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LIVING UNDER THE DOMAIN OF DEAD IDEAS: LAW AS THE WILL OF THE PEOPLE

Fernando Atria

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LIVING UNDER THE DOMAIN OF DEAD IDEAS :
LAW AS THE WILL OF THE PEOPLE

Fernando Atria

All true good carries with it conditions which are contradictory and as a consequence is impossible. He who keeps his attention really fixed on this impossibility and acts will do what is good.

Simone Weil, Gravity and Grace (1949)

Professor of law, Universidad de Chile, Universidad Adolfo Ibáñez. The first version of this article was read at the IV Congreso Estudiantil de Teoría y Derecho Constitucional, organized by students of the Universidad de Chile Law School in august 2009. I am grateful to the organizers for the invitation.

As will be seen, an important point in the argument to follow is that, as Simone Weil said, "If a child is doing a sum and does it wrong, the mistake bears the stamp of his personality. If he does the sum exactly right, his personality does not enter into it at all". This is the reason why academic activity is an essentially communitarian practice, though its present material conditions force academics and academic managers meticulously to insist on crediting everything that is done to one or more individuals (which in turn provides an incentive for cheating, as we have seen recently). Though this article appears under my name, its central ideas have been developed in conversation with Juan Pablo Mañalich and Samuel Tschorne. If Simone Weil is right, my authorship (my "personality") appears where I misunderstood them or fail to express them correctly. I am also most grateful to Francisco Saffie's comments, whose attempt to look at taxes as sacraments is highly promising. I am also in debt with Juan Ignacio Wilson, without whose assistance this English version would have been impossible.

TABLE OF CONTENTS

I. Living under dead ideas	3
The riddle of every constitution: the ascription of the rules of ascription	3
The people as institutional fact	6
A pre-institutional concept of 'the people'	12
II. Signifying imperfectly	20
Political Theology	21
Negative theology (i): The creation of the world	23
Negative theology (ii): negative political theology	29
Sacraments	38
The Protestant principle	43
Revolution	47
III. The people and its will	54
The will of the people as a double metaphor: the metaphor of the will	54
The people, bearer of a negativity	64
The people as a post- institutional concept	68
References	71

We live under the domain of dead ideas. To a considerable extent, our political language seems to be meaningless. What is the meaning of, for example, "Sovereignty rests essentially with the Nation, and it is exercised by the people¹"? How can we say, without naïvety, that law is the will of the people, and that the people is the bearer of constituent power? When and how (if at all) can we say that a constitution imposed by a dictator or an occupying power is the people's? This is what I would like to discuss in this paper: not the answers to these questions, but how to make them intelligible.

I. LIVING UNDER DEAD IDEAS

But when the social bond begins to fail and the State is weakened, when private interests begin to make themselves felt and small factions to exercise influence on the State, the common interest is harmed and [...]the general will is no longer the will of all.

J J Rousseau, The Social contract
(1762)

The riddle of every constitution:
the ascription of the rules of ascription

Maybe the last question, given its obvious political relevance in Chile, is a good start. Can the people appropriate a Constitution which was originally imposed? Or must we say, on the contrary, that the initial heteronomy is insurmountable? Can an originally heteronomous Constitution

¹ Article 5 of the Chilean Constitution. All references to articles hereafter must be understood as references to the Chilean constitutional text, unless stated otherwise.

become autonomous? If the Constitution was imposed by a dictatorship, as the decreto ley 3464 was in Chile (and I have no intention to join the collective amnesia that apparently affects our constitutional theory on this matter), would not "appropriating" it be but a way of falling in love with our chains?

The starting point must be our initial observation: it seems as though these questions are difficult because their answer is problematic (one can imagine the "realist" asking: "barring political rhetoric, how does the people go around becoming the owner of an alien constitution?"), while in truth the hard part is to understand it. We shall see that understanding and developing the question is to find an answer. Thus, our first stop must be to consider why it is difficult to understand. For now, we can say bluntly: appropriating the constitution is an action, and in that action we are supposed to read a volition. Hence if the people is the bearer of constituent power it must be able to act and to have a will. But what, strictly speaking, is for the people to act, to have a will?

The answer seems to be simple: law is the will of the people, and the institutional forms thorough which law is produced is the manner in which the people act, the way in which its will can be formed. Thus, according to article 5, Sovereignty rests essentially with the Nation. It is exercised by the people through the plebiscites and periodic elections, as well as by the authorities established by this Constitution. No sector of the people nor any individual may assume its exercise.

Thus the people acts trough institutional forms, and those forms identify what is to count as the will of the people.

There is nothing unusual in this. In fact, law can trivially ascribe a will to entities that, strictly speaking, seem incapable of wanting anything. Thus the opinion of one or more human beings counts as the will of a corporation when the former has been formed in the appropriate way. This appropriate way takes the form of a procedure, so that any decision that has been taken by following such procedure is recognized as a decision taken by the corporation. The procedure is specified by law or by the articles of association. Whatever its source, these are what we could call "secondary rules of ascription". To say that a corporation wills something is to apply to some facts a given rule of ascription. Such a statement looks like a description, but in truth is what Raz called an "applied legal statement"² (i.e. a statement the truth of which depends upon the validity of certain rules and the occurrence of certain facts).

Thus from a legal point of view there is a readily available answer to the question of how can the people will something. The people wills whatever corresponds to the occurrence of certain facts in the world, as specified by certain constitutional rules of ascription. In the Chilean case, such rules are contained in articles 5, 6 & 7. When a bill is submitted to either chamber of Congress, it reflects only the will of the individual member of parliament or political party who presented it. That is to say, it is the will not of the people but of a faction. But when the bill is duly voted and approved, and later enacted by the President,

2 Raz, The Concept of a Legal System, p. 217

it becomes the will of the people. It becomes the will of the people because it has been so enacted.

But this is too simple an answer, because what ought to be ascribed to the people is not only the rules formed through the procedure set by secondary rules of ascription, but these rules themselves. Here our analogy collapses: precisely because in the case of a corporation the rules of ascription (at least some of them) are previous to the existence of the corporation (and independent from it) it is possible for the corporation to form a will. Without these secondary rules of ascription the corporation would not, could not possibly have a will. And these rules are there before the corporation ever was. They are not valid because the corporation wants them. On the contrary: the corporation is able to want something because of the validity of these rules. But if the constitution contains the rules of ascription of a will to the people, how can we ascribe the constitution to the people, that is to say, how can the people will its own rules of ascription?

This is the paradox of the constitution, the "riddle of all constitutions" the answer to which is democracy.

The people as institutional fact

But how can democracy be the solution to the riddle of all constitutions if democracy itself presupposes a constitution? In fact, democracy is the idea that "state power must be articulated in such a way that both its organization and its exercise derive from the will of the people or can be

ascribed to it."³ The fact that the rules of ascription are part of what must be ascribed to the people suggests that the people has two modes of action, that there are, we may say, two concepts of 'the people': one institutional and one pre-institutional. Institutionally speaking, 'the people' is that which acts through the operation of the norms of ascription as already mentioned; pre-institutionally speaking, 'the people' is that which wills those rules of ascription.

Let us go back to article 5:

Sovereignty rests essentially with the Nation. It is exercised by the people through the plebiscites and periodic elections, as well as by the authorities established by this Constitution. No sector of the people, nor any individual may assume its exercise.

There are three rules here. According to the first, sovereignty rests essentially with the nation; according to the second, it is exercised by the people, but only through institutional forms (plebiscites, periodic elections and constitutionally established authorities); the third rule, finally, forbids any faction not authorised by a rule of ascription to act as agents for the people. This last rule is complemented by article 7 (second paragraph) of the same text:

No magistrature, no person or group of persons may assume, even on the pretext of extraordinary circumstances, any authority or rights other than those expressly conferred upon them by this Constitution or by law.

This seems, again, paradoxical: the constitution is willed by the people, but the people can only act in ways specified by the constitution or according to it. The former idea makes

³ Böckenförde, "La democracia como principio constitucional", p. 47.

the constitution seem autonomous, the latter heteronomous. But, how can the same norm, related to the same agent, be at once autonomous and heteronomous?

There is a sense in which this is indeed paradoxical, but before we discuss it we have to notice that in these two apparently contradictory features (autonomy/heteronomy) resides nothing less than the explanation of the very meaning of law. Every legal concept is the formalization of a pre-legal concept.⁴ The function of the legal concept is to make probable the pre-legal concept, which would be impossible or at least improbable without it. This is as valid for concepts such as "contract" and "testament" as it is for concepts like "law" and "constitution". Thus, for example, cooperation is, without law, improbable. What is probable is that each individual will act towards the other in an objectifying manner, i.e., will try to force or manipulate the other into doing what the first one wants. In other words, each will understand the other as an instance of a much larger problem: that the world shows resistance to their will. The world's resistance has to be trumped somehow, and in this all that succeeds is success:

if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end (which is principally their own conservation, and

⁴ This is what distinguishes institutions like law from institutions like games. That is why the analogy between legal rules and the rules of games, although useful in a certain sense, may confuse rather than clarify the analysis of law as an institutional system. This is thoroughly discussed in chapter 1 of Atria, Law and Legal Reasoning, where "regulatory" institutions (like law) are distinguished from "autonomous" institutions (like games)

sometimes their delectation only) endeavour to destroy or subdue one another.⁵

Because (if) there is law, the way to their end does not lead to destroying or subduing the other. Without law (in Hobbes' "natural condition of mankind"), there is no reason why I should refrain from using force or manipulation to obtain what I want, which is to say that the world is for me an instrument for my ends. The relation between self and the other will be purely instrumental, because the other does not appear before him or her as an other, but as part of a world that has to be manipulated to achieve his or her ends. The law of contracts makes my forcing or manipulating the other self-defeating: my using force or deceit to obtain your consent to a contract (to "destroy or subdue" you) will be detrimental to me or, at least, useless (not only I will be punished because of the illegal aggression, but I will also find out, when I want to enforce the contract, that my fraud or duress makes it void). Thus if I want something you have, trying to get it by destroying or subduing you will not be in my interest; I will have to contract with you, and in order for that contract to be valid I will have to treat you as if I recognise you as an equal (without fraud, duress, etc). By making my objectifying action self-defeating law makes probable that I relate to you as if I recognized that you are not just another parcel of the world that I can use to pursue my own ends, but an end in itself. It makes probable, in other words, that I relate to you as if I recognized you as an 'other'.

5 Hobbes, Leviathan, ch. 13.

Very much the same can be said of other (indeed: all) formal concepts. Take "testament." The function of a testament is to make trivially ascertainable something that without it would be hard to identify, the deceased's last will as to how his or her assets ought to be distributed. But the law does not accord the institutional status of "testament" to any plan as to how my assets will be distributed after my death. It has to meet some requirements: the testator must be sane of mind, it must be given in the presence of a number of witness, or in writing, etc. These conditions are such that, if they are met, it is probable that the will expressed in it will actually be the last will of the decedent.

Both pairs (exchange between equals/contract, last will of the decedent/testament) show the relation between the pre-institutional ("brute") concept and its institutional correlate. They also show that the function of the institutional concept can only be achieved if it is opaque to its institutional correlate, i.e. insofar as in its operation the institutional concept becomes autonomous from the pre-institutional concept: the claim that an unfair contract is immediately void and is not (because of its unfairness) legally binding is incompatible with the existence of the law of contracts, just as it is incompatible with the existence of a testament that it may be struck down proving by any means that the decedent's last will was somehow (anyhow) different.

