by significantly lowering their social and economic situations (Rawls, 2001, pp. 61–64).

The function of the second principle is to manage the distributive schemes in the well-ordered society in such a way as to ensure their optimal functioning
(Rawls, 2001, pp. 62–63). Through the second principle, Rawls arrives at the police function of a sovereign that Foucault highlighted (Foucault, 1994b, pp. 411–415). By

overseeing distributive schemes, Rawlsian justice in fact manages life: the Principles of Justice ensure that (a) all advantages are open to all, thus allowing one to optimize his or her position through the Principles of Justice, and (b) all advantages go to the least advantaged members in pursuit of the first goal. Through the distributive principle, the Principles of Justice become intimately connected to the physical lives of subjects in that they both ensure that basic biological needs are met and also become the sole means of advancement within political society.

While these operations are seemingly benign, they become problematic when we consider their power implications. The power to define membership as well as the power to protect the citizenry is also the power to excise and destroy. By operating through the concept of the citizen, juridical power comes to exert dominance over the society through those it marks out as nonmembers and thus as not persons. It is through this power of naming and removing, Hannah Arendt, Judith Butler, and Giorgio Agamben will argue, that the sovereign comes to govern bare life only. The management of life in a society, for them, is the management of death for those who fall outside of the citizenry. These nonmembers are not merely the subjects of another political realm, as in Benhabib, but they fall outside of the concept of the person altogether. In doing so, they become solely the province of the sovereign's will through the camp.

As will be seen, however, the camp serves a double purpose. On the one hand, it serves to destroy bare life. On the other hand, it serves to solidify the juridical sovereign's power over the society in a couple of ways. First, those removed to the camp stand as a reminder of the possibility of removal. Further, they stand as a reminder of what it means to fall outside of the sovereign citizenry, to be bare-life in the face of sovereign power.

Through the examples of the banned, Agamben will argue, the province of politics is the management of bare life accomplished through the development of juridical categories such as citizen and noncitizen (Agamben, 1998, pp. 23–26). It is through semi-transcendental categories and the power implications inherent in them that the camp becomes the paradigm for understanding the modern political paradigm.

Chapter 3: Conflation: Society, Space, and the Politics of the Person

I.

As we saw in the last chapter, sovereignty serves as an organizing principle. Power does not merely destroy, but it also provides the overarching framework that sets the terms for all interactions within the state. The sovereign acts on its members by defining the parameters of their social existence (Foucault, 1994b, pp. 403–405). To be a citizen is to exist within the predefined parameters set by the sovereign state, rather than living as a spontaneous person. Power, on Foucault's reading, creates the field of sovereignty through the capacity to define and deploy the "citizen" as a totalizing concept of the person linked to the preferences of the state. The reliance on the concept of the citizen is as evident in Rawls as it is problematic. On the one hand his reliance seems to point to an innate character of being. On the other, the "citizen" is little more than a constructed term that conflates Kantian understandings of the human with legal understandings of the individual (Benhabib, 2004, pp. 81–82).

This conflation between the Kantian person and the legal individual is important, Benhabib points out, because it begins a chain of thought that ends with the conflation of people and state. The state, for Benhabib becomes the sole organizational entity for a people, which is seen by Rawls as an aggregate of individuals. The conflation of "a people" and "a state" creates a skewed understanding of political life. By conflating "people" (a cultural grouping) with "state" (a structural edifice), Rawlsian theory necessitates the presence of institutional power to manage and oversee "a people". Rawlsian theory manufactures the need for the state through its insistence on particular features of "human nature" being necessary to uphold the well-ordered society, and their

opposites, the "special psychologies" of our personality, being detrimental to the functioning of that society.

The conflation of "a people" and state is not an accidental move in Rawls' thought. It marks an understanding of the natural existence of the state as the organizing principle in political life (Benhabib, 2004, pp. 81–82). Rawls himself points out that the basic structure of the well-ordered society must naturally be the object of political philosophy. It is only by looking to the way in which the institutions of a constitutional democracy link up to form the basic structure, he argues, that we can develop an operative theory of justice (Rawls, 2001, pp. 19–20). Rawls' assumption about the naturalness of the state is problematic, as it leads him to conflate "people" and "state" as well as "society" and "space." The "state" becomes the only means of political organization for an aggregate of individuals. Likewise political space is rigidified in Rawls' thought through his insistence on the need for a well-ordered society. These conflations, it will be argued here, allow for an image of political life that necessitates the presence of a sovereign in order to ensure stability. This chapter will break this conflation apart and analyze these two concepts separately, seeking to understand whether society is the natural political organization of a people, or if it is in fact driven by the need to dominate, as Foucault would have it. If society is domination in another form, what, if any, are the alternatives that can be found in the idea of a decentralized space?

The alternatives provided by the idea of a decentralized space offer the possibility of reorienting political understandings toward the possibility of a space where power implications are not absent but are mediated by the participation of everyone who is affected by them. The decentralized space operates *through* the person, rather than *on* the

person, by allowing for a participatory deliberative space. In the deliberative arrangements of a decentralized space, persons find themselves able to bring all aspects of their personhood to bear on deciding how power will operate in a decentralized space. In order to simplify our assessment, we will take "society" to mean Rawls' well-ordered society. We will utilize the term "space"[19] to understand possible alternatives to the sovereign state. Seyla Benhabib, Hannah Arendt, Giorgio Agamben, and Judith Butler have all written at length on the idea of sovereignty and the state, and each has posited an idea of a decentralized space in opposition to sovereign power[20].

By analyzing the decentralized space as a possible organizational framework, we will find the Kantian conception of the person unhampered by the sovereign discourse. Rights affix directly to the person in a decentralized space as envisioned by the above theorists for the simple reason that without a representative framework, people themselves deliberate to define how these rights are applied. The deliberative process, on Benhabib, Arendt, Agamben, and Butler's reading, is a continual process rather than a

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[19] The term "decentralized space" is intended as a counterweight to both the Rawlsian image of a society and the communitarian critique of a society based on the idea of a community. As Sandel and Taylor have both shown in their arguments, the communitarian concept of space is an inherently rigid idea. Communal commitments in both Sandel and Taylor are preexisting commitments that exert influence on the person from outside. This argument is similarly problematic in Benhabib's understanding of "a people" and the effects of statelessness. My understanding of the decentralized space is in keeping with I. M. Young's idea of the unoppressive city. For Young, the unoppressive city is marked by a dramatic openness to difference. This openness, in her argument, allows for the possibility of identity politics without the domination of centralized identities (Young, 1986, pp. 25–26; 1989, pp. 257–258).

[20] Honig too points to the damaging effect on plurality that the striation of political space by institutions has. Further, she finds, that these limitations are recast in the concept of the citizen, creating a political subject for institutionalized justice at the cost of the plurality and differences that are necessary for Justice as Fairness to operate (Honig, 1993, pp. 103-104).

founding moment. The image of power operations that appeals to the decentralized space, through Butler's image of the coalition, allows for the possibility of reconciliation, as members are able to bring their full personhood to bear on political formations rather than surrendering to a sovereign center that must be accepted de facto.

II.

Benhabib's critique of Rawls is especially instructive if we wish to understand the split between the idea of a decentralized space and the idea of state power. Her critique brings to light a fundamental misunderstanding in the Rawlsian framework that undermines the Kantian aspects of his endeavor. Rawls' theory begins with a fractured idea of the human person, in which elements of the self that do not pertain directly to his conceptualization of politics are removed from the field of inquiry. This requires Rawls to build a central structure of political principles that are removed from the relationships based on these nonpolitical aspects, in an attempt to govern and control them. Problematic in this, for Benhabib, is that Rawls' theory of justice is left unable to see the human requirements of justice as Kant understood them, namely that rights configurations are prepolitical and affix to the person as such (Benhabib, 2004, pp. 70–73).

