The Persuasive Force of Exceptionalism:
Radical Democracy, Michel Foucault, and
the Limits of the Modern Subject

By
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Bachelor of Arts, Simon Fraser University, 2003

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Abstract

Does a radical democratic pluralization of power seriously confront the problem posed to contemporary political thought by the current purchase of Carl Schmitt's political theory? Arguably not, given that the force of his approach lies not in the fascistic or dictatorial concentration of power but in his definition of sovereignty as consisting in exceptionalism, the practice whereby some agency, whether an individual or a group, decides the limits of the polity or decides what or who is fitting and appropriate to the polity and what or who is not, an inherently exclusivist act. While radical democrats attempt to overcome this problem of exclusion by being more inclusive and pluralist, they ultimately affirm this idea that the properly constituted polity, the condition of possibility of progress, emancipation, and pluralism, must be limited, excluding some forms of life while including others. They ultimately oscillate around this issue, arguing for more and more freedom and pluralization, while maintaining the need for limits. The nature of this problem stems from the ontology of the autonomous subject of modernity. In modernity, after nominalism removed God from creation, the human being came to assume disproportionate emphasis as meaning-giving subject, assuming the capacity to unilaterally determine what qualifies for existence and what does not. Just as the subject was conceived as self-sufficient in its own right, the modern polity was also so conceived. Thus, both modern subjectivity and sovereignty assume a solipsistic and
monistic ontological form, in addition to being exclusive. Michel Foucault makes a concerted and sustained effort to comprehend and thus stop himself from replicating this problem, an approach far more promising than that of radical democracy, but is limited to the extent that he remains committed to freedom and human creativity and fails to see the onto-theological basis of the problem of modern subjectivity. The failure of his endeavor and that of radical democracy give a powerful indication of the persuasive force of Schmitt’s theorization of sovereignty as consisting in the decision on the exception. The violently monistic and exclusive nature of this form of action indicates the need for a serious interrogation of the problem of the modern subject that continues to constitute the modern Western mode of inhabiting this world, limiting all transformations that fail to appreciate its ontological novelty and significance.
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Introduction
This thesis was initially inspired by Wendy Brown’s consideration, in her *States of Injury: Power and Freedom in Late Modernity*, of how “certain well-intentioned contemporary political projects and theoretical postures inadvertently redraw the very configurations and effects of power that they seek to vanquish.”¹ While Brown appears to be concerned with the manner in which many other progressives problematically turn to the state as a supposedly neutral arbitrating power, I came to wonder to what extent Brown’s concern could be applied to her as well. She believes that, in turning to the state as such a supposedly neutral power, contemporary progressives have dropped the causes of freedom and a truly substantive democracy from their agendas. Thus Brown herself formulates a vision for radical democracy to revitalize the cause of collective collaboration in the contemporary socio-political landscape. But what does this turn to radical democracy imply about Brown’s undergirding assumptions about the nature of the state and sovereignty in particular? Brown’s radical democratic solution seems to assume that political possibilities exist along a spectrum ranging from right to left, with the concentration of power in the hands of the state at one end and a democratic dispersal of power at the other. Thus for Brown democracy and the state are counterposed as opposites, so that an excess of state power can be effectively countered by a loosening of that power through democratization.

But does democratization, even radical democratization, constitute a serious challenge to the form of the modern state, sovereignty? The argument of this thesis is that it does not. To the extent that Brown views political possibility as ranging from power’s concentration to its radical democratic pluralization, her political theory

continues to be informed by a subtle yet powerful theory of sovereignty, whether she uses this theory consciously or not. This theory of sovereignty that is arguably at play between the lines in Brown’s political theory is exceptionalism, the practice that decides the limits to the modern polity. This theory of sovereignty finds its most powerful expression in the work of Carl Schmitt, an influential early-twentieth century German jurist reputed to be responsible to a significant degree for the demise of the Weimar Republic and ascendance of the Nazi regime. In particular, he articulates this theory in *Political Theology: Four Chapters on the Concept of Sovereignty*, where he argues that the sovereign is that agent that decides on the case of an exception. An exception is an event or occurrence that disrupts the normal order, a disruption that must be resolved by the sovereign in order to restore normality once again. Schmitt’s sovereign is entitled to decide both what constitutes an exception and how to resolve an exception. But if the sovereign is that agency that decides on the exception (in both senses), must it be assumed that such sovereign capacity is only a characteristic of a right-wing concentration of power? Arguably, as Schmitt contends, the process of identifying and resolving exceptions is likely to be much smoother if there is only one person who holds that jurisdiction – inversely, if such jurisdiction is divided amongst a multitude of powers, decision on the exception is more likely to get bogged down in disagreement. Nonetheless, despite this question of expedience, which Schmitt himself holds to be of the utmost importance, it is worth considering whether it is possible that democracy, radical or not, itself uses exceptionalist logic. If so, then it would appear that radical democrats like Brown reinscribe relations of power that they would like to resist, as exceptionalist sovereignty is an inherently exclusivist practice. In deciding the proper
limits of the polity, the sovereign decides what forms of life are fitting for inclusion in the normal political order and what forms of life are unacceptable. Although radical democrats attempt to avoid resorting to such exclusion by centering their political theories on inclusion and pluralism, shifting the emphasis to inclusion from exclusion does not constitute a serious interrogation of and challenge to the logic of exceptionalism. This shifting of the emphasis can at best delay the issue of exclusion. As such, shifting the emphasis appears as an attempt to avoid dealing with an extremely difficult and uncomfortable problem.

To be clear, in stating this point I am not trying to suggest that Schmitt is right or that “we” must ultimately exclude. I am not trying to suggest that radical democrats are soft and that “we” need to take a harder line than they have the stomach to take. That would be an incredibly frightening position, although there is no shortage of people who do actually adhere to it. It is precisely the sway that this attitude has that constitutes the point of departure for this thesis in the first place. Nor do I mean to suggest that radical democrats are as bad as fascists or Nazis – this is absolutely not the case. Rather, to the extent that they understand and describe themselves as radical but continue to draw upon this sovereign logic, they leave its power firmly intact, practicing violent forms of exclusion themselves, even if that violence is only of a hermeneutic nature, but also making it easier for more hard-line practices of exclusion to become increasingly accepted. This is also to say that this thesis is not primarily about radical democracy itself. Radical democracy is, rather, one of the sites I use to explore the problem of exceptionalist sovereignty. The other site I use to engage with this problem is the approach of Michel Foucault, who arguably has a better understanding of this problem
than radical democrats do. Foucault is interesting because he seeks to eschew this political logic, most particularly in his genealogy of it in his "Society Must Be Defended" course of lectures. Here, in addition to highlighting the contingency of exceptionalism's emergence, the methodological aim of Foucault's genealogical approach, he points to the failure of radical democrats to break from the logic of sovereignty by suggesting that their objection to autocracy, or the concentration of power, still remains preoccupied with the question of the legitimacy of the modern state. In a number of his subsequent essays and interviews he continues to draw out the implications of his critique of sovereignty, although his emphasis on freedom and the creative capacity of the modern human being begs the question of whether he remains committed to modern subjectivity, thus leaving the basis for exceptionalism unchallenged. The purpose of the explorations of the attempts by both radical democracy and Foucault to resist what they believe Schmitt represents is, above all, to underscore the persuasive force of Schmitt's powerful logic, which rests on the ontology of the modern subject.

What Schmitt argues explicitly appears to rest at the level of an assumption for more progressive, liberal, or left-leaning political thinkers – that the modern polity must have limits and that some agency, whether that agency is an individual or a group, must decide where those limits shall lie. My point is not, to be clear, that radical democrats are too conservative and that they draw the line too soon, but rather that they continue to believe that the line between what belongs to the polity and what does not must be drawn. It is the necessity of drawing this line itself that is the object of my concern. One agency may decide to draw this line at a certain point, while another agency chooses another point. The issue is not where the line is to be drawn, as if some calculus can ultimately
determine the appropriate place for it – 'Well, those people over there look different than us,' or 'Well, those people in that place practice what we consider to be barbaric acts,' or 'How could we truly relate to people from that far away?' – but rather that the line must be drawn at all. Liberal and radical democrats attempt to avoid the position embraced by Schmitt by attempting to be more pluralist and inclusive, but do they not draw the line just as arbitrarily as Schmitt? This is not to suggest that liberal and radical democracy is basically equivalent to a Schmittian-style of fascism; there are definitely different politics to how each approaches the question of drawing the line. Whereas those sympathetic with Schmitt might resort to such line drawing – 'you are either with us or against us' – most easily, liberal and radical democrats arguably engage in their own line drawing in their attempts to re-constitute the political entity more democratically.

In the wake of September 11, 2001, concern over the increasing purchase of exceptionalist rhetoric and argument has particular resonance, especially considering how the President of the United States forcefully declared that he alone is 'the decider.' But even without going to this extreme, the exceptionalist logic deployed consciously or not by liberal and radical democrats is itself highly problematic. While Schmitt and George W. Bush, amongst others, may want the sovereign power to decide to be the sole prerogative of the President, and while liberal and radical democrats may never, or at least not often, countenance such a concentration of power, the issue of concern is not simply the concentration of power. To believe that to be the case would be to take democracy, the opposite of the concentration of power, to be a self-evident virtue and would elide an examination of the very problematic logic of exceptionalism itself, which is just as much at work in democratic political theory as its purported opposite, fascism or
dictatorship. In either case some agency is held to be the sovereign who must decide the limits of the polity. Such an act of line-drawing inevitably includes some while excluding others, and thus is inherently violent. With some, such as Schmitt, this violence can be seen quite clearly in the designation of enemies, while with others, such as Brown, this violence is more difficult to see and is of a different magnitude, being a more hermeneutic form of violence, whereby what is excluded is that which is unrecognizable in modern politics.\(^2\) If democracy is intended to bring more into the fold, to rectify a socio-political situation of exclusion, is the process whereby the inside is identified as such by a simultaneous process of exclusion overcome by simply including as much as possible? To overcome the problem of an inclusion that simultaneously excludes would require a fundamental transformation of the ontology that informs modern political identity: modern subjectivity.

In addition to being inherently exclusive in some fashion, exceptionalist sovereignty is also ultimately solipsistic or monistic. This is because modern subjectivity is ultimately self-referential. Louis Dupré, author of Passage to Modernity: An Essay in the Hermeneutics of Nature and Culture, argues that in modernity the 'subject' has come to assume disproportionate emphasis:

Only when the early humanist notion of human creativity came to form a combustive mixture with the negative conclusions of nominalist theology did it cause the cultural explosion that we refer to as modernity. Its impact shattered the organic unity of the Western view of the real. ... At the end of the Middle Ages ... nominalist theology effectively removed God from creation. Ineffable in being and inscrutable in his designs, God withdrew from the original synthesis altogether. The divine became relegated to a supernatural sphere separate from nature, with which it retained no more

\(^2\) The point, quite simply, is that Brown sees the reinvigoration of democracy as the appropriate response to a situation of late modern technification and depoliticization. Politics must be redeemed through substantive democracy. Politics shall be the source of our redemption. Politics is the highest form of life (implied: other forms of life are inferior and not political).
than a causal, external link. ... Whereas previously meaning had been established in the very act of creation by a wise God, it now fell upon the human mind to interpret a cosmos, the structure of which had ceased to be given as intelligible. Instead of being an integral part of the cosmos, the person became its source of meaning. Mental life separated from cosmic being: as meaning-giving "subject," the mind became the spiritual substratum of all reality. Only what it objectively constituted would count as real. Thus reality split into two separate spheres: that of the mind, which contained all intellectual determinations, and that of all other being, which received them.3

This is a very problematic form of ontology, making the subject effectively sovereign over all that counts as real by giving it the power to define what exists, and thus what does not as well. Such a form of ontology effectively insulates the subject from the world, excusing it from truly relating and from being exposed to all other being.

Schmitt’s exceptionalism derives from this subjectivism. The logic of Schmitt’s exceptionalism is parallel to that of subjectivism: he says that through deciding on the exception, the sovereign decides what accords with the normal order and what does not. The two separate spheres in Schmitt’s political universe, paralleling the separate spheres constituted by modern subjectivist ontology, are, on the one hand, an important, sovereign, and creative sphere in which the decision on the exception is made, and, on the other hand, the normal, non-exceptional order in which the implications of the sovereign and creative decision are simply followed. Two separate spheres can also be seen to not only between the exceptional moment of decision and the normal order that follows upon it, but also between that which qualifies for political subjectivity and that which does not, or between that which is considered to fit inside of the polity and that which does not. In fact, Schmitt’s political sovereign is a sort of grand scale of the modern subject.

However, although the modern polity appears to be analogous to the modern subject, the relation between the two consists of more than a coincidental correlation.