Thus the three rules contained in article 5 reflect the structure common to every legal concept: the pre-legal concept (the first rule) is formalized (second) and then the

formal concept becomes, in its operation, opaque to its pre-institutional correlate (third).

This is indeed part of the explanation, but it does not do away with the problem altogether. As was said above, there is something paradoxical in article 5. But to identify the paradox it is not enough to distinguish a pre-institutional and an institutional concept of the people, so that the second is opaque to the first and in particular cases might even appear to be in opposition. This, for the reasons explained above, is common to every legal concept. In order to see the problem we have to notice that legal concepts are opaque in relation to their pre-legal correlatives, not in their intelligibility but in their operation: although 'contract' and 'testament' are opaque in their operation to 'fair exchange' and 'last will of the deceased,' they are dependent on them (or, of course, any alternative possibility) as regards their intelligibility: understanding its relation to the notion of 'fair exchange' is necessary in order to understand the concept of 'contract', and in order to understand the concept of 'testament' we have to refer it to the concept of 'deceased's last will.' If these pre-institutional concepts were unintelligible, then the corresponding legal concepts would be equally unintelligible, just an empty formalism. And the problem is that the very concept of 'the people' in a pre-institutional sense seems unintelligible. As Bruce Ackerman has said, in a passage we shall discuss later on,

we all know what it is for an individual to decide something, but what is it for a collectivity so grand as the People to enter constitutional politics in a meaningful way?⁶

But if the pre-institutional concept of 'the people' is unintelligible, the institutional concept of 'the people' is a mere formalism, a mystification contrived to deceive us, to make us believe we live according to our own will when we are actually subjected to an alien will. A dead idea.

A pre-institutional concept of 'the people'

If we are to say that the will of the people is whatever can be institutionally ascribed to the people, we must be capable, at least in principle, to identify what can it possibly mean for the people to want something, to have a will, in a pre-institutional sense. Here it seems we must choose one of the following answers:

The first answer is that 'the people' is a physical entity, characterized by some pre-political feature ("pre-political" here does not mean "metaphysical", but only "not politically constituted"): by race, religion, language, etc. This is the sense in which the expression is used when we speak of 'native (or indigenous) peoples'. Here 'people' is an entity characterized by some natural feature, which defines an identity: "the self-identity of the concretely present people as a political unity."⁷

The second answer is the one usually given by economists: "the people" is the name we use to refer to the aggregation of individuals, and its will is the will that results from adding all the particular wills. In this sense

⁶ Ackerman, "The political case for constitutional courts", p. 209.

⁷ Schmitt, Constitutional Theory, p. 255.

we cannot speak about "the people" (el pueblo), but just about "people" (personas).

The most salient aspect of these two explanations about what 'the people' is and what its "will" consists of is that they are both incapable of making intelligible the democratic rules of ascription, insofar as democracy relies on institutions; in fact, for both institutions imply a form of mediation the function of which cannot be, strictly speaking, making the identification of the people's will more probable, but rather less. For the first, the identity between rulers and ruled is what is crucial, and this identity is hindered or denied by the institutions we recognize as democratic. Thus, in this sense, the people's form of expression par excellence is acclamation:

Only the genuinely assembled people can do that which pertains distinctly to the activity of this people. They can acclaim in that they express their consent or disapproval by a simple calling out, calling higher or lower, celebrating a leader or a suggestion, honoring the king or some other person, or denying the acclamation by silence or complaining.⁸

Democratic political forms aim at "directly ignoring the assembled people as such", because

a distinctive feature of the bourgeois Rechtsstaat constitution is to ignore the sovereign, whether this sovereign is the monarch or the people.⁹

This renders problematic the democratic forms of popular participation:

The election or vote, more precisely, is a secret individual vote. The method of the secret individual vote, however, is not democratic. It is, rather, an expression of liberal individualism In the struggle against impermissible

8 ibid, 272.

9 ibid, 273.

electoral influencing by the government and against other misuses, the demand for secret individual ballots makes sense and is relatively justified. Nevertheless, it is necessary to understand its nature correctly and to be clear that in principle it is part of the circle of ideas associated with liberal individualism and contradicts the political principle of democracy. For the logically consistent execution of the secret individual election and the individual vote transforms the distinctly democratic, or political, figure, the state citizen or citoyen, into a private man who, from the sphere of the private, whether or not this private sphere may be his religion or his economic interest or both together, expresses a private opinion and casts his vote. Secret individual ballot means that the voting state citizen is isolated in the decisive moment.¹⁰

With remarkable anticipation, Schmitt discusses what today appears as a manifestation of the so-called e-democracy:

It is fully conceivable that one day through ingenious discoveries every single person, without leaving his apartment, could continuously express his opinions on political questions through an apparatus and that all these opinions would automatically be registered by a central office, where one would only need to read them off. That would not be an especially intensive democracy, but it would provide a proof of the fact that the state and the public were fully privatized. The result is only a sum of private opinions. In this way, no common will arises, no volonté générale, only the sum of all individual will, a volanté de tous, does.¹¹

To Schmitt, therefore, the characteristic institutions of representative democracy do not have the function of making the identification of the people's will probable, but, on the contrary, neutralizing the people, making it politically irrelevant.¹² Thus, the idea of the people as a political

10 ibid.

11 ibid., 274.

12 This is the same thesis defended by Left-wing intellectuals who advocate a "participatory democracy" as opposed to a "representative democracy". In relation to this,

concept is at least in tension and, strictly speaking, is in contradiction with democratic institutions, insofar as the first implies that the main function of these institutions is to neutralize it. Constitutional principles like article 5 are empty declarations with no real political content. The only reason why we would not say, on this reading, that they are dead ideas is that they were never truly alive.

This may be predictable, because after all Schmitt has gone down in history as Nazism's legal scholar. If one wishes to find an explanation of the political meaning of 'the people' that is compatible with democratic institutions, the plausible thing to do is to look for it in the work of those who have defended democratic institutional forms, not in the work of those who have attacked them.

Bruce Ackerman, for example, criticizes Schmitt precisely because his comprehension of the idea of 'the people' is totalitarian. In fact, to return to a passage already partially quoted,

The crucial problem is the People with a capital P. We all know what it is for an individual to decide something, but what is it for a collectivity so grand as the People to enter constitutional politics in a meaningful way.¹³

Ackerman makes reference to the very same passages of Schmitt's Verfassungslehre we have quoted, in particular to his statement that the people's mean of expression par excellence is acclamation and continues:

Once Schmitt 'solves' the problema of identification in this brutalized way, his Nazism follows immediately: the rallies at Nuremberg are just the kind of remedy for the disease of

vid. Moulian, Socialismo del Siglo XXI, p. 121, y Atria, "Veinte años después, neoliberalismo con rostro humano".
13 Ackerman, "The political case for constitutional courts", p. 209.

modernity that Schmitt is prescribing in his Verfassungslehre.¹⁴

Notice the way in which Ackerman claims to have found the connection between these two ideas: from an existential understanding of 'the people' Nazism is immediately derived. That is the reason why, as Schmitt says, the liberal wants to neutralize 'the people': the point of the institutions of representative democracy is to make politically irrelevant this existential reality, prior to institutions, which can acclaim. The liberal sees no political sense whatsoever in this notion of 'the people', so he replaces it with the second sense, which is based on what "everyone knows", namely, what it means for an individual to want something, added: that which is politically relevant is the sum of the preferences of the individuals that live in a specific territory. But then democratic institutions can only be seen as a pale second-best vis-à-vis the idea of direct democracy, in which each one can defend his own interest by him- or herself, with no intermediaries. In fact, Ackerman believes that 'the people' expresses in rare occasions which he calls "constitutional moments". These constitutional moments are characterized precisely by the divesting of institutional bonds, because during them the people expresses by means of what Ackerman once called, apparently without noting the contradiction, "extraordinary institutional forms."¹⁵

Since democracy is about aggregating what we all know, namely, what it is for an individual to decide something, in the most efficient way possible, in order to answer a much

14 ibid.

15 Ackerman, "The Storr Lectures: Discovering the Constitution", p. 1022.

less obvious question ("what is it for a collectivity so grand as the People to enter constitutional politics in a meaningful way?"), the liberal agrees with Schmitt on just this point: the institutional forms that mediate, i.e., that stand between individuals and their preferences or convictions and the decisions that are accorded the institutional status of "the people's", are problematic. And they are problematic because they mediate, because they perennially face the 'cut-out-the-middleman' objection. Their being problematic does not mean of course that they are unjustified (this is what Schmitt called a "relative" justification, like that of the individual secret vote by reference to "the struggle against impermissible electoral influencing by the government and against other misuses"). What this means is that they are forced upon us by the transition from ideas to really existing institutions. If this is so, the fact that it has become empirically possible to do away with them immediately challenges them. Hence e-democracy.

What is striking is that both Schmitt and Ackerman agree on this: Schmitt believes that popular acclaim is "more democratic" than the result of an institutional process, because it is immediate; Ackerman believes that the people expressing through extra-institutional means (in "constitutional moments") is a form of democracy superior to the institutional expression ("normal") of the people, because it is a form not mediated by institutions. The parallelism is too precise for it not to be meaningful.

In fact, in the broader public debate (I am leaving behind Schmitt and Ackerman now) the parallelism continues, and it is expressed in the proposals for institutional reform

that nowadays have become common to both the left and right. Insofar as mediating institutions are seen as hindering the people's expression, these fashionable proposals purport to diminish their mediating capacity, making them more transparent to what individuals "really" (i.e., without mediation, immediately) want. Direct democracy is, for both, the ideal situation: for some because in this way the people may act directly and immediately, acclaiming in assembly (or protesting on the streets); for others because the more direct democracy is, the closer the decision will be to the preferences to be added (the less mediated the decision is, the more precise the addition will be). And of course, actually existing representative democracy and political parties defined by an ideology, and any association of citizens other than single-issue movements are poor substitutes for direct democracy, for the immediate expression of the citizens' will through, for example, some form of e-democracy which was not technologically feasible in the past.

In my opinion this is our current predicament, especially after we look at what has occurred in some Latin-American countries: while direct appeal to the people is disqualified as a "plebiscitary" or "populist" form of democracy, our institutions suffer from an acute legitimation crisis, which (it is suggested) may be mitigated by reforms meant to make political decision-making more immediate: popular initiative, decisions by referenda, recalling, attention to the dominant preferences expressed in opinion polls, primary elections for selecting candidates, etc. The malaise of democratic institutions is manifested in sharp skepticism towards them: can we seriously say that in any

real sense law is really the will of the people? The law might be will, but in that case it will anybody's but the people's: maybe the will of economic groups, or of the "political class", of those who practice influence peddling, etc. (and that explains, by way of compensation, why it has become common to understand law in a way which devaluates the role of legislation and understands it -the law- as reason rather than will: a regression, in other words, to pre-modern forms of law, sometimes called neo-constitutionalism).

II. SIGNIFYING IMPERFECTLY

Il y a un autre monde, mais il est
dans celui-ci.