In Rawls, Benhabib argues, we find an altogether different trajectory, one based upon stripping the person from the political in order to create the well-ordered society (Benhabib, 2004, pp. 80–81). Rawls begins with a specific notion of the political: the well-ordered society. For Rawls, the well-ordered society is the a priori political framework that itself allows for social cohesion (Rawls 2001, 195–198). It is the presence of the well-ordered society, rather than the moral requirements of Kantian rights schemes,

that creates social cohesion. In Benhabib's argument, this departure changes the nature of Rawls' Kantian endeavor by necessitating the presence of the state to ensure and protect the rights of its members (Benhabib, 2004, pp. 77–78).

The removal of the person as an a priori rights-bearer creates the need for a power structure to ensure rights benefits. The guarantee of rights, Benhabib argues, becomes a posteriori to the presence of a political arrangement that can guarantee them. The state, for Benhabib, acts to define and secure the rights of members. The state, as the natural political organization of a people, has no moral responsibility to recognize the rights of nonmembers. Rights are solely the function of membership in a particular society rather than an essential feature of any idea of what it means to be a person (Benhabib, 2004, pp. 76–79).

Far more pernicious, for Benhabib, is the type of political society Rawls creates. Through the tools of the original position, the veil of ignorance, and overlapping consensus, she argues, Rawls strips the political of any human meaning. Spaces, she argues, do not exist in a vacuum, but rather are the product of human life lived in a group setting (Benhabib, 2004, pp. 84–85). Rawls is able to create political representatives, she argues, only by severing the ties to the human and placing these rational choosers in a discursive blank space (Benhabib, 2004, pp. 84–85). From the original position, the veil of ignorance obscures lived human life. Rawlsian rights choices, she argues, are made in spite of the historical context of the people on whom they operate rather than through the historical contexts that create the shared values (Benhabib, 2004, pp. 108–109).

What emerges from Benhabib's reading of Rawls is a theory of state power rather than a theory of justice. On her reading, the state is erected in the original position as the

natural organization of "a people". The state then operates to secure those rights chosen by the representative members in the original position. These rights, she argues, are guaranteed only by and through the state. In short, they become a function of state power over a people rather than the moral requirement of respect for dignity on which Kant built his political theory (Benhabib, 2004, pp. 76–77)[21]. Rawlsian political life, Benhabib argues, is the function of state power rather than the product of rational consensus amongst equals (Benhabib, 2004, pp. 77–78).

The idea of rights being a function of state power rather than a universal requirement has problematic implications for life in society. As Hannah Arendt finds, the idea of universal rights has always been contingent on state power, and as such, it has always been within the capacity of a state to withdraw recognition from individuals and groups (Arendt, 2000b, pp. 33–34). In her assessment of Nazi aggression, Arendt identifies a political theory of dominance in communal life that is grounded in the power over life and death.

Arendt begins with the idea of universal rights as linked immediately and inseparably to territoriality (Arendt, 2000b, pp. 32–33). Universal rights, it seemed, could not exist in the absence of codified law, which itself was the product of territorial sovereignty. From the beginning, the theory of universal rights was linked to the abstract idea of "man," which existed nowhere and everywhere all at the same time. States, she argues, as the territorial organization of individuals, became the guarantors of rights, as it

[21] Again, see Honig's discussion of the politicization of the original position for a more thorough account of the procedural limitations placed on the original position which, in Honig's view make the process, described by Benhabib above, the only possible outcome of rational deliberation behind the veil of ignorance (Honig, 1993, 105-110).

was under states that "man" lived. The "Rights of Man," she argues, immediately became enshrined in the law and upheld by state power (Arendt, 2000b, p. 32). Rights became a function of law rather than a fundamental aspect of personhood. In order that Europeans could be guaranteed the rights of man, she argues, they had to formulate the state as the organization of a people aggregated specifically to protect basic rights (Arendt, 2000b, pp. 32–33).

The fundamental problem in this juridical scheme of rights, she argues, is that the loss of rights equates to the loss of legal standing and, therefore, personhood within the state. In the postwar world, Arendt notes, displaced persons were seen as nonhumans under the law because they had lost two fundamental linkages to the society of rights-bearing individuals (Arendt, 2000b, pp. 34–35). First, she points out, the displaced were removed from political space. That is, they fell outside the boundaries of any society or the legal protections thereof. Such loss of home, she argues, is exacerbated by the inability to find a new place in a decentralized space of "man." If rights are linked to territoriality, then to lose one's space in the social texture that forms and informs one's being in the world is to lose not only one's rights but also one's fundamental status as a human (Arendt, 2000b, pp. 34–35).

Humans exist in a particular place; it is this social context that creates the foundation of the rights and liberties enjoyed. To be removed from that context, Arendt argues, leaves one permanently out of place (Arendt, 2000b, p. 34). The loss of home is the loss of connection to that social structure which created the rights-bearing individual. One becomes permanently placeless, she argues, as the displaced are taken out of context without being decontextualized. Displaced individuals are people who are removed from

one social context and who cannot fit into another because they are still linked to the culture they were removed from. They are permanent foreigners, unable to make meaningful connections with other social orders. The political understandings of displaced persons, she argues, come preformed by religious, personal, communal, or other commitments[22]. Political understandings are not easily detached from the particulars of our cultural backgrounds such as religious affiliation, familial obligations, etc. They leave stateless people, therefore, ill equipped to assimilate into a new society with differing political modes and obligations. The stateless person, then, becomes a permanent outsider to new political surroundings, unable to assimilate to them or alter them (Arendt, 2000b, p. 34).

Displaced people also are removed from a space of protection. As rights are indigenous to states and peoples, Arendt points out, the removal of a person from the state necessitates a stripping of rights. One exists in a grey area, outside the protective capacity of one state, lacking the standing to be assimilated into the protective framework of another state. The displaced person, for the purposes of law, exists outside of the scope of the human to the degree that human is a juridical category, that is, defined by law (Arendt, 2000b, p. 35). To exist outside the protection of the state is to exist outside of the law.

The fundamental horror of displacement, then, is not the loss of rights, but rather, it is the loss of law. Displaced people exist outside of the scope of law and thus, for

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[22] This is also Sandel's critique of Rawlsian justice. As he finds, the principles of justice act in such a way as to require that primary connections to the world are relegated to a secondary position in favor of citizenship. Thus, he finds, people are citizens first, and members of specific religious or cultural communities second (Sandel, 1984, 86-87).

Arendt, exist outside of the society (Arendt, 2000b, p. 36). For Arendt, the construct of the rights of citizens that took the place of the "Rights of Man" had the effect of designating certain spheres of life inhuman, as they fell outside the concept of that which is to be protected (Arendt, 2000b, pp. 36–37). Displacement amounts not to a loss of rights but rather to a loss of society. Displaced people exist outside of the legal concept of society; they exist outside of the protective framework that both bestows and guarantees the rights of citizens (Arendt, 2000b, p. 37).

Displacement, for Arendt, is not to be seen as something natural or accidental. It is a product of the very state power that operates on its members through the regimes of territorial security and rights protection (Arendt, 2000b, pp. 36–37). State power operates to ensure its own continuity and control and is fully realized through the ability to remove and destroy. Violence, in the form of exclusion, is instrumental to achieving the ends of state power (Arendt, 1979, pp.22–23). The capacity to withdraw recognition from a group serves as a guarantor of state power in that it allows the state to enforce its continuity on its citizens through exclusionary practices (Arendt, 2000b, pp. 33–35; 1979, pp. 36–37).