Constantin Fasolt’s *The Limits Of History* underscores the intimacy of the connection between the birth of modern subjectivity and modern political sovereignty. Fasolt argues that modernity is characterized by a temporal perspective, which consists of the distinction between past and present, a distinction which allows for the objectification of a mute and lifeless past and which imparts life and subjectivity to the present. He contends that this distinction grounds the modern subject and modern politics by freeing each from archaic obligations. In sum, the temporal perspective serves the cause of the modern autonomous subject, who lies at the center of the modern world:

> It consists of the commitment to a certain view of human nature that has held sway since medieval ways of thought and action were shattered in early modern times. This is the view that human beings are free and independent agents with the ability to shape their fate, the obligation to act on that ability, and responsibility for the consequences. According to this view, human beings are neither governed by divine providence nor condemned to the thoughtless repetition of custom, much less compelled to obey mere animal instinct or do battle with the devil. They are in charge of their own affairs.⁴

Fasolt argues that this temporal perspective was invented in what has come to be called the ‘early modern period’ by those he describes as the modern revolutionaries.⁵ He contends that this temporal orientation “jumped on the scene of European mental life with the force of a revolution against a specific form of governance,” what has come to be called ‘medieval universalism’ (16). This temporal perspective contested the grounds

⁵ He calls the authors of the temporal perspective, or the historical revolt, the modern revolutionaries because, although we tend to use the term ‘revolution’ to refer to events that occurred much later in England, the United States, and France, these later events did not fundamentally contest the existing order of society but simply brought the existing order of society into conformity with the principles of the historical revolt, most particularly the temporal perspective (17).
of medieval authority by questioning whether, in fact, the Roman Empire had endured over the centuries without change. This was a radical innovation, as the Roman emperor and the Roman pope claimed universality not only in space, but also in time, insisting that “they were in communion with eternity” and that they embodied the past “as though it had endured over the centuries without change” (17). Through questioning whether it was factually the case that the Roman Empire had endured over the centuries without change, the authors of what Fasolt, borrowing from Whitehead, calls ‘the historical revolt’ “placed history at the service of European princes and republics seeking to emancipate themselves in fierce campaigns from the authority of pope and emperor” (Ibid). Although the authors of the historical revolt did not completely remove these figures from the stage, they marginalized each, providing the foundation for the form of governance that came to replace so-called medieval universalism: modern sovereign states. But as the historical revolt became secure in its triumph over this preceding form of governance, modern Western culture came to lose sight of the original innovativeness of the temporal perspective, leading to the assumption that this form of consciousness is applicable without qualification:

When the Holy Roman Emperor finally stepped down from his throne and the papacy agreed to a concordat with Napoleon that turned French clerics into salaried employees of a secular state, the energy that history had brought to bear on the creation of sovereignty was finally freed from the authority of the past. The boundary the humanists had drawn between their own age and the Dark Ages ceased to be an object of contention dividing those who actively supported medieval forms of government from those opposing them in the name of modern forms of subjectivity. Henceforth the advance of sovereignty proceeded on auto-pilot, as it were, unchecked by mental reservations or significant opposition (26).\(^6\)

\(^6\) Note: to defend subjectivity from medieval universalism, against which it has been defined, it was necessary to defend the sovereignty of states. In other words, in their formation, in their struggle against their temporal opponent, states were the condition of possibility of subjectivity.
Fasolt underscores the fact that there is a certain violence to this temporal perspective, arguing that its commitment to the principle of human freedom “helps to determine what counts as politics and what does not” (xviii). In particular, he suggests that the disciplinarization of History led to a kind of caricature of the preceding form of life, which he describes as “a kind of chronological Orientalism” whereby the contemporary conception of the Middle Ages is not that of the true Middle Ages but a fiction “essential to the integrity of the modern world” and necessary to the grounding of modern identity (219). Moreover, there is a further and less obvious violence to this temporal orientation – that of the unrecognized or unrecognizable:

There is … a kind of displaced or stateless past that lies just beyond the borders of the empire of history, just as there are displaced and stateless people who suffer, in addition to the aches and pains of ordinary human life, the peculiar horror of an existence unacknowledged by the authorities, for no better reason than that they happened to have come without official papers (28).

To generalize Fasolt’s overall point would be to suggest that the grounding of modern identity requires a distinction between what is included (identity) and what is excluded. What is included is considered to be self-sufficient in its own right, but actually requires this exclusivist distinction to properly bound identity. The violence of this operation consists in the fact that the subject is effectively given unilateral power to decide what shall exist and what shall not, and if a certain form of life does not accord with its sense of order then so much for that form of life. Fasolt confirms that this is the case by underscoring the fundamental differences between medieval juridical reasoning and modern political reasoning. Whereas in the medieval universe “the nature of all things depends on their relationship to other things” and “No thing was inherently divided from any other thing,” related as they were through a universal hierarchy, under modern
sovereignty each body politic is a separate and indivisible entity requiring "clear boundaries in space and time where one sovereign's power met that of another" (199). This is to say, perhaps to belabour the point, that modern sovereignty and subjectivity are monistic, self-referential, and incapable of true relation, which requires a form of openness and exposure incompatible with exclusivist monism.

This thesis is comprised of two main chapters that seek to indicate the depth and severity of the problem, as is demonstrated in concerted efforts understand and thus not repeat it. The first chapter analyzes Wendy Brown's radical democratic project for the substantive renewal of collective life in late modernity in reference Carl Schmitt's exceptionalist theory of sovereignty. The two are counterposed to explore the manner in which, despite their very significant differences, they share an underlying logic. Since Brown is not fond of the institutional apparatuses associated with the modern state, it is not exactly straightforwardly apparent how she may replicate Schmitt's logic of sovereignty, so the first chapter also compares her to two other contemporary political theorists who articulate their theories in relation and opposition to Schmitt: liberal democrat John P. McCormick and radical democrat Chantal Mouffe. Drawing a kind of scale from Schmitt's fascist theory of sovereignty to McCormick's liberal democratic theory to Mouffe's radical democratic theory and then to Brown's own theory, will help to clarify how Brown replicates Schmitt's powerful logic. In brief, I will argue that Brown maintains that 'we' must be limited, as Schmitt, McCormick, and Mouffe each hold, despite the fact that she argues that 'we' should decide those limits ourselves, rather than have some representative (e.g., Schmitt's executive) or representatives (e.g., parliamentary democracy) decide these limits on 'our' behalf.
The second chapter analyzes Michel Foucault's genealogy of exceptionalist sovereignty, which underscores and helps to clarify the nature of the limitations of the aforementioned progressivist attempts to eschew the power relations typically associated with sovereignty: the concentration of power in the hands of the state's executive branch. He argues quite explicitly that such attempts to eschew the power relations of sovereignty ultimately end up reinscribing the logic of sovereignty, despite making what may seem to be major changes. His genealogy of exceptionalism in "Society Must Be Defended" charts how the emergent bourgeoisie transformed the notion of the nation which had been so important to the nobility prior to the bourgeois ascendance and how this reworking of this notion transmuted the preexisting sovereignty of the king, giving it a fullness and thoroughness that it had not enjoyed previously. With the birth of the nation-state around the time of the French Revolution national totality fused with statist universality, extending political decision deeper into the social body than had ever been the case up to that point. The formation of the nation-state constituted the condition of possibility of exceptionalism, which differed significantly from early-modern monarchical sovereignty. Foucault helps to show that liberal and radical democrats arguably still operate within this heritage, even though they desire to change important aspects of the constitution of national identity. The fusing of national totality and statist universality is also shown to lead to a number of insidious consequences, particularly the development of a bio-social racism, a project of permanent social purification – a project with horrific implications for those "outside" of the national territory as well as for those "inside" that territory. The second part of the second chapter also considers how this critique of sovereignty is carried through in a number of his later essays and interviews, examining how successful
he is in sustaining and remaining faithful to this critique. It is argued that, particularly in his discussions of the contemporary relevance of what Kant was doing in his mediations on Enlightenment, in contradistinction to what Kant was doing in the construction of his Critical project, Foucault maintains a commitment to the principle of human freedom and finds hope in the creative capacities of the modern human being, begging the question of his allegiance to modern subjectivity. As Hindess suggests, Foucault remains too preoccupied with the person of the king, in his centralizing capacity, to recognize that the problem of community that should be addressed by contemporary political thought is the relation of the autonomous polity to its autonomous members, which is to say that subjectivity must be limited by sovereignty. To the extent that Foucault leaves the modern autonomous subject seated on its throne, his critique of exceptionalism remains limited. Moreover, he seems off the mark to suppose that an epistemological transformation can redress what is ultimately an ontological problem: the undue priority given to the subject in modern thought. Reducing the supposed degree of certainty of this subject, in the manner in which he proposes in "Life: Experience and Science," does not necessarily suggest any resulting ontological transformation.
Chapter 1:

The Exceptionalism of Radical Democracy
Radical democrats appear to be the far opposite of fascist political theorists, such as Carl Schmitt, who argue for the concentration of political power. For Schmitt, the role of the state must be clearly separated from that of society, realms that inevitably become conflated in democratic regimes. For Schmitt, it is necessary that the political entity be one, unitary, and even homogeneous. His friend/enemy distinction, argued for in *The Concept of the Political*, serves to establish this homogeneous identity within the polity, both by defining an internal ‘us’ in relation to an external ‘them,’ and by identifying internal enemies in order to rid political identity of supposed distortion. For Schmitt, it is important that the state alone perform this operation of clarification, for if a unitary identity is to be established and maintained, a single and restricted agency must be accorded this prerogative. If this prerogative were to be opened up, the unitary nature of political identity would be compromised, making the political unit or group vulnerable to civil war or external control – in either case, heteronomy. For a people to remain free and autonomous, they must decide the friend/enemy distinction for themselves, although most certainly not democratically, for this would be ineffective and potentially destabilizing, but through their representative in the executive, the most important branch of the state.\(^7\)

As the apparent opposite of those who seek to define political identity through exclusion and dramatically restrict the prerogative to perform this operation, radical democrats seek both to disperse political power, even beyond the institutional parameters of parliamentary democracy, and to broaden the basis of political identity, being repulsed by the violence and repression of a history of exclusion, exemplified by the Nazi state in

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particular and fascist regimes generally, but continued perhaps more subtly in liberal
democracies previously and subsequently. Out of an intense aversion for the horror of
these extreme examples and for the paternalism of more normal practices, radical
democrats steer hard in the opposite direction, not only arguing for a radical pluralization
of power, but challenging the constitution of specific identity categories that aid and abet
exclusion in the first place.

Such efforts certainly go a long way in resisting the most extreme and many of
the more subtle forms of exclusion characteristic of much of modern politics, but do they
go straight to the root of the problem? Although they seek to resist exclusion by
emphasizing pluralist inclusion instead and by contesting practices of categorization that
enable the designation of some as fit for exclusion, they still seem to believe in the
primacy of the political, ascribing optimal redemptive potential to the democratically
organized polity. That is, it is my contention that despite their resistance to particular
ways of conceiving the political, they continue to play the game of modern politics.
Although they seem to counterpose democracy to the state, believing ‘the state’ to mean
the concentration of power and the institutional apparatus held separate from society,
must the state be considered separate from society? Schmitt stresses that this should be
the case, suggesting that it is not always so, particularly in democratic regimes. In
addition to the vulnerability potentially brought on by democracy, Schmitt fears the total
state that results when state and society become identical, clouding the (necessary)
distinction between affairs of state and social matters.

My concern with radical democracy is not that it will become totalitarian, but that
it continues to limit itself to the form of the modern polity. In stating that radical
democracy believes that the best possibility for redemption comes from democracy, I mean that it ultimately and optimistically holds that ‘We can do it! Together! Join in! Participate!’ Such pluralism and inclusion is far from being straightforwardly paternalistic or discriminatory. Nonetheless, such pluralistic inclusion rests upon and is limited by a fuzzy and problematic notion: the notion of the ‘we’ with which the modern polity is identified. Radical democrats certainly give this ‘we’ a dramatically different content, believing it not to be fixed or given, but constituted creatively. It may be constituted collaboratively through democracy, and the nature of this collaboration may be far less restricted by radical democrats than even liberal democrats, but the ‘we’ is still identified with the polity that ‘we’ are. There may be a great variety included within this polity, but this polity is still conceived as an entity. Moreover, this polity is still conceived as a sovereign entity. This is because sovereignty lies not simply in the special prerogative of the executive but, as Schmitt argues in Political Theology, in the decision on the exception. Even in Political Theology Schmitt maintains that the concentration of power is integral to sovereignty, but this is arguably a matter of expedience, rather than essential to what is particular to sovereignty itself.

Thus, although radical democracy expands the agency that constitutes the polity, this does not mean that it thoroughly confronts and challenges the problem posed by Schmitt. To do so would require undertaking an analysis of the manner in which exceptionalist sovereignty constitutes the polity itself and the basis of the persuasiveness of this understanding of our contemporary being. This is precisely what I propose to do, not to propose a more radical alternative, but because I believe that a deeper understanding of the problem is indispensable to future attempts to address contemporary
problems that do not reinscribe this manner of thinking and acting into the way in which we inhabit this world. This chapter sets out to contribute to this project by first exploring the basis of Schmitt’s theorization of sovereignty as consisting in exceptionalism, then presenting Wendy Brown’s vision for radical democracy, and finally analyzing the limitations of her venture through a comparison with liberal democrat John P. McCormick and far less radical radical democrat Chantal Mouffe. This comparison with these other democrats is intended to draw a kind of scale that helps to bridge the apparent disjuncture between the respective projects of Schmitt and Brown, making it easier to see how Brown draws upon a logic that resembles the one Schmitt presents as characteristic of exceptionalist sovereignty.

**Carl Schmitt’s theorization of sovereignty as exceptionalism**

This chapter takes seriously Carl Schmitt’s conceptualization of sovereignty as consisting in the decision on the exception. Although the concentration of political power in the hands of the executive branch of the state is of the utmost importance to Schmitt’s particular theorization of sovereignty, I would like to focus on the logic of what the sovereign does and what role he plays in order to consider whether this logic can be extrapolated and applied to other political theorists, particularly, for the purposes of this study, Wendy Brown. If it is what the sovereign does that constitutes sovereignty, then it is not so much the issue of executive control that is of interest, but a more general operation.

According to Tracy Strong, *Political Theology* was Schmitt’s “most important initial engagement” with the theme of sovereignty, which he describes as “the locus and
nature of the agency that constitutes a political system.”  

Central to Schmitt’s theory of sovereignty is the notion of the exception. He begins *Political Theology* with what has become its most famous of statements, in one sentence as a stand-alone paragraph, marking its importance: “Sovereign is he who decides on the exception.”  

Because this is such an important and complicated yet compact statement, it is useful to refer to Strong’s commentary on the difficulty of its translation, which underscores the fact that Schmitt intended this statement to be opaque. Strong suggests that the translation cited here is particularly wise because the translator, George Schwab, uses the term ‘on,’ which captures the ambiguity of the original German rendering, which uses ‘über.’ Often the translation to English reads “he who decides what the exceptional case is” or “he who decides what to do about the exceptional case,” destroying the ambiguity that is so “central to what Schmitt wants to say.”  

In giving the sovereign the power to decide on the exception, Schmitt is arguing that it is the sovereign’s prerogative to decide both what constitutes an exception and what action is appropriate to that exception.