Paul Eluard

Regarding Schmitt, Ackerman shows no disposition to engage, to be questioned by him. Schmitt can be simply excluded from the conversation by mocking him, because as a Nazi jurist he has become fair ground. And that is so notwithstanding the fact that Ackerman perceives the key to solve our riddle. Since he seems not interested in understanding Schmitt, however, he misses it. The point is that, as Ackerman notices, Schmitt's Theory of the Constitution

Is a piece of 'negative theology', with the crucial exception that Schmitt's god-term is the Volk: he tells us a lot about how the will of the Volk should not be confused with normal acts of political representation, but he is very weak in developing affirmative criteria for identifying the magical event.¹⁶

Ackerman's point here is not to understand, but to discredit ("not only he was a Nazi, but also believed in magical nonsense", one could say). Saying that something is "theological," in this context, is equal to say that it is "magical," i.e., irrational (like believing in witches or unicorns). The point has been correctly identified by Jeremy Waldron:

Secular theorists often assume that they know what a religious argument is like: they present it as a crude prescription from God, backed up with threat of hellfire, derived from general or particular revelation, and they

¹⁶ Ackerman, "The political case for constitutional courts", p. 209.

contrast it with the elegant complexity of a philosophical argument by Rawls (say) or Dworkin.¹⁷

In the following pages I want to question the self-sufficiency of the "secular theorist". I want to explain that the reasons why we misunderstand our own political language are the same reasons why the "secular theorists" Waldron refers to cannot understand theological language as anything but a language based on the discussion of magical events, of crude prescriptions from God, backed up with threat of hellfire, derived from general or particular revelation. This is the key to political theology.

Political Theology

The idea of political theology is much more radical than the thesis, interesting but nowadays transformed into a commonplace, that "All significant concepts of the modern theory of the state are secularized theological concepts."¹⁸ In its most powerful sense, the idea behind political theology is not a thesis about the genealogy of political concepts, but about their meaning, what we shall later call their mode of signifying. Since they use the same mode of signifying, the unintelligibility of the political concepts we have noted is the unintelligibility of theological concepts. This is concealed because, as opposed to political concepts, theological concepts do not seem unintelligible (they only seem plainly and ridiculously false: "magical"). But theological concepts so rejected or accepted are theologically distorted concepts, they are forms of idolatry. This is the reason why there is not much, in my view, to be

17 Waldron, God, Locke and Equality, p. 20.

18 Schmitt, Political Theology, p. 36.

said about political theology without going into theological questions (one cannot do political theology without theology).

In choosing a point of entry into theological questions one can do far worse than paying special attention to the distinction between faith and idolatry, because this goes right to the hearth of the problem of theological language. As Simone Weil said,

There are two atheisms of which one is a purification of the notion of God.

Of two men who have no experience of God, he who denies him is perhaps nearer to him than the other.

Religion in so far as it is a source of consolation is a hindrance to true faith: in this sense atheism is a purification.¹⁹

Now, the thesis that political concepts are theological concepts and vice versa, implies something quite precise: it means that their mode of signifying is the same, and therefore that their pathologies are analogue. From the point of view of theology, the point has been brilliantly identified by Juan Luis Segundo:

We are more interested in the (apparently dated) antithesis between faith and idolatry than in the (apparently topical) antithesis between faith and atheism. Furthermore, it has to be said at the outset that those who call themselves Christians can occupy, in the more radical antithesis

¹⁹ Weil, Gravity and Grace, pp. 114, 115. Likewise Karl Rahner said that "If we say "God" we must not imagine that everyone understands this word and that the only question is whether what all mean by it really exists. Very often the man in the street believes it to mean something which he rightly denies, because what he imagines it to mean really does not exist. He thinks it is a hypothesis for explaining phenomena until science can give the true explanation, or someone to frighten children until they realize that nothing extraordinary happens if they are naughty" Rahner, "The Little Word 'God'".

faith/idolatry, either of these positions. In other words, we believe that men are more profoundly divided by their image of God than by the position they take as to whether that image corresponds to something real.²⁰

In order to explore the political meaning of the antithesis 'faith-idolatry' the best starting point seems to be, precisely, the idea of "negative theology" which Ackerman mentions without even trying to understand it.

Negative theology (i): The creation of the world

Rowan Williams has perceptively warned that "theology is perennially liable to be seduced by the opportunity to ignore the question of how it learns its own language."²¹ Maybe it is possible to understand Thomas Aquinas' "negative theology" (so-called "apophatic" theology) as an attempt to make explicit his awareness of the danger of seduction identified by Williams. The sense in which Aquinas' theology is negative is expressed in one of his capital points about our knowledge of God:

When the existence of a thing has been ascertained, there remains the further question of the manner of its existence, in order that we may know its essence. Now, because we cannot know what God is, but rather what He is not, we have no means for considering how God is, but rather how he is not.²²

The way in which I want to exploit this idea is that theology uses an inverted language. Thus, the statement that God is "our father" is a statement about universal human brotherhood. This is because

20 Segundo, Teología Abierta para el Laico Adulto. Gracia y Condición humana, p. 22.

21 Williams, "Trinity and revelation", p. 131.

22 McCabe, "Aquinas' Summa Theologiae. Volume 3, Knowing and Naming God: 1a. 12-13", Ia q2.

when we speak of God, although we know how to use our words, there is an important sense in which we do not know what they mean. Fundamentally this is because of our special ignorance of God. We know how to talk about shoes and ships because of our understanding of shoes and ships. We know how to talk about God, not because of any understanding of God, but because of what we know about his creatures.²³

"God, maker of heaven and earth, of all things visible and invisible" is a good start, among other things, because it refers to the paradigm of "religious" statements that Waldron's "secular authors" have in mind. Richard Dawkins, for example, defines what he takes to be the "more defensible" version of "the God hypothesis" in the following way:

there exists a superhuman, supernatural intelligence who deliberately designed and created the universe and everything in it, including us.²⁴

And of course, in these terms,

God's existence or non-existence is a scientific fact about the universe, discoverable in principle if not in practice. If he existed and chose to reveal it, God himself could clinch the argument, noisily and unequivocally, in his favour.²⁵

But this is precisely "cataphatic", positive theology: it assumes we may know what God is: a super-wizard, which is idolatry (a super golden calf). The alternative to idolatry is negative theology. Therefore, we must understand that the meaning of the phrase "God, maker of heaven and earth, of all things visible and invisible" is not to be found in what it

23 McCabe, "Signifying imperfectly".

24 Dawkins, The God Delusion, p. 31.

25 ibid, p. 50. Dawkins does not explain the reader what is a "scientific fact" and how it can be distinguished from other, non-scientific facts.

positively affirms about God. But the statement seems to be about what God is (it has God as a subject: the maker of heaven and earth, i.e. the world, in the sense of all that is the case), so in order to understand its way of signifying it must be inverted. It then becomes a statement, not about God, but about the world: "God, maker of the world" implies "the world is something created". Notice: it is not that since we have independent reason to believe in God's existence that we believe that, since He is such a powerful person, He is the creator of all that is visible and invisible. We express our faith that the world is a created thing by saying that God made it *ex nihilo*. God is whatever is necessary to understand the world as something created.

If the claim that God created the world ex nihilo is understood in a positive manner, it seems hard to avoid some form of idolatry. It will have to be taken as a thesis about the (temporal) origin of the world: that there was a moment, at the beginning of time (as if this expression could possibly mean something), in which the world was created by a wizard of fabulous powers. But the (temporal) origin of the world (and the existence of such a wizard) is a fact about the world, and is difficult to deny that such a fact, like any other fact, is prima facie verifiable (a "scientific" fact). The distortion contained in this interpretation becomes evident when one remembers that Aquinas, for example, believed that the idea of the world created by God ex nihilo was in principle perfectly compatible with the thesis that the world is eternal, that it does not have a beginning.²⁶

Now, what does the idea of creation, in its inverted meaning, say about the world? First, that the world is not sacred, that it is not God (it is the negation of every form of pantheism, which does not distinguish God from the world). But it also expresses confidence in the answer to what might be called "the most fundamental question of philosophy": Why is there something rather than nothing? Or, in Wittgenstein's formulation, "It is not how things are in the world that is mystical, but that it exists."²⁷ Not knowing anything affirmative about God implies ignorance of the answer (the believer does not have, qua believer, any special access to privileged knowledge), but faith in that there is an answer. This faith in the existence of an answer to the question about the meaning of the fact that the world is might be expressed in the following way: the world is like the Ninth Symphony or Hamlet, which exist because they are the expression of somebody's genius. Understanding the Ninth Symphony as a creation, namely, as someone's work is to understand it as something with meaning. But it is clear that the Ninth Symphony or Hamlet only provide an analogy, because neither Beethoven nor Shakespeare could create ex nihilo. In fact, both Hamlet and the Ninth Symphony could only be created in the context of existing practices, and the genius of their authors is to be found in the way in which they were capable of organizing forms of artistic expression that were around when they arrive to the world (remember Hannah Arendt's insight that this obvious fact: that the world was there when we arrived and will be there when we leave, is a fundamental part of the human condition). This means that the

27 Wittgenstein, Tractatus Logico-Philosophicus, §6.44.

sense in which we talk about the Ninth Symphony or Hamlet as created things presupposes something prior to them that was not created: they are not, we could say, radically created. When we ask about the status of a parcel of the world the answer may be partial: when the question is 'why the world' the answer has to be radical. Therefore Shakespeare and Beethoven are "creators" in much less radical a way than God. This implies that although theological language is an inverted language, the inversion is necessary, it is not dispensable. "God is the creator of heaven and earth, of all things visible and invisible" implies but is not reducible to "the world is something created". The second statement gives us a hint about the way in which the first statement signifies, but the meaning of the first is not reducible to the meaning of the second.

Why insist, as Christian theology does, on the idea of a personal God instead of a cooler Hellenist unmoved mover? Is this not affirming something positive about God? A brief answer could be: because God cannot be the answer (or, strictly speaking: the name given to the confidence in the existence of an answer) to Wittgenstein's mystical question and be impersonal at the same time. If God were impersonal, then it would not be part of the explanation, but part of what needs to be explained: being the first does not stop a motor from being a motor. A motor is something that can be used, if we know how to use it. This is not the case of a "person": to recognize something as a person is to recognize its character as an end in itself. The thesis that God is "personal", thus, is also a negative thesis, not positive, because

what this truly and blessedly means is that God cannot be less than man, endowed with personality, freedom and love,

and that the mystery itself is free protective love, not an "objective order" which one can, after all, possess (at least in principle), and against which one could insure oneself.²⁸

Thus the idea that God cannot be an impersonal force (something that can be instrumentally used) may be expressed by saying that God is a person. As can be seen, in these terms the choice is also between a personal God and an idolatrous understanding of God. When we speak about ourselves, the way to express that human beings are ends and not means is to say that they are "persons". The idea of a personal God expresses the same about God, but in a radical manner. This means that the fact that God is a person does not entitle us to say of God what we say of us: that God has intentions, plans, wishes, will, etc. Almost all of our positive language related to the term "person" is determined by the fundamental fact about human beings: they have (we have) bodies that develop and decay. And of course, God does not have a body, because otherwise God would be part of the world. Therefore God is a "person" like us in the same sense in which he "creates" like Beethoven or Shakespeare.

