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The Tyranny of Rights

by

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**Master's Thesis
Political Science
Carleton University
Ottawa, Ontario, Canada
20/09/1**

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**The undersigned hereby recommend to
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Acceptance of the thesis,**

The Tyranny of Rights

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Sakis Agiomavritis, B.A. (Hons.)

**In partial fulfillment of the requirements
For the degree of Masters of Arts**

Chair, Department of Political Science

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September 20, 2001**

Abstract

Most people are under the impression that individual Rights are a positive contributor to human development and that they present a progressive style of politics. Most believe that Rights, because they empower the individual and free him from traditional moral restraints, are the ideal realisation of justice. However, most don't seem to understand the very harmful implications of a Rights based form of justice.

This paper attempts to display the full impact that Rights have on human reality. The first chapter examines human political community. The second defines the function of Rights and the last chapter, using the two previous chapters as background, analyses the effects that Rights have on human political community. In sum, this paper attempts to illustrate that the peace and freedom promised by a Rights based form of justice is illusory. Instead of peace and freedom, Rights ends up producing a stale and even meaningless form of existence which centres around the self.

Table of Contents

Abstract.....	11
Introduction.....	2
Chapter I. Schmitt and the Political.....	9
Chapter II. Kojeve and Right.....	27
Chapter III. Rights and the Illusion of Freedom and Justice....	38
Bibliography.....	95

"Philosophy is not a doctrine of Right order, but the light of wisdom that falls on the struggle; and help is not a piece of information about truth, but the arduous effort to locate the forces of evil and identify their nature. For half the battle is won when the soul can recognise the shape of the enemy and, consequently, knows that the way it must follow leads in the opposite direction".

-Eric Voegelin, *Plato*

The following essay is my modest attempt at locating the forces of evil and identifying their nature.

Introduction

**" Things are going to slide in all direction
Won't be nothing
Nothing you can measure any more
The blizzard of the world
has crossed the threshold
and it has overturned
the order of the soul "**

- Leonard Cohen

Even though the world has at no time in its history been as 'ordered' as it is today, it is nevertheless experienced as chaotic. Even though man has never before enjoyed the power he presently wields, he still feels himself to be powerless. Man is plagued by a feeling of failure and decay, even as great 'developments' take place. Despite the overflow of rules and regulations whose function is to guide and direct, the citizen finds himself confused and puzzled. The soul has lost its sense of

direction. Man has lost his purpose. The liberal-technological reality has created a divide between man and the divine source of meaning. As a result, human existence is experienced as absurd and a deep spiritual crisis develops. None are secure from the existential grip of this crisis which burdens our contemporary age. There is no refuge.

Now, there are three ways a person can react to the surrounding spiritual disorder. One can ignore it and lose oneself in everyday trivialities. One can despair and lose all will to live. Or one can resist by denouncing what is illusory and false (second reality) and thus indirectly point to what is true and actual (first reality). Yet, where does one begin ? How does one attempt to cause a fracture in the all encompassing liberal-technological illusion which has engulfed our lives? To answer this we must look back and assess the reactions of other men in times of spiritual crisis. Because " what Tonybee called the 'times of troubles' , usually coincide with the expansion of political science to a comprehensive account of human society and history and of the fundamental principles of order "1, an expansion which attempts to elucidate the nature of the "troubles", we must seek out the basis of past expansion of political thought with the hope of better understanding our

¹ Peter Emberley and Barry Cooper, eds. *Faith and Political Philosophy: The Correspondence Between Leo Strauss and Eric Voegelin, 1934-1964* (University Park: The Pennsylvania State University Press, 1993) , ix.

own 'times of troubles'. Now, who better to turn to than Plato. Amid the devastation left behind by the Peloponnesian War and the countless corrupt politicians, amid the wrongful execution of the wisest of all men, amid the disorder which consumed Athens, Plato attempted to resymbolise the order of transcendence by questioning himself and his native city on the subject of justice. Taking our cue from Plato, we must begin by investigating the question of justice. To consider contemporary man's understanding of justice and to assess its implications is the main purpose of this essay.

As the question of justice in contemporary society is discussed, the notion of individual Rights immediately comes to the forefront of one's mind. It is impossible to examine the role of justice in our society without taking into account individual Rights. Indeed, "it is impossible to study human reality without sooner or later coming up against the phenomenon of Droit, particularly if one considers the political aspect of reality..."² And so, to investigate the nature of modern justice is to investigate Rights. Now, a theoretical analysis of a document listing individual Rights, such as the Charter of Rights and Freedoms, will not reveal any profound insight into the nature of Rights.

² Alexandre Kojève, *Outline of a Phenomenology of Right*, ed. Bryan-Paul Frost, trans. Bryan-Paul Frost and Robert Howse (Lanham, Maryland : Rowman & Littlefield Publishers, 2000), 29.

Nor will any extensive survey of recent court procedures. The full force of Rights cannot be felt in an isolated courtroom nor can it be defined in the abstract. It seems to me that if one wishes to uncover the true substance of a Rights based form of justice, one must begin by asking the following questions : What structure of reality do Rights impose ? How do Rights influence man's way of being in the world and how do they alter the nature of human existence ? In short, the only way to gain a real understanding of Rights is by studying their impact on man.

But what is man ? Aristotle tells us that he is a political animal. According to Aristotle, man possesses certain natural needs which can only be satisfied within a community. Since the community satisfies natural needs, its development is therefore natural.³ Moreover, since politics is the medium through which members of a community communicate with each other in the hopes of abating their natural needs, politics is also a natural occurrence. Hence, man is a political animal by nature. In short, politics is the result of being aware of one's natural needs, one's irrevocable inadequacies.⁴ A beast bears many imperfections but because it is not conscious of them, it is not a political being. On the other hand, God is conscious of his state.

³ If the experience of hunger is a natural occurrence, the action of eating, which satisfies the hunger, is also natural.

⁴ These inadequacies are said to be irrevocable because they are natural.

However, his state is perfection and thus there is no need for politics.

Due to the fact that man possesses both divine and brute characteristics, he is the only being which inhabits a city. By describing man as a 'ζῶον πολιτικόν', Aristotle expressed that the political is an inescapable aspect of human existence. In other words, one cannot think of man without thinking of the political. And so, to study the impact that Rights have on humanity is to also study the impact Rights have on the politics of human community.

Before assessing the effects that individual Rights have on the political, and by extension on the human being, it is first necessary to possess some sort of valid and clear understanding of what constitutes Right, as well as what constitutes the political. Needless to say, such understanding is not easily achieved and requires many years of study. However, a brief summary of Alexander Kojève's Outline of a Phenomenology of Right, will provide a working definition of Right. While Carl Schmitt's Concept of the Political, will furnish us with the essential characteristics of the political. I have elected to turn to Schmitt's thought for two reasons : First, because Schmitt exposes the fundamental elements of the political (which are the notions of limits, hierarchies and boundaries) in a forceful and unambiguous way.

Secondly, because he reveals the political by pitting it against the liberal. Schmitt highlights the political by opposing it to liberalism. In sum, what I find attractive about Schmitt's thought on the political is that it takes the surrounding liberal setting into account.

Now, because individual Rights can only flourish in a liberal society, it is clear that my thought follows Schmitt's. However, I must acknowledge that Schmitt leaves me somewhat wanting in that I feel that he overemphasises the boundary which separates friend from enemy and does not adequately emphasise the boundary which separate man from divinity. Although, Schmitt links the friend/enemy distinction to the theological, his focus is almost exclusively devoted on the importance of enmity between men. In my opinion, the political cannot be primarily be described as man encountering man, it is more importantly man encountering a divine order. " The fundamental *raison d'être* of a people (is) that it goes its way through history in partnership with God ".⁵

I believe that there is a more meaningful distinction which characterises the political than the one Schmitt formulates. In sum, Schmitt's shortcoming is that he fails to develop sufficiently the

⁵ Eric Voegelin, *Plato* (Baton Rouge : Louisiana State University Press, 1957 ; Columbia, Missouri: University of Missouri Press, 1984) , 39.

experiential transcendental dimension of the political. Nevertheless, in an aggressive and elegant manner, Schmitt brings out many important features of the political. Furthermore, Schmitt's understanding of the political is the one which the preeminent thinker of 'Droit', Alexandre Kojève, accepted and it is one which most other twentieth century political theorists have, at least, viewed with sympathy. And so, a short outline of Schmitt's Concept of the Political will provide the appropriate backdrop for the study of individual Rights.

Chapter I

**" Woe to him who has no enemy, for I will
be his enemy at the Last Judgment "**

- Carl Schmitt

In a liberal society it is taken for granted that the purpose of politics is to coordinate and harmonise human relations to the point where a perfectly peaceful order develops. In other words, according to liberal thought, politics is a mechanism whose function is to progressively eliminate the antagonisms which characterise human society with the hope of establishing absolute security and order. However, Schmitt argues that the true nature of politics is the complete opposite of what liberalism portrays it to be. Schmitt maintains that political activity cannot be defined as an attempt to reconcile individuals

with one another, for politics has the effect of accentuating the irresolvable differences which exist between human beings. Simply put, political actions are governed not by the notion of unity but by the notion of enmity. The substance of the political is found in the disputes which inevitably develop between individuals. Politics are necessarily polemical. Inspired by Hobbes's state of nature, Schmitt describes life threatening struggle as a permanent characteristics of human nature and community.

Because politics is a matter of life and death, individuals are accordingly divided into two categories: the representatives of life and the representatives of death. Since friends help preserve one's existence, they personify life. On the other hand, enemies threaten to cause one's demise and therefore personify death. And so, on a very basic level, politics is about knowing who is your friend and who is your enemy. It is about being aware of both those who support your existence and those who threaten and oppose it. In the end, the political is characterised by well defined boundaries. According to Schmitt, the most significant

boundary is that which separates the ally from the foe. However, if one were to read Schmitt carefully, one would readily realise that the emphasis falls on the enemy. For one needs supporters, only because one has rivals. One seeks out the security of friends because there are enemies which menace one's life. If the enemy did not exist and life could not be threatened, the protective power of friends would not be needed. Indeed, friends would not be needed. Thus the emphasis is placed on the enemy for he represents death.

In effect, what Schmitt is trying to reveal is that life gains meaning only when man becomes aware of the real and imminent possibility of his death. It is only when death is acknowledged as the inevitable and final event of one's life (which is always on the threshold of happening) that one fully understands the seriousness of one's existence. Once man realises that his time on earth is limited, he is immediately grasped by a feeling of urgency. As a result, all his endeavours gain a sense of seriousness. Today's events are meaningful because there might not be a tomorrow. By placing a definite limit to

man's existence, death becomes the preeminent possibility which bestows meaning upon all other possibilities. Death is the possibility which measures and evaluates all other possibilities. In other words, because man is mortal, some undertakings are seen as important and worth the time.⁶

Thus enmity is indispensable to human life for it brings the possibility of death to light. Moreover, by presenting the possibility of death, the enemy more importantly presents the possibility of action (i.e. politics). Action is meaningful only when there is a direction and thus an end to it (death). It is simply impossible to have action without purpose. Purpose is born out of the fact that we are temporal beings. It is because our time is limited that some things will necessarily be viewed as more purposeful than other things. Since, the enemy brings to focus the temporal nature of human existence, he gives direction, purpose and a sense of seriousness to life. Death (enemy) creates purpose which in turn provokes resolute actions. In short, there is no action (politics) without

⁶ This same idea is discussed by Heidegger in section 51 of Being and Time, where he refers to man as a being-towards-death.

purpose and there is no purpose without the enmity (death). Therefore, the meaningfulness of life is preserved by the "objective power" of the enemy. A power which "keeps world history in motion".⁷

Because the enemy poses a danger to one's being (death), he cannot be ignored but must be confronted (action). The enemy demands a response and thus his existence guarantees the survival of action. And so, the sole reason one's life has purpose (i.e. action) is because one has an enemy. The political struggle against the enemy keeps man a dynamic, vigorous and strong being. Political action pulls man away from his insignificant private affairs (animal life) and propels him into the historical world. It seems that the existence of politics (action) depends on enmity (death). A world without conflict is a world without life threatening dangers, without seriousness, without politics (resolute action), without meaning. Thus, it is enmity (death) which bestows upon man his humanity. Human life is valuable only when it is threatened with an unforeseeable annihilation. At this point, one easily notices a

⁷ Heinrich Meier, *Carl Schmitt & Leo Strauss : The Hidden Dialogue*, trans. j. Harvey Lomax (Chicago : University of Chicago Press, 1995), 70.

similarity between Schmitt and Kojève's Hegel. In both cases, human history is characterised by an awareness of the possibility of death.⁸

However, it should be noted that Schmitt stresses the presence of death and not its occurrence. Death is a possibility which must remain possibility. It must never become actuality. If human life finds its purpose in the confrontation with the enemy, to eliminate all of one's enemies would be to eliminate the source of purpose of one's life. Once again one notices a similarity between Schmitt and Kojève's Hegel. When the Master negates, he does not kill the Slave but simply subordinates him. For, it is the Slave's recognition which endows the Master's life with a certain (although not the highest) degree of meaning. Without the Slave, the Master cannot be a Master. And so, political history is not driven by the actual death, "but (by) a behaviour that is determined by this real possibility".⁹ A perfect illustration of this would be the Cold War between the U.S.A. and the U.S.S.R.