So the sovereign has the prerogative to decide on the exception in both of these significant respects. But precisely what is meant by ‘exception’ has not been made clear. The original German uses the term ‘Ausnahmezustand,’ which Schwab translates as ‘exception.’ Strong suggests that a comparison with another possible and frequently used translation can give a better appreciation of the meaning of this inherently difficult term. Often, the phrase ‘state of emergency’ is used to communicate what Schmitt is getting at, but Strong suggests that such a rendering is inadequate because that phrase “has more of

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9 Schmitt, 5.
10 Strong, xii.
a legal connotation, and is more confined than an exception” (xiii). That is, it is the nature of this concept itself that poses this interpretive difficulty, as the exception is something whose meaning cannot be fixed and must be understood, if it is to be understood at all, as “more of what one might think of as an open field” (Ibid). An exception, to define it by way of inversion, is that which cannot be anticipated, particularly by the existing legal order. Schmitt himself says that it “can at best be characterized as a case of extreme peril, a danger to the existence of the state, or the like.”\(^{11}\)

According to Schmitt, the whole question of sovereignty is made relevant in the first place by the exception. He explains how this is the case through a critique of liberal legalism, his primary pluralist opponent. He notes that from the liberal constitutionalist perspective “there would be no jurisdictional competence at all” provided to deal with the possibility of an exception (7). That is, from the liberal constitutionalist perspective there is no sovereign.\(^{12}\) This tendency of liberal legalism poses a great threat to the state, on Schmitt’s account, because such a development hinders the state’s ability to anticipate and survive a genuine crisis. Although he maintains that an exception cannot be anticipated or resolved by the preexisting legal system, as liberal legalism would like, he contends that if there is an effective agency in place to do so the state persists even if the legal order does not. This is so, according to Schmitt, because although the sovereign “stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety” (Ibid).

\(^{11}\) Schmitt, 6.

\(^{12}\) Inversely, “If such action [as is required to eliminate the exception] is not subject to controls, if it is not hampered in some way by checks and balances, as is the case in a liberal constitution, then it is clear who the sovereign is.”
While this is an attempt to justify the concentration of power in the hands of the executive, that is not the only thing that is important about this statement. He also appears to be suggesting that sovereignty resides in resolving border cases, which is to say eliminating exceptions and recovering a state of normality (5). The sovereign decides what is inside the sovereign-certified order and what is not; he decides what counts as order and what does not accord with that order:

What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes. Because the exception is different from anarchy and chaos, order in the juristic sense still prevails even if it is not of the ordinary kind (12).

The role of the sovereign is to make normality once again possible; it is his role to (re)found the legal order. Thus he says that “Like every other order, the legal order rests on decision and not a norm” (10).

He argues that liberal legality is simply incapable of apprehending the concrete, which ill-equiips the corresponding political order to deal with an emergency or crisis. Sovereignty consists in apprehending the concrete, on Schmitt’s interpretation: “Whether God alone is sovereign, that is, the one who acts as his acknowledged representative on earth, or the emperor, the prince, or the people, the question is always aimed at the subject of sovereignty, at the application of the concept to a concrete situation” (Ibid).

He says that Hans Kelsen, his primary liberal legalist opponent, assumes that “The state is nothing else than the legal order itself, which is conceived as a unity, to be sure” (18-19). Schmitt believes that this manner of thinking inappropriately assumes the order of nature to be a self-sufficient and enclosed system, thus believing that “The state is thus neither the creator or source of the legal order” (19). Instead, legal rationalism sees
sovereignty as consisting in "the unity of the system of norms," overlooking the fact that the legal order itself originated as a result of a decision made by a person or what Schmitt calls 'a sociopsychological power complex' (Ibid). Here, Schmitt is contesting the idea adhered to by legal rationalists that a logically valid system of rules can escape the essentially arbitrary nature of sovereignty. This is not to say that one version of sovereignly-constituted order is actually just as good as any other in Schmitt's eyes – he would definitely have a preference – but this is precisely the point. By using the term 'arbitrary' to interpret what I think Schmitt is getting at, I do not mean it in the sense that any one option is as good as any other, but merely that which one is best or most appropriate cannot be discovered deductively according to the rules of logic alone.

Rather, as the rules of logic themselves seem to acknowledge, deduction must start from a particular premise. So, again, Schmitt's point is that the self-coherence of the legal order is sufficient under normal circumstances, but must be recognized to have originated with a decision by a particular sovereign agency and must be recognized to be inadequate under exceptional circumstances in which a particular decision must be made in order to (re)found a state of normality. Thus, Schmitt's point is that in its attempt to avoid the arbitrary (according to its universalist orientation), particular, and situated nature of sovereignty by conceiving a system of norms as a self-sufficient unity, legal rationalism is naïve and irresponsible. It is naïve and irresponsible because its very presumptions make it such that the exception "confounds the [presumed] unity and order of the rationalist scheme," so that legal rationalism does "not know what to do with the exception" (14). Consequently, under a legal rationalist regime, an exception is likely to destroy the existence of the state definitively. It is for this reason that he stresses that a
philosophy of concrete life must not withdraw from the exception,” because in the case of an exception “real life breaks through the crust of a mechanism that has become torpid by repetition” (15).

The problem he has with the liberal legalist idea of the state as identical with the legal order conceived as a self-sufficient unity, according to Strong, is that, following Weber, Schmitt “sees danger in the increasing sense of the State as ‘a huge industrial plant,’” which increasingly runs itself, losing “the decisionistic and personalistic element in the concept of sovereignty.”13 For Schmitt, as for Weber, such an outcome is the result of a developmental process: the ‘secularization,’ ‘demagification,’ and ‘rationalization’ of our life world. According to Strong, Schmitt believed this to be a process that has occurred progressively over the past five-hundred years:

[I]n the sixteenth century the world was structured around an explicitly theological understanding with God and the Scriptures as foundational certainties; this was replaced in the next century by metaphysics and rational (“scientific”) research and in the eighteenth by ethical humanism, with its central notions of duty and virtue. In the nineteenth century economics comes to dominate (although Schmitt is seen as a man of the Right, he always took Marx very seriously), and, finally, in the twentieth century technology is the order of the day. And this is at the core of his claim that ours is an age of “neutralization and depoliticization”: whereas all previous eras had leaders and decision makers, the era of technology and technological progress has no need of individual persons.14

Schmitt himself states that ‘rationalistic’ formalism is characterized by “technical refinement, which, emerging from either the needs of specialized knowledge or the interests of a juristically educated bureaucracy, is oriented toward calculability and governed by the ideal of a frictionless functioning.”15 That is, rationalistic formalism is governed by the idea of a frictionless function according to the needs of a specialized

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13 Strong, xxiii.
14 Strong, xxiv.
15 Schmitt, 28.
knowledge or bureaucracy and not a real person or set of persons. Strong says that Schmitt believes that as a result of this progressive depersonalization culminating in the dominance of technology, it is almost to the point that sovereignty is no longer a constituent part of our present world, so that “the political is in danger of disappearing as a human form of life.”16 Thus, Strong suggests that when Schmitt says that “All significant concepts of the modern theory of the state are secularized theological concepts,”17 this does not mean that Schmitt wants to restore a theological dimension to those concepts, but rather wants “to point to the fact that what has been lost since the sixteenth (“theological”) century has amounted to a hollowing out of political concepts,” making these earlier important concepts “unable to resist the dynamics of technology.”18 Thus, Strong interprets Schmitt’s project in Political Theology not to be one of restoring lost theological content to modern political concepts, but one of creating a political theology to restore to these earlier concepts the quality they once possessed, in a manner appropriate to our secular age.

The key purpose of Schmitt’s discussion of the exception, then, is to challenge the rationalist view of nature as a self-enclosed system, a manner of thinking that has come to dominate juridical thought as well as ontological thought, or our understanding of being:

The idea of the modern constitutional state triumphed together with deism, a theology and metaphysics that banished the miracle from the world. This theology and metaphysics rejected not only the transgression of the laws of nature through an exception brought about by direct intervention, as is found in the idea of the miracle, but also the sovereign’s direct intervention in a valid legal order. The rationalism of the Enlightenment rejected the exception in every form.19

16 Strong, xxii.
17 Schmitt, 36.
18 Strong, xxiv-xxv.
19 Schmitt, 36-37.
In sum, Schmitt compares the role of an exception to jurisprudence to the role of a miracle to theology, as something that cannot be anticipated in existing codes of interpretation and categorization. Schmitt’s defense of exceptionalist sovereignty against liberal legal rationalism is ultimately a defense of a particularist subjectivity against a universalism that would have no room for it. Schmitt argues that such a universalism may have initially been intended to serve particularistic subjectivity but has become seemingly self-sufficient, no longer having room for the subjectivity it was designed to serve. Schmitt’s exceptionalist sovereignty is intended to rectify this situation, restoring to the modern subject the dignity it has been denied by the dominance of technology.

Although Schmitt argues that effective sovereignty requires the concentration of power, this is arguably a matter of mere expedience. Such expedience is important for Schmitt, given that the exception is potentially a crisis, and given that a slow and bogged down response to a crisis is quite likely to be unsuccessful. However, my concern for the sake of the ongoing analysis of this project is not what is most appropriate for the state to do in times of crisis, but whether particular political thinkers in our present, Wendy Brown and Michel Foucault specifically, manage to comprehend and face up to the challenge Schmitt poses to contemporary political thought. If the issue is not what is most appropriate for resolving a crisis, does anything from Schmitt’s theorization of sovereignty here remain? Worth noting in this context is the fact that Schmitt says that liberal legalists do not recognize that the normal legal order is itself based on a previous decision and, thus, cannot be considered to be self-sufficient. This implies that sovereignty for Schmitt consists in more than responding to crises, but in constituting the normal order, both in the first place and in restoring such order in the event of a crisis.
Take away the issue of crisis, and sovereignty seems to consist in the constitution of the polity. Even for Schmitt the constitution of the polity is more than a one-time affair.

Yes, first it has to be constituted by its creator, who is sovereign, but it continues to be reconstituted every time the sovereign makes a decision fundamental to the ordering of the polity. This may happen for Schmitt mainly in times of crisis, but this is arguably particular to Schmitt himself, and perhaps others of like orientation, and is not necessarily essential to sovereignty itself, which consists in the constitution of the polity.

**Wendy Brown’s Radical Democratic Project: Intentions and Limitations**

Might the desire for some degree of collective self-legislation, the desire to participate in shaping the conditions and terms of life, remain a vital element — if also an evidently ambivalent and anxious one — of much agitation under the sign of progressive politics? Equally important, might the realization of substantive democracy continue to require a desire for political freedom, a longing to share in power rather than be protected from its excesses, to generate futures together rather than navigate or survive them? And have we, at the close of the twentieth century, lost our way in pursuing this desire? With what consequences?

Wendy Brown refers to the twentieth century as “the age of institutions” (8), and makes the case that progressives have dropped the causes of freedom and democracy from their agendas, turning instead to the state, which they believe to be a neutral arbiter of disputes, for economic redistribution and legal redress. She holds that a reinvigoration of democracy through agonism, a form of direct engagement amongst the citizenry about the issues over which they may disagree is what is needed to rectify this situation of ‘depoliticization.’ She would like to return politics, which she reads as having been given over to and appropriated by the state, to the people.

Radical democracy is needed, particularly in this ‘age of institutions,’ because the institutionalization of freedom remains preoccupied with images of unfreedom from the

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past, impairing the perception of new threats to freedom. Instead of institutionalizing freedom, she suggests that contemporary progressives should recognize that freedom’s ‘actualization’ consists more in a matter of ethos or style than in a matter of laws or institutional organization. However, she stresses that this is not an aesthetic conception of freedom, but a richer, more complicated, and more fragile formulation of the political than that of representative democracy. This conception of the political is one of collective self-fashioning, a process of active contestation and rejuvenated self-consciousness, passion, and irony, all of which are integral to truly democratic politics—that is, substantively democratic rather than merely formally democratic, as she holds to be the case with democracy’s twentieth-century institutionalization.

Key to this richer formulation of the political is the fact that Brown maintains that freedom should be understood as a practice and not as a state. She argues that in much of modern political thought freedom has been thought of as a state that exists in self-sufficient purity so long as it is not infringed upon by any intervening force, such as the state or other individuals. She holds that this understanding of freedom constitutes and affirms an atomistic and passive vision of politics, not requiring individuals to do much of anything, much less interact with others, to achieve or enact their freedom. Moreover, she maintains that the abstract manner of conceiving freedom characteristic of so much of modern political thought has the effect of naturalizing substantive inequality and excusing some forms of domination, such as those based on gender, race, and class, to name a few. This is why she seeks to rethink the relationship between power and freedom. While it is usually supposed in much of liberal political theory that “freedom transpires where power leaves off,” Brown insists that freedom “requires for its
sustenance that we take the full measure of power’s range and appearances – the powers that situate, constrain, and produce subjects as well as the will to power entailed in practicing freedom” (25). That is, freedom requires a certain exercise of power for its enactment and the free individual assumed by many liberal political theories is in fact constituted in power relations. This is not to say that Brown believes that there is no freedom, but rather that she holds that, to the extent that freedom continues to be conceived as a state and to the extent that it is not recognized that the supposedly free individual is actually produced by and situated in power relations, those who are situated in a less advantageous position in terms of power relations will be less able to enact their freedom. Brown is seeking to problematize the idea that if freedom is considered as a state that exists so long as it is not infringed upon, an individual who is more advantageously placed in terms of power relations will be considered to be just as free as someone who is less advantageously placed. In addition to recognizing the ways in which supposedly free subjects are constituted in and through power, Brown seeks to underscore the manner in which freedom itself requires power for its enactment, given that it is not simply a self-sufficient state so long as it is undisturbed by intervening forces. A recognition of both factors is integral to Brown’s project for a truly substantive democracy.

Nevertheless, she suggests that it may be difficult to achieve such substantive democracy, given that contemporary politics is, on her view, “saturated with countless aims and motivations other than freedom” (4), including the mitigation of damages and managing of problems, as well as the powerful role played by nihilism, ‘barely masked despair,’ and ressentiment, with the result that we are less than successful in collectively
asking ourselves what futures we desire to create together, confining ourselves to mitigating damages and managing problems.21 In particular, she worries that those who wish to “establish racism, sexism and homophobia as morally heinous in the law, and to prosecute its individual perpetrators there” run the risk of casting “the law in particular and the state more generally as neutral arbiters of injury rather than as themselves invested with the power to injure” (27). Her concern is that such a turn to the state for resolution of social ‘hurt’ cedes political ground to moral and juridical ground. Instead of turning to the state as neutral arbiter, she hopes that through rethinking freedom and its relation to power, contemporary progressives will repoliticize struggles that have been coded as merely private or social, and above all as unpolitical, in an agonistic fashion.

Agonism, or radical democracy, would feature these contests between one another openly and publicly, illuminating their political nature. She surmises that, although such political practice may be difficult work for its practitioners, revitalizing politics in such an agonistic manner opens up much more hope for the realization of a truly substantive democratic way of life than if we continue to limit ourselves to formal or institutional democracy. She contends that not to follow her advice in this regard would “unwittingly increase the power of the state and its various regulatory discourses at the expense of political freedom” by “fabricating something like a plastic cage that reproduces and further regulates the injured subjects it would protect” (27-28).