States strive to dominate their members. Domination, for Arendt, is an organizational principle whereby the complexity of the human person is broken down into a representative concept (Arendt, 2000c, p. 119). In effect, domination seeks to control members down to the basic level of reaction. States seek the capacity to completely control every action and reaction of their members. In doing so, they create a social order by which any one instance is infinitely replaceable by any other instance. Power, Arendt argues, seeks a homogeneous citizen that is devoid of the capacity for spontaneous action (Arendt, 2000c, pp. 119–120). The state accomplishes this end

through two means, first, through the indoctrination of members, whereby they come to know themselves through the juridical categories produced by state doctrine and regimes of knowledge
(Arendt, 2000c, pp. 119–121; Foucault, 1994a, pp. 399–341; Butler, 2005, pp. 146–148). The other method is through the terror of displacement and the establishment of camps (Arendt, 2000c, pp. 119–120).

It is through the processes of the camp that the displaced person is stripped of all public vestiges of humanity and is reduced to bare animal life
(Arendt, 2000c, pp. 119–120). There is a predictable pattern of domination that destroys the public person. First, the state must remove the juridical person. Here, the state withdraws its protection from the person by removing the displaced person from the scope of the law (Arendt, 2000c, pp. 128–129). Through the process of killing the juridical self, the state places the displaced person in an open space where not only the law of the state but that of any other state can apply. Killing the juridical self removes the person to an extra-juridical space; it is the end of territorial citizenship and thus of the protections of "The Rights of Man" (Arendt, 2000c, pp. 129–130).

The next step in this state process of domination is the removal of the moral grounding of the self-implied in notions of human rights. The capacity to martyr oneself is done away with simply by removing the significance of the act of martyrdom (Arendt, 2000c, pp. 132–133). For Arendt, the capacity to take one's life in protest is the last vestige of the free moral self. It amounts to the tacit admission that the conditions one exists in are intolerable to the point that death is preferable to life in those conditions. The choice remains with the individual. One's control over one's own life is removed, Arendt

argues, by removing the audience (Arendt, 2000c, p. 132). By removing the displaced from the social context, the state removes the public referent from the individual's actions. Once displaced to the camp, existence is a purely private matter. One's actions are carried out without a public interlocutor[23] to ascribe significance to them. Conscience here becomes meaningless, because it has no public referent; thus it "dies out," as it has no public space in which to exist (Arendt, 2000c, pp. 133–134).

Finally, the state kills the personhood of the displaced. Here the state acts to remove the spontaneity that differentiates one person from another, leaving only an undifferentiated mass of biomaterial (Arendt, 2000c, p. 135). For state ends, the destruction of the individual personality is the decisive step, because it is through spontaneity that we are capable of public life (Arendt, 2000c, pp. 136–137). Political life, Arendt argues, is the product of our capacity for public speech. For her, public speech is a product of the spontaneous; it can manifest the capacity to resist and to behave in ways not allowed by state programs (Arendt, 2000c, pp. 135–136). The removal of this last vestige of personhood, she argues, marks the total domination of both society and the camp by the state. It replaces the individual's capacity to resist with rote behavior that can be predicted and controlled by state power (Arendt, 2000c, pp. 136–138).

Through domination manifest in the camps, the state seeks to create a system of consistency whereby the regime's power is shored up and can be used on society when necessary (Arendt, 2000c, pp. 135–138). For Arendt, the camp is not the natural endpoint

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[23] Consider again the importance of mutual interlocution for social development and cohesion. For Charles Taylor, the entire idea of political life hinges on the interconnected web of relationships that form a social body. It is through this web of mutual interlocution, he argues, that we are able to know ourselves and participate meaningfully in political life (Taylor, 1989, pp. 47–53).

for those deemed outside of the Schmittian sovereign relationship, but rather is the very lab where sovereign power is tested and refined in order to ensure consistent control over the social body (Arendt, 2000c, p. 137). It is in the camp that the regime learns to reduce the person to bare life, or life devoid of a public referent, generating a population whose reactions and interactions can be made consistent and predictable.

The camp marks the birth of the citizen as subject of political discourse. Through the camp, the state learns how to control the spontaneity that defines personhood. It is through this control and the desire for it that the concept of the citizen is created. The citizen comes to define personhood in the sovereign state, she argues, because it is a concept that is both defined and controlled by the power of the state (Arendt, 2000c, pp. 138–139). It is through the camp as a laboratory that regimes learn how to alter human nature itself, killing off the undesirable spontaneous traits of personhood and creating consistent Pavlovian behavior (Arendt, 2000c, pp. 139–140). The creation of a consistent populace, one that exists in the shadow of the camp both as threat and as the laboratory of the reductive practices of state power, marks the apex of the indoctrination process. The citizen created by the state through threat of the camp, Arendt argues, can be governed by the regime. The citizen is only fully governable, she argues, through the destruction of spontaneity, which for Arendt is the hallmark of personhood (Arendt, 2000c, pp. 139–140).

It is through the camp that the state reduces the human to the animal, or bare life. In reducing the human to bare life, the state finds not only a fit subject to govern, but further, it creates fit subjects for what Foucault called biopower. The camp comes to be the governing principle of a society in that, as Agamben points out, it stands not merely

as a threat of destruction to the citizenry but also as the image of citizenship within a society. Citizenship becomes, for Agamben, an inclusion, which is simultaneously excluded (Agamben, 1998, p. 18). The sovereign becomes the essential presence in the society, and the line between life and death is defined solely by sovereign power (Agamben, 1998, pp. 19–20).

For Agamben, the hallmark of sovereign power is not the capacity to exclude and destroy the exception to the sovereign image of a citizen but rather is the capacity to continually name and define the exception (Agamben, 1998, pp. 26–27). The power that the sovereign exercises over the society is not an isolated instant in which the other is found, removed, and destroyed, but rather, sovereignty acts continually on the society, defining and redefining what constitutes membership. It is the act of excising that allows the sovereign to maintain its dominant position over a society (Agamben, 1998, p. 27). It is able to do so, Agamben argues, in two ways. First, he points out, through the continual act of defining membership, the camp comes to define the boundary between inside and outside, as it is continually filled with displaced people. As in Arendt's thought, the camp exists on the outside of the society as an example to those on the inside. It is through the threat of removal to the camp that the sovereign governs a society. The threat of exclusion allows the sovereign to maintain its power over society by ensuring that spontaneity is controlled through the fear of exclusion from the society. Thus the exception is brought into intimate proximity to the society and the sovereign. The citizenry must be able to see the camp and see it as the ultimate end of banned people. For Agamben, the camp does not fall outside of the normal juridical space but becomes an intimate part of it; it sets the example of the power of the ban

(Agamben, 1998, pp. 26–29).

Secondly, the camp, for Agamben, acts as the line between life and death. The sovereign power is the power of the ban; it is the power to remove those members that it is unable to hold sway over. The ban acts as a form of social death, analogous to the exclusions we see in Arendt. To be banned, Agamben argues, means to be at the mercy of the sovereign. The legal structures that protect the citizenry from the unchecked power of the sovereign are not at work in the camp (Agamben, 1998, pp. 28–29). In its original sense, the ban meant to be put out of the safety of the society and, therefore, at the mercy of the elements. To be banned meant to be exposed and unprotected (Agamben, 1998, pp. 28–29). In the modern political paradigm, he argues, it means to be pushed outside of the protection of the sovereign society and to be exposed to the pure violence of sovereign power. It is to be removed from the normal situation and into chaos (Agamben, 1998, p. 19). The sovereign does not distinguish inside from outside, but rather creates a threshold beyond which there is no protection from sovereign power. To exist outside the bounds of society is not to be removed from the sovereign gaze but to be subject to it and it alone, with no recourse to rights or protections under the law, as these protections too are a product of sovereign power (Agamben, 1998, pp. 19–20).