The point here is that our language about God is a language that cannot account for itself. That is why it must rely on analogies (like "creator") or metaphors (like "father"). In short, it must use what Hegel called "representations."²⁹ And, of course, the first representation is "god". Indeed, "God" is a pagan word which was appropriated by Christian theology in order to say: there are no gods. But it is a word which shows no meaning at all, that

28 Rahner, "The Little Word 'God'".

29 On Hegel's idea of "representations" (Vorstellung), see Taylor, Hegel, pp. 480-509.

operates as if it were a proper name.³⁰ The reason why this is so is that when we talk about God we are talking whereof cannot be spoken. The fact that we can speak about it is not a reason to remain in silent, but to keep constantly in mind that we are that we are "stretching language to breaking point", so that it is "precisely as it breaks that the communication, if any, is achieved."³¹

Negative theology (ii): negative political theology

I want to show now that everything we have been discussing can be understood politically. This task has been facilitated by Professor Carlos Pérez's notable book, Proposición de un Marxismo Hegeliano. The reason Pérez gives in the introduction of his book for "recurring to Marx once again" are indeed negative:

For his idea that the communist goal, the end of class struggle, is possible. For his radical critique against capitalist exploitation Against all forms of naturalism, against the idea of human finitude, so characteristic of the culture of defeat.³²

Pérez postulates, as the basis of his Hegelian Marxism, what he calls a "theory of alienation", which is, in its turn, grounded

on an absolute historicism, in which every object is objectified by the human action of producing its whole being. The political reason for affirming so counterintuitive a fundament is to avoid all traces of naturalism, all possibility of appealing to elements that, starting from human nature or the human condition, put limits to the possibility of ending class struggle. What is stated here, as the basis, is a radical affirmation of human infinitude Without these founding statements we can project as an

30 Rahner, "The Little Word 'God'"

31 McCabe, God matters, p. 177.

32 Pérez, Proposición de un Marxismo Hegeliano, p. 9.

utopian horizon a better humanity, but never a humanity that is essentially free.³³

But the idea of alienation implies that there is no way of knowing what is for humanity to be "essentially free". This cannot be seen from our alienated perspective; to talk about it is, again, talking whereof we cannot talk. Pérez explains this point with his distinction between lie, error and alienation. What characterizes these three situations is the difference between discourse and action. But in the cases of lying and error this gap is a phenomenon of the conscience: she who lies may get to recognize she is lying, and she who errs may come to recognize her mistake.³⁴ But alienation is different: it cannot be overcome simply at the level of consciousness, by just realizing that one is alienated:

It is not the case that you are alienated. It is, rather, that you are your alienation. And you cannot overcome it until you change what you are In a situation of alienation, there is no non-alienated point of view Only from the point of view of other alienation it is possible to see the alienation. This means that overcoming it cannot be an epistemological process (making the truth appear) but only a specifically political process.³⁵

But how can we understand what it would be like to be in a non-alienated situation? If there is no non-alienated point of view in an alienated situation, how can we even describe the idea of a non-alienated life? What is important here is the experience of a deficit:

Suffering that drives us towards breaking the relation that constitutes it, in order to change life itself. The possible mobility of the alienated conscience is given by the flagrant, existential, empirical contradiction, between that

33 ibid, 71.

34 ibid, 88

35 ibid, 89

which is harmonized by conscience and that which is suffered in immediate experience.³⁶

What Pérez has called "a suffering" is an existential experience of deficit. This experience of deficit flows from the contradictions of our forms of life, the fact that they promise what they cannot give. We may get to formulate the idea of a non-alienated life through a radicalization of such unfulfilled promises. What makes the conscience of alienation as well as its overcoming action possible is the fact that what is experienced as a deficit may be identified as a deficit (i.e., it is not harmonized). This refusal not to experience it as a deficit can be described as faith in human infinitude: in the possibility of non-alienated life.

The anthropological thesis that is discussed here is that exploitation is, originally, a survival strategy against scarcity, a strategy progressively objectified through history [... .] That human beings have no internal tendency to oppress [...] or subjugate [...] is not, and cannot be, an empirical thesis. It is a matter of principle, driven by the conclusion one wants to arrive at. If these tendencies existed (as part of the human nature, the human condition or as a biological basis of conduct) communism would be impossible. If one wishes to arrive at that conclusion it must be excluded from the premises.³⁷

The conditions under which alienation can be identified, however, are unlikely to be maintained. This is because what allows the individual to identify his or her alienation is consciousness of a deficit, which implies that he or she must face a "generally painful and catastrophic" situation. This condition appears as cognitive dissonance, a contradiction between what is harmonized by conscience and suffered by experience. The dissonance is reduced by denial, which

36 ibid, 90.

37 ibid, 109.

neutralizes the deficit. This denial assumes one of two forms: on the one hand, the liberal (or conservative) answer³⁸: there is no deficit, because a mature understanding

38 In the politically relevant sense, the expressions "liberal" and "conservative" are equivalent. In the apparently most popular antithesis, these two terms are politically opposed: but in the radical antithesis, these two terms are analogous and they both oppose to "socialism". The matter is discussed with certain detail in Atria, "Veinte años después, neoliberalismo con rostro humano". This may be one of the reasons why "academic" discussions seem so detached from actually existing politics: those discussions do not capture the oppositions that are really important. This is the case, for example, with the so-called "liberal-communitarian debate", labels that, in North American academic vocabulary, correspond to the liberal/conservative distinction. Paul Kahn has noticed very much the same point in his *Putting Liberalism in its Place*, where he claims that that liberalism and communitarianism are, concerning the relevant issues, analogous, a thesis as implausible at first sight as it is correct.

To express this larger point briefly, both liberals and conservatives settle for this world: the conservative because he ascribes normativity to the traditional order he discovers in the world, the liberal because he believes that the subject, the human being (not the order), is natural, and therefore the only thing we can do is to order their interactions so they can live without attacking each other. They both deny human being's infinitude, because they both think there is no hope in this world (the very idea of an "essentially free" humanity is meaningless to them): for the conservative because he thinks that if there is hope it is in other world, completely alien to this one (thus it is politically irrelevant), and for the liberal because there is nothing more than the actually existing world.

The fundamental equivalence of liberals and conservatives makes its more concrete oppositions, about this or that legal reform proposal, to pale in comparison. This equivalence is particularly pristine (*pace* its author, which gives it greater value) in Gray, *Black Mass*. Gray's thesis is that what characterizes modern political discourse is its apocalyptic dimension: "Modern politics is a chapter in the history of religion" is the book's opening phrase. Thus, this

of the human condition (enhanced nowadays by volumes of neo-darwinism) will show us that human beings are "naturally" wolves to each other, so that the only meaning of politics is

is the same thesis defended in this paper. Gray, nevertheless, thinks this is modernity's curse, because all apocalyptic comprehension of politics leads to terror and totalitarianism: "all societies contain divergent ideals of life. When a utopian regime collides with this fact the result can only be repression or defeat. Utopianism does not cause totalitarianism - for a totalitarian regime to come into being many other factors are necessary - but totalitarianism follows whenever the dream of a life without conflict is consistently pursued through the use of state power" (53). Indeed, if this claim can be associated with someone in particular, the most obvious candidate is not a conservative but a liberal thinker, Isaiah Berlin.

Both liberalism and conservatism are defined by the idea that the actually existing world, with its conflicts as they appear to us today, is as good as it gets. Gray claims that this is only asserted by conservatives, but at the price of forcing an obviously implausible millenarist interpretation of liberalism. Now, if Gray is right and totalitarianism is the consequence of pursuing a completely human form of life through politics, then we will have to choose between conservatism and liberalism (that is the reason why after the fall of Berlin's Wall so many leftists followed Berlin and became liberals). But Gray is wrong, because he identifies the origins of totalitarianism incorrectly. Totalitarianism does not originate in the idea that a world is possible in which the unity of particular and general interest is transparent. It originates in the idea that to achieve this it is necessary to ignore actually existing human beings and their (our) forms of life, because they are completely worthless. It is the idea that, because they are alienated, the interests, wishes and beliefs of actually existing individuals are irrelevant, that they may be ignored in order to hasten the birth of the new man. Later on this will be discussed by reference to the idea of Revolution and what will be called the "Portalian principle". Because what Gray's argument legitimately brings into question is not the idea of a world free from alienation, but the idea of Revolution which, as we will see, is where the main problem of Pérez's argument lies.

to hold each person at bay in order to make our co-existence possible. The second form of denial (which is nothing but the symmetrical reflection of the first) is the one taken by those that Engels called "infantile communists", those who imagine that, merely because they want to skip the intermediate stations and compromises, the matter is settled, and if 'it begins' in the next few days—which they take for granted—and they take over power, 'communism will be introduced' the day after tomorrow. If that is not immediately possible, they are not Communists.³⁹

The first denies alienation because it denies that reconciliation among really existing individuals is possible, either because there is a natural tendency to violence and domination within them, which may be controlled but not eliminated, or because reconciliation will be reached only in paradise, understood as something completely alien to this vale of tears. When they are optimists, they say we can expect a "better humanity" (namely, one with a bigger GDP) but "not an essentially free humanity."

The second, on the other hand, denies alienation by treating it as a phenomenon of the conscience, which may be solved simply by "realizing" that one is alienated (a state at which, in fact, he or she has already arrived, so that the only thing necessary for the instauration of Communism is his or her obtaining control). Perez's idea of alienation as foundation (or at least the way in which I interpret it here), implies that in a deep political sense liberals (conservatives) and infantile communists are equivalent, because neither understands the way in which actually

39 Engels, "El Programa de los Emigrados Blanquistas de la Comuna". The passage is quoted at the beginning of Ch. VIII of Lenin, "Left-wing" Communism, an Infantile Disorder.

existing institutions can legitimately claim our allegiance. The liberal, who accepts the world for what it is, must claim that law is not the will of the people if by "the people" anything greater than the sum total of individuals is meant. But then of course the obvious problem is grounding the obligation to obey a law that one opposes but that was passed anyway because, for example, the lobby of some particular pressure group was highly effective. Democratic theory says that, in a politically relevant sense, that law is still my will because it is our will, but for the liberal this is overloaded rhetoric.

The infantile communist, on the other hand, will flatly deny the legitimacy of any actually existing democratic institution, because to him or her the function of institutions is always the same: to mask exploitation. For them the idea that law is the will of the people is also overheated rhetoric, but in this case its function is ideological.

What is common to both is that they fail to understand political discourse and its particular mode of signifying. It is this mode of signifying that politics shares with theology. Political concepts signify, as theological ones, imperfectly.

The idea of representation (metaphors or analogies) provides us with a new perspective from which we can try to understand our political institutions. Before, the dilemma was that in order to recognise their claim on our loyalty we had to either deny that they embody a systematic deficit (to do this we must change our understanding of the institution -the point of democracy being that heads will be "contadas y no

cortadas," in Norberto Bobbio's expression) or we had to recognise the deficit and claim that because of it institutions are "merely ideological" and thus false. The problem is that the infantile communist is right in claiming that there is a systematic deficit inherent in institutions: they exist because something must be made probable, and the obvious question concerning any institution is its necessary: why is cooperation unlikely without the institution of contract law? The existence of the institution, in other words, is in itself a deficit, and it is crucial to remain aware of this, because the experience of the deficit as deficit is the necessary condition for identifying our alienation as such without assuming an impossibly non-alienated perspective.

Hence the liberal is right in claiming that actual institutions, with their actual shortcomings, do have a claim on our loyalty. But since he or she will not admit signifying imperfectly, they believe that to say this, the deficit must be ignored or wished away. And with this they invite us to abandon the crucial perspective that stems from the experience of the deficit.