⁸ See Kojève's last two lectures of the academic year 1933-34 entitled, The Idea of Death in the Philosophy of Hegel, translated by Joseph J. Carpino.

⁹ Meier, *Carl Schmitt & Leo Strauss: The Hidden Dialogue*, 34.

Each nation believed in a specific faith. The U.S. embraced liberal capitalism. While the U.S.S.R. adopted social communism. Both were willing to destroy the other in the goal of honouring (in other words, forcing the other one to recognise) their respective faith. However, neither state actually directly engaged the enemy and when "communism collapsed, America was suddenly without an ennobling national purpose".¹⁰ When one of the competitors ceased to exist, the other was left without direction and in total confusion (what use is NATO? what is the new direction that U.S. foreign policy should adopt? Who will be the new enemy...Iraq? China? International terrorists?). In short, the meaning of the political becomes clear when one understands that one does not, and cannot, exist in a social vacuum. Politics require that one either favour (ally) or oppose (foe) another's existence.

And so, one must always be ready to kill the enemy but must never actually do it. For with the enemy's demise comes purposelessness. By killing the enemy, one is really harming oneself. According to

¹⁰ Peter Augustine Lawler, " End of History 2000," in *Faith Reason and Political Life Today*, ed. Peter Augustine Lawler and Dale McConkey (Lanham, Maryland: Lexington Books, 2001) , 100.

Schmitt, the enemy maintains the seriousness of life and should be revered as a divine blessing. At this point, a connection between fascism and Schmitt's political thought comes to light. The following passage from The Doctrine of Fascism which was written by Benito Mussolini illustrates the debt which modern fascism owes to Schmitt.

"War alone bring up to its highest tension all human energy and puts the stamp of nobility upon the peoples who have the courage to meet it. All other trials are substitutes, which never really put men into the position where they have to make the great decision- the alternative of life and death".¹¹

However, it is important to realise that Schmitt does not identify the political with hate but with division. According to Schmitt, politics exist because men are divided by the deep spiritual beliefs they hold. In other words, what differentiates one individual from another is faith. It is faith that places certain men within a specific group which then isolate these men from other groups. " The oppositions between friend and enemy are of a spiritual sort ".¹² Humans engage in political battles in order to assert their faith. And so, politics is not simply about

¹¹ Benito Mussolini, "The Doctrine Of Fascism," in *Social and Political Philosophy*, ed. John Somerville and Ronald E. Santoni (New York: Anchor Book, 1963), 426.

¹² Meier, *Carl Schmitt & Leo Strauss: The Hidden Dialogue*, 59.

preparing to kill or be killed. It is first of all about believing in something that penetrates one's being to its very core. Only secondly is it about being willing to defend one's faith with one's life. The logic is simple. Before fighting one must first have a cause to defend. Before one has friends and enemies, one must first deeply believe in something and have a definite stance on an issue. Only after one has adopted a definite stance and found one's faith, does one know who is the ally and who the foe. According to Schmitt, these divisions which separate men from each other are the very substance of politics and must be preserved. Men are divided and it crucial that they remain that way, for the alternative is devastating. The alternative to politics is liberalism.

According to Schmitt, liberalism "strives for agreement and peace at all cost"¹³ and thus is the antithesis of the political. Its primary goal is not to defend spiritual ideals but to establish a perfectly peaceful order on earth. Yet in order to achieve this goal, liberalism must eradicate all the divisive elements which characterise human reality. Differences between individuals provoke a struggle for recognition. This struggle in turn provokes conflict and war which produce a certain level of chaos. It is simple. Civil order cannot be achieved as long as antagonisms persist. In order to achieve perfect peace and order, the

¹³ Ibid. , 41.

divisions between men which are primarily based on faith must disappear. Liberalism attempts to overcome division by religiously promoting a single universal faith whose main tenet is the tolerance of all other faiths. In other words, liberalism is founded on the notion of universal recognition. Liberalism claims that as recognition gradually expands, order progressively develops. When recognition will be universal, order will be perfect. Liberalism defines the movement of history as the universal unfolding of recognition and the progressive disappearance of all antagonisms.

Because to withhold recognition and be 'against' something is to create disunity and turmoil, liberalism demands that no divisive stance on anything be adopted. Instead of political participation which creates political rivalries, liberalism cultivates political apathy.

Liberalism, which is "the search for an absolutely and definitively neutral ground"¹⁴, renders the differences between individuals unimportant. In a liberal society there are no friends nor are there any enemies, for there are no sacred beliefs that are at stake. Everything which is not an immediate threat to the city's organisation is tolerated and deemed 'lawful'. Every point of view is acknowledged and respected, for the individuals basic desire for recognition must be satisfied. In a liberal

¹⁴ Ibid. , 42.

society, the recognition of the individual is of great importance because an unrecognised individual is an unsatisfied individual. To be unsatisfied is to be desirous and thus unpredictable. It is to be a potential menace to society. Stated differently, if a person feels he is not being recognised and therefore feels he is being discriminated against, he will act in an unruly manner. He will protest, strike and riot. He will disrupt the orderly functioning of the state in order to gain the recognition he craves. However, once the desire for recognition is appeased, man no longer has reason to initiate action. Since there is always an element of chaos and unpredictability in any resolute action, perfect order requires the cessation of all resolute actions.

In the hopes of rendering man actionless, liberalism accords the individual recognition which in turn allows him the freedom to satisfy his every desire. When every human endeavour is accorded equal recognition, struggle is no longer necessary and all obstacles to man's satisfaction disappear (freedom). Thus recognition entails freedom. Universal recognition entails absolute freedom. Yet if man is allowed to act in any manner he chooses, it logically follows that his actions mean absolutely nothing. As far as liberalism is concerned, the endeavours men choose to undertake do not really matter as long as there is a stable amount of public order which is preserved. Since it is not significant

what a man accomplishes, he often ends up accomplishing nothing. Without the struggle for recognition, the stimulus for action is lost. In order to achieve universal peace, liberalism provides the individual with the liberty to satiate all his desires and makes real action impossible. Universal peace develops when everyone is satisfied. Satisfaction comes about when all desires are fulfilled (beginning with the desire for recognition). From the moment recognition is accorded and satisfaction is realised, human activity (which is the expression of a lack of recognition) ceases.

Universal recognition which produces universal satisfaction makes the development of a universal order possible. Once universal recognition flourishes and the enemy is accepted and acknowledged as an equal, the historic battle for prestige ends. In other words, universal recognition means that there are no struggles to overcome, no tasks to perform and no causes to defend. Hence, the birth perfectly peaceful order. However, when the serious issue of death disappears, all that remains are the frivolous concerns of entertainment. In Schmitt's words:

" Were the distinction between friend and enemy wholly to cease even as mere possibility men would thus have achieved full security...There would consequently be neither politics nor state, but only a politics-free boredom, culture, civilisation, economy... and entertainment."¹⁵

¹⁵ Ibid. , 44.

As a result of having nothing to accomplish, man finds himself in a devastating state of boredom. With the demise of the enemy, which is caused by universal recognition, a dreadful feeling of *ennui* emerges and envelops the soul. In the hopes of avoiding this boredom, one seeks out various forms of entertainment. One seeks to be numbed from the anguish of living a purposeless existence. After ridding the world of enmity, liberalism must then deal with the spiritual discomforts produced by boredom. Discomforts which could result in civil unrest. After relieving the citizen of his political activities and responsibilities, which also relieve the citizen's life of meaning, liberalism then attempts to alleviate the depressive mood of boredom by offering 365 days of games (in the form of television, movies, computer games, internet ...).

Although it gains importance only after man loses the drive to engage in political struggle, it should be noted that through its comforts, entertainment encourages man to disregard the political and remain actionless. Entertainment is the product of man's reluctance to fight or ask philosophical questions, but it also entraps and further stupefy the individual. In other words, entertainment is both symptom and cause of man's unhistoric condition. It was born from meaninglessness and it gives birth to meaninglessness. Nothing nurtures

apathy like entertainment. There is no greater pacifier than bread and circus. When entertained, the individual does not think nor does he act. He simply sits, submits and lets himself be dazzled by the seductive shadows that are presented to him. According to Schmitt, liberalism is a threat to man's spiritual well being because it is characterised by the great value it accords entertainment. Liberalism seeks to eliminate man's serious concerns and replace them with trivialities which induce apathy and results in civil tranquillity. To achieve order, liberalism injects man with the tranquillising drug of entertainment.

II

Now, even though liberalism is portrayed as being detrimental to man's spiritual vitality, it nevertheless plays an important part in human history. If one elaborates Schmitt's political thought to its logical conclusion, one would realise that liberalism fulfils the role of the enemy, and is therefore indispensable. Because it represents such an immense danger, liberalism is an evil which must be confronted and defeated. Needless to say, Schmitt is fully committed to the cause. It is a holy cause for it is the cause of defending God against false prophets. The purpose of Schmitt's thought is to reveal the Word of God and unmask the false reincarnation of the Word which is liberalism. Thus it

seems that liberalism, because of the evil it represents, confers meaning and seriousness to Schmitt's life. Liberalism is at the same time humanity's greatest enemy and its greatest blessing. It is God's gift to man.

III

If liberalism were to succeed and the distinction between friend and enemy were to evaporate then "the old tenet that man is not to expect full security in this life would be obsolete",¹⁶ and man would inhabit a terrestrial paradise. A place which presents no hostility, only lavish comforts. Yet paradise on earth is not only unachievable, it is also heretical. For to maintain that paradise on earth is possible is to disregard man's sinful and God given nature. Schmitt argues that as a consequence of man's dangerous, dynamic and active nature, politics become an inescapable fact of human life. Schmitt supports his claim for man's dangerousness by declaring that "all genuine political theories presuppose man to be evil".¹⁷ Even such opposed thinkers as Saint Augustine and Hobbes begin their philosophical teachings with the premise that man is by nature sinful and thus dangerous.¹⁸

¹⁶ Ibid. , 44.

¹⁷ Ibid. , 51.

¹⁸ Even though the two recognise man's flawed nature, they react to it in very different ways. Hobbes endeavours to overcome it. Augustine struggles to cope with it.

Now, although there have been many occasions throughout history where man's evil character has revealed itself, there is still no 'genuine knowledge' which can be presented and definitely prove man's sinfulness. In the end, Schmitt admits that his argument is a supposition which is based on what he terms "an anthropological confession of faith".¹⁹ In other words, Schmitt argues for man's inherent sinfulness because his faith demands it.

Schmitt bases the political on the theological. To make the claim that the political is founded on man's inherently sinful nature and that this nature is known only through faith, is to make a theological claim. According to Schmitt, there is an undeniable connection between the political and the theological belief in Original Sin. As a result, the political necessarily implies the theological.