To be banned is to be exiled, that is, to be pure animal life, neither being seen as a person nor possessing rights that the sovereign bestows on the citizenry. To be banned is to exist beyond the legal threshold of personhood (Agamben, 1998, pp. 104–105). The sovereign thus sets up two distinct political spaces: the society for the citizen and the camp for the banned (Agamben, 1998, pp. 104–105). It is in a space outside of the social order that all “threats” to this order are placed. Agamben argues that this space too must

be ordered by the sovereign, but ordered on different lines from those required by Schmitt. For Agamben, the camp is a purely Hobbesian arrangement (Agamben, 1998, pp. 106–107). In the camp, the banned are brought under the direct power of the sovereign who, through the use of force, not only "defends" the society from these threats but also draws limits on the society by identifying them and naming them as such (Agamben, 1998, pp. 107–108).

As Agamben points out, the camp is at all times and in all places an example to the society. It exists as a display of the raw power of the sovereign. The camp is a space of the exception (Agamben, 1998, p. 38). It is the sovereign's province to name the exception, and thus, those who fall under the sovereign ban are exposed to the sovereign power's capacity for violence (Agamben, 1998, pp. 38–39). The camp becomes a space of life stripped of any political meaning, and it marks the promise of sovereign violence.

To exist in the society is to exist under the threat of the ban and to live in the shadow of the camp. The sovereign becomes the essential presence, the sole arbiter of membership within the society. The juridical apparatus oscillates between two functions. On the one hand, state power acts to protect those that fall inside the sovereign definition of personhood, and on the other, it operates punitively on those that have been deemed a threat. The threshold between the two, however, is solely defined by the sovereign will (Agamben, 1998, p. 63). Thus, to live inside of a society is to live with the constant example of the camp and the threat of the ban. The sovereign solidifies his hold over the society through the knowledge that both the inside and outside of it are his province.

Sovereign power, for Agamben, holds a society together through the ban. The ban, on his reading, is the perpetual threat of the presence of an enemy. This enemy becomes

the sole province of the sovereign. It is only the sovereign, in other words, that is imbued with sufficient strength to deal with the threat once it is named. The sovereign, Agamben argues, becomes the essential presence in a society in a double sense. On the one hand, it is the sovereign who has the capacity to define and limit membership. On the other, it is the sovereign alone who has the capacity to protect the society (Agamben, 1998, pp. 65–67).

For Agamben, however, this Hobbesian relationship between the sovereign and a society cannot help but be one of total conquest. Life in this society, for Agamben, is between life under the protective gaze of the sovereign and life in the camp as a space of unchecked sovereign violence (Agamben, 1998, pp. 62–64). Society is maintained through the fear of sovereign violence and the sovereign ban. To be banned is not merely to be removed back to the state of nature but to be removed to a punitive space (Agamben, 1998, pp. 63–64). Thus, the sovereign spreads its power beyond the reach of the society by creating the camp as a response to the chaos of the state of nature[24]. Society, for Agamben as well as for Benhabib and Arendt, marks a territorialization of the communal space by an external power, that is, the sovereign. It is, as Foucault suggested, a conquest of a people by power.

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[24] Consider the changing role of Guantanamo Bay in contemporary American political discourse. During the Bush regime, GITMO was a prison housing only the most dangerous terror suspects for interrogation. During the first year of the Obama regime, Gitmo was argued to be a prisoner of war camp that was in keeping with the Geneva Convention. When it came time to close GITMO, the prison became the only space available for prisoners who were too dangerous to try or incarcerate in the American Justice system. In short, it developed into a permanent space of displacement where the threat could simultaneously be isolated and displayed by the state.

Through these three theorists, an image of society emerges. Society exists first and foremost as a series of artificially ordered "individuals" and institutions (Benhabib, 2004, pp. 76–79). These instances are identified and held together by the domination of the sovereign and the threat of the sovereign ban (Arendt, 2000c, pp. 137–138; Agamben, 1998, pp. 108–110). Society is an organizational situation in which the absolute power of the sovereign must be maintained in order to hold this society together. The slightest weakness on the part of the sovereign, the first failure, and the society falls apart. Society, then, is vulnerable to power in a double sense: it is vulnerable to threats to sovereign power in that if the sovereign were to fall away, so would social cohesion. It is also vulnerable, however, to the sovereign itself. In this society, sovereign power exists as the threat of exclusion. As sovereignty is seen to be a direct function of the capacity to ban, and this capacity is continual, then those living in the sovereign space are continually threatened with the ban and destruction.

All life in society, for Agamben, is bare life. It has been stripped of the three public referents of personhood: legal recognition, moral recognition, and individual recognition. Bare life exists only at the behest of the sovereign will. It cannot be spontaneous, universal, or even localized without the presence of a sovereign to define and order it. What emerges is an image of society as a relationship of domination between a people and a sovereign, which both produces meaning within its borders and imbues a space outside of it with meaning as the punitive space of sovereign power (Arendt, 2000c, pp. 134–135; Agamben, 1998, pp. 41–43; 64–66).

III.

While it is true that there are no overt physical manifestations of the camp in Rawls, there exists the killing of personhood in favor of consistency. Justice as Fairness, for Rawls, becomes the organizing principle by which the well-ordered society can be maintained. It is the essential presence that gives meaning to the various forms of interactions within the society (Rawls, 2001, pp. 8–9). Insofar as there is a sovereign presence in Justice as Fairness, it is the operation of the Principles of Justice. As Rawls points out, the well-ordered society cannot be maintained without them (Rawls, 2001, pp. 8–9). For Rawls, then, the society that is maintained by the Principles of Justice is in fact a sovereign power; it is that which is defined and maintained by an overriding externalized power of the order we discussed in the previous section.

Sovereignty in the well-ordered society can be said to be a principle of order (Rawls, 2007, pp. 78–79). In his reading of Hobbes[25], Rawls notes that the sovereign does not act as an overt force but merely as a unifying principle (Rawls, 2007, pp. 76–77). The sovereign does not act to change human nature but acts rather to change the environment in which human nature plays out (Rawls, 2001, pp. 77–78). The sovereign's sole province is to manage the background conditions of political life. Sovereignty's function in Hobbes, according to Rawls, is to secure an arrangement whereby social cooperation is possible. Hobbes does this, Rawls argues, by making sure that the law and the institutions it creates are continuous and consistent (Rawls, 2007, p. 78).

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[25] Again, consider J. Judd Owens reading of Rawls through Hobbesian liberalism. As Owen found, sovereignty is an operative principle in Rawls, but it is a tolerant sovereign along the lines of what Hobbes imagined in the leviathan (Owen, 2005, 146-148).

For Rawls, the sovereign acts to stabilize the field of interaction so that there are guarantees of reciprocity in the law. The sovereign becomes a necessary presence in that he alone has sufficient strength to ensure both reciprocity and continuity (Rawls, 2007, pp. 77–78). The sovereign must therefore be a public person. For Rawls, this is an important point in the idea of sovereignty: to have authority, the sovereign must act with public justification (Rawls, 2007, pp. 77–78c; 2001, pp. 26–28). The sovereign's strength comes from the fact that he is publicly recognized as having the authority to act on the social body, and his legitimacy derives from being chosen for that purpose[26] (Rawls, 2007, p. 79).

While Rawls seeks a Kantian framework of justice, on his own reading, its mechanics are patently Hobbesian. Justice as Fairness fulfills all the functions of the role of the sovereign he identifies in his reading of Hobbes. Justice as Fairness operates on the basic structure of a society so that the background conditions in that society are guided according to the Principles of Justice (Rawls, 2001, pp. 10–11). Further, Justice as Fairness acts to ensure that the various institutions in that society link up in a consistent manner (Rawls, 2001, p. 10). Finally, as Justice as Fairness is supported through public justification, it is recognized as being chosen as the ordering principle for the institutions of the well-ordered society (Rawls, 2001, pp. 12–14; 2007, pp. 79–80).