Since actually existing institutions are in themselves the mark of a deficit, all institutions have two faces: one emancipatory and one oppressive. The law of contract is an explication of what is to cooperate for two individuals who recognise each other and refuse to behave instrumentally towards the other. But individuals can assume this position for instrumental reasons. Generally speaking, institutions are false (there will be no institutions in the Kingdom of God or under Communism) but in their falsehood they teach us: it is by living under them we can see from afar what a non-

alienated life looks like. For this reason, we can be loyal to institutions without denying their deficits. But this loyalty never loses its ironic quality, insofar as the form of life we live in is necessarily dehumanized, insufficient. This ironic loyalty is based on faith: faith that what is inhuman in the world world we live in can be overcome, because it is not a fatal and necessary consequence of our nature, but of our forms of life: forms of life that accustom us to show "incredible levels of indifference towards the pain of others."⁴⁰ And as it is a consequence of our alienated forms of life, it is possible, in principle, to live humanly: if we could only live under truly humane forms of life! What could these forms of life be like? The whole point of a theory of alienation like the one defended by Pérez, or at least the sense I have of it here, is that we cannot answer this question: there is no point of view free from alienation in an alienated situation. But we may know some aspects of our forms of life that will not exist: there will be no opposition of class interests (which means: there will be no class differences), there will be no objectification, no exploitation. We know that because those are the conditions that lead to the existential experience of deficit. And as we cannot affirmatively know what these non-alienated forms of life will be like, we cannot truly say anything about them. But here we have to follow Wittgenstein's example and disregard the advice he himself contradicted in the very act of giving it.

40 Pérez, Proposición de un Marxismo Hegeliano, p. 62.

Sacraments

Once again the idea that we are speaking whereof we cannot speak. Maybe because of that we should remember Pérez's observation: speaking is not enough, because alienation is not a phenomenon of the conscience, but of life. In theological terms, this implies the notion of sacrament and of sacramental practices.

In Christian theology, sacraments are signs of God's presence among us. That is to say, they are signs of the possibility of radical reconciliation, of complete human fulfillment, in a world where reconciliation and such fulfillment are impossible. Therefore, they are signs that, as Aquinas said, "signify imperfectly". Their signifying imperfectly does not mean they are false, but rather that their full meaning is inaccessible to us given our forms of life (forms which Pérez would say are constituted by alienation, Aquinas would say: constituted by sin). And of course, in the Kingdom of God those signs will be unnecessary (and that is why in the Kingdom of God the virtues of faith and hope will disappear). An understanding of politics that avoids the symmetrical errors of someone who believes that what we see today is as good as it gets and someone who thinks that a non-alienated life can be brought about just by seizing power and rearranging things "the right way" is what we could call a sacramental understanding of politics: our institutions are (or at least may be) signs of that which is unknown: living non-alienated lives.

Here it might be useful to put it another way: alienation consists in seeing the other's interest as opposed to my own. Because our interests are (seen to be) in conflict, it is unlike that we will spontaneously agree in

our identification of what is in our common interest. What is likely is that I will try to use whatever means I have to get you to agree to what is in my interest (indeed, if I manage to convince you that your interests are served when you serve mine, I will have thoroughly succeeded) -- and you will do the same. The function of democratic institutions is to make likely what is unlikely: that the norms that we shall recognize serve everybody's interests, and not only those of the powerful.

A "sacramental" understanding of those institutions allows us to show an ironic commitment to them. It is a form of commitment, because in our conditions it is the only way to express (and live according to) the idea that the only source of normativity is one common to everyone's perspective. But it is ironic, because we know that law as an institution does not live up to its own promises. And note that it does not live up to them because it cannot do so: if it could, the fundamental commonality of interests among humankind would be transparent to us; that is to say, we would have overcome our alienation. But had we reached that condition, the institution would no longer be necessary, because the necessity of this institution is the deficit of our alienated forms of life. This is the meaning of the Marxist idea that under communism, law would disappear, as well as the meaning of the Thomist observation that in the Kingdom there will be no sacraments. Just like religion is the soul of a soulless world, law is the will of a community that has no community of wills.

The fact that both political and theological language cannot but use representations (metaphors and analogies), implies that their pathologies are also the same. Indeed,

because of this pathology it seems as though we are living under the domain of dead ideas. The pathology is losing sight of the fact that representations are just that: representations, instead taking them as literal descriptions. The origin of this pathology lies in the temptation to deny the contradiction between promise and delivery on which they are based, and thus lose sight of the possibility of an ironic commitment, which if not resisted reduces our possibilities to naïve devotion or cynical irony.

If the representations to which theological and political language recur must be understood literally, then they are evidently false and must be abandoned. Those who assume this position are likely to ask: do you really believe the consecrated wafer is a piece of human flesh? That the world appeared magically in six 24-hour days? That the earth is no more than 10.000 years old? That law is truly everyone's will and not the will of an "elite"? For this line of criticism, splendidly illustrated nowadays by the recent (and banal) books written by the high priests of neo-darwinism, Richard Dawkins⁴¹ and Daniel Dennet,⁴² as well as in the school called "public choice," all theological language, in addition to the political language of the democratic tradition, is complete nonsense. Since these critics do not even understand the literary genre (i.e., the figurative mode of signification) of theological or political discourse, their admonitions are ridiculously irrelevant.⁴³

41 Dawkins, The God Delusion.

42 Dennet, Breaking the Spell.

43 These critics, which call themselves "brights" (ibid, 21) define what they criticize by reference to the belief in representations literally understood: "For some people, prayer is not literally talking to God but, rather, a

"symbolic" activity, a way of talking to oneself about one's deepest concerns, expressed metaphorically. It is rather like beginning a diary entry with "Dear Diary." If what they call God is really not an agent in their eyes, a being that can answer prayers, approve and disapprove, receive sacrifices, and mete out punishment or forgiveness, then, although they may call this Being God, and stand in awe of it (not Him), their creed, whatever it is, is not really a religion according to my definition" (10). In other words, Dennet defines "religion" on the basis of the literalness of its representations: religion, in his definition, is "a social systems whose participants avow belief in a supernatural agent or agents whose approval is to be sought" (9).

The ease of Dennett's move from "him" to "it" shows that he and those he criticizes occupy the same position in Segundo's "more interesting" dichotomy (between faith and idolatry). Indeed, both of them take the language they use for granted (oddly enough, it is authors like Dennet or Dawkins who are specially liable to forget Williams' warning). Therefore his stipulations are quite difficult to comment, since in some sense he is completely right. But not in the sense he imagines to be. It may be said about the idea of "religion" that it is a corrupt notion, incompatible with faith. As François Varone has claimed, "para la religión, Dios es un poder que el hombre ha de hacer reaccionar en provecho propio. Para la fe, por el contrario, es Dios quien actúa, quien hace vivir al hombre, y éste ha de acogerlo. Sobre esta primera ruptura se esboza inmediatamente una segunda. La religión espera inducir a Dios a intervenir útilmente para hacer realidad los deseos y necesidades del hombre [... .] Para la fe, por el contrario, Dios hace ciertamente existir al creyente, da aliento a su libertad, luz a su búsqueda de sentido, pero no interviene útilmente a favor del hombre. Dios deja que el hombre cargue con todo el peso de su vida y del mundo y los lleve a su realización. No viene, una vez creído y aceptado por el creyente, a transformar los cactus en terciopelo: los abismos concretos de falta de sentido - muerte y depresión, violencia y hambre, esclavitud y cáncer - todo ello permanece inmutado" (Varone, El Dios Ausente, p. 83. See generally ibid, 15-79, the first part of the book, called "Religion, atheism and faith". Notice how Varone's three categories match those of Segundo: idolatry, atheism and faith).

Or, better, they are or would be for a self-conscious theology or political understanding. The reason why their admonitions might have sense today is the symmetric but inverse pathology of religion; if Dawkins and Dennett believe that metaphors and religious representations are meant to be literal descriptions and that as such they are obviously false, the idolatrous agree with them in the former but disagrees in the latter (believing they are true). They go to court to claim that the story of Genesis ought to be understood as a theory alternative to Darwin's about the origin of life on earth. Here religion becomes a way out of this vale of tears, and is eternally projected outwards: it tells us nothing about this life, except that we must endure it in order to gain access, once we have served our time down here, to a better and truer one. Thus, this idea ignores that "God" is a metaphor, that the meaning of God is that there are no gods, and worships an idol defined by its fabulous powers, whose most portentous demonstration has been the "intelligent design" of everything that is. Politically speaking, they correspond to the neo-constitutionalist who believes that injustice in our forms of life is a phenomenon of pure conscience, and that, were he or she appointed to the Constitutional Court, true justice would follow the very next day.

Here we must return to Juan Luis Segundo's antithesis. In the antithesis faith/atheism Dawkins opposes those who condemn evolution because it contradicts the Book of Genesis just as the infantile communist opposes the liberal/conservative. But in the antithesis faith/idolatry (Varone: faith/religion), Dawkins and those who see God as a super-wizard concur, and they oppose those whose faith is

free of idolatry, in the same way the infantile and the liberal (conservative) are against those who exhibit an ironic (i.e., sacramental) commitment to our actually existing institutions.

The Protestant principle

Political theology is the thesis that the modes of signifying of theological and political discourses are the same. We have seen that by adopting the theological-political point of view we can re-draw a familiar landscape in which traditional antagonisms are equivalent in an important sense. What makes them equivalent is their rejection of political theology, i.e., their rejection of politics as a language structurally analogous to theology (i.e., that they are based on the same mode of signifying). By ignoring the fact that our political language signifies imperfectly, they are forced to deny the contradiction we live in, and must then embrace one horn while ignoring the other: it means either settling for this world or rejecting it altogether. Since the possible movement of alienated consciousness is grounded in the existential experience of this contradiction (Perez dixit), this denial amounts to the radicalization of alienation, insofar as it hides that which permits its identification. But nonetheless (or maybe precisely because of it) these positions are attractive, as they reduce cognitive dissonance and allow us to continue with our lives.

How can we maintain the tension in spite of normality's brutal levelling force? What I have called a sacramental understanding of our institutions is, of course, the first step. But, is this a stable understanding? Is it possible for a sacramental understanding of politics to subsist in normal

times, in the face of the levelling force of normality? (The traditional leftist objection against social-democracy was precisely this: normality transforms citizens into clients, because the spirit that grounds social-democratic institutions cannot survive the normal operation of the institution; hence they create new forms of alienation, rather than emancipation. That the "revolutionary" left has been defeated and that the social-democratic option is somewhat more attractive nowadays should not make us forget these objections, for they point to a truly fundamental problem). In my opinion, the survival of our political practices depends on the answer to this question. This is what it means to live under the domain of dead ideas. Given the question's breadth, it would be derisory to pretend to give a full answer here, but we may try to move a step closer by availing ourselves of what Paul Tillich called "the Protestant principle":

Protestantism has a principle that stands beyond all its realizations. It is the critical and dynamic source of all Protestant realizations, but it is not identical with any of them. It cannot be confined by a definition. It is not exhausted by any historical religion; it is not identical with the structure of the Reformation or of early Christianity or even with a religious form at all. It transcends them as it transcends any cultural form. On the other hand, it can appear in all of them; it is a living, moving, restless power in them [... It] contains the divine and human protest against any absolute claim made for a relative reality, even if this claim is made by a Protestant church. The Protestant principle is the judge of every religious and cultural reality."⁴⁴

The last sentences reveals that what Tillich calls the "Protestant principle" is not really Protestant: it is the

⁴⁴ Tillich, The Protestant Era, cap. 11.

assumption made by all theological reflection that heeds Williams' warning, that is to say, that remains aware that it must always account for its own language: for the moment in which representations fossilize and claim to provide a full account of what they represent - specifically, the moment in which metaphors are no longer understood as metaphors but rather as literal descriptions - faith becomes a set of false, irrational and supernatural beliefs (i.e., idolatry). It ceases to be faith in the possibility of a non-alienated human life and becomes a conspicuous sign of alienation.