Because man possesses a sinful nature, and is therefore imperfect, politics will never vanish from the face of the earth. In short, man's imperfect constitution demands the practise of politics. As long as there are men, there will be politics. The dangerousness of mankind expresses itself in deep divisions and harsh disagreements which can never be perfectly reconciled. As a result politics, which are an attempt to

¹⁹ This is where Strauss strongly criticises Schmitt in the Notes.

cope with these divisions and disagreements, become necessary. All men bear the mark of sin and thus there will always be division between them. There will never be a utopian order on earth, only political ones. Human reality will forever be characterised by struggle and toil. Any venture which endeavours to unite mankind in one universal state is bound by this reality and thus bound to fail.

Therefore, any attempt to transform man's sinful and imperfection condition into something historical, i.e. temporary, is an attempt to eclipse reality. The claim that the appearance of a terrestrial paradise is simply a matter of time, reveals a strong pathological element intrinsic to modern liberal thought. The modern liberal quest of bringing the heavens down to earth thus establishing perfect peace has absolutely no reference within reality. Because the source of this quest does not flow from reality but from the individual's diseased and passionate imagination, it is properly speaking a pathological quest.²⁰

Human experience teaches that there is no escaping sin and that politics are the closest available salvation from total catastrophe. And so, according to Schmitt, liberalism might very well eclipse reality and blur man's understanding of the political but it will never succeed in

²⁰ *Pathos* is a Greek words which alludes to passion, rage and disease.

completely eradicating the political or the reality to which it belongs. Hence, Schmitt maintains that the tendency that liberalism has of parcelling up human life into "autonomous province of culture" where everything appears to be a private matter can be resisted by listening to and answering the call of faith. In sum, Schmitt is trying to reveal that the tenets of liberalism are illusory and that the reality it intends to impose is a false reality, a 'second reality'.

Chapter II

" The idea or ideal of Justice is truly a juridical idea, and not a moral or religious one."

-Alexandre Kojève

In the Outline of a Phenomenology of Right, Kojève sets himself the task of formulating a comprehensive definition of Right by revealing its origin and function. However, the Outline is more than an inquiry into the nature of Rights, it is more importantly an attempt at describing the legal intricacies which lead to the birth of an all encompassing and all-inclusive worldwide state. In the 450+ pages that make up the English translation of the Outline,²¹ Kojève extensively works out his case detailing with intense intellectual vigour the steps which, according to him, necessarily result in the actualisation of a universal and homogeneous order. The Outline is Kojève's attempt

²¹ The original French version is several hundred pages longer.

at legitimising his belief that **a)** a universal and homogeneous order is progressively enveloping our world and that **b)** to exist in this order is man's inevitable destiny. Now, as the title suggests, a study of the phenomenological impact that Rights have on human reality is an important, if not the most important, means of understanding the realisation of the universal and homogeneous state. In other words, a study of Rights is essential to one's understanding of the UHS for Rights produce changes in human behaviour which in turn create the necessary conditions for the appearance of the UHS.

The argument is simple. Rights begin by being relative but progressively, through historical evolution, become universal. When Rights are accorded absolute value by being acknowledged by everybody, they become universal. Once achieved, universal Rights transform the world into a thoroughly integrated legal entity. In promoting a single set of belief and principles throughout the world, universal Rights unify humanity. By being raised under a system of thought which nurtures equity, all end up acting and thinking in essentially an identical manner (that is in a modern liberal manner). And so, it does not matter which continent one visits, one will encounter the same individual. In sum, because universal Rights mean that all accept the same principles and beliefs (or in Schmittian terms all have the same faith) they purge

national boundaries of their purpose thus eliminating them and creating a universal and homogeneous order.

I

According to Kojève, Right exists when an "impartial and disinterested" third (who Kojève names C) intervenes and mediates a conflict between two subjects of Right (named A and B). The result of the third, C's, intervention is the cancellation of an act by one subject, B, that challenged the Rightful act of the other, A. If A is a neo-nazi racist and has the Right to voice his beliefs in public, B who is a Jew must accept A's Right. If the Jew rebels, his rebellious act will be squashed by C. However, it should be noted that the third is impartial and thus indifferent to either A's or B's personal plight. In other words, if the roles were reversed, C would intervene in the conflict just the same. If the Jew, B, has the Right to preach his beliefs in public, the neo-nazi, A, must tolerate it. If A is not tolerant of the Jew's actions and reacts, C will annul A's reaction and compel his tolerance.²² Note that it does not matter if an action is improper or imprudent. As long as the action is within a person's Right, it must be tolerated.

²² Kojève, *Outline of a Phenomenology of Right*, 38.

C is said to be impartial “ if he neither loves nor hates them (*A and B*), if he refers to their acts and not their persons, and...if his intervention in their interaction will not and could not be altered by the sole fact of interchanging A and B, A playing the role of B, and B that of A”.²³ Furthermore, because the third is indifferent to A or B’s particular situation, he is also said to be disinterested. C is not interested with A’s social status. C is not seduced by how much money B is worth. C does not care if the subjects of Right are black, white, yellow or red. C’s intervention is not personal and there is nothing that A or B can offer C to motivate him to act. And so, C is disinterested if his act of intervention leaves him unaffected, if in the end, he neither gains nor loses anything by mediating the conflict of Right between A and B. It is simple, C is impartial and disinterested if he “ has no ‘egoistic’ motive for intervening”.²⁴

But even though the third’s intervention is disinterested, it is not without purpose. One should not mistake C’s disinterested intervention as being capricious and void of meaning.

“ First of all, the expression ‘disinterested’ must not be taken in too broad a sense...(for) if one acts in a certain way, it is because one has an ‘interest’ in so acting. In this broad sense, there, C’s intervention is not ‘disinterested’ since

²³ Ibid. , 79.

²⁴ Ibid. , 80.

it is voluntary. But the big question is knowing if the interest which prompts C to act is or is not...a 'judicial interest'. If so, we will say that his intervention is disinterested in the narrow sense of the word."²⁵

C's actions, although disinterested, are not random or arbitrary. In other words, the third's intervention is not the result of a whim but is motivated by a judicial principle. It is a deep interest in giving form and actualising justice that causes C to mediate the dispute between A and B. C's loyalty resides with neither A nor with B but with a certain notion of justice. As a result, only a threat to justice can provoke the third's intervention. Thus, " if C is 'disinterested' in the sense indicated, his intervention cannot have another motive than the idea of justice". ²⁶ In sum, C's is impartial and disinterested if he has no egoistic motive for intervening and if his actions comply with the dictates of justice.

Now, all those whose sole concern is the realisation of justice (the third) form an 'exclusive judicial group'. This group is 'exclusive' because, internally, each nation-state is constituted by three types of individuals: A, the possessor of Right, B, the violator of Right

²⁵ Ibid. , 80.

²⁶ Ibid. , 81.

and C, the protector of Right. Therefore not everybody in society is a C thus not everybody is a part of the judicial group. Moreover, because, externally, each nation-state possesses its own judicial group which is distinct and independent from the judicial groups of other nation-states. In addition, this group is 'judicial' because it is animated by the notion of justice. If this group was inspired by any other notion, it would not be judicial but political.

The exclusive judicial group's task is to mould human behaviour in accordance with a given notion of justice. However, to be able to perform this task successfully, the group's actions must be forceful and unavoidable. If an individual's Right is to be an actual fact which effects the way one relates to others, it must be enforced in a definite manner. If the exclusive judicial group is to effectively alter mankind 'unjust' ways, it must not only preach the ways of justice but must also physically impose them. In sum, the exclusive judicial group exists because there are times when the truth of justice must be forced upon the citizen. By employing any means necessary, the exclusive judicial group assure that all actions which do not conform with the notion of justice expressed through Rights are strictly forbidden. In the end, Rights drastically narrow the scope of human action. Nevertheless, on each occasion these circumstances appear, each time a person

suppresses the Rightful act of another and causes the intervention of an impartial and disinterested third who is motivated by a particular notion of justice and whose intervention is forceful and unavoidable, Right has taken place and, according to Kojève, justice has occurred.

II

However, in a world divided into numerous nation-state, each of which has its own faith, the exclusive judicial groups actions can always be avoided and justice can always be violated. Rights reflect each nation's private faith. As a result, Rights are relative to each nation-state. A person can violate another person's Right and avoid the exclusive judicial group's mediation by immigrating to another state where the Right violated is not recognised as Right. Therefore, as long as the political remains a dynamic and active force in organising human community, Rights will never be universal and perfect justice will never be achieved. Since in our present day world Rights are real 'in potentiality' and not 'in actuality', the realisation of Rights remain only a possibility.²⁷ Simply put, Right is real only inasmuch as the third is

²⁷ Ibid. ,126.

able to annul unjust acts.²⁸ If the exclusive judicial group is not able to annul a violation of Right, the violator's behaviour will not be affected by Right and the 'unjust' ways of mankind will continue to persist.

The only way justice can be guaranteed is if there is a single judicial group which administers, with absolute authority, a set of universal Rights throughout the world. It should be noted that such a judicial group would no longer be exclusive, in the external sense, but universal. The closest contemporary example of a judicial group whose function is to enforce universal Rights is the U.N. However, the U.N. is not universally recognised nor does it possess sovereign power over the nation-state. Thus its intervention is not irresistible or unavoidable.

Still, if it did in fact possess sovereign power and was universally recognised, the U.N. would in effect be an unavoidable judicial group able to mediate conflicts and regulate human life according to the demands of a declared set of universal Right. Thus guaranteeing the realisation of justice. In other words, perfect justice will occur when Rights become the sovereign power of the world. Directing, in an absolute manner, all human affairs. Yet, as a consequence of the

²⁸ It should be noted that, according to Kojève, an unjust act is one which violates Rights. In other words, an unjust act is in essence a political act. Judicial acts are always just. And so, the political according to Kojève prevents the realisation of justice.

supreme sovereignty of Rights, nation-states would vanish. In other words, if the world is governed by a single set of Rights which are imposed by a judicial group that is universally recognised, the world would then be a single universal entity.²⁹ Man's historical pursuit for perfect justice results in a universal and homogeneous order. But what does this perfect justice consists of and what exactly does it promote?

Universal recognition. This is what justice in the universal and homogeneous state promotes. Even though Kojève uses the word equity, he is nevertheless discussing universal recognition. An unbearable desire throws man into a bloody struggle which shatters the world. Man's attempt to satiate his desire for recognition divides the world into two realms : the realm of the Master and the realm of the Slave.

Each realm possesses its own distinct way of life and its own particular understanding of justice. The Master obeys the rules of equality. While the Slave's existence is governed by the principle of equivalence. According to the Master, justice is realised when equality in entitlement is reached. While the slave believes that justice is when all

²⁹ See Robert Howse and Bryan- Paul Frost's introductory essay to Alexandre Kojève's, *Outline of a Phenomenology of Right*, ed. Bryan- Paul Frost, trans. Bryan- Paul Frost and Robert Howse (Lanham, Maryland: Rowman & Littlefield Publishers, Inc.) , 26.

receive equivalent benefits and bear equivalent burdens. Now it is crucial to note that aristocratic Right does not recognise the bourgeois (Slave), if it did it would not be aristocratic. Likewise, bourgeois Right does not apply to the aristocrat (Master), if it did it would not be bourgeois. As long as the world is divided into Masters and Slaves, the desire for recognition will never be satisfied. As long as there are two concepts of justice, perfect justice will never be realised.

According to Kojève, true justice will be realised only when the distinctions based on equality and equivalence disappear. In other words, justice will be perfect when its tenets apply to, and thus recognise, everybody. The justice of equity, being the synthesis of the aristocratic Right and the bourgeois Right, recognises all individuals as being equals and as possessing equivalent benefits and burdens. When everyone is acknowledged as everyone else's equivalent and equal, when there is no longer two sets of Rights but one unique Right which is applicable to all, the boundary between Master and Slave collapses and universal recognition flourishes.

The inescapable product of equity is universal recognition (or the inescapable product of universal recognition is equity). And so, equity (in the manner Kojève is employing it) is simply another term

used to express universal recognition. According to Kojève, the bottom line is that unless all realise that universal recognition is the essence of justice, unless all are guided by the principle equity, the universal and homogeneous state will never become real 'in actuality'.