21 While nihilism is described by Brown as “the oxymoronic belief in meaninglessness” that attends the disenchchantment of the world with the realization that there is “nobody here but us” (i.e., that God is dead), and while barely masked despair stems from “the meanings and events that humans have generated,” ressentiment occurs “when the negative moment in our ambivalence about freedom is ascendant [and] the will to power is redirected as a project of antifreedom,” taking “the form of recrimination against action and power, and against those who affirm or embody the possibilities of action and power” (25-26).
Thus it is clear that Brown encourages the members of a polity taking political power into their own hands, rather than ceding it to state institutions, by proposing a richer understanding of the political based on agonistic engagement and contestation and passionate collective self-fashioning. It is another question, however, whether such a radical democratization radically challenges the underlying logic of the modern state: sovereignty. Both Brown and Schmitt perceive the problem to be a process of ‘depoliticization’ in late modern times, but offer seemingly opposite responses to this problem. Whereas Brown seeks to resubstantialize politics by pluralizing, allowing for more participatory and engaged democratic practice, Schmitt seeks to do so by concentrating power in the hands of the executive branch of the state. Although Schmitt argues for a constitutionally unimpeded executive to represent the people as a whole, in sharp distinction from liberal and radical democrats, the argument of this chapter is that sovereignty does not consist in the concentration of power, but in the form of the practice of exceptionalism so tied up with modern subjectivism. Schmitt critiques liberal legalism for identifying the state with the legal order, conceived as a self-sufficient unity of norms, valid in its own right because of its self-coherence. The basis of his critique is his contention that even that logically-coherent legal system is based on a decision that is inherently tied to a particular person or sociopsychological power complex, i.e., a collection of persons. The nature of sovereignty consists in the decision(s) made by that actual agent. Under normal conditions, yes, we must abide by the preexisting law and thus we normally assume that law is the ultimate authority (backed up by enforcement, of course), but Schmitt’s point is that even more impressive than the laws that are set out in legal codes is the fact of their very creation – hence the veneration of the “founding
fathers' that is surprisingly prevalent in public discourse in the United States. And, far more impressive, to Schmitt, than the authority of existing legal codes is the presidential sovereign's capacity to apprehend and respond to the unexpected challenge to the existing order posed by the exceptional situation. Although the legal order recedes in such a context, the state remains, as the president, the representative of the people and the polity as a whole, guides it through crisis, enabling the re-establishment of order when and how appropriate in his eyes. But it is important, for the purposes of this study, to recognize that it is not the concentration of power that is crux of sovereignty, but exceptionalism, the practice whereby the sovereign, whether one person or a sociopsychological power complex, a group of persons, decides the limits of the polity, what is amenable to the sovereign-certified order and what, or who, is not.

Not only do separate and isolated individuals take the form of the modern subject, so too do modern polities. This is as true of the collectivities shaped by democratic participation and contestation as it is of democracy’s opposite, dictatorship. This is not to overlook the very real differences between democracy and dictatorship, but simply to point out that these supposed opposites both conceive the nature of the polity as a sort of grand scale subject, such as America, France, or Germany, amongst others. That is, collectivity is still conceived as a kind of self-sufficient, self-contained identity along the lines of the nation. Although it is clear that Brown argues for a radical dispersal of power amongst the citizenry and loathes the idea of ceding power to state institutions, it is less clear from her argument for agonism in States of Injury that she conceives of the polity as a unity and even less clear that she believes that it must necessarily be limited. Comparing Brown primarily with Schmitt is likely to make this more difficult to see.
Thus, this section briefly compares with Brown two analysts of Schmitt who happen to fit between Schmitt and Brown on the political spectrum: John P. McCormick, a liberal democrat, and Chantal Mouffe, another radical democrat. A presentation of these two intermediary figures will help to show how the problem works and make it easier to see how Brown could replicate this problem.

John P. McCormick reads and analyzes Schmitt to understand how a liberal democracy like the Weimar Republic could be so easily subverted by fascism, to enable contemporary liberal democratic regimes to defend themselves from this phenomenon, which is still very much a live possibility, on his interpretation. But rather than going into an in depth analysis of his investigation and assessment of Schmitt, which reads Schmitt as reacting against the depoliticizing tendency of technology, which Schmitt holds to be so intimately associated with late modern liberalism, I shall focus on McCormick’s own orientation as someone who reads a similar literature and defends a liberal democratic position. He argues that an adequate legitimation and defense (from fascism) of liberal democratic political theory must not succumb to the sociological assumptions and philosophy of history of a Weberian worldview: “an absolute ‘pluriverse of values,’ on the one hand, and a technoeconomic determinist notion of progress as a process that cannot be fully controlled and that cannot be significantly challenged, on the other.”22 In addition to justifying resignation, hopelessness, and quietism, as a result of its supposedly determinist historiography, one of the main problems that he sees with Weberian pluralism is that “it provides for little common ground among the many value differences within modernity and may even encourage irrational responses to the

ostensibly incommensurable nature of such value pluralism” (307). In a statement that encapsulates his political theoretical orientation, he makes clear that on his understanding of liberal democratic pluralism, there must be limits to the polity:

The prevailing notions of “pluralism,” whether in its existential warring gods, Weberian manifestation or its more mundane American post-World War II variety [i.e., that of John Rawls], are rightfully challenged today for their insensitivity to concrete cultural, economic, or gender-based specificity. But the advocates of identity and difference qua concrete otherness ought not to leave wholly unexamined their own potential essentializing of themselves or others in their challenges to traditional pluralism. When both sides foreclose the possibility of commonality and mutual rational exchange, they consequently leave the public sphere vulnerable to those who would seek to enforce a stable and unifying order from above and who would exploit concrete otherness, not on behalf of those unjustly marginalized or banished from the redistributive picture but rather in a strategy aimed at naked political gain. … [T]he movement to take into account diversity, difference, and the attempt to practice a multiculturalism that appreciates concrete otherness does not necessarily preclude, as some critics on both sides would suggest, universality, consensual agreement, and the possibility of fully democratic legitimacy (310).

For McCormick, the public is that which is held in common, a space that transcends ‘our’ particularities, which otherwise divide ‘us.’ Those who foreclose the possibility of commonality leave the public sphere vulnerable to those who would like to exploit it for their own purposes, rather than for truly public purposes. Thus it is imperative that this public space and commonality is protected, for otherwise the only alternative is naked power, whether anarchic or dictatorial. If ‘we’ would like to avoid brute force, there is only one option: a democratic legitimacy characterized by universality (within the polity) and consensual agreement. What appears to give democracy its legitimacy for McCormick and others is the transmutation of the will of all into the general will: the converting of a multiplicity of particulars into a whole and unity, a ‘we.’ For McCormick, difference can be balanced with commonality. However, it also ends up
being the case with McCormick that commonality is the precondition for diversity, making commonality ultimately far more important than difference on his assessment. Thus McCormick appears to agree with Schmitt’s argument that there is only so much pluralism a polity can withstand and that, thus, at some point the line must be drawn, limiting what forms of pluralism are acceptable and what forms are not tolerable.

Chantal Mouffe, by contrast, is unsatisfied with liberal democracy as conventionally understood and argues for an agonistic form of radical democracy. Her political theoretical endeavor undertaken in Democratic Paradox springs from her concern that the liberal aspect of liberal democracy, the rule of law and its emphasis on rights, is given undue emphasis as of late. To counter this disproportion, she argues for a form of democratic pluralism that she describes as agonism, an idea adapted from “postmodern” philosopher Richard Rorty and formulated in relation to the ‘friend/enemy’ distinction of Schmitt’s Concept of the Political. She argues that liberal democrats must recognize that “democratic logics always entail drawing a frontier between ‘us’ and ‘them,’ those who belong to the ‘demos’ and those who are outside it,” as the drawing of such a line is “the condition for the very existence of democratic rights.”

But because she believes that it is the responsibility of properly democratic politics to mitigate the possibility of antagonism, she distinguishes between two forms of antagonism: antagonism proper, “which takes place between enemies, that is, persons who have no common symbolic space,” and what she calls ‘agonism’:

... which is a different mode of manifestation of antagonism because it involves a relation not between enemies but between ‘adversaries’, adversaries being defined in a paradoxical way as ‘friendly enemies’, that is, persons who are friends because they share a common symbolic space.

but also enemies because they want to organize this common symbolic space in a different way (Ibid).24

Despite the fact that Mouffe wants to enable the accommodation of difference, especially against efforts to impose a fictitious and exclusive homogeneity and unanimity, she nonetheless stresses that her anti-essentialist political theoretical perspective “does not allow a total pluralism” because she holds that “it is important to recognize the limits to pluralism which are required by a democratic politics that aims at challenging a wide range of relations of subordination” (19-20). That is, the polity, the form that makes progress and emancipation possible, must be limited for it to enable and facilitate these aspirations. Thus, she agrees with Schmitt on the need for limits, but differs from Schmitt on what those limits are. She argues that it is clearly not the case that asserting that “the condition of possibility of an ‘us’ is the existence of a ‘them’ exhausts the subject” because “Different forms of unity can be established among the components of the ‘us’” (50). That is, she holds that “we” can transform our identity together, but it shall always remain a securely grounded identity, with the proper limits that protect it from destruction or disintegration.

She believes that “Schmitt presents us with a false dilemma: either ‘there is unity of the people, and this requires expelling every division and antagonism outside the demos – the exterior it needs if it is to establish its unity,’” or “some forms of division inside the demos are considered legitimate, and this will lead inexorably to the kind of pluralism which negates political unity and the very existence of the people” (54). In rejecting his dilemma, while accepting Schmitt’s argument “for the need of some form of ‘homogeneity’ in a democracy,” Mouffe makes the case that “The problem we have to

24 Implied here is the notion that ‘if you do not submit to commonality, you are an enemy.’ If you happen not to share common symbolic space, you must be hostile to one another – you cannot just be different.
face becomes, then, how to imagine in a different way what Schmitt refers to as ‘homogeneity,’” or what she proposes to call, rather, ‘commonality’ (55). Mouffe identifies what she sees as the consequence of “putting into question any idea of ‘the people’ as already given, with a substantive identity” (55). It is crucial, that is, that we recognize that “Democratic politics does not consist in the moment when a fully constituted people exercises its rule;” rather, “The moment of rule is indissociable from the very struggle about the definition of the people, about the constitution of its identity” (56). Mouffe defines her approach as radical in relation to the liberal aspect of liberal democracy as well as in relation to Schmitt’s homogeneous and naturalist conception of the polity headed and represented by a strong sovereign. But if sovereignty consists in the continuous constitution of the polity and not necessarily in a response to a full-blown crisis, as argued toward the end of the preceding section, Mouffe seems far from radical, replicating the form of politics articulated so forcefully by Schmitt. For Mouffe, as for McCormick, the limited polity alone can provide the forum for progress and emancipation.

Like Mouffe, Brown rightly stresses the constituted nature of identity, collective and individual. However, when speaking of her vision of a truly substantive democracy achieved by agonistic engagement and contestation amongst the citizenry, she appears to be discussing the manner in which collective subjectivity/identity can be collaboratively transformed into something that “we” create together. What a far more inspiring view of politics than a completely top down version in which the president alone decides! But is the key issue whether one or many are entitled to decide? If both democracy and dictatorship share the same underlying logic, sovereignty, then is it truly the case that
radical democracy has gone as far as is possible in eschewing the problematic configurations of power it seeks to avoid? Although Brown does seem to be something of a radical pluralist, it is arguably the case that she too, like McCormick and Mouffe, accepts Schmitt’s judgments that there must be limits to the polity. Although this may not be so clear in States of Injury, it is clearer in her subsequent work, Politics Out of History, particularly in its chapter on democracy. Here, she argues that to defend itself from “insurgency from within and conquest from without” democracy must supplement itself with theory of a historically self-conscious sort, because its inherently antitheoretical nature, which stems from its mass-basis, can cause it to “adhere without reflection to nondemocratic principles or practices, and to be inhabited by nondemocratic powers” (124, 129). Echoing McCormick and Mouffe, she says, borrowing from Alexis de Tocqueville, that “without ideas in common, no common action would be possible, and without common action, men might exist, but there could be no body social” (124). She suggests that genealogy, such a historically self-conscious type of theory, may be just what democracy needs to “overcome itself without sacrificing itself, without turning against itself” because the vertigo it produces by destabilizing our contemporary sense of necessity, by tracing the contingency of the emergence of contemporary forms of order, can help to test “how far collective or individual identity can be dissolved in order to disrupt without destroying” (125, 129). That is, it is important that although we may question aspects of our collective democratic identity, it is imperative that our testing of its limits not break them, leaving the form of identity intact, even if we find it important to change aspects of its content. In sum, for Brown, the polity is a potentially fragile unit, and although it may need to be challenged in order to remain vital and inspired, it should
only be pushed so far, to prevent collapse and disintegration, generated from inside that unit or from outside of it. In discussing the need for commonality, she’s not being directly or explicitly exclusive, but the similarity of the importance accorded to commonality in her project to its priority in the efforts of McCormick and Mouffe suggests that she may also rank commonality over difference, holding democracy and the modern polity to be the condition of possibility of progress, ranking commonality over plurality.

To the extent that radical democrats seek to pluralize, but within limits, they subscribe to the belief that there is only so much pluralism that political identity can withstand and thus to the belief that at some point the line must be drawn, distinguishing the inside of the political entity from its outside, distinguishing its subjectivity and its self from its other(s). It is not that the radical democrats are too conservative, drawing the line too soon, or that they should accommodate more pluralism, but that even they still ultimately draw the line, a line required to be drawn by modern subjectivity, as that line serves to secure the self-identity of subjectivity, enabling it to categorize what it perceives, giving it a sense of stability and control.