In fact, the Protestant principle has to be a Catholic principle, because Catholicism insists on a politically central dimension. One of the distinctive characteristics of Catholicism is its insistence on tradition as a source of revelation, which in turn implies the special relevance of the institutional aspect of the Church. As Schmitt claimed, Catholicism is an idea of representation by means of institutions.⁴⁵ Institutions are formalized traditions. Tradition, on the other hand, is a common history, a collective biography.⁴⁶ But it is a biography whose meaning only appears when it is read according to the Protestant principle, for only then can revelation be understood not as a truth fallen from the sky and communicated to us from the

45 Schmitt, Roman Catholicism and political form.

46 This is the reason why a tradition needs a principle of identity, something of which we can say that the tradition is the history of. And the institutionalization that marks Catholic Christianity off was precisely a compensation for the deficit of identity implied by Christian universalism: from early on, Christianity was understood not as the religion of a (naturally defined) people, but of humanity. The lack of any natural feature that could provide a principle of identity is offset artificially, by the institutional Church. See Segundo, El Dogma que Libera, pp. 190-193.

outside, without denying its radical opposition to this world of sin (as 19th century liberal theology did). The Protestant principle enables us to understand tradition as the effort of successive generations to give finite form to what is infinite, historicity to that which transcends history. This is possible only to the extent that tradition itself does not seem alien, that is to say, that members of the tradition understand that they have a specially responsibility towards it. Tradition becomes alien when it forgets the Protestant principle. Speaking of a tradition as the Christian tradition in general or Catholicism in particular, there is nothing strange about its being, in the same sense as Perez's Marxism, opposed to this world. This is precisely the point: it is the sigh of the oppressed creature, the heart of a heartless world, the soul of a soulless environment. This opposition may be called eschatological, or anticipatory, because it has a sacramental dimension in the sense we have already seen. But since we are talking of actually existing traditions and institutions, it is possible and even likely that this opposition to the world will be due, as least as well, to the fact that the institutional forms of the tradition, since they exist in this world, have become corrupted.⁴⁷ Distinguishing these two reasons for the opposition between tradition and the world is what it means to belong to a tradition that is not experienced as alien, a tradition one is responsible for. Tillich's "Protestant principle" is the modulation of this idea. It keeps constantly open the possibility that accepting what we receive is not a form of showing loyalty, but a way of

47 McCabe, Law, Love and Language, p. 155.

betraying one's tradition. That is why the fact that the Church is a corrupt institution is not a reason to abandon it.⁴⁸

Revolution

Now we are in a position to discuss one of modernity's most powerful ideas, whose development during the 20th Century was nevertheless very unpromising. Donoso Cortés called it "the most terrible word of all": Revolution.

Pérez characterizes his Marxism as "revolutionary"

[I]n the specific sense that it claims that only violence can break the chain of violence, already installed by dominant classes. But also in the slightly more scholarly sense that the only way to finish the prevailing class domination is radically to change the rule of law and, eventually, putting class struggle to an end will imply abolishing any institutional kind of rule of law.⁴⁹

Later on Pérez will claim that the dichotomy "reform-revolution" is "one of the most sterile and destructive discussions in the culture of the left,"⁵⁰ because "the difference between reform and revolution is one of degree, of range, it is not a disjunctive and least of all an antagonism."⁵¹

To some extent, the whole of this article's argument is contained here. The usual oppositions that we have been discussing would understand that the difference between reform and revolution is a difference of type: the liberal and conservative would say, in fact, that only reform is acceptable (because revolution implies violence and it is, as

48 See McCabe, "Comment".

49 Pérez, Proposición de un Marxismo Hegeliano, p. 67.

50 ibid, 182.

51 ibid, 183.

a method of political action, it is "immoral"), while the infantile communist will believe that only revolution is acceptable (because in order to end with alienation it is necessary to seize power and arrange everything anew). A sacramental understanding of politics may overcome this opposition because it understands that revolution is a radicalization of what is already present in our institutional forms of life; it is not about replacing one set of institutions for another, nor about doing away with them, but about radicalizing them.

But it is precisely because this point contains the whole argument that the way in which Pérez discusses it is so insufficient. Indeed, Pérez is not overly interested in the emancipatory dimension of our institutional forms of life. This emancipatory dimension does not lie (it is always important to remind ourselves) in the fact that institutional forms of life actually enable us to live non-alienated lives, so that we could accept them naively. This is why their emancipatory dimension is not denied when we recognize that institutions are corrupt, that they have an oppressive dimension. Every actually existing institution possesses these two faces, one oppressive and one emancipatory. When we discussed the institutional forms of our religious practices, we noted something that may be generalized: they belong to an alienated world. A non-alienated world is a world in which mutual radical recognition is no longer improbable, and therefore there would be no need to make it probable by means of institutions: it will have become second nature to us or, better yet, we will have then understood that non-alienated life had always been our authentic nature. The point, however, is not what we might say about forms of life we

cannot imagine, but how they inform our actions, even if we cannot actually imagine them. It is about identifying the forms of political action that are sacramental, not because they are instrumental to hasten the arrival of the Kingdom (or Communism), but because they anticipate it. As we have seen, the idea that alienation may be diagnosed from a non-alienated perspective makes no sense at all. It can only be identified from within alienation, as an existential experience of deficit. And it is this existential experience of deficit that must be coupled with an understanding of our institutional forms of life that shuns both cynicism and naivety. Cynics only see the oppressive face of institutions; the naive only see their emancipatory side. The former ignore that institutions carry the promise of a non-alienated life (in contract we find the idea of exchanges among subjects that recognize each other completely, in marriage the idea of a community based on love, etc), while the latter ignore that actually existing institutions can never live up to their own promises, and that the extent of their failure to do so is the extent of their being instruments of oppression.

I want to refer here to a rather unknown exchange of letters between Karl Marx and Pierre-Joseph Proudhon.⁵² In 1846, Marx wrote to Proudhon inviting him to become a member of a European socialist and communist network to get German, French and English socialists in touch. The network was meant, on the one hand, to create a discussion forum that surpassed nationalist limitations and, on the other hand, to allow members in one country to be informed of developments elsewhere, to be prepared "when the moment of action comes."

⁵² I have discussed this exchange in further detail in *Atria*, "Veinte años después, neoliberalismo con rostro humano".

Proudhon accepted the invitation without enthusiasm. Along with his acceptance, however, Proudhon included two remarkable substantive observations in response to Marx. The second observation is particularly relevant now:

I have also some observations to make on this phrase of your letter: at the moment of action. Perhaps you still retain the opinion that no reform is at present possible without a coup de main, without what was formerly called a revolution and is really nothing but a shock. That opinion, which I understand, which I excuse, and would willingly discuss, having myself shared it for a long time, my most recent studies have made me abandon completely. I believe we have no need of it in order to succeed; and that consequently we should not put forward revolutionary action as a means of social reform, because that pretended means would simply be an appeal to force, to arbitrariness, in brief, a contradiction. I myself put the problem in this way: to bring about the return to society, by an economic combination, of the wealth which was withdrawn from society by another economic combination. In other words, through Political Economy to turn the theory of Property against Property in such a way as to engender what you German socialists call community and what I will limit myself for the moment to calling liberty or equality. But I believe that I know the means of solving this problem with only a short delay; I would therefore prefer to burn Property by a slow fire, rather than give it new strength by making a St Bartholomew's night of the proprietors.⁵³

From our historical and spiritual moment it is hard not to see the sense behind Proudhon's observations. Particularly in the third world, so much bloodshed, so many frustrated expectations of revolutions that in the end were "nothing but a shock"! When one remembers the seizures produced by the Land Reform (agrarian reform) in Chile, and the fact that less than ten years later the most extreme neoliberalism the world has ever known was instituted in storm of fire and steel (and this is not a metaphor!), how can we fail to see

53 Proudhon, "Letter to Karl Marx".

the truth behind Proudhon's fear of giving property new strength by replaying St. Bartholomew's night with landowners instead of Huguenots!⁵⁴.

I think that Pérez's concept of revolution fails to take account of this. Perez's suggested measures (reducing work time while keeping the wages fixed, decentralizing public services, reducing the cost of credit, etc.⁵⁵) is a set of instrumental measures the value of which can be reduced to its instrumental aptitude to bring about more humanity, but precisely because of this aspect, not a humanity that is essentially free. It is not a program of political action that strives towards a radicalization of the unfulfilled promises of our own institutions. Pérez leaves no space to explain the meaning of our current political forms in terms of their two faces. This double face explains the "more scholarly" sense of revolution Pérez defends (though I am not sure he would recognize my reading). A revolution is in this sense a radical transformation of our forms of life, so radical, in fact, that pre-revolutionary discourse about post-revolutionary life cannot but avail itself of representations, that is to say, to analogies and metaphors. The reason for this is that post-revolutionary life cannot be explained in terms of a pre-revolutionary life:

The revolutionary ... proposes to change not merely this or that detail within society, but the structure, and hence the values of the society itself. The revolutionary does not propose something that in terms of this society is better; he wants to change the terms. He wants history to advance not

54 I am not saying that the agrarian reform in Chile was such a St Bartholomew's night of the proprietors. But it is clear that they understood it as such, and that explains why there was to be, after the 1973 coup d'état, so much violence.

55

simply further along the established lines, but along new lines. Now such lines extend into the past as well as into the future. I mean that each society interprets its history as leading up to itself, as well as leading forward into the future. Indeed each society is its interpretation of its past, just as each person is his interpretation of his past; I hope this does not sound too enigmatic. I only mean that if you ask yourself the question 'who am I?' you answer by producing an autobiography. A radical change in society, a revolution, means a change in its interpretation of history, just as a radical change in a person a conversion let us say, involves a change in the whole of his autobiography. He now sees that he was a miserable sinner even though while he was committing the miserable sins he was really rather cheerful about it all.⁵⁶

Hence Pérez is right when he says that revolution implies "changing the rule of law radically" and "abolishing any institutional kind of rule of law". Those institutional forms are the sign of a deficit, so they will not be necessary when the deficit is overcome. But it is a mistake to conclude from this that "revolution" implies fighting those institutional forms in order to abolish them. How will we know what we are fighting for, and how will we be able to distinguish revolution from a purely imaginary future, from an illusion? The question is the same as the one we already answered following Pérez: How can we know what it is like to live a non-alienated life? It is impossible, because post-revolutionary forms of life cannot be described in pre-revolutionary language. We can only know how it is not going to be, and it is crucial for that to assume the existential experience of deficit. Our institutional life (the "rule of law"), keeps that existential experience alive. But as we have seen, living with the existential experience of deficit is painful because it means living with cognitive dissonance,

⁵⁶ McCabe, Law, Love and Language, pp. 28-9.

although this painful experience can be reduced through denial (false consciousness): the denial of thinking that the rule of law as it actually exists fully guarantees freedom and autonomy (to do so requires redefining liberty and autonomy: negative liberty, for example), but also through the false consciousness of thinking that the institutions of the rule of law are only a mask of exploitation. Although institutions (the "rule of law") are indeed signs of deficit, the deficit is not in the existence of the rule of law, but in the conditions of our lives that make the rule of law necessary in order to live human lives. By making this dramatic mistake, Pérez seems to be in line with the 20th century revolutionaries who fought for revolution but did not achieve revolution, but what Proudhon (the utopian socialist!) saw: an appeal to force, to arbitrariness; in the end, a contradiction. For today it is hard to deny that, as Tomás Moulian has said:

Socialist revolutions could never overcome their mark of origin and always needed coercion to affirm themselves. They could never build a participatory democracy because the "all-out war" (guerra a muerte) never ceases: it is endless.⁵⁷

In other words, the objection against Pérez's less scholarly idea of revolution is not a moralist objection that condemns violence as a method of political action. It is a political objection, one that holds that violence is not a force that can be dominated, but is rather a force that dominates anyone who thinks they have dominated it,⁵⁸ and makes us forget what it was that we were fighting for.