Chapter III

"I do not wish to be mixed up and confused with these preachers of equality. For, to me justice speaks thus: ' Men are not equal '. Nor shall they become equal ! "

- Friedrich Nietzsche

According to Kojève, human history begins with the feeling of alienation and concludes with the feeling of complete satisfaction. Man begins his historical journey as an 'alienated being' and ends it as a 'self-satisfied being'. What carries humanity from one state of being to the other is desire. More specifically, the desire for recognition. As man is accorded recognition, desire is satisfied. The greater the degree of recognition, the greater the degree of satisfaction. When all are fully recognised, complete satisfaction will be achieved and history will end. By maintaining that history is a process which progressively showers an

ever increasing number of Rights (i.e. recognition) on the individual until all enjoy the satisfaction of bearing Rights (of being recognised), Kojève is in effect arguing that human history culminates in the realisation of universal recognition.

However, if Kojève is correct and the distinctive purpose of human life is the attainment of satisfaction through recognition (and thus the overcoming of alienation), then one must conclude that human life is intrinsically tragic. For it seems that recognition is not only impossible during the course of history, it is also impossible at the end of history. And so, the feeling of satisfaction is never really experienced.

Recognition never occurs during history, which is characterised by the Master /Slave dialectic, because the Master simply does not recognise the Slave and because the Slave's recognition is worthless.³⁰ Recognition is likewise impossible in a universal and homogeneous state because from the moment universal recognition flourishes, the notion of recognition becomes meaningless. Recognition necessarily suggests that some will not be recognised. If all are recognised, none are truly recognised. To receive an award is an honour only because it is not presented to all. If an award is given to many

³⁰ Alexandre Kojève, *Introduction to the reading of Hegel*, ed. Allan Bloom, trans. J.H. Nichols, Jr., comp. Raymond Queneau (New York : Basic Books, 1969), 18.

that award ceases to bestow honour (recognition) and becomes meaningless. " For some to have honour in this sense (*that is in the sense of recognition*) it is essential that not everyone have it."³¹ Simply put, the notion of inequality is ingrained in the notion of recognition. Without inequalities which reveal one to be more worthy than another, without a certain level distinctiveness and uniqueness, recognition cannot be awarded to anyone. And so, if all are universally recognised as being equally worthy, then the notion of recognition means absolutely nothing. To recognise everybody (universal recognition) is to abolish the notion of hierarchies, to suppress all inequalities and therefore render recognition impossible.

However, one may argue that this is exactly what Kojève intended. The need for recognition is the result of man's feeling of alienation. Thus by eliminating the need for recognition (or by eliminating recognition altogether) Kojève must have reunited man with nature. Nevertheless, this argument still does not entail satisfaction. Satisfaction is the outcome of desire fulfilled. Therefore, the feeling of satisfaction requires the stimulus of desire. Yet, the end of history means the end of time. Time is an extension of desires. Desires

³¹Charles Taylor, *The Malaise of Modernity* (Concord, Ontario : House of Anansi Press Limited, 1991), 46.

necessarily imply time and space. In other words, the only way time can reach its conclusion is if all desires have been satisfied. But complete satisfaction annuls the notion of satisfaction, for it suggests that all desires have been satiated. Thus complete satisfaction means that there are no longer any desires whose fulfilment produces the feeling of satisfaction. And so, since post-historical man is universally recognised and experiences no desires, how can he possibly be satisfied? If man cannot desire, he cannot be satisfied. Even at this early point one notices that the goal of complete satisfaction and universal recognition is illusory and gives man a false impression of reality.

Now, it must be noted that the notion of recognition is not contrary to the political. For one of its functions is to honour the virtuous while refusing to recognise and therefore condemning the vile. Furthermore, the all important political notion of the 'common good' suggests that a greater degree of recognition will be awarded to those who most passionately participate in its promotion.

"Indeed, it might even be argued that any political society based on some strong notion of the common good will of itself by this very fact endorse the lives of some people, those who support its notion of the common good, over others, those who seek other forms of good, and thereby deny equal recognition".³²

³² Ibid. ,51.

Even though there will be some who will enjoy a higher level of recognition, the notion of common good nevertheless suggests that all citizens will be taken into account and thus recognised. Yet, although all are recognised, they are so not as equals. They are recognised only in proportion to their ability and effort to bring about the common good. In sum, the recognition involved in politics is not one which universalises but one which distinguishes and particularises. On the other hand, universal recognition means that all must be accepted equally and unconditionally. No matter how disordered or perverse, no matter if one is decent or vile, all must be recognised as possessing the same unalienable Rights. No matter how ignoble the desire, the individual should be accorded the Right to gratify it.

The principles expressed by political recognition are opposed, and perhaps antagonistic, to those expressed by universal recognition. In other words, if universal recognition (absolute freedom) is to flourish the tenets of political recognition must be rejected. " Political recognition is as much of dependence as of freedom; I am dependent on your recognition for my freedom. Marx is in this sense right. The state (the political) must wither away for human beings to live free and unalienated lives"³³ . It is obvious that universal Rights, which promote

³³ Lawler, "End of History 2000," in *Faith, Reason, and Political Life Today*, 99.

unconditional and universal recognition, cannot simultaneously promote the political virtues of prudential judgments and noble acts.

I

Because recognition is promoted through Rights, and since Rights are protected by laws, it would seem that the function of modern law is to safeguard recognition. Laws have always been about asserting and protecting one's recognition i.e. status. Yet, what differentiates modern laws is that the recognition they attempt to promote is not political recognition but universal recognition. From the Charter of Rights and Freedoms to the Universal Declaration of Human Rights, the driving principle behind the Rights based form of law is universal recognition. The goal of modern law is to crush all political barriers, erase all political horizons of meaning and thus put an end to politics altogether. In short, laws no longer erect boundaries (the political) but guarantee their abolition.

There was a time when the duty of the law was to establish and maintain authoritative moral and social hierarchies but this has now changed. Modern intellectuals have altered the function of the law

from preserving authoritative hierarchies to annihilating them. As a result, nothing holds absolute authority over the citizen who possess Rights. No act can override the individual's Rights. Nobody has the authority to impede universal recognition. When the supreme human goal is viewed to be the realisation of universal recognition, the once all important political distinction between the virtuous and the vile is reduced to something of secondary importance and ultimately to something of no importance. Because politics is about determining the boundaries and limits of recognition, the large number of laws which protect Rights and promote universal recognition are antithetical to the political. Thus the great amount of laws which safeguard Rights, and which characterise our contemporary societies, are a symptom of the universalising and homogenising process.

Laws have become the means through which principles become universalised and as an inescapable consequence the world becomes more homogenised. The character a person possesses is the result of what that person believes. If all believe in the same principles, all have fundamentally the same character. To bring about perfect equity and render everyone the same (equal and equivalent) is precisely the function of modern laws (Rights). Politics occur on account of the

differences which exists between individuals. Humans have various demands and desires. The objective of politics is to separate the vulgar desires from the virtuous ones. It is an exercise whose purpose is to classify. Placing certain things within certain boundaries and outside others. Thus, politics establishes a hierarchy of goals and desires. Yet, since laws attempt to produce uniformity in thought and by extension identity, they in fact attempt to eliminate the political.

If there is perfect agreement on all issues, there is no need for politics. Perfect order (UHS) entails the eliminating of politics. Equity means that there are no longer any meaningful differences between people and the ideas they hold. However, a person understands his existence to have meaning, only when he understands himself to possesses some sort of identity. A sense of identity is possible only when there are substantive differences which distinguish one individual from another. A person develops an identity by taking part in the debates which arise in the community, for it is during these political debates that the differences between individuals come to light.

In other words, the political process is central to a person's development. But when there are no disputes and no conflicts of principles (for all agree on the principle of equity), when all forces of

society drive towards uniformity in thought and action, there is simply no use for politics and thus the individual is deprived of the tools needed to form a unique identity. Accordingly, his life is deprived of meaning.

Still, it should be noted that the notion of equity embodies noble intentions and that the liberal, who is the leading promoter of equity, is not an evil person fostering evil aspirations. The goal of universal recognition is born out of a deep concern for justice. Now because implicit in the liberal notion of justice is the presumption that to withhold recognition from some is a form of persecution which induces psychological suffering, anything short of universal recognition is regarded as unfair and unjust.³⁴ Behind the liberal claim that all differences are relative and that therefore everyone and everything should be recognised as being equal and equivalent is the hope that a universal and homogeneous order will give root to perpetual peace. The liberal wants nothing more than to be good and just. However, the quest for peace at any cost translates into a quest for equality and equivalence at any cost. In the hopes of creating perfect harmony, the citizen is stripped of all unique traits. Rights force the extraordinary to conform with the ordinary. It is true that there is nothing more peaceful than a herd of sheep but there is also nothing as stupid.

³⁴ Taylor, *The Malaise of Modernity*, 46.

There is an inconsistency between the liberal idea of protecting the citizen's dignity and the procedures which are employed to enforce that idea. Procedures, such as Rights, which in fact deprive the citizen of any sense of identity and dignity. In short, the concerns which produce Rights are legitimate, but regardless of the intention, Rights have a harmful effect on humanity and a catastrophic one on politics.

II

As the amount of procedures which enforce Rights increase, the political notion of justice shrinks. Rights express explicitly and without ambiguity the way one should behave if one wishes to be deemed good and just. The only actions which are declared to be just are those actions which follow the explicit guidelines laid out by Rights. If one wants to be considered a decent human being and not be punished by the law, one must respect the Rights of all individuals i.e. one must recognise all individuals. Simply put, Rights are a rational mechanism of control that produce and firmly maintain social peace by narrowly prescribing how a person ought to conduct himself within human community. But under these stifling circumstances, man's actions lose their historic character. Human endeavours become stale, repetitive and meaningless. Still, justice demands that one initiate resolute action.

However, Rights eliminate the possibility of such action and thus also eliminate the possibility of justice. The narrowness and rigidity of Rights are in effect a threat to justice for they produce a crippling purposelessness.

Free resolute actions are dynamic and violent. They enter the world and alter its shape in unpredictable ways. Yet to regulate action through Rights is to render them predictable and controllable. In other words, it is to destroy their very essence. Actions which are predictable are not free resolute actions but motions or behaviours. Furthermore, by regulating and constantly directing human conduct, Rights in fact breakdown man's sense of responsibility. There is simply no room for thoughtfulness or discretion and there is no need for resoluteness in a world governed by an elaborate system of Rights.³⁵

³⁵ Nowhere is this better revealed than Heidegger's Being and Time. In section 54, Heidegger begins by discussing the fact that Dasein's potential for an authentic existence (that is an existence characterised by freedom and responsibility) is stripped away by its absorption into the THEY. Now the THEY can be described as an invisible power that directs (with the use of such things as Rights) Dasein towards an inauthentic existence (that is an existence characterised by a lack of freedom in thought and action). Thus rights can be understood as an extension of THEYSELF'S morality. Individual Rights are the THEY's mechanism of thought and action control. And so, in its inauthenticity, Dasein organises its existence to suit the commands of the THEY. Dasein mindlessly follows orders and never really acts or thinks on its own behalf. The Dasein which exists inauthentically is merely the unreflective shadow of the THEY and thus possesses no sense of identity. It mimics the THEY's every movement without question or protest. It is important to note that one of the reasons that the THEY's power is so great is because it exerts what can be termed 'soft power'. One of the main ways this soft power is exercised is through Rights. In other words, the THEY's control over Dasein's existence is so subtle that Dasein does not even notice it is being controlled. The THEY's discretion in domination greatly strengthens its position. If Dasein does not know that it is being manipulated, it obviously cannot revolt against its manipulators.

The effect of formulating justice explicitly through Rights is that it dictates precise actions which one cannot deviate from and thus prevents the citizen of ever developing prudential judgment. The more the citizen is told what to do, the less he exercises, and has use for, his common sense. Instead of morals, Rights produce rules and regulations. Because Rights attempt to construct a complete and closed system of justice, the citizen does not need to ponder about the meaning of justice. He needs only to obey the law and honour the procedures stipulated by the system. For example, if one wants to be seen as a just employer, one needs simply to apply the procedures (and satisfy the quotas) required by an affirmative action plan. Now, in order to be effective, justice must be readily accessible and easily applied. In other words, efficiency demands that the tenets of justice be explicitly spelled out in an easy-to-follow system of procedures. If a defective situation is to be effectively redressed, it must be perfectly controlled and mastered. The imposition of procedures give man the impression of absolute control. However, when everything is reduced to rules and procedures, when everything is governed by the idea of total efficiency, the inefficient art of politics becomes insignificant. As the value of efficiency grows in our society, the value of politics diminish.³⁶

³⁶ We have somehow been convinced that our very survival as a species depends on our adopting the most efficient ways of living. Thus if one wishes to be honoured, one must be viewed as contributing to the realisation of total efficiency, absolute freedom, universal recognition and perfect justice. Terms which for the modern liberal are synonymous.