Schmitt would disagree with the pluralism of the democrats, arguing that at some point the line must be drawn, because too much pluralism ultimately threatens the integrity of the state and the identity of the polity. He stresses that the pluralism liberal and radical democrats allow for depends on the superiority of identity, which is to say that so long as identity is secure then there can be a certain pluralism within the state. He ultimately contends that any pluralism is actually a real threat to the state, which is why he would vehemently disagree with the radical democrats. Although they do not agree
with Schmitt’s radical conclusion, that no pluralism is tolerable, radical democrats appear
to agree with the assumption that so long as political subjectivity is secure there can be a
certain amount of pluralism within the polity. Of course, they do not say that their
pluralism is restricted to the form of the state, sovereignty, but this is because they have
some fairly unexplored assumptions about the nature of the state and sovereignty. It
seems that they continue to believe that all progress comes from the right organization of
the modern state – the difference lies in what this proper organization is supposed to be:
pluralism for the democrats and homogeneity for those like Schmitt. The pluralists
appear to hold limits to be necessary because, with Schmitt, they believe there is only so
much contention a polity can withstand before the political entity is truly threatened with
disintegration. It appears to come down to an ultimatum: ‘unity or chaos,’ meaning that
either the one, identity, survives or absolute insanity ensues. This is what is meant by the
earlier suggestion that modern subjectivity and sovereignty are monistic and thus
exclusive: if something is to be counted as existing, it must be reconcilable with the one
way of being sanctioned by the sovereign exceptionalist subject. My concern about the
pluralists is that, ultimately, differences are permitted to remain, provided that they take
on a superficial status. But if differences challenge or do not conform to that which
brings us together and enables a possible accommodation of difference in the first place,
are they ultimately cast out and left to die?
Chapter 2:

Foucault’s Genealogy of Political Exceptionalism &

Ultimate Commitment to Modern Subjectivism
I have argued that though liberal and radical democrats appear to believe that they are moving further from the frightening powers of the state by democratizing, they fail to appreciate the extent to which they continue to replicate the logic of sovereignty, the exceptionalism of the modern subject. Despite situating itself at the furthest end of the political spectrum from dictatorship, radical democracy continues to conceive community in the form of a grand subject, the modern polity, united by the commonality shared by its members. They believe commonality to be the condition of possibility of pluralism, emancipation, and progress. This appears to assume that pluralism that does not yield to the commonality required by the polity is a threat to the polity, and to itself (because the commonly grounded polity is the condition of possibility for pluralism. This is less apparent with Brown, who encourages contestation, but she does believe the polity to be fundamentally rooted in commonality. To that extent, radical democracy also continues to succumb to Carl Schmitt’s powerful argument that there is only so much pluralism a polity can withstand and that at some point the line must be drawn to properly distinguish what qualifies for political subjectivity and what does not. Although radical democrats do not agree with Schmitt that no pluralism is actually safe for the state, they do believe limits to be necessary to prevent the dissolution of the overarching political identity that allows for and enables pluralism to flourish in the first place. Without sovereignty to control the limits, they believe, there could only be chaos or a war of all against all.

Rather than trying to say ‘Bring it on!’, my attempt to investigate this logic merely seeks to pose the question of whether it is appropriate to refer all political possibility to this logic which presents the options as either sovereignty or chaos. It is for this reason that I find the genealogy of exceptionalism presented by Michel Foucault in his "Society Must
"Be Defended" course of lectures to be so interesting. Foucault's genealogy traces the emergence of exceptionalism in order to underscore its contingency, an important exercise given the incredibly persuasive influence of this phenomenon. In addition to showing exceptionalism to have a contingent basis, Foucault's discussion in "Society Must Be Defended" helps to demonstrate how radical democrats, despite being dramatically opposed to Schmittian versions of presidentialism, remain bound to the logic of sovereignty. His discussion suggests that radical democratic attempts to move far away from autocracy may simply be renewed attempts in a long line of efforts to salvage the legitimacy of the modern state. Nevertheless, despite these promising aspects of "Society Must Be Defended," and despite the fact that Foucault appears to have carried his understanding of the problem of sovereignty through to his later works, many of these later works also exhibit certain preoccupations that may be read as containing a commitment to modern subjectivity, begging the question of how successful his critique of sovereignty might ultimately be, if exceptionalism is as dependent on the ontological form of the modern subject as I have suggested. As the modern subject knows but is not known, Schmitt's sovereign stands outside the normally valid legal order, nevertheless belonging to it, for it is he who decides its limits. This problem exhibited in some of Foucault's later work suggests that Hindess is correct in his argument that Foucault is unduly preoccupied with the person of the sovereign, missing the real problem, the notion of the autonomous community – itself autonomous and comprised of autonomous individuals. He comes very close to the problem, connecting exceptionalism to Kant's transcendental subject, but seems to consider the problem to be one of the form of knowledge or epistemology rather than ontology.
“Society Must Be Defended” – Foucault’s Genealogy of Exceptionalism

“Society Must Be Defended” is perhaps most well known for the statement that Foucault made there that political theory has yet to behead the king. Sure, he suggests, there may have been a Revolution in France in which the physical king was beheaded, but he questions whether political theorists continue to serve the principle of the monarchy by failing to interrogate and rectify the extent to which the logic of their theories still manifest the theory of right. That is, he argues that political theory, or the philosophical approach to power, remains preoccupied with royal power. Historically, he says, juridico-philosophical discourse has centered on royal power in two specific senses: on the one hand, it had to be demonstrated that “the monarch was indeed the living body of sovereignty, and that his power, even when absolute, was perfectly in keeping with a basic right” and, on the other hand, it had to be demonstrated that “if power were to retain its legitimacy, it had to be exercised within certain limits.”

He contends that since medieval times the theory of right has been primarily concerned to establish and define the legitimacy of power and, thus, that the theory of right is centered around the problem of sovereignty. He is straightforwardly suggesting here that modern liberal-democratic attempts to de-authoritarianize the state may not radically challenge or transform its form, which is determined by the logic of sovereignty, implying, by extension, that to the extent that radical democrats continue to practice political theory they continue to promulgate the theory of right, which was formulated at the behest of royal power. He says that his project is to do the opposite of what Hobbes was trying to do in the Leviathan, and what political theorists since have tried to do:

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Ultimately, I think that all jurists try to do the same thing, as their problem is to discover how a multiplicity of individuals and wills can be shaped into a single will or even a single body that is supposedly animated by a soul known as sovereignty. Remember the schema of *Leviathan*. In this schema, the Leviathan, being an artificial man, is no more than the coagulation of a certain number of distinct individualities that find themselves united by a certain number of the State’s constituent elements. But at the heart, or rather at the head, of the State, there is something that constitutes it as such, and that something is sovereignty, which Hobbes specifically describes as the soul of the Leviathan (28-29).

He says that, in general, theorists of right are preoccupied with the problem of how to shape a multiplicity of individual wills into a single will or monistic entity. This forging of a singularity, moreover, appears to be exclusive in addition to being monistic: for the soul of the polity to triumph, those wills not reconcilable with the sovereign will must be extinguished.

He surmises that the key purpose of juridico-philosophical discourse and techniques has been to “dissolve the element of domination in power” through a theorization of legitimacy (26). He contends that although the juridico-philosophical theory of sovereignty may have adequately represented the manner in which power was exercised for a time, it became increasingly unrepresentative as a new form of power, disciplinary power, was invented. This new form of power, “one of the basic tools for the establishment of industrial capitalism and the corresponding type of society” in the seventeenth and eighteenth centuries, enabled the eclipse of feudalism by bourgeois society (36). He contends that this new development “should logically have led to the complete disappearance of the great juridical edifice of the theory of sovereignty,” but

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26 He specifies that he does not mean by ‘domination’ the “brute fact of the domination of the one over the many, or of one group over another, but the multiple forms of domination that can be exercised in a society” (27). Later in his career, he drops this rhetoric of domination in favour of a focus on power relations instead, maintaining the belief that power should be analyzed as “something that functions only when it is part of a chain” and cannot be possessed as a commodity (29).
did not because it was able to use and benefit from the continued credibility of the theory of sovereignty (37). He suggests, in fact, that this new form of power may have formed the condition of possibility of democratization of sovereignty by creating “a tight grid of disciplinary coercions” that “actually guarantees the cohesion of that social body” (Ibid). Because of the juxtaposition of the two heterogeneous discourses of sovereignty and discipline, he argues that the mode of social organization prevalent in our times is a ‘normalizing society,’ in which “normalizing procedures are increasingly colonizing the procedures of the law,” so that right comes to serve normalization (38-39). The general sense that the only credible alternative to disciplinary and normalizing power is a recourse to right leads Foucault to conclude that we are currently stuck in ‘a sort of bottleneck’ because turning to right to limit these new forms of power is increasingly ineffective. Thus, his claim that we must ‘release’ or ‘emancipate’ ourselves from the principle of sovereignty is more than a theoretical preference, in that remaining bound to this principle prevents us from effectively responding to this new development. This is why he explores the possibility, in “Society Must Be Defended,” of using war as an analyzer of power relations, instead of using sovereignty for that purpose.

Although Foucault asks some very general questions about the role war might play in analyzing power relations, his interest in war ends up being quite central to his genealogy of exceptionalism, which is more important for the purposes of this investigation. He says that at the end of the Middle Ages, “When war was expelled to the limits of the State or was both centralized in practice and confined to the frontier, a certain discourse appeared,” a discourse he believes to be “the first historico-political discourse on society,” one that differed fundamentally from the philosophico-juridical
discourse of sovereignty (49). He says that this discourse was ambiguous from the outset, being used in bourgeois, and sometimes popular, resistance to the absolute monarchy in England and in nobiliary resistance to a centralizing monarchy in France. So, this discourse did not necessarily stem from a common source, being united by any particular doctrinal elements, but took on similar characteristics as it developed in its various manifestations as it developed in response to the same development: the centralization of state power in the hands of an absolute monarchy, a development that occurred all across modern Europe.

According to Foucault, this first historico-political discourse of postmedieval Western society differs most fundamentally from the juridico-philosophical discourse of sovereignty because it does not attempt to take on the guise of “a universal, totalizing, or neutral subject,” but maintains that truth “can only be deployed from its combat position, from the perspective of the sought for victory and ultimately … of the survival of the speaking subject himself” (52). This orientation of the first historico-political discourse is especially evident, Foucault suggests, in its particular analysis of race:

... even at this early stage, or in other words from the seventeenth century onward, ... the idea that war is the uninterrupted frame of history takes a specific form: The war that is going on beneath order and peace, the war that undermines our society and divides it in a binary mode is, basically, a race war. At a very early stage, we find the basic elements that make the war possible, and then ensure its continuation, pursuit, and development: ethnic differences, differences between languages, different degrees of force, vigor, energy, and violence; the differences between savagery and barbarism; the conquest and subjugation of one race by another. The social body is basically articulated around two races (59-60).

But whereas, when it first appeared in the seventeenth century, it was basically a weapon used in resistance campaigns and polemics by decentered camps, by the nineteenth century it mutates and becomes ‘recentered’ as “the discourse of power itself,”
developing into a ‘biologico-social racism’ (61). The discourse of race war becomes, in this mutation, the discourse of “a battle that has to be waged not between races, but by a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from that norm, against those who pose a threat to the biological heritage” (Ibid). Thus, the discourse of race war becomes part of a “global strategy of social conservatisms,” which society comes to direct against itself as a State racism, or an “internal racism of permanent purification, … one of the basic dimensions of social normalization” (62). However, despite this particularly insidious later transformation, Foucault suggests that we “reserve the expression ‘racism’ or ‘racist discourse’ for something that was basically no more than a particular and localized episode in the great discourse of race war or race struggle” because, until this mutation occurred, the discourse of race used by the first historico-political discourse was part of a counterhistory, whose point was to fight for its survival in an order whose purported peace was actually a form of war, or quest for domination, waged by one group, nation, or race over another (65-66).

The significance of this transformation begs the question, however, of what may have brought it about. Although Foucault has little respect for linear and teleological historiographies, I believe that there is a more than coincidental link between the re-establishment of the hegemony of the theory of sovereignty over the binary conception of society espoused by the proponents of the first historico-political discourse on modern society and the emergence of this new racism. He notes although the bourgeois had the

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27 As noted later, with the transformation of the race discourse that Foucault describes as a counterhistory into racism as the notion is generally understood today, racism is not only something that society comes to direct against itself, as deeply troubling as that is, but is, in fact, first developed in the nineteenth century in order to justify colonization and its attendant genocide.
most difficult time using the discourse of history in its political fight during the heyday of
the first historico-political discourse, in France at least, certain obstacles were removed
because of "the reworking – in political and not historical terms – of the famous notion of
the 'nation,' which the aristocracy had made both the subject and the object of history in
the eighteenth century" (216-217). To clarify, it seems that the terms 'nation' and 'race'
were roughly coterminous in that earlier historical discourse. The most well-known
spokesperson of the emergent bourgeoisie in this context was Emmanuel Joseph Sieyès,
who argued that whereas the nobility were a nation but not the nation, and whereas the
absolute monarchy was the state but not even a nation, the Third Estate was the nation
thereby entitled to the state, because the it alone fulfilled the nation's substantive
conditions of existence, despite the fact that it had been formally granted such status.
Foucault suggests that this reworking of the notion of the nation reorients the relationship
between universality and particularity, paraphrasing the argument of the bourgeoisie:

"We are no more than one nation among other individuals. But the nation
that we constitute is the only one that can effectively constitute the nation.
Perhaps we are not, in ourselves, the totality of the social body, but we are
capable of guaranteeing the totalizing function of the State. We are
[uniquely] capable of Statist universality" (222).

With this transformation, the nation is no longer specified horizontally in relation to other
groups, nations, or races (according to Foucault's account of the first historico-political
discourse), but vertically in terms of a body of individuals who are capable of
constituting a State, as well as administering, managing, and governing themselves and it
(223). This shift allows for the possibility of writing "a history of a rectilinear kind in
which the decisive moment is the transition from the virtual to the real, the transition
from the national totality to the universality of the State" and will enable the writing of a
history that is not preoccupied with warlike relations, but rather relations of a civilian nature, in which the struggle that it records is "not of an armed clash, but an effort, a rivalry, a striving toward the universality of the State" (Ibid, Emphasis added). A further consequence of this notion of the nation, according to Foucault, is that the military or violent clash will become "no more than an exceptional moment, a crisis or episode within it" (Ibid).