Instead of creating a stable field for social cooperation, Rawls in fact creates a sovereign presence through Justice as Fairness. This presence is necessarily linked to the

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[26] For a more detailed analysis of Hobbes views on public justification and the leviathan, see "The 'Market' and the 'Forum' in Hobbes Political Philosophy" by Amit Ron. Ron finds, with Rawls, that public justification was a necessary feature of the leviathan, which was necessary to ensure the stability of the commonwealth (Ron, 2006, pp. 237-242).

well-ordered society, just as Arendt and Agamben have highlighted. First, it operates on the society to ensure continuity above all else (Arendt, 2000c, p. 139). The concept of a well-ordered society is impossible without a consistent conception of justice acting as an ordering principle amongst the various institutions and competing doctrines of the society (Rawls, 2001, pp. 10–11). For the well-ordered society to exist as a fair system of cooperation, Rawls argues, the essential linkages of that society must be consistent[27]. Justice must be arrived at through rational consensus in a homogeneous space so that it can be equally applied throughout the social system. In this sense, Rawls shows the methodology that both Foucault and Arendt defined whereby power moves throughout the society, linking the disparate parts back to it *first and foremost* in order to ensure consistency (Arendt, 2000c, pp. 139–140; Foucault, 1994a, pp. 406–408). In doing so, Rawls' Principles of Justice create the society they operate by ensuring the deep connectivity identified by Deleuze and Guattari in their arguments on the relationship of sovereignty to a society, in the example of the chess game above.
(Deleuze & Guattari, 1987, pp. 376–379).

The drive for deep connectivity in turn necessitates that the sovereign becomes the essential personage. The presence of a sovereign becomes the only means of maintaining and protecting the well-ordered society (Agamben, 1998, pp. 125–127). As the Principles of Justice come to connect the institutions to form a society, the Principles of Justice become the only source of political meaning in that society. If political order is

[27] Again see Honig's discussion of the closing off of the political in favor of consistency inside the original position, and the effect it has on the creation of justice as fairness as the only possible outcome of deliberation. Further see the effects she extrapolates from this process on political subjectivity in the well-ordered society (Honig, 1993, pp103-105; 108-110).

only maintained through the development of a central source of power, then the only recourse of that power is the ban. The sovereign must remove the other from the society in order to maintain this continuity (Agamben, 1998, pp. 106–107). In this sense, to exist within the society is to be ruled by the exception; the rule of law is applied not in the connections of institutions, for Agamben, but in the removal of elements from the social body that break this fundamental continuity and in their placement in a space of pure power adjacent to the society, that is, the camp (Agamben, 1998, pp. 125–127). The well-ordered society is ordered, on this reading, by removing personhood from the representative framework and thus from the social context.

Benhabib identified the exclusivist tendencies of Rawlsian theory. In order for the theory to be viable, Rawls must push to the outside all forms of discontinuity. Justice as Fairness must remove its deliberations to a pure space that is devoid of the essential conflicts and disparities that form a human space (Benhabib, 2004, pp. 107–109). In order to maintain the well-ordered society, justice must formulate and operate through a blank construct, one that can continually be emptied and refilled with political meaning as new situations arise in a society over time. The "citizen" becomes an empty construct, which allows for the reinterpretation of being in the society as it is filled and refilled with meaning through the Principles of Justice[28]

(Benhabib, 2004, p. 108; Rawls, 2001, pp. 195–197). Continual reinterpretation of citizenship has pernicious effects on bare life. By continually redefining the criteria of

[28] The citizen is a legal concept. Laws form the borders of meaning that surround it. While new laws and new interpretations of law can redefine the concept, what they cannot undo, on Rawls' reading, is upset the fundamental stability of the well-ordered society. For Rawls, only by maintaining the integrity of the Principles of Justice is a society able to be a stable field of cooperation (Rawls, 2001, pp. 195–197; 1977, pp. 163–165; 2007, pp. 77–79).

membership, the Sovereign is able to continually dominate society and render all "members" bare life, i.e. all membership becomes contingent thus able to be rescinded by the sovereign (Agamben, 1998, pp. 106–107; Benhabib, 2004, pp. 196–197). The power to define terms becomes the power to deem and remove threats. As Rawls himself pointed out, the purpose of the Principles of Justice is to ensure that "special psychologies" and particular comprehensive doctrines do not gain dominance over a society; thus, once something is marked outside of the "reasonable moral psychology," it is removed from the well-ordered society as a threat (Rawls, 2007, pp. 79–80). As Benhabib notes, however, this marks a removal of personhood from the original position and thus from the well-ordered society (Benhabib, 2004, pp. 106–107).

The well-ordered society too exists through the threat of the ban (Agamben, 1998, pp. 106–107). It is the capacity to remove threats to the continuity of the well-ordered society that ensures that social cooperation is possible, as dominance can only be maintained through violence (Rawls, 2001, pp. 33–35). In this sense, comprehensive doctrines gaining sway over a society come to threaten it in that they give rise to the "special psychologies" that destroy society as a fair system of social cooperation (Rawls, 2001, pp. 33–35.) What is banned, then, is difference. Rawls argues that in order to ensure continuity; it is necessary for all comprehensive doctrines and all representatives to be symmetrically situated (Rawls, 2001, pp. 33–35). In her assessment of this idea, Benhabib finds that what Rawls effectively does is remove all difference from the act of representation (Benhabib, 2004, pp. 106–107). Rawls, on Benhabib's argument, creates a disembodied construct to rule over other constructs by removing the essential differences that define political space. Only through removing these differences

from the discursive framework, she argues, can Rawls create a well-ordered society. The only link between disparate institutions in Rawls' framework is the Principles of Justice (Benhabib, 2004, pp. 106–107).

What emerges, then, is a sovereign society predicated on the construction of a disembodied sovereign. This sovereign creates the society by ordering the disparate relations in a society along its own axis. In doing so, it must be on constant guard against heterogeneity, as this ruptures the fundamental connectivity necessary to keep this society tightly bound. In a word, Rawls creates the very disembodied sovereign that Foucault warned about. The power of the sovereign in Rawls permeates every aspect of the well-ordered society. The well-ordered society can only exist in reference to the sovereign power that sustains it. By providing continuity and stability, the Principles of Justice become the only means for understanding the well-ordered society as a whole greater than its parts. In linking institutions, comprehensive doctrines, and members back to them a priori, the Principles of Justice become the essential presence necessary to maintain the well-ordered society. Without the presence of the Principles of Justice and a commitment to them, there is nothing that stabilizes the well-ordered society. There are only disparate parts. Rather than a space in which cooperation becomes possible through the interactions of various institutions operating on a common conception of justice, Rawls creates the society without the personage of the sovereign. Law emanates from the center, just as in Hobbes. In Rawlsian theory, the center is a set of shared ideas on justice that operate to

ensure order. Without that center, there is nothing to uphold the well-ordered society or the concept of the political.[29]

Order, however, as Benhabib, Arendt, Agamben, and Foucault demonstrate, is not necessarily the same thing as justice. Order is the stuff of structures. Order creates a field in which institutions fit together in a cohesive whole. As Arendt has argued, the drive for order is predicated on dehumanization (Arendt, 2000c, pp. 127–131). For Benhabib, the absence of the person marks the absence of justice, as justice is predicated on tension being worked out in the history of a people (Benhabib, 2004, pp. 106–108). What emerges is a society that is predicated on the immutability of the Principles of Justice as the essential presence holding the construct together (Agamben, 1998, pp. 104–105). The sovereign operates to deploy and manage the members of the society by removing those "special psychologies" that threaten to undermine the capacity of the Principles of Justice to uphold the society (Agamben, 1998, pp. 106–107).

The concept of social order, however, is not the only image of the political. It is merely the dominant image (Arendt, 1979, p. 3). The idea of a decentralized space as typified in the works of Benhabib, Arendt, Agamben, and Butler offers a sharp contrast to the idea of society we find in Rawls. It is an image that suggests the possibility of new political formations grounded in the fundamental malleability of the person in the face of sovereign power.