It should be clear that since Rights form a system of justice, they are therefore a decontextualised form of justice. In other words, with regards to the application of Rights, immediate circumstances carry no significance. Thus prudence, which takes into account the particulars of a situation, is no longer required. When there is a perfect solution waiting to be employed, there is no need for prudential judgments. Rights reduce justice to an established body of rules formulated as an explicit set of regulations which are available to all and which all can effortlessly follow. These rules are said to be universally valid and are applied, by a bureaucracy, in a mechanical and unthinking manner. In short, Rights express the belief that a set of abstract rules can be imposed on any given situation and produce justice. Making personal deliberations unnecessary and even undesirable.

By depriving the citizen of the opportunity to deliberate, Rights render him irresponsible and incapable of any significant independent thought. Concealed in the system of Rights is a doctrine of justice which centres on equity. Rights are doctrinaire for they narrow the scope of reality by promoting a closed system of precise beliefs and fixed set of goals. All thoughts and actions are guided by the same principle (equity) which directs everyone towards the same direction (UHS). All human experiences are reduced to a universal and abstract

group of procedures which mechanically produce the same results (equity). At this point, one can see why in a world ordered by Rights, circumstances are not really important. If all act and think in roughly the same way (that is terms of equity), there is no radically distinct circumstances to speak of. Once again, we notice that by promoting the application of specific procedures which all must follow, Rights tend to eradicate all distinctive thoughts and actions which characterised individuals. When one's existence is regulated by Rights, one does not need to call up his being, test his beliefs or contemplate about justice. He needs only to let himself be shepherded by the guidelines of the liberal doctrine of equity.

Rights induce a stasis in being. Stunting human understanding and development. Restrictively rational and totalising procedures prohibit all questioning thus they have the effect of repressing all human thought. In sum, because the UHS is characterised by the cessation of thought and action and because Rights suffocate thought and action, the more Rights we have the closer we are to the universal and homogeneous state. Nonetheless, a Rights based system of justice is judge by many to be an effective and efficient form of justice for it offers formulations of explicit rules and principles which can easily be transposed in writing. Making the ways of justice accessible to all.

By obtaining certain documents which list individual Rights, it is believed that all citizens can learn to be just in their dealings with others. It is assumed by many that the written provisions of the Charter of Rights and Freedoms (or any such document) offer a clear path towards justice.

With its authoritative appeal, the Charter imparts the illusion of perfect justice and complete certainty. As long as one conforms to the written stipulations of the Charter, one will be just and nothing can go wrong. And so, what use is there for political debate when the solution to the problem of justice can be found in a document. Moreover, the very existence of a Charter of Rights and Freedoms encourages and empowers judicial review thus weakening and taking the focus away from political debate. The result of devoting more of our time discussing Rights is that our discussions become less political.

" In recent decades, more and more energy in the American political process is turning towards a process of judicial review. Matters that in other societies are determined... after debate and sometimes compromise between different opinions (*politics*), are seen as proper subjects for judicial decision in light of the constitution".³⁷

³⁷ Taylor, *The Malaise of Modernity*, 114.

III

Rights translate into laws and laws entail bureaucracy. A high output of legislation demands an elaborate bureaucracy. The more laws a society has, the more bureaucracy is necessary to administer the various laws. Thus legislation requires a bureaucracy to perform the administrative function of implementing the law. A function which is essentially apolitical. Moreover, it is precisely because they are apolitical, that bureaucracies are said to be just. " Its (the bureaucracy's) staff is hired on the basis of some skill, not because of a family or social connection, and all those who come before the bureaucracy are treated the same; all are recognised equally ".³⁸

A society becomes void of politics once the defining feature of that society becomes administrative. The more Rights are granted, the more important become bureaucracies, the less necessary become politics. Thus it would seem that in our world of ever increasing Rights, sovereignty has shifted from the political to the bureaucratic. Sovereign power is passing from the nation-state, whose duty is to protect the

³⁸ Pontuso, "Trevarian's Shibumi: The perfect Post modern Tale," in *Faith, Reason, and Political Life Today*, 146.

interests of its people, to international bureaucracies (U.N. E.U), whose function is to safeguard the universal Rights of all people. This is perfectly illustrated by the European Union's dealings with Turkey. The bureaucratic policies of the E.U. are coercing Turkey into becoming a Rights based liberal democracy.

If Turkey is to be a part of the 'world empire', it must first subordinate its national sovereignty to the international sovereignty of Rights. If Turkey is to be accepted as a 'civilised' and not a 'rogue' nation, it must comply with international regulations. Iraq is said to be a 'rogue' nation because its government's actions are not accepted as acts of national sovereignty but as a criminal acts which have broken international law. In short, Turkey must endorse a process which Iraq has rejected (although for dubious reasons). Turkey must consent to the process of homogenisation. This not only implies that Turkey should recognise the Rights of its own people, but those of all peoples, including its enemies. Universal Rights, enforced by the European Union, demand that Greece and Turkey recognise each other and that the millennium old enmity which created a boundary between the two nations evaporate. It seems that Rights have become the sovereign power which governs our world for they have come to dictate the terms of discussion and engagement between states and citizens.

As illustrated with the example of Greece and Turkey, and as Kojève points out in the Outline of a Phenomenology of Right, the function of Rights is to depoliticise and neutralise a political problem. Rights offer a system of solving political issues which, by imposing strict procedures (enforced by C) ,transform the political question (between A and B) into a policy question and thus a non-political question. The political problem of justice becomes an administrative problem to be solved by bureaucrats. From being a political animal, man becomes apolitical bureaucrat. Rights depoliticise and neutralise³⁹ for they suggest that problems of injustice are simply technical and that the solution is to be found in the proper procedural application of individual Rights. In short, man's salvation from the evils of inequality lies in the individual Right policies administered by the bureaucrat.

Now, Rights might very well neutralise a political situation but Rights are not themselves neutral or value free. Modern laws denote a particular interpretation of human and non-human nature. There is a certain reading of reality that is suggested through Rights. There is a certain way of understanding man which legitimises the application of Rights. This understanding declares man to be the source of all law and order. And so, Rights are not unbiased stipulations which are empty of

³⁹ Tom Darby, " On Spiritual Crisis, Globalization, and Planetary Rule," in *Faith, Reason, and Political Life Today*, 48.

ambition or purpose. The procedures mandated by modern laws are not impartial or uncommitted. These procedures have been designed to bring about a specific goal. Rights attempt to lead humanity towards a certain well defined place. That place is the universal and homogeneous state. Rights have been conceived with a definite end in mind. As a result, they can only bring about that definite end. Rights accomplish one thing and that is homogenisation.

Rights foster the belief that the good development of humanity is in the realisation of universal recognition which will in turn lead to perfect justice and absolute freedom. Hence, a person is labelled unjust, if he is not effectively contributing in the effort to bring about universal recognition. In sum, Rights are not value free for they are means whose shape has been dictated by a specific end, and that end is total efficiency, absolute freedom and the fruition of a perfect order (UHS).⁴⁰ Rights, which embody a certain set of values, impose a manner

⁴⁰ It is believed that freedom grows proportionally with the rise of efficiency. Efficiency is determined by the distance, measured by the time and space, between means and ends. Efficiency grows as the space isolating means from ends diminishes. Thus, the more efficient the means, the less distance there is separating means from ends and the quicker the ends are realised. The quicker the ends are realised, the less time is sacrificed in the pursuit of the intended ends. Efficiency creates leisure (freedom) for it provides man with the opportunity to spend less time working for the preservation of his and his family's existence and more time on satisfying his personal desires. In other words, efficiency emancipates man from labour [toiling the soil] and provides him with the freedom to pursue whatever he desires. Because of efficiency, man no longer needs to live by the sweat of his brow. In sum, total efficiency comes about when means and ends are in perfect harmony. When means instantaneously realise the ends. By collapsing time and space, total efficiency frees man from the confines of history. [On this point, see Tom Darby's essay "Reflections on Technology : An Excursus as Introduction," in *Sojourns in the New World*, ed. Tom Darby (Ottawa, Ontario: Carleton University Press, 1986) , 8.]

of viewing the world, a manner of being. Rights are not dispassionate but are a form of willing. They are a manifestation of man's 'libido dominandi', his will to power.⁴¹

Rights are about recognition and recognition is power. In the end, Rights are about empowering the people. The idea that man can determine what is just, creates an immense sense of freedom and power. Universal Rights (universal recognition) complete the revolution which began in 1789, for they satiate the metaphysical rebels hunger for absolute power. By imposing the values of universal recognition and absolute freedom, Rights attempt to supply life with a purpose which will in the end radically empower man. Through Rights man exercises his mastery over nature. Nature bore man into an unjust world but with the use of Rights man will overcome nature's injustice. Furthermore, through Rights man can even will the past. It is believed that every injustice ever suffered by man can be redressed with Rights. Thus remolding the world to an elaborate system of Rights endows man with immense powers.

Moreover, by not being neutral, Rights do not allow for decisions about right or wrong. For the simple reason that Rights already

⁴¹ Gerhart Niemeyer, *Between Nothingness and Paradise* (Baton Rouge: Louisiana State University Press, 1971) , 141f.

express a certain idea of what is right. As a consequence, one cannot exercise Rights without invoking that idea. Because Rights are tainted by a partial view of reality, each application of Rights promotes that partial view. And so, when one is faced by a dilemma and turns towards Rights for guidance, he is in fact relegating his responsibility to decide what is good and adopts the idea of the good implied by Rights. Since there is no need to decide what is proper and what improper, there is also no need to be responsible, prudent or even thoughtful.

IV

The irony is that Rights, which were created with the hope of justice, have reduced man's ability to contemplate justice. Modern man's understanding of justice limits itself to those things which become identified as Rights. The plethora of Rights which saturate our society prevent man from understanding justice as being anything other than the procedural. Thus the justice of Rights is perceived as the unique legitimate form of justice. Whenever a citizen demands justice, he is referring to Rights. The cry for justice is a cry for Rights.

Stated differently, man's experience of justice is confined to the procedures formulated by Rights. As a result, justice is understood only in terms of Rights. For example, a fetus has no distinct Rights and thus it is not viewed to be unjust to destroy a fetus. Simply put, the mother is accorded recognition (she is recognised as a human being) while the fetus is not. Only when the fetus gains recognition and is provided with Rights will abortion be perceived as unjust. As long as there are no Rights which are being violated, there is no injustice being committed. And so, it seems that Rights are not judged by the standard of justice, but that Rights are the standard of what is just. In the end, the political question of justice becomes a function of man made Rights.

The standard of justice articulated through Rights is recognition (power, efficiency and freedom). Therefore, perfection of justice requires universal recognition (absolute power, total efficiency, complete freedom). In other words, Rights produce an understanding of justice which centres around the self (the recognition of the self). This understanding made its decisive appearance with the French Revolution. The citizen, understanding himself to be a slave, viewed his civic duties as slavery. As providing the master with a satisfaction which he never experienced. Growing weary of giving and never receiving, the slave begins a revolution which would turn reality on its head. Instead of the slave

providing the master with recognition, the slave now demands recognition from the master. These demands take the form of Rights. The justice of Rights demands to be given what is owed. When Kojève argues that justice consists in equity, he is in effect arguing that everybody be given what they are owed. That everybody be given equal status and equivalent results. Thus from Kojève's point of view, homogenisation is perceived as essential for the improvement of justice in the world. However, homogenisation can only be achieved through the universal regulation and formulation human experiences.