This paragraph sums up what I consider to be the most important points in Foucault's genealogy of exceptionalism. For one, he does not describe the contemporary status of sovereignty as following a simple straight line from the birth of the modern state to our present, but gives an account that highlights the contingent combination of factors coming together to constitute what we now know as the nation-state. This emphasis on contingent combination is one of the key goals of his genealogical approach, which he uses to facilitate an understanding of our contemporary being as, above all, transformable. But, to return to the specific issue of exceptionalism, it is worth noting in particular some of the differences he shows to exist between the early modern monarchical state and the more recent nation-state. Whereas the earlier version could be characterized by a certain universality (i.e., over a particular territory), with the development of the nation-state, this universality comes to be supplemented by a totalization, so that sovereignty becomes more invested in the interstices of the social body. Foucault describes this process as social normalization, where discipline and what he calls biopower colonize the law, changing its orientation to suit the purposes of the social normalization. Of course, this trajectory is not normally controlled by an all-powerful monarch, but is more diffuse, as contemporary power relations operate as part
of a chain. What is sovereign, instead of a single individual, is the nation, although such an individual may supposedly represent that nation. In documenting the history of this new socio-political configuration, the *decisive* moment is the transition from the virtual to the real. Although this is different language than Schmitt uses, it can be taken to say something logically similar. When Schmitt says that the sovereign’s decision institutes a new order, or at least (re)founds order, ‘order’ can be taken to be akin to ‘the real’ in Foucault’s terminology, and the period when Schmitt’s sovereign suspends the existing constitution can be considered a state of virtuality or latency. In other words, virtuality can be considered to be a suspension of the real. Like Schmitt’s sovereign decider, virtuality can go in any possible direction. Once virtuality has become reality, and once Schmitt’s autonomous agent has decided and re-instituted order, then possibility is foreclosed.

In addition, Foucault’s description of the shift from a history focused on hostile confrontation to one concerned with a more peaceful or civil struggle over the constitution, governance, and administration of the nation-state suggests that this political form, still dominant in our present, is generally characterized by an internal stability, whose disruption is exceptional and confined to the margins. Perhaps he means that war in particular is usually fought over territorial borders, but it is conceivable that his statement is more open-ended and general than this – a likelihood given his elaborate distinction between the thoroughgoing sovereignty characteristic of the nation-state and the less invasive sovereignty of the early modern state. Given that he says that with social normalization sovereignty comes to define the norm, it is plausible that matters other than territory can stimulate an exceptional situation in the eyes of the sovereign (in
this case, normal society). For example, marginals, degenerates, or abnormals could be and have been considered a very serious threat to the one and true nation/race. It is in this sense that Foucault shows Schmitt’s project, particularly as it is exemplified in his later *The Concept of the Political*, to be much more insidious than a simple renewal of the theme of the political enemy.²⁸ Foucault argues that the modern state uses racism to justify murder after the development of biopower, whose function is to regulate and normalize life, a corresponding development to the emergence of mass society. With the elimination of war from historical analysis by the principle of national universality, the question of race is not erased, but becomes part of State racism. The primary function of racism, on Foucault’s interpretation, is to introduce “a break into the domain of life that is under power’s control: the break between what must live and what must die,” allowing “power to treat that population as a mixture of races, or to be more accurate, … to subdivide the species it controls into the subspecies known, precisely, as races” (255). He contends that although the notion that “‘In order to live, you must destroy your enemies,’” is in fact the relationship of war, racism makes this relationship function in a new way in tandem with biopower. The death of the other does more than guarantee the

²⁸ According to George Schwab, who translates and writes introductions to Schmitt’s *The Concept of the Political* and *Political Theology*, Schmitt’s primary motivation was to address the problem of the demise of the European sovereign state, which had enabled order to prevail within and between sovereign states from the Peace of Westphalia until the early twentieth century. In particular, he contends that Schmitt was concerned that “the infusion of militant ideology into politics undermined the states very foundation,” based as it was on a secular understanding of politics. Thus Schwab suggests that rather than being a conniving proponent of totalitarianism himself, Schmitt was attempting to stem the tide of “ideologically committed totalitarian one-party states.” He interprets Schmitt’s argument in *The Concept of the Political* to be that under ideology, the adversary is considered less than human, thus worthy of absolute annihilation, whereas his own friend/enemy distinction so fundamental to his conception of politics is meant to leave the adversary his humanity, merely requiring the enemy to retreat to his own soil. This may indeed be Schmitt’s intention, though perhaps not, but, nonetheless, he did collaborate with the Nazis whose intentions and actions Foucault has described quite accurately. Regardless, such intentions do not justify the hostile and opposed relation to the other, both external and internal, that Schmitt himself holds to be so necessary for the proper constitution of the political. See George Schwab, “Introduction,” in Schmitt, *The Concept of the Political*, 3-16, particularly 11.
safety of the self in the conventional sense: “the death of the other, the death of the bad race, of the inferior race (or the degenerate, or the abnormal) is something that will make life in general healthier: healthier and purer” (Ibid). This evolutionist racism, according to Foucault, first developed in the nineteenth century with colonization and its attendant genocide. Later, in the second half of the nineteenth century, “war will be seen not only as a way of improving one’s own race by eliminating the enemy race (in accordance with the themes of natural selection and the struggle for existence), but also as a way of regenerating one’s own race” (257). Thus he argues that the Nazi regime’s objective was not simply the annihilation other races, although that was definitely a major component of its project; the other component was to “expose its own race to the absolute and universal threat of death,” something the Nazis found to be a necessary component to the enslavement or extermination of other races, in order to truly constitute its “own” population as a superior race (259). Nonetheless, despite the terrifying ruthlessness of Nazi racist exceptionalism, Foucault makes the case that a racist exceptionalism is at play in some form in most modern states, characterized as they are by a variety of projects of social normalization.²⁹ Perhaps this is the key point of “Society Must Be Defended” – it is certainly present at many other points in his scholarly career – but what I wish to highlight most is the fact that his genealogy of exceptionalism underscores its contingent emergence and shows it to come into fruition with the birth of the nation-state, the contemporary form of the “we” modified but maintained by liberal and radical democrats alike. Moreover, his description of exceptionalism shows decision to transform virtuality

²⁹ In fact, he argues that “the socialist State, socialism, is as marked by racism as the workings of the modern State, of the capitalist State,” because it inevitably reaffected and reinvested the very power-mechanisms constituted by the capitalist State or the industrial state” and has certainly not made any critique of biopower (260-261).
into reality and shows exceptionalism to deal with marginal cases for the sake of
protecting and restoring normality and order. Perhaps the point of this story he tells is to
underscore that the problem with Nazism was not just dictatorship, but the more general
problem of exceptionalism that operates in less extreme cases as well. His account also
highlights the fact that the agency that most often decides is not simply an individual
person, but the nation, polity, or collective identity.

The limits of Foucault’s critique of sovereignty: a fidelity to modern subjectivity

In a number of his later essays and interviews, Foucault continues his analysis of
the problem of sovereignty and begins to flesh out some of its implications and
consequences. However, to the extent that he delivers such a sophisticated examination
of contemporary exceptionalist sovereignty but nonetheless uses the discourse of freedom
and creativity so readily, I wonder whether Foucault, who is otherwise known for his
critique of subjectivism,\(^\text{30}\) truly thoroughly comprehends the problem of sovereignty.
Can his critique of sovereignty be all that comprehensive if he does not truly connect
exceptionalism to the ontology of the modern subject? If he fails to make this
connection, advocating for the freedom and creative power of the modern subject, can his
resistance to political sovereignty be considered successful? Unfortunately, despite his
astonishing sophistication, I suspect that Foucault’s project stops short of going to the
heart of the problem.

\(^{30}\) Early in his career, in the “Foreword to the English Edition” of The Order of Things, Foucault says that
in particular he rejects what one might call “the phenomenological approach,” “which gives absolute
priority to the observing subject, which attributes a constituent role to an act, which places its own point of
view at the origin of all historicity – which, in short, leads to a transcendental consciousness.” Michel
Foucault, The Order of Things: An Archeology of the Human Sciences (New York: Vintage Books,
Barry Hindess argues that although Foucault’s interest in resistance and freedom stems not from a straightforward commitment to the autonomous agent championed by Enlightenment political thought and so central to much of contemporary liberal democratic and critical theory but from a Nietzschean concern with life, Foucault does not manage to escape from the political theoretical preoccupation with legitimacy that he critiques in “Society Must Be Defended.” Hindess makes the case that Foucault is too concerned with the person of the sovereign, overlooking the role of fictional communities in modern Western social and political thought, particularly communities governed on the basis of their members’ consent.

Foucault’s focus on techniques or “the means whereby the effects of power are produced” plays a critical role in his attempt to circumvent the question of legitimacy that lies at the heart of so much of political theory. Moreover, his analysis of the constitution of the subject in and through power relations and the work of government goes a long way in undermining the illusion of “the person as an autonomous moral agent which plays such an important part in the model of government as based on rational consent” (21). His discussion of disciplinary- and bio-power is a key component of such an effort. Nonetheless, Hindess maintains that despite Foucault’s avoidance of a utopian vision of emancipation, his treatment of domination in particular aligns him with those variants of political theory he had criticized for being so preoccupied with legitimacy. Although he may not propose a utopian ideal of emancipation, he does seem to suggest that “emancipation from particular systems of power, or from the effects of the employment of particular techniques of power, is another matter entirely” (152). Hindess

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questions whether Foucault can really have it both ways, denying the tenability of the normative project of human emancipation, while suggesting that emancipation may be desirable and achievable on certain limited fronts:

In spite of Foucault's explicit avoidance of any universalistic discourse of emancipation from the effects of power, there are passages in which his treatment of states of domination— that is, 'what we ordinarily call power' ... in relation both to liberty and to the critical function of philosophy, seems to resurrect many of critical theory's traditional concerns. ... The difficulty here is that there are passages in which Foucault seems to suggest not only that domination will in fact be resisted, but also that it should be kept to a minimum. However, if we take seriously his radical account of the constitution of the subject and of the productivity of power, then it is difficult not to be sceptical of the way in which he sometimes counterposes liberty to domination (152-154).

Hindess questions whether Foucault's approach rests on a normative basis, despite attempting to remain more factual, noting that his demand that domination should be kept to a minimum is a contention that "presents the mere presence of domination as if it were an appropriate object of normative judgment: as something that is bad in itself" (156).

Hindess's point here is not simply that Foucault contradicts himself, but rather that this inconsistency points to the fact that Foucault has missed the problem, despite the fact that he comes close to apprehending it. He argues that the problem to which Foucault alludes when he states that political theory has yet to behead the king is "symptomatic of a more general modern obsession with the idea of the person as an autonomous agent, and consequently, with the idea that a community of such persons can, and should, be governed by the consent of its members" (157).

Foucault, on Hindess's interpretation, is unduly preoccupied with the person of the sovereign. Although Foucault underscores the fictional nature of the state of nature story that grounds the theory of government as based on consent, Hindess stresses that
such a point is not original and is something with which modern Western political thought appears to be familiar, given that, even while it acknowledges the fictional status of this world, it constantly invokes it, "both as a surrogate for the present, and as a model of what ought to, but does not, exist" (156-157). The real problem, he contends, is not that of sovereignty but that of political community. Hindess implies that Foucault's critique of sovereignty itself appeals to an implicit "we," or fictional community, that must rid itself of sovereignty. While Hindess acknowledges that sovereignty is a problem worthy of consideration, the most important aspect of this problem is not the endowment of the sovereign with the right to govern provided by the supposed consent of its subjects, but how this presumed consent can give the sovereign the capacity to govern. He stresses that this is the slippery problem that dominates the majority of modern Western political thought (15). Rather than being centered on the king himself as Foucault supposes, the modern Western polity and modern Western political thought is more based on the autonomous agent of modernity and on the idea of a community of such agents.

While I think that Hindess makes an important point that should be taken seriously, Foucault certainly goes to great lengths to explore the problem of political community in "Society Must Be Defended" and elsewhere. One of the most interesting sites for an investigation of the simultaneous strength and limitations of Foucault's critique of exceptionalist sovereignty is his discussion of Kant's "What Is Enlightenment?," where he expands upon his earlier critique and reveals that its motivation lies in a commitment to autonomous subjectivity. I will return to his discussion of Kant's Enlightenment question shortly, but would like to start with a late interview, "Polemics, Politics, Problematizations," which I believe will help indicate
what is at stake in his discussion of the novelty and contemporary relevance of Kant’s questioning. This interview is one of the clearest examples of his critique of the Schmittian manner of thinking given in the final stage of his career, shortly before his death. Here he states that his choice not to belong to the world of people who get involved in polemics is a difference that is “something essential” because he believes that “a whole morality is at stake, the morality that concerns the search for truth and the relation to the other.”

Schmitt emblematizes the most dominant contemporary model of polemics, the political model, which “defines alliances, recruits partisans, unites interests or opinions, represents a party” and “establishes the other as enemy, an upholder of opposed interests against which one must fight until the moment the enemy is defeated and either surrenders or disappears” (Ibid). Clearly, Foucault is referring to the “friend/enemy” distinction of Schmitt’s The Concept of the Political, which can be read as a radicalization of the need to define modern political subjectivity and identity by way of projection, distinguishing self from other and inside from outside. Foucault’s moral resistance to this form of polemicism finds its violent relation to the other particularly abhorrent. Nonetheless, he contends that a less radicalized but still problematic version of the modern manner of conceiving political identity is maintained in other examples of contemporary political thought.

He responds in particular to “postmodern” philosopher Richard Rorty, who maligns him for not appealing to any ‘we’ in his previous work, for not grounding his criticism on the side of ‘any of those ‘wes’ whose consensus, whose values, whose traditions constitute the framework for a thought and define the conditions in which it can

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be validated” (21). He says that Rorty has clearly missed the point of what he has been trying to effect in his approach to political questions, putting the cart before the horse, so to speak, demanding that one work from and limit oneself to a preexisting, given, and necessary identity. Instead of starting by placing “oneself in a ‘we’ in order to assert the principles one recognizes and the values one accepts,” he prefers what he calls ‘problematization,’ which can help to “make the future formation of a ‘we’ possible by elaborating the question” (Ibid). He describes problematization as “the specific work of thought,” which, in turn, he describes as “freedom in relation to what one does, the motion by which one detaches oneself from it, establishes it as an object and reflects on it as a problem” (24, 23). What he means by this can be clarified by turning to his continued critique of exceptionalism made in his appraisal of Kant’s mediations on Enlightenment.

Foucault takes interest in Kant’s discussion of Enlightenment because it poses an important question relative to the Cartesian question. Whereas Descartes ask “Who am I? I, as a unique but universal and unhistorical subject?,” Kant ask a more grounded and specific question, “What are we, as Aufklärer, as part of the Enlightenment?” He stresses that while for Descartes “I … is everyone, anywhere at any moment,” Kant’s question is more particular and focused on a live present (134). In his analysis of Kant’s “What Is Enlightenment?” in his own essay by the same name, Foucault suggests that the gist of Kant’s Enlightenment question is to ask what difference today introduces with

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33 Making the point that this is not a solipsistic operation, he says that “To say that the study of thought is the analysis of freedom does not mean that one is dealing with a formal system that has reference only to itself,” because “for a domain of action, a behavior, to enter the field of thought, it is necessary for a certain number of factors to have made it uncertain, to have made it lose its familiarity, or to have provoked a certain number of difficulties around it.” He says that such instability results from “social, economic, or political processes,” but “here there only role is that of instigation, as these processes “can exist and perform their action for a very long time, before there is effective problematization by thought.”