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[29] On Rawls' own reading, the political is a separate aspect of human life, one that is built on consensus and deliberation. By anchoring all political possibilities on the need for central concepts that act to hold the society together, Rawls in effect argues that rational deliberations, and thus political life, are only possible through the presence of the Principles of Justice (Rawls, 2001, pp. 194–197).

IV.

Rawls' argument rests on the presence of the basic structure of the Principles of Justice in order to ensure the well-ordered society as a stable field for social cooperation. Benhabib, Arendt, Agamben, and Butler, however, each offer an image of a decentralized space, which is decentralized in the sense that democratic practices play a key role in shaping every aspect of the communal life, rather than symmetrical situations in representative founding moments. It is only through access to public space and political voice; they argue contra Rawls, that cooperation is possible. Political cooperation, on their reading, is only possible in a decentralized space in which each person has access to a meaningful say in shaping the common life, rather than in a society that is governed from the center by rigid political concepts.

Rawls' work begins with a constitutional democracy. It takes the presence of rights to be dependent upon the Principles of Justice. Benhabib, however, argues that rights begin with the person, not with the society that enshrines those rights in law (Benhabib, 2004, pp. 25–27). In Kant, she argues, the onus is on the recognition of personhood, not on the preservation of a particular social order. For this reason, Kant begins with the person as a moral animal and ascribes rights to human beings-as-such, prepolitically (Benhabib, 2004, pp. 25–27). Personhood is a central departure from Rawls' framework: if rights exist prepolitically, then they must be taken as a given by any political order that comes into contact with the person-as-such. For Benhabib, the recognition of personhood has a dramatic effect on political systems in that it requires that basic rights apply, whatever the geographical contexts or sovereign structures one finds oneself in. In other words, one does not leave one's rights in one's home state, nor

are they a function of that state's approval, but they are a fundamental aspect of the universal Kantian concept of humanness (Benhabib, 2004, pp. 25–27; 107–108).

Benhabib reverses the directionality of power in Rawls. Rights, in Rawls, are formulated in the original position as part of rational deliberation and are then applied back to members through the fair operation of institutions in the well-ordered society. While it is assumed that these members are in fact equal in their moral powers, in Rawls, the ascription of rights can only come through the well-ordered society (Rawls, 2001 pp. 106–107; 2007, 78–79; Benhabib, 25-26). In Benhabib's arrangement, however, a person brings his or her rights to bear in a decentralized space. This ability fundamentally alters both law and political discourse within a decentralized space in that if each is equal to the other in rights, then each has an equal say in what those rights mean and how they are to be applied (Benhabib, 2004, pp. 106–107). For Benhabib, the framework of justice that operates in a decentralized space becomes fluid. As each person has equal say in the meaning of the political, the meaning of the political changes to reflect the situation in which a decentralized space finds itself (Benhabib, 2004, pp. 106–107). For Benhabib, this shared political meaning brings a decentralized space closer to the idea of a people than does Rawls' state. Further, it allows for the "outsider" to become a fully functioning member of a decentralized space through the ability to share in the process of articulation. For Benhabib, articulation allows rights to become a fundamental part of the political makeup of a decentralized space, as it ensures that deliberation is a central process to that space. For Benhabib, democratizing the discursive process opens a decentralized space to a host of new meanings from "outside" (Benhabib, 2004, pp. 106–107).

A people, on Benhabib's account, emerges over time and is a product of its historical context. Kantian Cosmopolitanism allows for this contextualization of meaning on two fronts. First, Kantian Cosmopolitanism provides a decentralized space within the political discourse whereby each has not only equal access to a scheme of rights, but each has the power to define those rights in terms of meaning and application (Benhabib, 2004, pp. 109–110). Rights are affixed to the person-as-such rather than to the individual-as-citizen, as a decentralized space grows over time, these understandings are continually developed over the complete life of a decentralized space (Benhabib, 2004, pp. 109–110).

Secondly, through a cultural commitment to equal access to the discursive framework of rights, these rights become more deeply engrained into a decentralized space's sense of itself in that they are acted on and upheld by the persons who create them (Benhabib, 2004, pp. 110–111). In this sense, rights come to be seen as part of the dense fabric of a decentralized space in that while they exist prepolitically, their ongoing interpretation forms the political identity of a decentralized space. A commitment to the interpretation of rights, with each person having an equal share in the creation of the political discourse, creates spaces with varying interpretations of rights (Benhabib, 2004, pp. 111–112). As these rights are prepolitical, moving from one space to another does not change the basic scheme of rights but only the interpretation of them, with the displaced person being guaranteed an equal share in the interpretive process (Benhabib, 2004, pp. 106–107). As people move from one space to another, then, they are able to find spaces that share the same interpretations they do. Further, for Benhabib,

people are able to fully realize their political selves by sharing in the interpretive process of their new space (Benhabib, 2004, pp. 111–112).

What emerges, then, is a scheme of rights that acts as an integrative principle rather than as a function of sovereign power. Rights, for Benhabib, keep their vitality, as they are a function of the capacity to deliberate rather than of the sovereign power to bestow and protect. First, the scheme of rights affixes to the person as an a priori mark of membership in the meta-space of human life. By affixing rights directly to the idea of the human, the Kantian scheme marks a line that no space would cross, as interpretation is a function of human life (Benhabib, 2004, pp. 111–112). Secondly, by taking part in the process of interpretation, one is integrated into a specific human space that is representative of that person, as that person literally informs a decentralized space's identity (Benhabib, 2004, pp. 111–112). What emerges is a conception of a decentralized space as an extension of the human person, as it is deeply connected to that person's sense of self through the capacity to directly inform a decentralized space's makeup.

While Benhabib does much to ensure that rights affix to the person, she seems loath to apply descriptors to that presence. Here, too, we find the person as a blank construct that, though holding rights, can be filled with meaning through discursive power, thus leading back to the normalizing power of the sovereign. While each member has an equal say in the discursive process, Benhabib leaves open the question of what constitutes the human in the Kantian Cosmopolis.

Arendt, in her conceptualization of a decentralized space, seeks to link the conception of personhood directly to access to the public sphere

(Arendt, 2000a, pp. 12–14). For Arendt, under the traditional conceptualization of power, rights fall under the rubric of the privileges of the state. Their articulation and preservation are both a function of state power (Arendt, 2000b, pp. 32–33). For Arendt, however, this privilege exists because of a misunderstanding of the nature of power (Arendt, 1979, pp. 4–5). Traditional understandings of political power conflate the ideas of power and violence, leaving theory saddled with the argument that the only means of utilizing power is through violence (Arendt, 1979, pp. 4–5). Traditional concepts of political power then come to center themselves on the state. Violence is the primary means at the disposal of the state to secure that power over its members (Arendt, 1979, pp. 6–8). This conflation is problematic, she argues, in that it assumes that the exercise of political power is necessarily violent, that political power is always seeking to secure control of members through violence (Arendt, 1979, pp. 12–14).

The conflation of power and violence produces the need for the sovereign, as found in Rawls and Schmitt, in order to keep the "power" of violence from undoing the political society (Rawls, 2007, pp. 79–80; Schmitt, 1985, pp. 20–21). In state-centered theory, as typified by both Rawls and Schmitt, the end result is the erection of a state as the sole guarantor of political existence, and only through the threat of violence (Arendt, 2000b, pp. 32–33; 1979, pp. 14–15; Rawls, 2007, pp. 79–80; Schmitt, 1985, pp. 20–21; Agamben, 1998, pp. 106–108). The state, Arendt argues, comes to dominate the concept of the political through its violent domination of the public life (Arendt, 2000c, pp. 119–120). The state's drive for total domination of a population, she argues, flows from this fundamental misunderstanding of power (Arendt, 1979, pp. 12–

14). The drive to total domination comes directly from the drive to secure power over the members of a society.