Now there is an understanding of justice which examines not what is owed to the individual, but what the individual owes. This understanding is articulated by Saint-Paul in Romans 13:1-13. There he states that justice is not to be given what is our due, but to give what is due. Justice is not to take but to render. It is not to be honoured (recognised) but to honour. Saint-Paul further elaborates on the subject of justice using the image of the Mystical Body to illustrate that justice is doing what we are fitted for. This idea was also articulated by the ancients. "The traditional Western view of goodness (justice) is that which meets us with an excluding claim and persuades us that in obedience to that claim we will find what we are fitted for".⁴² This

⁴² George Grant, "Technology and Faith," in *The George Grant Reader*, ed. William Christian and Sheila Grant (Toronto: University of Toronto Press, 1998), 439.

traditional view involves the notions duty and obligation rather than Rights and recognition. Justice is born when all fulfil their proper duties. In other words, justice is when each individual accomplishes what he is capable of accomplishing. Suggesting that not all are able to perform the same feats.

Contrary to Kojève's notion of asserts perfect equity, the idea of justice revealed by the ancients strongly expresses the notion of hierarchies. Rorty is correct in arguing that from the stand point of the universal recognition (he uses the word Hegelianism), Platonism is the enemy of justice.⁴³ For implied in the statement that justice is what we are fitted for is the assumption that we are not all equally fitted for the same things. Each person has a task to realise and justice consists in acknowledging that task and realising it in an excellent manner. However, "goodness (justice) is now apprehended in a way which excludes from it all 'owingness' ".⁴⁴ When the cry of justice is a cry for Rights, the call of duty becomes an inaudible whisper. Making human community, which obligates one citizen to another by mutual interdependency, impossible. Other human beings exist only as sources of recognition and power. Others exist to give us what we are owed. The city was established in order to give us what we are owed.

⁴³ Lawler, "End of History 2000," in *Faith, Reason and Political Life Today*, 104.

⁴⁴ Grant, "Technology as Ontology," in *The George Grant Reader*, 429.

" Relationships and institutions are then simply instruments and tools...serving the same end of enhancing the individual's security and control over the world ".⁴⁵

Since Rights guarantee that we will be given what we are owed, they impose an instrumental conception of human relationships thus degrading human community to an agreed set of arrangements established for the private satisfaction of each. As a result, the political process of determining and articulating the common goal of a distinct community no longer carries any significance. There are no common goals, only private one's. The politics of the common good give way to the administration of Rights.

By legitimising every individual's private goal, Rights polarise society for they pit one's private goal against another's. In other words, Rights produce an understanding of reality which is filtered through one's intimate needs and desires. Thus cutting the individual off from any shared experience of a divine reality and negating the possibility of an authentic human community. Politics are simply impossible without an overarching metaphor which is experienced by all to be intrinsically meaningful.

⁴⁵ William M. Sullivan, *Reconstructing Public Philosophy* (Berkeley, Los Angeles and London; University of California Press, 1951) , 60.

Unlike the laws of traditional societies, which directed man's attention towards a higher and divine order (symbols), modern laws draw all focus to the self. Rights are self-referential in that they do not attempt to rise above their narrow particularities. They do not attempt to direct man's thoughts to anything other than man (signs). In short, Rights designate the individual as an absolute. They do not allow the individual to commit to anything that transcends his private interests. And so, Rights should not be interpreted as symbols of a divine will (God given Rights). On the contrary, because they are created by man and point exclusively to man, they discourage and even prevent philosophical transcendence. As a consequence, the notions of the good, the just and the virtuous are understood solely on the basis of recognition i.e. power.

In true Machiavellian fashion, what is good, just and virtuous is reduced to recognition-power. To be recognised is to be honoured. To be honoured is to gain authority and authority is power.⁴⁶ Recognition equals power equals virtue. Once the encounter with divine order is lost, reality is understood solely on the basis of recognition-

⁴⁶ Leo Strauss, *On Tyranny*, Revised and Expanded Edition, including the Strauss-Kojeve Correspondence (New York: The Free Press, 1991) , 143.

power.⁴⁷ When there is no overarching metaphor⁴⁸ which can command respect and obedience, the task of organising human community is fulfilled by force. At the moment reality is identified as a power struggle, a struggle for recognition, a contract to ensure civil peace becomes necessary. Intimately connected with Rights is the contractarian notion of justice and human community.

V

Contract theory maintains that the bloody struggle for recognition-power gave rise to the city. Therefore the city is not a natural development but is an artificial construct created by man to better appease his desire for recognition-power. And so, to think of the political question of justice in terms of Rights is to have a contractual understanding of human community. Simply put, Rights embody the contractarian attitude which suggests that the individual precedes and is thus more fundamental than the city.

The city was once cherished as a portrait of the divine order of things. The citizen was significant in as much as he was an integral

⁴⁷ Voegelin, *Plato*, 77.

⁴⁸ For a full explanation of this term see Tom Darby, "On Spiritual Crisis, Globalisation and Planetary Rule," in *Faith, Reason, and Political Life Today*, 35.

part of that portrait. The city reflected the sacred. And so, being a devout citizen provided spiritual purpose. It was the position one held in the city's hierarchy which placed limits but also gave meaning to one's civic endeavours. The hierarchical order of the city attempted to reflect the divine order of things. Each citizen was important only in that he was a part of that divine order. However, when Rights become the organising force of human community, when the citizen's main concern is the satisfaction of his intimate desire for recognition-power, the city is then reduced to an incidental. When the city and the justice it enforces are understood as the outcome of an agreement of reciprocity inspired by private individual needs, all focus and attention shift from the community to the individual. Political reality is narrowed to the point where only the individual's appetites are taken into account. The city, the community and even the family take a second place to one's personal needs.

The contractual requirements i.e. Rights, which establish what is 'just', are formulated by individuals to accommodate their needs and desires. " These contractual relationships are entered into because they are necessary or useful for individuals as means to pursue their private ends ".⁴⁹ The appeasement of the individual's will takes

⁴⁹ Sullivan, *Reconstructing Public Philosophy*, 26.

precedent over any social obligation. As a result, the demands placed on the citizen are minimal and duties are nonexistent. " The modern view of goodness (justice) is that which is advantageous to our creating richness of life".⁵⁰ And so, it is no wonder that the ethical task of modern governments is limited to the defence of the citizen's life and possessions. Establishing an efficient and extensive network of institutions designed to protect the Rights of all is the only responsibility of modern governments. Furthermore, establishing these types of institutions is considered to be the ideal realisation of justice.

Since political life begins with man's intimate desires and ends with the complete satisfaction of those desires, man is therefore prior to the city. In other words, contract theory does away with the ancient notion that man is a political animal by nature. The political community is established in order to fulfil certain human desires. Once those desires are satisfied, they disappear. Thus losing its *raison d'etre*, the political community dissolves. The political community is simply a means to an end. The moment the end is reached, the means become useless and worthless. According to the contractarian view, the elimination of politics is simply the elimination of a once useful and necessary evil. Contract theory implicitly suggests that humanity will

⁵⁰ Grant, "Technology as Ontology," in *The George Grant Reader*, 429.

reach the highest degree of freedom in an order which is beyond politics. Because contract theory views the conservation of life and property as the highest good, and because the only definite manner of successfully conserving these is through universal Rights, contract theory (especially Hobbes) inevitably leads to an apolitical empire and a universal civilisation (UHS).

If the idea of justice which governs the city exists solely on account of its usefulness for the preservation of life and property, it cannot demand of the citizen any real sacrifice.⁵¹ Because justice is understood on the contractarian terms of being initiated by human consensus, it cannot hold any real authority over the individual who is its creator and as a consequence can alter its meaning. In other words, if the notion of justice is a result of human agreement, justice is then void of any absolute authority. If justice is contractual, it is also provisional.⁵² Contract theory in effect maintains that until all needs are met, the meaning of justice will constantly change. However, once all needs are met, the notion of justice will no longer be required (useful) and will disappear.

⁵¹ Preservation begins with recognition i.e. Rights.

⁵² Grant, "Technology as Ontology," in *The George Grant Reader*, 430.

Thus the understanding of justice as "an unchanging measure of all our times and places" and as an object for whom "our love of it defines us"⁵³ has no place in contract theory. The city is nothing more than a bunch of stipulations which form a contract and justice is merely one of these stipulations whose essence is purely utilitarian. Thus justice is not perceived as an intrinsic good but an instrumental good. Justice, not because it is good and noble but because it is necessary and useful. Stated differently, justice is not deemed to be good in and of itself. It is 'good' in that it establishes the procedures which regulate society in a way that efficiently protects one's belongings (including one's life) and facilitates satisfaction. The 'value' of justice stems from its utility.

According to the contractarian view, to speak of something as being just is to designate something as being useful and beneficial. And so, it is not the individual who must attune to the dictates of justice, but rather it is justice which must conform to the appetite of the individual. It is not justice which fashions humanity but humanity which fashions justice. The selfish desires of the individual become the ordering principle of the city. The individual's private passions impose themselves on, and thus eclipse, the divine order of things.

⁵³ Ibid. , 435.

Clearly, at this point, one can readily notice the considerable difficulty which the contractarian argument presents. For what is in effect being argued is that the notion of justice which governs the life of the citizen is simply an assumption which has gained majority approval. The city and its justice have meaning not of themselves but because individuals choose to accord them meaning. Stated in this manner, it is rather obvious where the danger lies. To conceive human community as resulting from a social contract is to understand man to be the fountain of order and the standard which measures all things. It is to explain all law as originating in the individual's creative freedom. This understanding necessarily refutes the presences of a divine and natural order of things. An order where worth is revealed and not created. According to the liberal contractarian view, there is nothing prior to man's freedom. There is simply no other criterion of judgment than freedom.

"Things that were once settled by some external reality- traditional law, say, or nature- are now referred to our choice. Issues where we were meant to accept the dictates of authority we now have to think out for ourselves. Modern freedom and autonomy centres us on ourselves..."⁵⁴

⁵⁴ Taylor, *The Malaise of Modernity*, 81.

But with this great freedom comes great responsibility. The responsibility of formulating worth and meaning. Contract theory places upon man the heavy responsibility of creating a perfect society, but at the same time diminishes his ability to be responsible. Through contract theory, the individual loses his responsibilities as creature and gains the responsibilities of a creator. Man is free from morality which binds the creature and becomes the creator of values, the creator of worlds. Perceiving the world to be an imperfect state of nature characterised by constant war (the struggle for recognition), man concludes that he has the responsibility to create a state characterised by orderly peace (universal recognition). Thus the individual relates to the world not through a sentiment of gratitude but through the actions of remolding and reconstructing it. The citizen becomes an engineer (social as well as mechanical) who changes the face of human community to resemble the most just and efficient way of existing. Those who are not themselves engineers, nevertheless think in the engineering terms of efficiency. If there is some sort of injustice (inefficiency) plaguing mankind, it is believed that all that is needed is a little tinkering with nature (mechanical engineering), with society (social engineering) or with human nature (human engineering) and all will be resolved.

Because man is viewed as the ordering force of the world, human community must account for itself and give man its reasons for being. The city's ordering principles must first pass before the court of human *doxa*. The notion of justice must justify itself to humanity. However, if everything in the city is formulated and shaped by human opinion, nothing is of great importance. " Which issues are significant, I do not determine. If I did, no issue would be significant ".⁵⁵ In short, meaning is a function of an overarching metaphor which is given and not created by man. Standards created by human beings hold no intrinsic value. Thus when one suspects that all principles are arbitrarily created by individuals, one no longer believes in anything.

Although the question of justice is central to the political, the understanding of justice promoted by the contractarian view (Rights) is ultimately apolitical. When advantage becomes the sole incentive for justice, when utility becomes the first principle of justice, the notion of justice then becomes philosophically and politically invalid. The question of why should I be just to another can only be answered on utilitarian and not experiential or philosophical terms. Thus justice suffers a divorce from its transcendental origins. This is an instance where a symbol of transcendence becomes immanentised.

⁵⁵ Ibid. , 31.

Rights compel man to think of justice in terms of immanent order and material efficiency. Terms which are beyond good and evil. And so, the individual who maintains that the standard of truth is society or history (in other words, man), must confront the matter of nihilism. Contract theory leads inevitably to nihilism. To assert that man is the absolute creator of order is to experience the world as chaotic, absurd and meaningless. If man is the source of all worth, then the world is in itself worthless.