34 Michel Foucault, “The Subject and Power,” in The Essential Foucault, 133-134.
respect to yesterday. This is a novel question because for the first time in the history of the Christian tradition the present is presented as an issue worthy of philosophical consideration. He notes that Kant defined Enlightenment “in an almost entirely negative way, ... as an ‘exit,’ a ‘way out,’” or as “a process that releases us from status of ‘immaturity,’” where ‘immaturity’ means “a certain state of our will which makes us accept someone else’s authority to lead us in areas where the use of reason is called for.”

Enlightenment, or the overcoming of self-incurred immaturity, requires both individual courage and collective participation.

Foucault suggests that in Kant’s little text on Enlightenment we can see “the outline of what might be called the attitude of modernity” (49). He suggests Baudelaire as an exemplar of this attitude of modernity, whose “consciousness of modernity is widely recognized as one of the most acute in the nineteenth century” (Ibid). What Foucault appreciates most about Baudelaire’s approach to modernity is that it does not attempt to “‘liberate man in his own being’; it compels him to face the task of producing himself” (Ibid). Likewise, Foucault himself describes the attitude of modernity as “a limit-attitude,” which seeks to “move beyond the inside-outside alternative” to situate ourselves at the frontiers or margins, to test our limits in practice (53). The reason I presented a summary of his point in “Polemics, Politics, Problematizations” first was to make it clearer, through comparison, just what Foucault is getting at in this important statement. Just as Baudelaire’s modern approach does not seek to liberate man in his

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35 Foucault, “What is Enlightenment?,” in The Essential Foucault, 44-45.
36 It is more fruitful, he believes, to ‘try to find out how the attitude of modernity, ever since its formation, has found itself struggling with attitudes of ‘countermodernity’’ than to distinguish ‘modern’ from ‘pre-’ and ‘post-modern’ epochs, because characterizing modernity as an epoch is problematic in that, ‘situated on a calendar, it would be preceded by a more or less naïve or archaic premordernity, and followed by an enigmatic and troubling postmodernity.’
own being, Foucault seeks to problematize a Rortian defense of existing identity that is
defined by way of projection or differentiation of self from other and inside from outside.
Just as Baudelaire's modern approach compels man to face the task of producing himself,
Foucault suggests that it is the role of problematization to enable the formation of a future
we possible, by testing in practice the necessity of our limits as we currently understand
them. This is why he says that his understanding of the attitude of modernity is "oriented
toward the contemporary limits of the necessary" (52). Although he appears to follow
Kant in identifying criticism with analysis and reflection upon limits, he takes it in a
different direction, saying that whereas Kant's Critique was concerned to determine
necessary limitation, "seeking to make possible a metaphysic that has finally become a
science," the goal of his own critique is more practical, seeking to "give new impetus, as
far and as wide as possible, to the undefined work of freedom" (54). This has been the
aim of his genealogical work, although it is clear that as much as it problematizes
important aspects of modern subjectivism, including the definition of identity by way of
projection, and the necessity of limits as defined by Kant's critical project, it is clear that
this problematization is motivated by an underlying commitment to freedom and the
creativity of modern man, begging the question of how thoroughgoing his critique of
modern subjectivism really is.

I think that rather than thoroughly exploring the nature of the problem of the
modern subject, Foucault has come close, identifying a related problem but stopping
short of going completely to the root of the problem. Foucault appears to be most
concerned with the transcendental subject of Kant's Critique and characteristic of
subsequent phenomenology. The transcendental subject is certainly problematic (a point
to which I shall return in the Conclusion), meaning that Foucault’s project offers much that is insightful. However, his problem with Kant’s transcendental subject seems to be one of epistemology and not of ontology, which explains how he can continue to champion and place hope in the free subject despite the critique he offers.

In “What Is Critique?,” an earlier work in which he started thinking about the novelty of Kant’s Enlightenment question, he calls the attitude of modernity by a different name: the critical attitude. Here, he defines the critical attitude as a form of insubordination that would “essentially insure the desubjugation of the subject in the context of ... the politics of truth,” arguing that this definition has more in common with Kant’s definition of Enlightenment than it does with Kant’s own definition of Critique. Foucault is careful to distinguish between Kant’s treatment of Enlightenment and Critique, noting that for Kant Critique “is not so much a matter of what we are undertaking, more or less courageously, than it is the idea we have of our knowledge and its limits” (267-268). He finds it very unfortunate that Kant himself allowed for the privileging of Critique at the expense of the courage of the Enlightenment that became so prominent in the course of the nineteenth and twentieth centuries. He argues that the overconfidence of positivist science, “the development of a state or state system which justified itself as the reason and deep rationality of history,” and the interweaving of positivist science and the modern state are three of the most noteworthy negative consequences of this privileging of Critique instead of Enlightenment courage made possible by Kant (268).

However, he notes that along with these problematic developments arose a concern similar to Kant’s Enlightenment concern, expressed most notably by German
thinkers "from the Hegelian Left to the Frankfurt School" in the question, paraphrased by Foucault: "for what excesses of power, ... all the more impossible to evade as it is reasonably justified, is reason itself not historically responsible?" (269). He contends that as a result of such interest in the relation between rationality and power, a concern which is becoming ever more pressing, Kant's Enlightenment question is becoming ever more relevant. As such, he suggests that it is the task of the present to reverse the privileging of Kantian Critique over the critical attitude, or Enlightenment courage (278), by, as he says in "What Is Enlightenment?," transforming the critique performed in the form of necessary limitation into a practical form of critique that tests our limits in the perpetual quest for freedom.

Foucault's discussion of the privileging of Kantian Critique at the expense of his Enlightenment question can be seen to be the basis of his attempt to avoid thinking about the problems of the overconfidence of positivism, the development of the states system, and their combination as 'the self-perversion of reason,' one of the possible interpretations of Weber's secular-rationalization thesis, made by Jürgen Habermas, one of Foucault's main philosophical opponents, in particular. According to Hindess, Habermas seeks to rectify a situation he interprets to be one of a self-perversion of reason, while simultaneously defending "the enlightenment faith in the emancipatory potential of reason," by distinguishing between instrumental reason, or positivism, and communicative reason, presenting the latter as "more fundamental."37 Foucault refuses to take this approach, contesting the problematique that seems to require it. In "Structuralism and Poststructuralism," an interview, Foucault says that, because he has tried to take his distance from phenomenology, not believing in "a kind of founding act

37 Hindess, 147.
whereby reason, in its essence, was discovered or established,” he is not inclined to view “the self-perversion of reason as a unique phenomenon, occurring only once in history, at a moment when reason would seem to have lost something essential, something substantial – as we would have to say after Weber.”[38] This refusal of a certain approach to the post-Weberian problematique, whereby one conceives the problem as one of restoring to reason a lost substantiality, can also be read as an important component of Foucault’s response and resistance to Schmitt’s project which buys in wholeheartedly to this approach to the post-Weberian problematique. He argues that the idea that we are witnessing the collapse of reason manifests “one of the most harmful habits … in post-Hegelian thought: the analysis of the present as being precisely, in history, a present of rupture, or of high point, or of completion or of a returning dawn, and so on” (89).

Although he acknowledges having done this himself and that one can even see it in someone like Nietzsche, he contends that we should have the modesty to say that “the time we live in is very interesting; it needs to be broken down, and that we would do well to ask ourselves, ‘What is today?”’ (Ibid). Hence his attraction to Kant’s Enlightenment question. He stresses, again, that “any diagnosis of what today is … does not consist in a simple characterization of what we are but, instead – by following lines of fragility in the present – in managing to grasp why and how that which is might no longer be that which is” (94). He maintains that “What reason perceives as its necessity or, rather, what different forms of rationality offer as their necessary being, can perfectly well be shown to have a history; and the network of contingencies from which it emerges can be traced”

(Ibid). Earlier in this chapter I argued that this is in fact the objective of his genealogies, including his genealogy of exceptionalism in "Society Must Be Defended."

I noted earlier that Hindess acknowledges that Foucault's interest in resistance and freedom is not rooted in an Enlightenment commitment to the autonomous moral agent in the way that Habermas's political theory is, but derives more from a Nietzschean concern with life. In a way, this could be seen to align Foucault with a post-Weberian interpretation of reason as having lost its substantiality to the triumph of technology and instrumentality, but in "Life: Experience and Science," he formulates a unique way of trying to get around this problem, by redefining life explicitly in opposition to this post-Weberian problematique. In this essay he borrows the notion of 'the concept in life' from his mentor, Georges Canguilhem, to formulate a philosophical approach that conceives 'life' as central without conceptualizing 'life' as the experience of the subject. This notion of the concept in life is similar to his understanding of problematization as the work of thought that responds to difficulties, and appears to be a more empirical-experimental, land-bound approach than the rationalism of the transcendental subject.

Although he previously argued, in "What is Critique?" that the question of Enlightenment, as Kant had posed it, had never been of as great an influence in France as it had in Germany, he also suggested that more recently such questioning had become more prominent in France as a result of the influence of the history of the sciences, which stimulated a questioning surrounding the relationship between rationalization and power through its research on the constitution of meaning and analyses on the history of scientific rationality. In "Life: Experience and Science," he argues that the most significant division running through the different versions of thought in post-war France
is that which separates "a philosophy of experience, of meaning, of the subject," from "a philosophy of knowledge, of rationality, and of the concept." On the one hand, there are philosophers like Jean-Paul Sartre and Maurice Merleau-Ponty, while on the other hand, there are historians of science like Canguilhem. Despite the fact that the former strain seems more straightforwardly relatable to political concerns, given the speculative and theoretical nature of the history of the sciences, Foucault argues that it was the latter strain that was most involved in disputes over whether "the basis of rationality could not be dissociated from an interrogation concerning the current conditions of its existence," thus bringing the thrust of Kant's Enlightenment question to the fore in contemporary France (Ibid). Moreover, this problematization of the relation between rationalization and power stimulated a movement reaching beyond France that "caused people in the West to ask what basis there could be in its culture, its science, its social organization, and finally its very rationality for it to claim a universal validity" and to ask whether such universality could be "anything more than a mirage tied to domination and a political hegemony?" (10). It is possible that his involvement in this broader questioning stimulated and facilitated his analysis and critique of racism and social normalization in "Society Must Be Defended," which argued that this racism held that there was one true race entitled to define the norm and that this racism was developed to justify and facilitate colonial genocide and also came to be turned against designated normals and degenerates in European societies as well.

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He suggests that Canguilhem in particular played a key role in bringing this Enlightenment questioning to the fore in post-war France. Foucault, who has sought to avoid resorting to phenomenology since the inception of his career, finds Canguilhem to provide a manner of thinking that does not proceed by way of the transcendental subject. Problematically, even though, after Husserl, phenomenology “brought the body, sexuality, death, and the perceived world into the field of analysis, the cogito remained central to it” (16). Canguilhem’s work was able to have such pervasive influence in France, “for all of those who, from very different points of view, have tried to rethink the question of the subject,” by opening up the question of the philosophical problem of the relation of truth to life (Ibid). Foucault says that while phenomenology “expected ‘lived experience’ to supply the originary meaning of every act of knowledge,” Canguilhem enables him to consider whether it might be possible to look for the basis of knowledge in “in the ‘living’ itself” (14). He takes particular interest in Canguilhem’s notion of “the concept in life,” which he describes as “one of the modes of that information which every living being takes from its environment and by which conversely it structures its environment” (Ibid). Contrary to the interpretation of the post-Weberian problematique that holds that we have witnessed the self-perversion of reason, that reason has become purely technical or instrumental, losing its substantial and authentic basis, Foucault, motivated by Canguilhem’s innovation, argues that “The fact that man lives in a

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40 Foucault says that many, or “nearly all,” of those who have occupied a considerable place within the French philosophic institution “were affected directly or indirectly by the teaching or the books of Canguilhem.” According to Foucault, he was so influential that, “take away Canguilhem, and you will no longer understand very much about a whole series of discussions that took place among French Marxists; nor will you grasp what is specific about sociologists such as Pierre Bordieu, Robert Castel, Jean-Claude Passeron, what makes them so distinctive in the field of sociology; you will miss a whole aspect of the theoretical work done by psychoanalysts and, in particular, by the Lacanians. Furthermore, in the whole debate of ideas that preceded or followed the movement of 1968, it is easy to find the place of those who were shaped in one way or another by Canguilhem” (6).
conceptually structured environment does not prove that he has turned away from life, or that a historical drama has separated him from it” (Ibid). Rather, living in a conceptually structured environment merely enables man to relate to his environment with “no set point of view toward it, that he is mobile on an undefined or rather broadly defined territory, that he has to move around in order to gather information,” information which he needs to live (Ibid). Thus, instead of immobilizing life, forming concepts is “a way to live in relative mobility” (Ibid).

This non-phenomenological, non-transcendental form of knowledge seems to be a form of experimentation or trial and error. In fact, Foucault surmises that what is specific to life itself, and to humanity, is its capacity for error. Accordingly, he argues that it is appropriate to see error as “the root of what produces human thought and its history” rather than “a neglect or delay of the promised fulfillment” of truth (15). Thus, Foucault contends that the promise of the history of the sciences is that it “can be analyzed only as a series of ‘corrections,’ as a new distribution that never sets free, finally and forever, the terminal moment of truth,” unlike philosophy or metaphysics (Ibid). He suggests that the achievement of Canguilhem’s contribution to the history of sciences, Foucault contends, is that this notion of error so central to his understanding of life enables him to “connect what he knows about biology and the manner in which he does history, without ever intending to deduce the latter from the former, as was done in the time of evolutionism,” thus enabling the question of the relation of truth to life to be posed in a way that is meaningful for thought and the present (16).