If the conflation of power and violence creates the totalitarian state, as Arendt argues it does, the counterweight to this is the separation of power from violence. In Arendt, the drive of the totalitarian state is the killing of the public self in order to govern purely private life (Arendt, 2000c, pp. 137–139). The goal of total domination is to reduce all movement in a society to labor, that is, the procurement of basic goods in purely private life (Arendt, 2000a, pp. 174–175). The counterweight to this kind of domination, she argues, is action (Arendt, 2000a, pp. 168–189).

Action, Arendt argues, is the very capacity for spontaneity that the totalitarian state seeks to undo (Arendt, 2000c, pp. 130–131). For Arendt, the capacity for spontaneous activity is the mark of true political power in that it marks the movement from animal procurement to existence in reference to others. Existence, for Arendt, is the hallmark of the public sphere (Arendt, 2000a, p. 181). The public life is a life in reference to equals (Arendt, 2000a, p.179). It is typified by the idea of the common; it is a decentralized space that all equals are given access to and in which they act in reference to each other (Arendt, 1979, pp. 199–200). For Arendt, existence in the common is the source of power in a decentralized space. In the public common, she argues, the only ability "to do" comes from the capacity to convince other equals to act in conjunction. The common is a decentralized space in which we all come together but do not overrun each other. Rather, we seek to act out in the presence of and in reference to others within a common space (Arendt, 1979, pp. 199–200). The common, she argues, is a decentralized space of political existence.

In the common, the familial relationship is carried out into the political. Just as with a family, the "power of violence" is ill fit to accomplish common goals (Arendt, 1979, pp. 202–203). Rather, one must use one's power, that is, the ability to persuade and convince and aggregate support, to bring together members for common action. This image of the public sphere, typified by political power rather by than power-as-violence, offers a sharp contrast to the society. Here, rights become possible in the same manner in which they are ascribed in Benhabib's formulation of Kantian Cosmopolitanism—through an agreement among equals about the meaning and application of these rights in the public space. For Arendt, only the existence of the public realm guarantees the existence of rights in that it is a decentralized space where violence is inapplicable (Arendt, 1979, pp. 204–205).

Violent acts proceed from a decentralized space of superiority; they act from above on those below. Violence, for Arendt, is meted out in the idea of total domination which we find in Schmitt's concept of the role of sovereignty and, more tellingly, in Rawls' arguments on authority (Arendt, 1979, pp. 119–120; Schmitt, 1985, pp. 19–20; Rawls, 2007, pp. 79–80). In the public space, however, one acts only among equals; therefore, there is no space for violence in the sense that these authors understand it. One is never in a position of superiority that one must maintain through violence; rather, one is always vulnerable in the presence of equals and must resort to persuasion rather than force (Arendt, 1979, pp. 202–203). For Arendt, the public is the realm of all truly human activities; it is a decentralized space where we operate in reference to each other

(Arendt, 1979, pp. 216–217). The public space, for Arendt, is necessarily a decentralized space of shared vulnerability. We act in reference to the other and thus are subject to interpretation in the public sphere. Without vulnerability, Arendt finds, public life has no meaning, as it is devoid of the referent found in the other (Arendt, 1979, pp. 203–204).

As Foucault has pointed out, however, the concept of the human is itself vague and power-riven and is thus prone to the same exclusionary practices as the violence of total domination (Foucault, 1994b, pp. 408–409). What is necessary, then, is a more decentralized understanding of the person as the source of public life, one that strives for the heterogeneity necessary to maintain the vitality of the public space. For Foucault, any attempt to rigidly define the human carries with it the possibility of domination (Foucault, 1994b, pp. 409–410). Access to the public realm becomes dangerous, by this reading, as the restriction of this access leads directly back to the politics of exclusion and domination. Thus the politics of the person seems to give way to the politics of sovereignty as soon as the person is ascribed with attributes.

Agamben's theoretical framework marks a halfway point between Arendt and Foucault. On the one hand, he shares Foucault's critique that the onus of traditional political power is domination, meted out in the form of biopolitics (Agamben, 1998, pp. 127–129). But on the other, he finds that this is acted out on a society in the form of violence through the threat of exclusion, sharing Arendt's idea that the camp serves as much as an example to the dominated society as a place of destruction for those falling under the ban (Agamben, 1998, pp. 38–42). The question for Agamben, however, becomes how to recreate the Arendtian "public space" in the face of state

violence. The answer he finds is in the reaffirmation of the public through the very object of state violence: bare life (Agamben, 1998, pp. 84–86).

As we have already seen in Agamben, in the sovereign society, the sovereign becomes the essential person. It is the sovereign definition and the sovereign gaze that defines life and death in the society. Personhood, Agamben argues, rests on the sovereign definition of being within the borders of a society, because to fall outside of this is to be banned to the camp as a threat. To exist in the sovereign society is to exist based on proximity to the sovereign definition of personhood as found in the concept of the citizen (Agamben, 1998, pp. 17–19). The sovereign concept, he argues along with Foucault and Benhabib, is a singularity; it is conceptualized once and enshrined as the moment of origin for the sovereign society. Power constitutes bare life in a decentralized space through the concepts that it employs in law (Agamben, 1998, pp. 39–40). The sovereign concept, once arrived at, is a solid entity; it carries the force of law for the duration of the life of the sovereign society (Agamben, 1998, pp. 40–41). The durability of the sovereign concept, however, rests on a faulty understanding of potentiality. The misunderstanding, for Agamben, marks an opening for the person to reassert itself in the sovereign society and to remake a decentralized space from within. In doing so, he argues, the person is able to fundamentally rupture the sovereign concept, thus undoing the power of the ban, as it has nothing left upon which to rest (Agamben, 1998, pp. 44–45).

The sovereign, Agamben argues, sees potentiality as an exhaustive process. Once a concept has been brought into being, all of the constituting power that the concept possesses is spent. The concept is actualized and is assumed to be a total description of the situation it purports to describe (Agamben, 1998, pp. 44–45). The concept of the

person, once it is constituted as the citizen in the society, is spent. The citizen becomes the sole marker of personhood, because it alone carries the full potentiality for description of personhood in our political language (Agamben, 1998, pp. 43–45). The potentiality of being is exhausted in the creation of the concept of citizen; therefore, all other forms and modes of being are locked out of the idea of presence. The citizen comes to represent the person in the discourse. Everything outside of this concept is seen as a threat to the sovereign society and is thus removed to the camp (Agamben, 1998, pp. 45–46).

Agamben's reading of the relationship between sovereign power and the concept of the citizen points to the impossibility of an exhaustive definition of the person in political discourse. While the concept of the citizen comes to hold sway over the society by its coupling with sovereign power, this definition cannot be exhaustive, due to the complexity of the person. For Agamben, the person fills the concept of the citizen with its vitality, and not the other way around; therefore, the potential for new and alternative conceptions of being is always present in the sovereign discourse (Agamben, 1998, pp. 46–47). It becomes possible, then, to form new and dramatically different conceptions of personhood that, by the mere fact of their existence diminishes the sovereign power over life and death (Agamben, 1998, pp. 192–183).

For Agamben, the reassertion of the human into the sovereign conception of the political has the capacity to undo the camp that lies at its center (Agamben, 1998, pp. 181–183). As he points out, as the sovereign definition is that which upholds both the camp and the society, it moves to the center of the social order, marking the literal line between "life" in the society, and death in the camp (Agamben, 1998, pp. 36–38; 181–182). In order to undo this center, he argues, one must sever the

connection between sovereign power and "life" (Agamben, 1998, pp. 181–182). This can only be done by reinvigorating the person while operating in the small space between the ban and society (Agamben, 1998, pp. 182–183). Reinvigorating the idea of the person in political space opens space between the ban and the camp in that these modes of existence are articulated in terms that are both undeployable and ultimately irrevocable by the sovereign ban. These modes occupy a decentralized space that is irremovable, as they are part and parcel of bare life and yet fall outside of the sovereign understanding of life (Agamben, 1998, pp. 185–189).