57 Moulián, Socialismo del Siglo XXI, p. 112.

58 See Weil, "The Iliad, or the poem of might", and Atria, "Reconciliation and reconstitution".

III. THE PEOPLE AND ITS WILL

À force de se comporter comme un homme amoureux, il devint de nouveau un homme amoureux.

Isabel Coixet, Bastille (2006)

Now we can return to the question about the people, its will and the law. Our question was: how can the people will anything, and in particular, how can it will into being the rules of ascription? The argument up to now implies that our problem can be solved by understanding the question. In particular, by understanding its mode of signifying imperfectly. This will lead to the observation that, like any theology free from idolatry, our understanding of these political concepts will have to be negative, or, "apophatic".

The will of the people as a double metaphor: the metaphor of the will

For a start, it may be useful to consider the usual objection to the liberal idea of self-ownership, of the property of one's own person. This idea is the basis of liberalism (or at least some varieties of liberalism), because it grounds the natural rights that individuals want to protect by means of the social contract. The usual objection is that this idea rests in a Cartesian dualism of mind and body that is nowadays unacceptable: it assumes that behind this body there is "me", its owner: that my body is an object possessed by a subject different from it as any owner possesses his things, a ghost in the machine. And this, of course, is absurd.

The charge of dualism is an objection against a positive understanding of self-ownership: if the thesis is understood as an answer to the question of who owns my body, it seems to be unavoidably dualist. But the thesis finds basis in a negative interpretation, according to which what is important about it is not the way it answers the question, but its self-evident negative implication: that nobody else (neither the lord, nor the king, etc.) owns me nor my body: I am not a slave, I am free. In this negative sense, the idea of self-ownership is not only free of objection of Cartesian dualism, but it also possesses content that is undeniably emancipatory: it marks the movement, to use Maine's celebrated expression, from status to contract.⁵⁹

Just as the self-ownership thesis is distorted if it is understood in a cataphatic rather than in an apophatic way, the thesis of law as the will of the people must be understood in an apophatic way: it is the will of no one else. Thus, the idea of the will of the people marks the transformation of subjects into citizens.

But let us try to move further ahead. In order to do this, we must use representations. Why a will? The answer becomes apparent if we acknowledge a fundamental fact about what we might call the grammar of the will. Compare what is sometimes called the "direction of fit" of preferences and beliefs: while beliefs are directed to fit the world (thus

⁵⁹ The question, of course, is not only "philosophical". Gerald Cohen claimed (in Cohen, Self-ownership) that the self-ownership thesis that lies at the bottom of Marx's concept of exploitation, makes it liable to a neoliberal critique like the one deployed by Robert Nozick. Therefore, Cohen claimed, the thesis had to be abandoned. But what had to be abandoned is the thesis in its cataphatic sense only.

having an intrinsic criterion of correctness) desires are directed to make the world fit to them (hence they are self-affirming). If I am challenged ('why do you want X?') I can point to the fact that I want it ('this is simply who I am'). If I am challenged as to why I believe something I owe an explanation in terms of reasons, i.e. in terms of the world.

Whoever invokes a belief in the public, appeals, then (correctly or incorrectly), to what is universal, to reasons that are, in principle, valid for everyone.⁶⁰ The particularity of the person speaking is, therefore, transparent. The speaker claims to be giving expression to something that is in principle universal, in the sense that it could be said by anyone; but he who expresses a will affirms his particularity - he claims (correctly or incorrectly) authority to decide the issue, to decide it in such a way that the decision is not made valid by its correctness, but rather because it is his decision. The particularity of the person who wants is not transparent: his wanting is contingent and thus it is valid because it is his will:

What is sacred in science is truth; what is sacred in art is beauty. Truth and beauty are impersonal. All this is too obvious.

If a child is doing a sum and does it wrong, the mistake bears the stamp of his personality. If he does the sum exactly right, his personality does not enter into it at all.

Perfection is impersonal.⁶¹

Because perfection is impersonal and truth universal, believing is transparent: the phrase "I believe that p (is the case)" means the same than "p (is the case)". But willing

60 This subject is thoroughly discussed in Atria, "La verdad y lo político (i): La verdad y su dimensión constitutiva".

61 Weil, "On Human Personality".

is not transparent in the same way: a will is always somebody's will. To say that law is will is to say that the existence of law (its validity) is not something universal, that it is always somebody's law: it has been posited, rather than discovered. Auctoritas, non veritas, facit legem. The sense in which this is an emancipatory idea can also be found in Hobbes' Leviathan:

And when men that think themselves wiser than all others, clamor and demand right Reason for judge; yet seek no more, but that things should be determined, by no other mens reason but their own, it is as intolerable in the society of men, as it is in play after trump is turned, to use for trump on every occasion, that suite whereof they have most in their hand. For they do nothing els, that will have every of their passions, as it comes to bear sway in them, to be taken for right Reason, and that in their own controversies: bewraying their want of right Reason, by the claym they lay to it.⁶²

The reason why law is volition is that its validity does not depend on its conformity to reason. And the reason for this is that, ever since Hobbes, appeal to the authority of reason does not immediately constitute an appeal to reason's authority, but rather an appeal to the authority of the person making the appeal.

In this first sense, the apophatic content of the idea that law is volition is denial of the unmediated authority of reason. It is a mistake to understand the denial as a celebration of irrationality. It only means that reason cannot rest in any formal authority, and thus its strength is reducible, to use Habermasian jargon, to the unforced force of the better argument. And this is related to the second sense in which law is will. To affirm that I want X is the same as saying that (I think that) X suits my own interest.

62 Hobbes, Leviathan, Ch 5.

Of course, I may be wrong. But if no one has authority over me, that means that only I can correct myself to reach greater clarity as regards my interests. My destiny is my responsibility, and my mistakes will be mistakes and will last until I correct them, (this was the first sense: my will is valid because it is mine). Thus, my decisions may be described as mine, and my history is my biography.

In this second sense, the fact that law is the people's will means that law is what goes in the people's interest, that is to say, in everyone's interest (we will say more about this step from "the people" to "everyone" soon). But of course this is too ambitious; as Rousseau said in The Social Contract,

In order to discover the rules of association that are most suitable to nations, a superior intelligence would be necessary who could see all the passions of men without experiencing any of them; who would have no affinity with our nature and yet know it thoroughly; whose happiness would not depend on us, and who would nevertheless be quite willing to interest himself in ours; and, lastly, one who, storing up for himself with the progress of time a far-off glory in the future, could labor in one age and enjoy in another.

Gods would be necessary to give laws to men.⁶³

By discovering the idea of "general will", Rousseau founded the modern democratic tradition. But the moment in which he discovered the idea and the moment in which he identified its historical or political improbability were the same. Using the terms introduced above, although applying them to Rousseau is anachronistic, we may say that the improbability of the general will lies in the fact that it must be identified under conditions of alienation. In these conditions, what is ours appears alien. Thus, the general

63 Rousseau, The Social Contract, 2.7.

will, i.e. what goes in everybody's interest, seems to be different and opposed to our own, factious, particular interest. This contradiction between common and particular interest, is what gives meaning to the idea of 'state of nature' (the case proposed by Hobbes is, as always, the most perspicuous one): the state of nature was a literary resource to illustrate circumstances in which it was immediately evident to the reader that the individuals' immediate interests were in conflict with their real interests. The paradox of the natural condition of mankind is not that there is bellum omnium contra omnes, a situation that is deplorable for all, but the fact that such a situation is brought about by the rational actions of individual people, each of whom is doing what, in the circumstances, goes in his or her individual interest. Because everyone is pursuing his or her individual interest, everyone loses. And note carefully that here "everyone" does not mean a magical, mysterious supraindividual entity, but each one.

The problem is not that there is no such thing as the interest of all; the problem is that in the natural condition of mankind identifying the common interest is unlikely, and what is likely is that each will pursue his or her individual immediate interest. This is the reason why "without a common power to keep them all in awe, [men] are in that condition which is called Warre", in which "nothing can be Unjust."⁶⁴

Thus, the creation of a common power capable of keeping all in awe is what makes peace likely.⁶⁵ But though it makes

⁶⁴ Hobbes, Leviathan, Ch 13, p. 88-89.

⁶⁵ That is why it is so naïve to say that the function of the constitution is to "limit" power. Not because it is naïve to believe that power needs to be limited (that is obviously

peace likely it does not make freedom likely, for it makes us subject to an heteronomous will. The sense of democratic institutions is that they make it more likely that we shall only be subjected to what is in the interest of all. This they do by introducing formal criteria of recognition (just as we have seen that the law of contracts introduces formal criteria of recognition of fair exchanges, or the law of wills introduces formal criteria of recognition of the deceased's last will as to how his or her assets ought to be distributed). When those criteria are met, because those criteria are met, then we can treat the relevant decision as a decision taken from the point of view of everybody. We can express this by saying that the decision has been taken in the name of everybody, i.e. that it is everybody's decision. But notice that the claim that it is everybody's decision is not based on the idea that the formal criteria are likely to produce a right aggregation of preferences. Indeed, in times in which the number of citizens who fail to vote is considerable, there is no reason to assume that, if aggregating preferences were the fundamental point about

true), but because of the assumption that this is the first problem, the main function of a constitution. But the limitation of power is the second problem. The first problem, the really fundamental one, is the creation of power. Constitutions create power, and so enable us to overcome the state of war among us, which is the sign of the absence of power (Hobbes' "natural equality"). The case of Iraq's postwar situation is the most evident case of the dissolution of power and of the difficulty (or even, in these circumstances, the impossibility) of re-creating it (on this, see Gray, Black Mass, pp. 149-161), but there is no need for us to go this far: the problem in Latin America is precisely that: the creation of a power strong enough to submit the natural forces (that are sometimes called, using a contradictory expression "factual powers").

democratic institutions, a sufficiently sophisticated poll would not produce a better report than a popular election. The point is not about aggregating preferences, but of assuming the proper perspective. And law's claim to be everybody's decision is based on the fact that, by advancing through the different stages of institutional procedure and thus causing the issue to be discussed in public by different people from different perspectives, when a decision receives the final, formal mark that allows us formally to identify it as the will of the people it is likely that it will have been purged of particular interests. O at least more likely than alternative institutional arrangements such as four generals deciding what is good for an entire country.⁶⁶

For, let us not forget, the general argument about institutions involved two moments. The first was answering the question of the meaning of the institution: it was held to be a means to make something probable that would otherwise be improbable. The second regarded the way in which institutions can achieve: a testament is an institutional device to identify the last will of the deceased as to how his or her assets ought to be distributed, but when asking whether a testament is valid we do not ask the substantive question: Does it truly contain the testator's last view on

⁶⁶ In a Chilean summer festival in February 2011, a stand-up comedian made a rather homophobic routine. The next artist was Puerto Rican band Calle 13, and its leader, Resident, criticized it on national television. The next day the comedian said that he would not accept any criticism coming from a foreigner. Resident replied with a phrase that explains better than I could the reason why institutionally mediated democracy cannot be understood as a second best vis-a-vis direct democracy: "I see from afar what you can't see from up close" ("veo de lejos lo que no ves de cerca").

the subject? A contract is an institution of which the function is identifying exchanges that are fair, i.e., those in which none of the parties has been exploited by the other as if they were simply resources, yet in order to determine whether a particular instance of the institution is valid we do not ask the substantive question: is it fair? The legislator is an institution of which the point is the identification of that which is in everybody's interest, but when a given law has been passed its validity cannot be challenged by showing that it is not in everybody's interest, that instead in this case a particular lobby was especially effective.