VI

All that has been stated thus far points to the conclusion that because modern laws (i.e. Rights) tend to eliminate the political along with the limits and boundaries it establishes, they promote a kind of apathetic nihilism. The political suggests that there is something at stake. It is a struggle to know which actions " to approve and which to disapprove ". It is a trial which aims to discover who to " praise and who blame ". " Political things are...not neutral but raise a claim to man's obedience, allegiance, decision, or judgment ".⁵⁶ And so, politics demand that one be in favour of something while being against

⁵⁶ Leo Strauss, *Liberalism Ancient and Modern* (New York; The Free Press, 1959) , 57.

something else. In short, the political reveals that all is not permitted. That all will not be honoured. That all acts will not be tolerated. That all issues are not equally important. On the other hand, the attitude being articulated through Rights is that everything should be equal, and therefore everything should be permitted. Rights do not stifle disordered behaviour, but tolerate and encourage it. The bottom line is that by attempting to recognise all, Rights are in fact attempting to legitimise all.

And so, the freedom which comes to light at the end of history has the effect of corrupting man's soul. For it is nothing more than the freedom to commit crime without shame or guilt. This freedom gives man the ability to commit crime without even being aware of the crime being committed (When they said REPENT/ I wonder what they meant -- Leonard Cohen, The Future). Like the Ring of Gyges, Rights attempt to liberate mankind from the traditional moral and social sanctions of a well ordered society so that all can gratify their most intimate desires. But unlike the bearer of the Ring, today's criminals commit their crimes in plain sight. Rights emancipate and nourish passions to a point where passions come to eclipse the moral and natural order of society.

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Crime arises because the border which separates prudence from imprudence has been violated. It arises when one's dreams cross the threshold and enter the realm of reality. Thus the notion of crime evokes the notion of borders. Borders which separate the imaginary from the real, good from evil, just from unjust. However, the notion of universality and homogeneity suggests that there are no borders. As the world approaches the universal and homogeneous, borders tend to disappear. Once the all important border between vice and virtue collapses, once good merges with evil, crime ceases to be an issue. Indeed, the notion of crime ceases to have any valid meaning.

Crime can be defined as the transgression of the boundary between one's private desires and the public realm. In other words, when one is incapable of differentiating one's selfish interests from the common good, when one exhibits one's private desires in the public domain, that is crime. For example, the problem with pornography is not that people are having sex but that they are having it in public. Pornography is a crime because it display in public an intimate act which should be kept in private. Yet the more the process of homogenisation and universalisation progresses, the less are we able to discern the private from the public realm.

The universal and homogeneous state does not allow for two distinct human realms. By definition, the UHS expresses a common and comprehensive domain. Thus the more advanced the process of homogenisation and universalisation the less are we able to identify crimes. In a globalised world, crimes can be conducted daily (abortion, euthanasia, cloning) and one would be unable to identify them as crimes. Yet this is not accidental. Crime cannot be distinguished because they simply cannot be committed in a universal and homogeneous state. Crime is antithetical to the UHS. The terms mutually exclude each other. Either one lives in a society where crime occurs or one lives in a universal and homogeneous state. One cannot inhabit paradise (UHS), if one is a sinner (criminal). The logic is simple. As long as human community is plagued by a criminal element, the universal and homogeneous state cannot come into existence. Before the tranquillity of paradise can appear on earth, man must become sinless.

Crime implies desires. Desires entail actions. Actions indicate that the historical process has not ended. It is impossible for crime to occur in the UHS, for it is a phenomenon which can only manifests itself in time. It should be noted that the traditional notion of crime and what we presently consider to be a crime are not the same. The crimes which are recognised in our increasingly homogenised world

are not the crimes against the good or the just but the one's against globalisation. All acts which stall the progress towards universal recognition (universal Rights) are viewed as criminal.

" Things take on importance against a background of intelligibility. Let us call this a horizon. It follows that one of the things we can't do, if we are to define ourselves significantly, is suppress or deny the horizons against which things take on significance for us".⁵⁷

Yet, this is precisely what is occurring. Universal Rights (universal recognition) requires the suppression of all horizons, especially moral ones. In order to achieve universal recognition and perfect order, man must be freed from the notions of good and evil. As long as there are some who are honoured for being good and others who condemned for being evil, recognition will never be universal. As long as there is the question of who is right and who is wrong, there will never be perfect peace. Since those who are good will struggle against those who are evil. Those who are right will fight those who are wrong. And so, for the greater good of peace on earth, questions of right or wrong must be placed on the back burner.

⁵⁷ Ibid. ,37.

" Agreement at all costs is possible only if man has relinquished asking the question of what is right... but if he seriously asks the question of what is right, the quarrel will be ignited ".⁵⁸

Rights, which disregard the notions of good and evil, are perceived as facilitators of peace. While the political, which evokes these notions, is perceived as an obstacle. Hence, Rights are glorified as the building blocks of eternal peace. They are glorified in this way because they are viewed as efficient producers of order. They are efficient producers of order precisely because they are beyond good and evil. Now, when all horizons are effaced and all choices are recognised as being equally legitimate (universal recognition), the all important distinction between right and wrong collapses. If everything is legitimate, nothing is evil and thus nothing is good. If everything is equal and equivalent, it logically follows that nothing is either good or evil. When we think of our deepest concerns as Rights, we are treading the waters of nihilism.⁵⁹

⁵⁸ Meier, *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, 46.

⁵⁹ Yet, man is not impervious to the experience of meaninglessness. On the contrary, Rights can be understood as an attempt to elicit purpose and meaning. The purpose promoted by Rights is, as stated earlier, the homogenisation of the world and the realisation of perfect justice on earth. Unfortunately, the task of homogenising the world which man has chosen to fulfil is tantamount to digging his own grave. Instead of easing the sense of meaninglessness, homogenisation increases it. This is where man's blindness and the power of Rights are both displayed. Man's blindness consists of using Rights to alleviate the nihilism which Rights have created. The overflow of Rights which have overtaken society exhibit man's lack of understanding of justice which he attempts to cover up with more Rights. The power possessed by Rights consists in man's inability to think about justice without invoking Rights. In the end, the more we promote rights the more we promote nihilism.

In order to overcome the notions of good and evil, Rights promote the belief that there is no such thing as an absolute standard. The modern liberal argues that questions about 'ought' are not susceptible to a definite solution. The result of this argument is an apathetic tolerance. "The principle of tolerance, or, more precisely, moral non-judgement rooted in both fear and respect, has now become a comprehensively social principle".⁶⁰ The political task of detecting a reliable and firm answer to the question of what is right, is disregarded as being impossible. As a result, liberal Rights exclude from their discourse the asking of the most important question of what is right, proper and prudent. Creating an atmosphere of political indifference which in turn cultivates an amoral and perverted tolerance. This tolerance is amoral and perverted because it is the tolerance of criminal and wicked acts. Nothing is certain and so everything is permitted. We do not know if abortion is wrong, thus we allow it. We do not know if euthanasia is bad, thus we tolerate it.

The popular belief that Rights based justice is founded on a conception of mutual respect for persons is entirely inaccurate. Rights rest on the grounds of mutual tolerance and not respect. Consequently, no one has the prerogative to question or criticise another's desire. By

⁶⁰ Lawler, "End of History 2000," in *Faith, Reason and, Political Life Today*, 104.

not being checked by criticism or shame, the individual feels himself free to desire anything. And so, the liberal attempts to solve the problem of justice with Rights that declare the moral neutrality and equality of desires.

For the sake of perfect peace and order, Rights are completely oblivious to moral principles and beliefs. It is clear that the liberal interprets the problem of justice as a problem of immediate order. Now, when everything is tolerated and permitted, the distinction between the honourable and the dishonourable vanishes. When all are universally recognised, all are honoured. But when all are honoured none are really honoured and thus none are dishonoured. When all choices are tolerated and all acts are permitted, governments no longer need to perform the political task of distinguishing an honourable deed from a dishonourable one. As a result, the government is reduced to fulfilling the apolitical function of an arbitrator. According to the liberal contractarian understanding of society, the responsibility of government is to play the role of a referee placed between the several competing goals and values which citizen's hold. The important point is that in the same way that the referee in a sporting event does not favour one team over the other but simply guarantees the smooth running of the game being played, modern liberal governments do not favour any specific goal or

value over any other but simply assure the smooth running of society.

Modern liberal governments simply arbitrate conflicts between individual interests (i.e. conflicts of Rights) and arrive at a settlement acceptable to everyone. This in turn creates more Rights.

Furthermore, it is only when the government is understood as a mediator of Rights that the entrenchment of a Charter of Rights and Freedoms is perceived as being necessary. The Charter lays out the directives which the arbitrator must implement. It announces the rules of engagement which the referee must enforce during the game. In the end, the Charter of Rights and Freedoms reinforces the governments role as an arbitrator of individual Rights. Instead of gazing at the opponent on the other side of the field, government plays no interested part in the battle occurring on field. Through mediation, governments annul and defuse the possibility of any real action. They are an impartial and disinterested Third. In short, liberal governments simply manage relations between isolated individuals who are essentially seeking their own intimate satisfaction.

Instead of arousing a sense of virtuousness by actively endorsing a moral and political vision, modern liberal governments simply administer Rights which devalue the citizen by stripping him of

any distinctiveness. Rights exhibit the modern governments disinterest towards the citizen's spiritual welfare, and its deep interest in the efficient functioning of the state. This is where the fundamental mistake of liberal contract theory lies. The contractarian's misreading of reality is reflected in the belief that one can order the city without taking into account the spiritual health of the citizen's soul. A society does not establish itself in a vacuum. The substance of the city is the souls of its citizens. The city reflects the virtue of its citizens. Simply put, the city simply cannot exhibit order if the majority of its citizens exhibit a deep disorder.

" A polis is in order when it is ruled by men with well-ordered souls; it is in disorder when the souls of the rulers are disordered. ' Must we not agree that in each of us there are the same forms and habits as in the polis? And from nowhere else do they pass there? ' (435e of the Republic) Plato answers the question in the affirmative: ' The forms of men have as many varieties as the forms of government...for the forms of government stem from the human habits that are in them ' (544d-e)".⁶¹

The primary interest of the citizen, be it making money, attaining high honours or contemplating truth, will be revealed by the city through its laws and customs. The structure and organisation of the city's regime indicates the structure and organisation of the citizen's

⁶¹ Voegelin, *Plato*, 70.

soul. The structure of the psyche is personified by the regime. The regime, in turn, symbolises the existential order of the citizen's soul. The city places on a larger scale the existential condition of its citizens. In short, the soul is the existential driving force of the city. Thus giving it its shape and purpose. The city is man written large. Yet, according to the contractarian view, there is no existential or organic relationship between individual and city. When the city is reduced to a domain of official institutions where the individual's Rights and interests are negotiated, there is simply no sense of citizenship or purpose. There are no natural ties between individuals. All relationships, including the family, can be repealed on the basis of personal satisfaction. As a result, human interaction is robbed of any significant meaning.

" If interest relates men, it is never more than some few moments. It can create only an eternal link between them... where interest is the only ruling force each individual finds himself in a state of war with every other... nothing is less constant than interest... it can only give rise to transient relations and passing associations ".⁶²

The citizen comes to understand who he is by appreciating the binding social relations encircling him. Social hierarchies do not simply express that certain people are superior to others, more importantly, they reveal that everybody holds a unique position in the

⁶² Sullivan, *Reconstructing Public Philosophy*, 35.

community and thus is indispensable to the realisation of the common good. It is one's social relations which endow one's endeavours, and one's existence, with purpose and recognition. Modes of satisfaction which disregard the individual's obligation and ties to others destroy the conditions necessary for a meaningful life. By neglecting the citizen's social relations and focusing on the personal satisfaction of all individuals (universal satisfaction), modern liberalism eliminates the hierarchies and boundaries which preserve mankind. The consequence of hindering the political exercise of classifying goals, of establishing borders, of differentiating the proper limits to human conduct is nihilism. Either you have the political, and all that it entails, or you have nihilism.