Agamben offers two images of human potential reasserting itself inside the sovereign concept. These two images, taken together, speak to a conceptualization of the person more in keeping with Benhabib's understanding of the Kantian Cosmopolis. The face and its counterpart, the gesture, become powerful symbols of the person for Agamben, because neither can be strictly defined or territorialized without breaching the line of the ease or naturalness, beyond which they reveal themselves as forced caricatures of authentic presence (Agamben, 2000b, pp. 52–54).

The face, for Agamben, is the factual representation of the vulnerability of the human. It is the part of us that exists always in public (Agamben, 2000c, pp. 90–91). For Agamben, to exist is to exist as a face. It is the irremovable trace of the human. It moves with us and carries our expressions, emotions, and all other things we wish to hide (Agamben, 2000c, pp. 93–94). To exist as a face is to exist in reference to others, to exist as the bare, open vulnerabilities that we are (Agamben, 2000c, p. 93). Human nature acquires the face, he argues, precisely at the moment that nature is being betrayed by the word (Agamben, 2000c, pp. 91–92). We are most human precisely at that point, he

argues, in which the vulnerable person has been subsumed by the power of the sovereign definition. The face exists as a vulnerable reminder of the person, one that cannot be articulated through political concepts such as the citizen, or agent, or even the individual. The face, Agamben argues, is the mark of all the complexities of the person that fall outside of these definitions (Agamben, 2000c, pp. 93–94). It exists as the raw, open reminder of the person, and this presence is at all times and in all places open to and vulnerable to the presence of others. It marks an irreducible facticity. The immediacy of the human is recognizable in its features, the simplicity of the face and its capacity to communicate the ineffable in the person (Agamben, 2000c, pp. 91–92).

Given the nature of the face and its direct a priori connection with presence, it is a potentiality that cannot be territorialized by the sovereign ban. To cut one off from one's face is to kill, not to ban, and thus the murdered carry no political weight. They do not cease to be human under sovereignty; they simply cease to be (Agamben, 2000c, pp. 94–95). Thus, for Agamben, the face becomes simultaneously irreducible to bare life on the one hand and undeployable by the sovereign concept on the other. A face is not a citizen; it is a presence, a reminder of the human that resides within the body, both expressive and spontaneous (Agamben, 2000c, pp. 95–96).

The gesture is the mode through which the face communicates. It is an immediately recognizable yet inarticulate mode of communication. Gestures, like the face, are part of the human person that cannot be categorized and defined, only experienced and understood (Agamben, 2000b, pp. 49–50). The gesture marks the natural ease of human communication for Agamben. Rather than seeking out rational representation of the discourse, the gesture, for Agamben, is the immediate articulation of being. It too

comes a priori and resists all attempts at territorialization by the sovereign discourse (Agamben, 2000b, pp. 52–53). For Agamben, the gesture marks the naturalness of being and of communication for the person. We are beings that exist in communication, and any attempt to stifle or replicate this becomes immediately recognizable because it loses the air of naturalness that the gesture possesses. For Agamben, gestures are acts of pure articulation. Any attempt to categorize and define them, he argues, undoes the natural ease of communication that they possess (Agamben, 2000b, pp. 53–54). If the face marks the natural openness of the person, the gestural response marks the natural ease with which the person communicates to others. It does so immediately and without need of discourse, only with connections with other faces that can interpret and understand the gesture and thus the importance of the person for political life. It marks the openness needed to create the communal bonds required to sustain the public space (Agamben, 2000b, pp. 53–54, 2000c, pp. 91–92; Arendt, 1979, pp. 199–200).

The aggregation of the person in Agamben's work marks the undoing of the sovereign ban. The person, as typified by the immediacy of the face and its gestures, marks a radical point of departure from the concept of the citizen and the threat. To be a face is to be human and thus immediately recognizable by other humans as a member. The face makes no political demands or policy platforms; it simply exists in the social setting. It undoes the society by asking nothing of it. It becomes the "whatever singularity," an aggregation of the person that makes no demands on the society; it merely manifests itself in its existence. It is raw being in the face of the sovereign discourse of rights and citizenship (Agamben, 2000a, pp. 85–86).

The presence of the singularity marks the undoing of state power as it marks the reassertion of the human space inside of the state. It marks an aggregation of humans rather than citizens. It is the connection of people utilizing Arendt's concept of the power of convincing. Within the "whatever singularity," the onus is on space as common life. Political arrangements, for Agamben, revolve around finding common solutions to problems rather than in the creation of an ontological center that purports to provide security (Agamben, 2000a, pp. 87–89). Here, power operates to create bonds among members rather than through force and violence. The singularity is a being in common; it resolves around the shared experiences of the human life. It is these shared experiences that give rise to the coalition as the power structure of a decentralized space.

For Butler, shared problems give rise to group connections in the communal space. These connections mark the aggregation of members in reference to finding potential solutions to common problems (Butler, 2005, pp. 152–153) For her, by allowing these shared experiences to define potential solutions, room is made for a coalition discourse by which everyone affected by the problem has equal say in the shape and scope of the solution (Butler, 2005, pp. 153–154). By allowing for this open-ended discourse, she argues that power operates only so long as the problem exists and only in reference to the problem at hand.

Coalition discourse has a built-in limit both in scope and duration. It exists only through those who are affected by the problem, and it moves toward a solution through the affected members. Thus, as a solution comes to a head, the coalition dies out and gives way to new coalitions rising in reference to new problems (Butler, 2005, p. 154). A decentralized space develops equality, as Benhabib understands the term. Each member

who is affected has equal say in the discursive arrangements that define and solve the problem. As political problems tend to affect a multitude of groups simultaneously, one can expect that these coalitions will not only be broad based but will also allow for a multitude of possible solutions (Butler, 2005, p. 154; Benhabib, 2004, pp. 110–111).

What emerges is the image of a decentralized space based not in coercive power and authority, but an image of deep membership based on the immediacy of the person. By reasserting this presence into political life, rather than trying to territorialize it in the political discourse, Benhabib, Arendt, Agamben, and Butler seek an open space of power, one in which the onus is on solutions to common problems rather than the solidification of juridical norms that provide stability only through the force of violence. While Rawls sought to reconcile "man" to the well-ordered society by pointing to its reasonableness, he was able to do so only by removing the person from the polis altogether.

The political project is a human endeavor, if nothing else. Removing the person from the political leaves only disembodied reason to govern. The sovereignty that Rawls erects in his work is all the more pernicious as it purports to speak to all people in a particular political setting while making the definition of the human a function of state power. As Foucault, Agamben, and Arendt have shown, however, the state recoils in the face of the complexity of the person. What it requires to govern is the concept of a definable entity that can be delimited by the very functions of power that constitute it. This concept exists as the sovereign definition, and law comes to operate on the human body through it. Thus, the Rawlsian well-ordered society could exist only insofar as the citizen is inscribed on the body, removing any traces of the person that does not mesh with the authoritative definition.

By reinvigorating the political as a human endeavor, these authors offer us an opportunity to reflect on the possibilities of the political project, to seek new means of coming together and forming a common life. Their work suggests forming a political life in which the onus of power is not the definition of being but is the removal of obstacles to being. By seeking out a decentralized space in which the person can exist in its immediacy, the politics of the person comes to bear on a decentralized space not as a body inscribed with juridical categories but rather as the a priori presence required for the political as Kant envisioned it (Benhabib, 2004, pp. 110–111). Only by critiquing the modes of sovereign power can the "whatever singularity" come to undo the operations of sovereign power in political life. And only by undoing the operations of discursive power can we hope to build an authentic space of equals rather than a society that lives in the shadow of the camp.

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