Thus, we treat whatever is produced by the institution (laws in the "formal" sense) as if it were what really lies in everybody's interests (laws in the "material" or "substantive" sense). The gap between the formal and the substantive sense can only be properly breached by (something like) the notion of a sacrament, as explained above.

Law, then, is a sacrament of radical recognition. This implies that it has two faces, which correspond to the two senses in which law equates to will. To citizens, it presents itself as their will, as what we think is good for us. As it happens with all of our beliefs, it is fully reducible to our reasons for believing it is correct.⁶⁷ This is shown by the fact that it does not make sense to hold fast to a belief that one has come to accept is false. Our beliefs, in other words, are intrinsically connected to reason, they are transparent to reason (not in the sense, obviously false, that I can only have "true" beliefs if they are rational, but

⁶⁷ The point is thoroughly discussed in Atria, "La verdad y lo político (i): La verdad y su dimensión constitutiva".

in the sense that I cannot hold a belief once I have seen it as irrational). That is why political deliberation knows no a priori limits: the fact that a will has been formed by means of legislative procedure does not constitute a reason to stop thinking or deliberating or campaigning about the issue, so that if we come to the conclusion that the previous decision was wrong we can simply change it. This is the meaning of the old idea that law does not bind the legislator.

But if law appears to the citizen as his or her will, as what they believe from a universal point of view, namely, what they really want, it appears to the individual as pure heteronomy: as a decision that is valid because it has been adopted in accordance with valid procedures, and that will stay in force, even if he or she does not agree with it, until it is repealed in accordance with the same procedures. To a pharmaceutical company's CEO who negotiates collusive agreements according to the law of his competitors, it does not appear to him as his own will, but rather as a norm that binds her regardless of her desire; that is, that coercively constrains her freedom.

This is the reason why law is, like religion, the sign of an alienated world. Hence, Pérez claims that under Communism there will be "exchange but no market ..., family but no marriage, government but no state, organizations but no institutions"⁶⁸ and then he adds: "order but no laws."⁶⁹ Each of these pairs is meant to rescue law's first dimension while denying the second. All of them express the idea that institutions make probable what is improbable: were it not for our alienation, family, government, organizations, and

68 Pérez, Proposición de un Marxismo Hegeliano, p. 20.

69 ibid, 91.

order would be immediately probable (i.e., probable without institutional mediation), because they would seem "natural" and thus institutions would become redundant. But the question before us now concerns the sense in which living with markets, states, marriage, institutions and laws points to a non-alienated life in which exchange, family, government, organizations and order come about naturally. It is in this tension that the idea of the law as the will of the people exists.

For there were gods before Christianity, and peoples (pueblos) before democracy. And just as Christian theology uses a pagan concept, god, in order to subvert it and express the idea that there are no gods, democratic tradition takes hold of an anti-democratic concept, 'the people', in order to subvert it and express the idea that there are no peoples (pueblos).⁷⁰ The mistake of thinking that God is a supernatural wizard is equivalent to mistaking the people for a discrete group of individuals each distinguishable from the next, which is the mistake of using, as has become common in our days, the word "people" (pueblo) in the plural (like "indigenous peoples"). Pueblo, like God, is a word that can only be used in the singular.

The people, bearer of a negativity

Idolatry (theological or political) starts, as we have seen, in the movement from the negative to the positive, from the apophatic to the cataphatic. Positively characterized, God is

⁷⁰ The standard Spanish rendering of "people" is "pueblo". But "pueblo" is a singular noun, hence grammatically speaking it admits a plural form ("pueblos"). Since this is not the case in English, in this paragraph I had to use the Spanish word.

a super wizard, and the people is an existing entity, defined by race or some equivalent (natural) property. An apophatic idea of God understands it as the denial of all human deficits, and so we could say: God is love. This is not a statement about what God is, but one about that which denies all human deficits (thus the argument discussed here is not a reformulation of Feuerbach's familiar argument, but rather its reversal: it is the reversal of the reversal). Correspondingly, "people" is a denial of all political deficits, and so we are able to say that it is radical mutual recognition. Again, this is not so much a statement about what 'the people' is as statement about that denies all political deficits. The contrary is political or religious idolatry.

Schmitt says that "in a special sense", the people is a negative concept:

In a special meaning of the word, the people are everyone who is not honoured and distinguished, everyone not privileged, everyone prominent not because of property, social position or education. Thus states Schopenhauer: 'whoever does not understand Latin is part of the people'. In the French revolution of the year 1789, the bourgeoisie as Third State could identify itself with the nation and the bourgeoisie was the people, because the bourgeoisie was the opposition to the aristocracy and to the privileged. Sieyès posed the famous question: What is the Third State? He answered that it is the nation. The third state is nothing and should become everything. But as soon as the bourgeoisie itself appeared as the class that is marked by property and that dominates the state, the negation had to move. Now the proletariat became the people, because it becomes the bearer of this negativity: it is the part of the population that does not have property, does not participate in the productive surplus, and finds no place in the existing order.⁷¹

⁷¹Schmitt, Constitutional Theory, p. 272.

And, in order to avoid the predictable ad-hominem objection of the Nazi-hunter, who will find a way to show that somehow Nazism follows from this, we may note that the same idea, albeit in somewhat different terms, is defended by Pérez:

Our enemies have and must have the same universal rights we claim for ourselves. What we deny them are those particular rights which they claim for themselves, and which make them, structurally, our enemies: all those rights that have only been established to legitimate exploitation.⁷²

This is why 'the people' is universal: because it is the bearer of a negativity. Any non-negative feature with which we were to characterize it would be a non-universal property. From here the argument proceeds along the lines we have discussed: politics (rather than a modus vivendi on the one hand and management on the other) can only survive under a sacramental conception of our institutional life, and the Protestant principle is the negation of one of the main reasons why such sacramental understanding is unlikely: because of the normalizing effect of institutions, i.e., its operative opacity. Political institutions will always be defective, because of the very same reasons we need them. Like the Kingdom of God, which in Cullmann's celebrated formula is with us "already but not yet,"⁷³ law is the will of the people, but it will never be the will of the people, until we can in fact have order but not law, in which case it will be made redundant; when, in other words, it will wither away.

Does this idea lead to a devaluation of our democratic institutions? At this point, the answer to this question needs only to be verbalized: since alienation cannot be

72 Pérez, Proposición de un Marxismo Hegeliano, p. 186.

73 Cullmann, Christ and Time, p. __.

"diagnosed" from a non-alienated situation, it can only be experienced as a contradiction between promise and deliverance: between the idea of fair exchange between subjects that recognize themselves reciprocally which gives meaning to the law of contracts and the strategic action it permits and, in a way, promotes; between the idea of gratuitous love which gives meaning to marriage and the spheres of abuse and domination it creates; between the aspiration to radical and reciprocal recognition that lies in the idea that sovereignty rests essentially with the people and the imperfect institutional forms that allow factious interests to masquerade themselves as common interests. By means of exploiting these contradictions we may understand what it means to overcome them. In Proudhon's terms, we have to put the theory of property against property; the philosophy of contract as an autonomous exchange among agents that recognize each other against the contract by means of which each individual uses the other as an instrument to his or her own ends; the idea of the family as a community constituted by love against marriage as a sphere of patriarchal domination; the idea of law as the will of the people against the negotiations of the 'political class'.

This implies the exclusion of what may be called the "Portalian principle". As is well known, Diego Portales was of the idea that citizens were "full of vice, ... lacking all virtues necessary for democratic governance". The corruption of the citizenry implied the necessity of "a strong, centralizing government", so that only "once they have been moralized, the completely liberal government may come, free

and full of ideals, where all citizens have a place."⁷⁴ The objection to the Portalian principle need not be the denial of its premise, i.e. that we are, in an important sense, full of vices and lacking all virtues. The objection is that living under institutions whose contradictions make the fact of their deficit clear is the only way in which we can aspire to overcome alienation. Only living under imperfectly democratic institutions shall we develop the virtues necessary for democratic governance.

The people as a post-institutional concept

And now, at last, we can join the strands of the argument together. Our starting point was to note that the intelligibility of our political institutions depended, as the intelligibility of every legal concept, on its relation with some pre-institutional concept, namely, a concept which does not assume the existence of any institutional correlative. But though they require a non-institutional correlative to become intelligible, in their operation they must be opaque to it. A legal concept may operate without a pre-institutional correlative, but it is, in fact, unintelligible: pure formalism, a meaningless ritual. One that in its operation is fully transparent to its pre-institutional correlative might be intelligible, but does not make any difference and is redundant.

However, unlike other legal concepts, the democratic concept of 'the people' could not be pre-institutionally understood, because that would forced upon it a distorted

74 Written in Lima, March, 1822, and available in multiple sources. See, for example, Silva, "Ideas y confesiones de Portales", p. 15.

content: the people as a naturally characterized group (in which case democratic theory would be inherently racist, or ethnocentric) or as an aggregation of individual interests (in which case it would be inherently neoliberal). But with no pre-institutional correlative to render it intelligible, democratic institutions can be nothing but form. Thus the options do not seem particularly attractive: democratic institutions are an empty formalism, an arrangement neoliberal or plainly racist (ethnocentric). This is why nowadays we seem to be living under the domain of dead ideas, that is to say, ideas that operate, but are unintelligible. Given that we seem forced to choose one of the three options above to make sense of democratic institutions, no wonder that they look like dead ideas!

But unlike all other legal concepts, and given its character as the founding concept of every other institutional form, the non-institutional correlate of the institutional concept of the people is not pre-institutional, but actually post-institutional: 'the people' is an anticipatory way of talking about the whole of humanity. We already live according to the will of the people, but not yet. Since it is an anticipatory concept, it rejects two opposite mistakes which should by now be familiar enough: the mistake of believing that, since in biological terms it constitutes a species, "humanity" is an operative political category and that of believing that politics can only be particularistic (be that either a ground to reject them or to embrace them)

The people is the bearer of a negativity; it is the universal, bereft of everything particular. It is common humanity, universal community. However common, humanity does

not truly exist, but is rather a goal of history. But from this it does not follow that it is an empty concept. It exists in an anticipatory or eschatological manner, within our political practices, which can only be understood as grounded on its will.

Thus, when we speak of the people, although we know how to use our words, there is an important sense in which we do not know what they mean. Fundamentally this is because of our special ignorance of universal reciprocal recognition. We know how to talk about infractions and contracts because of our understanding of infractions and contracts. We know how to talk about the people, not because of any understanding of the people, but because of what we know about its will.

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