Human existence makes sense when it is held within strict boundaries. One's life has meaning when one experiences desires which lead to risky and dangerous actions. Because there is always a risk involved in the crossing of boundaries, it is only when there are firm and absolute limits that an action can be deemed risky. The most terrifying prospect for a human being is to live without ever encountering any limits. For without them, there are no risks. Without risks, there are no desires. Without desires, there are no actions. Desire propels action. However, in order for a desire to develop, there must be a subject which

desires and which is distinct from the object desired. The self can only desire that which is other than the self. Thus boundaries are a prerequisite for desires. Yet, in hopes of harmonising all earthly things, liberalism tends to eliminate the distinction between the self and the other. By rendering everyone the same (equal and equivalent), Rights attempt to blur all the distinctions which exist between individuals. As a result, there is nothing which differentiates the self from the other. The different attributes which characterise individuals and which position one either as inferior or superior to another (slave or master) are forcefully eliminated. These attributes are perceived as being inhibitors to universal recognition i.e. equity i.e. justice.

And so, with the actualisation of a universal and homogeneous state, which brings about universal recognition and thus tears down all boundaries, man becomes absolved of all desiring. Once perfect order is established and human nature is fully regulated, Eros disappears. While eliminating all distinctions, Rights simultaneously eliminate desire, risk, purpose, actions and finally meaning. In the following passage, Kojève illustrates what it is to exist in an age void of desire.

In point of fact, the end of human Time or History- that is, the definitive annihilation of Man properly so-called or of the free and historical Individual- means quite simply the cessation of Action in the full sense of the term. Practically, this means: the disappearance of wars and bloody revolutions. And also the disappearance of philosophy; for since Man himself no longer changes essentially, there is no longer any reason to change the (true) principles which are at the basis of his understanding of the World and of himself. But all the rest can be preserved indefinitely; art, love, play, etc.,etc.;"⁶³

Kojeve's statement is clear. With the conclusion of history comes the cessation of action. Without action (history) there can be no historical beings (human beings). In short, the end of history marks the end of humanity.⁶⁴ Human action has accomplished all that it can possibly accomplish. Man's historical projects have been completed. Humanity's journey has ended. Yet, the journey endowed man's existence with purpose. Now that the journey has ended, man has no longer any reason to live. Hence, the coming forth of a truly nihilistic age.

Having no historic purpose or task to fulfil, man simply produces motions which create no real change or progress. Since neither physical or intellectual struggle reveal anything of original significance, everything becomes a matter of frivolous and capricious play. With the

⁶³ Kojève, *Introduction to the Reading of Hegel*, 159n.

⁶⁴ According to Kojève, the 'end' has presently occurred only in principle but it will inevitably become actual.

emergence of an eternal order of things comes meaninglessness. With infinity comes a disabling purposelessness. It is to travel for hours upon hours and yet never reach a destination. For the simple reason that there is no end in sight. Without a destination, there is no need for thought or action and thus there is no significance to human life. The journey began with man the lover of wisdom and it concludes with man the possessor of wisdom. As Kojève's points out, the end of action also means the end of philosophy. The end of thought. The principles of reality having been discovered, there is simply no reason for man to think. Thought entails action. Action entails change. Yet once the perfect order is achieved, the transformative actions of history are no longer required.

Now, it should be clear that the wisdom gained at the end of history is not the wisdom personified by Socrates. It is not wisdom which acknowledges one's inadequacies and limitations ("ἐν οἷδ᾽ ὅτι οὐδὲν οἷδ᾽", " the one thing I known is that I don't know"). In other words, it is not human wisdom which characterises post-historical man but an all encompassing and divine wisdom. Being wise, post-historical man no longer needs to contemplate about such things as justice. " One can say that in its final form the Droit (equity) is an absolute Droit... it is "

perfect', for it can no longer be improved, no longer being able to change".⁶⁵ And so, at time's end the only remaining task is to develop procedures which will enforce this perfect justice throughout the world. Compelling all men to be free.

"We (post-historical beings) now know that racism, sexism, and classism are wrong; we know what justice is. Education is no longer asking what justice is, but using our wisdom about justice to judge thought and action past and present. Our task today is to employ our wisdom to root out residual error embodied in our institution and individuals..."⁶⁶

VII

It is believed that with the actualisation of this epoch of endless play will come absolute freedom and the realisation of perfect justice. Because it endows man with the freedom to satisfy all desires, the universal and homogeneous order is declared to be the most just order imaginable. It is the regaining of paradise. But what is neglected is the fact that once all boundaries vanish, justice and freedom become impossible. The notion of justice cannot develop in a universal and

⁶⁵ Kojève, *Outline of a Phenomenology of Right*, 268.

⁶⁶ Lawler, "End of History 2000," in *Faith, Reason, and Political Life Today*, 98.

homogeneous state, for justice is about establishing boundaries (between the just and the unjust) while the UHS is about eliminating them. And so, it would be more appropriate to characterise this global state as orderly rather than just.

Likewise, the notion of freedom requires boundaries. As previously stated, without boundaries, there are no desires. Without desires, there is no motive for action. How can there be freedom without action ? When the historical task of realising universal recognition is completed, there will no longer be any need or will to act. Thus there will be no freedom. Some may argue that freedom consists of not experiencing any wants or needs and thus being free from all limitations and boundaries. This understanding of freedom is precisely what Nikos Kazantzakis imparts to those who visit his tomb which is inscribed with the following words : " Δεν ελπίζω τιποτα, Δεν φοβαμαι τιποτα, Ειμαι ελευθερος " ("I have no hopes, I have no fears, I am free"). One has no hopes (goals) only when one has no wants. One has no fears only when one has no needs. One is therefore free in that one's life is not governed by the boundaries established by one's hopes and fears.⁶⁷

⁶⁷ Nikos Kazantzakis, Greek novelist, poet, and thinker. Author of The Last Temptation of Christ, Freedom and Death and Zorba the Greek.

This same image of freedom is presented by Albert Camus in his early work, The Myth of Sisyphus. In this essay, Camus maintains that because Sisyphus is not plagued by needs or wants, he is happy. The result of being forever condemned to repeat the same meaningless motions is that the capacity to desire withers away. In other words, because Sisyphus accepts the reality that he will never again experience desire, he is truly free. Yet the person who exists without desire, exists without purpose. Because Sisyphus is sentenced to redo the same worthless task over and over throughout eternity, he is properly speaking actionless (it seems rather difficult to image such a person as being happy). What Kazantzakis and Camus are describing is not freedom but nihilism.⁶⁸ It is the case that these two terms are often understood as denoting an identical experience. However, freedom expresses something radically different and even contrary to nihilism.

Although it is meant as punishment, the purposelessness of Sisyphus' s existence is, according to Camus, the essence of his freedom. Sisyphus is free because he accepts the intrinsic worthlessness and actionlessness of his life. Because Sisyphus wills the non-historical condition of his existence and chooses to be is actionless, he is free. Yet we learn from Kojève that " freedom is negativity ". Negativity is action.

⁶⁸ Interesting side note: Camus and Kazantzakis were both considered for the Noble Prize for literature in 1957. Kazantzakis lost the prize to Camus by one single vote.

Simply put, without action there is no freedom. As professor Lawler puts it: "All other claims for freedom except historical ones are not really worth taking seriously". Historical freedom is the act of negation. It is to "transform nature through action".⁶⁹ Camus's thought is an attempt to overcome the suffocating implications of the end of history. Camus finds himself in the awkward position of having accepted, in principle, the end of history but at the same time trying to circumvent its logic. He is correct in maintaining that at history's end, human activity becomes in essence identical to Sisyphus's eternal and pointless rolling of a stone. To exist in the universal and homogeneous state is to exist as Sisyphus. It is to repeat, all throughout one's life, the same trivial motions. But Camus is wrong in arguing that even without time (which also means without boundaries, limits, desires, purpose, meaning, politics...) there is still the possibility of free resolute choice and actions.

The reality is that when all boundaries recede and Rights reach the pinnacle of universality, man will reach the depths of bondage. Still, it will not be his body which will be bound but his spirit. " The perfection of democracy (order) is the abolition of human liberty, the disappearance of that singular being capable of acting freely or

⁶⁹ Lawler, "End of History 2000," in *Faith, reason, and Political Life Today*, 98.

historically ".⁷⁰ This freedom gained at the end of time is illusory and empty. What good is freedom when there are no significant choices because there are no serious questions or conflicts to face? " It may be important that my life be chosen, as John Stuart Mill asserts in *On Liberty*, but unless some options are more significant than others, the very idea of self-choice (freedom) falls into triviality and incoherence".⁷¹ The notion of freedom has meaning only when there are limits and risks which deem an action as worthy to be perform. In short, absolute freedom (freedom without limits, nihilism) negates the notion of freedom. When man is free to perform the act he desires without risk, his desire to act evaporates along with the notion of freedom. Absolute freedom shackles man to a paralysing meaninglessness. When everything is permitted and becomes a possibility (nihilism), nothing, of any original significance, is actualised. The notion of freedom requires hierarchies, boundaries and limits. Without boundaries freedom simply has no meaning. The unconfined reign of one's desires does not constitute freedom but slavery. One is free when one acknowledges boundaries by placing certain limits on desire. Obligations are not the antithesis of freedom. On the contrary, freedom implies obligations. As Moses taught us through the Ten Commandments, there is no freedom without law (limits, boundaries).

⁷⁰ Ibid. ,102.

⁷¹ Taylor, *The Malaise of Modernity*, 39.

Nevertheless, many speak of Rights and freedoms as being synonymous (Charter of Rights and Freedoms) and do not realise that, in effect, Rights annul freedoms. In his confusion, the modern liberal comes to believe that by forcefully demanding what he is owed (i.e. his Rights), and thus negating any real attachment to others, he will gain the freedom to develop himself on his own terms. Because the common good demands the imposition of hierarchies, it is understood as being a hindrance to one's personal growth. In the end, liberalism deceptively sets the common good against the individual's good. Prompting the individual to reject the notion that the city reflects a divine order and encouraging the creation of a private order centring around the self. By closing himself inside his own private order, which is created and protected by Rights, the individual believes to have liberated himself from all limitations.

And so, it is presumed that Rights are the perfect embodiment of freedom and justice. Yet to believe this is to misread the purpose of Rights. It is not freedom nor is it justice which is motivating principle behind Rights but order. A universal and homogeneous order. It is order at the price of freedom and justice. Rights impose, through intricate procedures, a particular interpretation of human and non-human nature. As a result, they drastically restrict man's ability to think

and act freely. Rights have one ambition. The attainment of perfect order. Thus Rights are a threat to freedom and justice.

Rights, which have been conceived with the intention of liberating the individual from overbearing institutions whose rules suffocated one's development, end up enslaving the individual. Although Rights may have very well emancipated man from such notions as good and evil, they still do not allow him to think or act in any manner he wishes. Rights require that man think in terms of efficiency and order. "People can be so organised by technological and bureaucratic organisations that they become tools rather than masters of them".⁷² In short, how can one be free when one's thoughts and actions are conditioned, by bureaucratic policies and administrative procedures, to interpret reality in a specific manner ?

Still, most do not understand the real threat of globalisation (which has nothing to do with wages or job security for these are almost always addressed in liberal context of equity). "Most of the westernised world, that is most of the world, blinks and says save us from what? From unprecedented peace, freedom and prosperity...?"⁷³ No. Not from

⁷² Pontuso, "Trevarian's Shibumi: The perfect Post modern Tale," in *Faith, Reason, and Political Life Today*, 147.

⁷³ Lawler, "End of History 2000," in *Faith, Reason, and Political Life Today*, 104.

these, but from the illusion of having attained these. Order is not peace nor is it justice. Nihilism is not freedom. Being victim to an overwhelming yearning for peace and freedom, man has mistakenly embraced their opposites. And so, yes, we need to be saved from the false images produced by the liberal-technological reality, by this second reality. And, yes, like it has always been, only God can save us. " Κυριε Ιησου Χριστε υιε του Θεου ελεησον και σωσον ημας ".⁷⁴

⁷⁴ Lord, Jesus Christ, son of God, help and save us.

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