By displacing phenomenology and the subject in this alternative approach to the notion of life, Foucault appears to continue his resistance to exceptionalist
sovereignty, which mirrors the logic of the transcendental subject, particularly in its emphasis on *necessary* limitation. However, as interesting and potentially innovative as this approach is, I wonder how deep Foucault’s understanding of the problem of the modern subject is and thus how limited his approach may be. An indication of the scope of Foucault’s limitation is indicated by Karsten Harries who does not address Foucault directly, but questions whether such a science-centered approach truly comprehends the novelty of modernity. Harries says that his own work, *Infinity and Perspective*, was provoked by a French historian of science, Alexandre Koyré, author of *From the Closed World to the Infinite Universe*, who argued that “‘It is generally admitted that the seventeenth century underwent, and accomplished, a very radical spiritual revolution of which modern science is both the root and the fruit.’”41 Against this interpretation, Harries argues instead that modern science is really only the fruit of that revolution and that “Even more important are theological speculations and, more generally, the Christian understanding of God” (15). I do not want to go further into an interpretation of Harries’s very interesting work, but would like to extrapolate this point of his in relation to Foucault. Foucault seems to suggest that human knowledge is essentially characterized by a series of corrections and seems to understand science as a more empirical or experimental practice, as Hume did, than a rationalistic or metaphysical one, as Kant did. Considering Harries’s criticism of Koyré leads me to question whether Foucault anachronistically tries to read science into the prehistory of modernity, failing to appreciate the onto-theological transformation that Harries, Dupré, and Fasolt believe to be constitutive of modernity.

Although I believe that Foucault goes to considerable lengths to grasp the problem of political community, as is evident particularly in "Society Must Be Defended" and "Polemics, Politics, Problematizations," I think that Hindess has an important point. Although this may be a bit of an extrapolation, Hindess’s analysis suggests that Foucault fails to make the link between the autonomous agent of modernity and modern sovereignty. This might not seem straightforward because of his trenchant criticism and resistance to subjectivism, but I believe that what is going on here is that Foucault’s main problem is with Kant’s transcendental subject and the privileging of Kant’s critical project at the expense of his Enlightenment questioning. Despite his resistance to this version of modern subjectivism, he seems mainly to oppose it as a form of knowledge or science, failing to explore its onto-theological basis. I share with Foucault a critical assessment of aspects of Kant’s particular subjectivism that shapes the logical form of exceptionalist sovereignty, particularly his analysis of the self and its projection of its outside, but find that his response occurs primarily on the level of epistemology, which cannot fundamentally redress the ontological imbalance of the modern autonomous subject. I do think that he comes extremely close to the problem and must admit that his analysis has played a powerful role in the shaping of my own understanding of the problem, but I must agree with Fasolt, who contends that Foucault has failed to apprehend the novelty and implications of what he calls the ‘temporal perspective’ integral to the autonomous modern subject:

> Nowhere is this more clearly evident than in his reliance on the conventional periodization of European history into ancient, medieval, and modern periods, his unfamiliarity with medieval matters, and a faith in the self-centered independence of modernity that seems remarkably naïve compared to his philosophical sophistication.42

42 Fasolt, 38.
Conclusion
Many liberal and radical democrats view political possibilities as existing along a spectrum, ranging from right to left, with the concentration of power characteristic of dictatorship on one end of the spectrum and the dispersal of power characteristic of democracy on the other end. To what extent, though, does such an understanding of political possibility fail to appreciate the way in which many liberals and leftists may replicate the logic of political formation used by many of their conservative and fascist opponents? However, underlying the gradation of alternatives along this spectrum is the assumption that politics must occur within the confines of modern sovereignty. Although fascists may want to do one thing with the state and radical democrats may want to do something very different, it is the argument of this chapter that both projects, whether explicitly or not, depend upon the logic of sovereignty. To the extent that radical democrats continue to use this logic, despite seeing themselves as the opposite of fascists, they reinscribe relations of power that they intend to eschew. This is not to suggest that liberal or radical democrats are about to embark on mass projects of ethnic cleansing and genocide, but simply that their political theories nonetheless replicate a logic that is essentially monistic and exclusive. They allow more differences to enter into the equation, but continue to maintain that there must be limits to the modern polity and, thus, that at some point the line must be drawn, ultimately excluding certain forms of life from democratic politics.

When I say that radical democracy does not fully confront the problem Schmitt's persuasive argument for exceptionalist sovereignty poses to contemporary political thought, I do not mean to suggest that Schmitt invented this problem and theory or that an adequate response to it comes from an understanding and resistance to Schmitt alone. It
is easy to be reviled by Schmitt and to attempt to avoid the particular moves he makes. The point of referring the problem to Schmitt is mainly because he makes the argument for exceptionalism explicitly and in a fairly clear fashion, having the audacity to draw out its consequences boldly. In fact, the theory he articulates with such clarity has a widespread appeal and influence, at least on a general level. Not everyone who draws upon the theory and practice of exceptionalism believes that political power must be concentrated nor that political identity must be defined in opposition to external and internal enemies. Nonetheless, exceptionalism seems to act as the unconscious of modern politics. By this I mean that modern political thought, even in its less regressive instantiations, including liberal democrat and, most notably, radical democratic political theories, draws upon it readily and with ease.

Wendy Brown does not argue for exclusion specifically, as even self-described radical democrat Chantal Mouffe does, but she does agree with Schmitt, even if she is not thinking of him directly, that limits are necessary to protect the polity from ‘insurgency from within and conquest from without.’ A basis of commonality is the condition of possibility of social progress, emancipation, and freedom, implying that a balance must be struck, limiting what is possible for the sake of that which makes such things possible. I certainly do not think that she desires such an outcome, given that she herself finds toleration to be incredibly presumptuous and paternalist, because those who do the tolerating find their own power to be unproblematic and implicitly or explicitly designate those who are to be tolerated as deficient and inferior. However, to the extent that she anchors her project to modern politics, she is bound to share important aspects of its shortcomings, particularly the emphasis on necessary limitation. At the
very least, as Constantin Fasolt suggests, the commitment of modern politics to freedom and subjectivity rules some forms of life out as nonpolitical while it includes others in the realm of politics. In making the argument that even radical democrats remain committed to the form of modern exceptionalist sovereignty by maintaining that the polity must have limits in order to persist, my point is not to malign them for their attempts to avoid reconstituting the relations of power characteristic of their opposite on the political spectrum, fascism or dictatorship, but is, rather, to bring attention to the constitutive role played by the modern subject in modern politics, to encourage the possibility of being otherwise, both in terms of politics and ontology.

It is clear that Foucault has made a considerable effort to analyze and avoid repeating this problem. He simultaneously problematizes Schmitt as well as the variants of political theory that ground themselves in the French Revolution and Enlightenment (i.e., those leftist and liberal approaches preoccupied with emancipation and freedom). His analysis in "Society Must Be Defended" suggests that liberal and radical democracy remain tied to an ancient preoccupation with the legitimacy of royal power, or the soul of the state, sovereignty. He underscores the violence of the modern state and the kinship of democracy and dictatorship, as well as the intervening variations along the political spectrum, that stems from a commitment to the logic of sovereignty. Moreover, he maintains a resistance to phenomenology, the philosophy of the transcendental subject, throughout his career. Nonetheless, Hindess suggests that Foucault's condemnation of domination as worthy of disapprobation in itself aligns him with the emancipatory orientation of liberal democratic and critical theory. His later essays on Enlightenment reveal a concern with freedom that adds to the force of Hindess's assessment. He does
maintain a resistance to phenomenology in his exploration of Enlightenment, however. In “Life: Experience and Science,” he formulates a more immanent understanding of human knowledge that does not aspire to the pretensions of transcendence. But might this be another attempt, by one of the most erudite of contemporary thinkers, to once again make human finitude its own foundation, a move for which he had faulted Kant early in his career, in The Order of Things? Even if he offers a more provisional philosophy of knowledge, does this imply that he ceases to replicate the solipsistic ontology of modern subjectivity? Although he maintains a concern for the other, that which or who is excluded by the solipsistic self, throughout his career, and does not merely seek to include the excluded in the polity or subjectivity as democratic pluralists do, does provisionalist epistemology redress what Dupré describes as an ontological imbalance?

Beatrice Han argues that Foucault indeed remains trapped within the analytic of finitude, the modern quest to make the subject act as its own foundation. She argues that the fact that our current relation to ourselves and the world is so defined by an overconfidence in technological Macht underscores the urgency of the problem of the solipsism of the modern subject. Her analysis is inspired by Foucault’s own, finding him to come incredibly close to an adequate understanding of the problem, but ultimately replicating the problem in his own theoretical efforts to overcome it.

Early in his career, in his Commentary, his unpublished complementary doctoral dissertation on Kant’s Anthropology, and in The Order of Things: An Archeology of the Human Sciences, Foucault identified the fate of modernity with Kant’s own philosophical slippage from the Critique of Pure Reason to the Anthropology. Kant’s initial
problematique had been to resolve the dilemma of empirical finitude, or, as Han paraphrases: “in a bereaved world in which God is no guarantor of eternal truths anymore and can only be construed as a postulate, how can a finite being step beyond the boundaries of its empirical limitations and know anything with a legitimate claim to universality?” Kant proposed the transcendental subject, which was to be conceived as simultaneously finite, unlike the now dead God, but above the fray of particular and inevitable empirical limitations, as God had been conceived. For Kant, this transcendental subject constituted the condition of possibility of truth and defined the necessary form and limits to human knowledge. But this necessity of founding the theory of knowledge on the finitude of the human subject generated serious problems for Kant.

On Foucault’s interpretation, Kant had an impossible time keeping both forms of finitude — empirical and a priori — distinct, culminating in “the ambiguous and opaque image of ‘man’ as subject/object” in the Anthropology (128). Problematically, the former condition of possibility of knowledge, the transcendental subject, came to appear as ‘already’ determined by empirical factors, destabilizing the foundation of knowledge, given that this background could not be truly known unless through the perspective of the transcendental subject itself. The vicious circle that resulted from this attempt to ground the theory of knowledge in human finitude was not unique to Kant’s philosophy, but has been replicated throughout modernity, which has been plagued by innumerable attempts to make finitude self-foundational.

In the face of these problems he encountered in providing a solid and secure foundation for knowledge, Kant did not ultimately admit defeat but, rather, gave man

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43 Béatrice Han, ‘Foucault and Heidegger on Kant and Finitude,’ in Foucault and Heidegger: Critical Encounters, edited by Alan Milchman and Alan Rosenberg (Minneapolis and London: University of Minnesota Press, 2003), 127.
incomparable power, making him "the center of a purely anthropological stage from which even God has been excluded as supreme Director" (154). After Kant, this problem became even more pronounced in the latter attempts by German idealism to attain godhood and absolute knowledge. This over confidence and self-centeredness of modern man is responsible, Han contends, for "our contemporary understanding of Being has given us the implicit belief and more importantly the practices from which it appears that technological Macht is what defines our relationship to the world and to ourselves" (Ibid). Because such reverence for scientific progress and the unprecedented power of 'theoretical man' lead nowhere but to nihilism, which she defines as "a hyper-efficacious but spiritless and valueless dynamic," it is clear that "finitude cannot be understood in this solipsistic way, as its own foundation and the path to its private overcoming" (155, 154). Despite his analysis of Kant's failure, Han argues that Foucault himself does not manage to escape from the analytic of finitude that he identifies as so endemic to modernity. This failure is evident, she contends, in his attempt, during his archeology phase, to "isolate successive historical a priori as epochal conditions of intelligibility," or epistemes, which encountered the problem of being unable to accounting for change "without having the empirical recur within the transcendental" (150). She surmises exhaustion with this problem of the analytic of finitude leads Foucault to turn to "a purely positivist account of history, in which philosophy has no place" and leads Heidegger to revert to the mysticism evident in his last works, both of which simply seek to deny and avoid the problem of finitude for the sake of a greater sense of certainty (151).

Han herself is inspired by one of the three previous approaches to finitude in the history of Western culture before Kant's Copernican turn: humanism. While the other
two previous approaches to finitude, the tragic and the stoic, are too hybristic - by which she means the desire for "more than the share imparted to us by moira" - for Han's sensibilities, she finds the third to be more suited for our overconfident and reckless technological age, as it does not share the implicit or explicit heroism of the tragic, stoic, or Kantian approaches to finitude (Ibid).44 The Copernican turn is especially hybristic, on her interpretation, ""defining the very range of all possible knowledge and action, a claim that neither the tragic nor the stoics had ever dared to make” (153-154). Although renouncing this aspiration to absolute power rooted in "the solipsistic circularity of the analytic of finitude," may reopen the way to a certain degree of skepticism, she stresses that this skepticism would be more measured than "the radical pyrrhonism feared so much by the thinkers of the Enlightenment," being rooted in "humanist good cheer and irony in the face of our limitations" (Ibid).

Han's discussion of the problem of the analytic of finitude that even continues to plague Foucault, despite the fact that he contributed so much to her own understanding of it, has particular relevance to an exploration of exceptionalism. The problem of the analytic of finitude is its demand to make finitude self-foundational, or to make the modern subject truly autonomous. Although 'autonomy' is often used as a synonym for 'freedom' or 'liberty,' the former term says much more than the latter two by juxtaposing two components: 'self' and 'rule.' On the one hand, the autonomy of the modern subject is characterized by a solipsistic or self-centered monism, and on the other hand, it is

44 The first attempts to deal with our limitations through "heroic denial, a Promethean rebellion in which human finitude consumes itself in the attempt to reach beyond its own condition." The second is the opposite of the first in that it attempts to deal with finitude "from the inside, by lucidly exploring [one's] limitations and trying to make the best of them: what really matters ... is not the many constraints that weigh upon us (such as death, illness, pain, loss), but the way we behave toward them." She contends that the second shares the hybris of the first by resting on the claim that "one can accept any fate" and the assumption that "there are no limits to the power of human reason, another hybristic claim that in turn presupposes a (rationally unjustifiable) belief in the benevolent nature of the order of things" (152).
characterized by necessary limitation. Moreover, I have argued that to ensure that it is appropriately limited, the self depends also upon exclusion. I have described exceptionalism as the practice whereby the sovereign unilaterally decides the appropriate limits of the polity. In this unilateralism, it is logically analogous to the solipsistic epistemological privilege of the modern subject, who is accorded the prerogative of determining what qualifies for existence. Nevertheless, the relation between the modern subject and the political practice of exceptionalist sovereignty are more than simply correlated. If the polity is a large scale version of the modern subject this is arguably more than a simple coincidence. Fasolt broaches the nature of the connection:

It is scarcely an accident that subject is a word we use with equal facility for the subjects of a sovereign ruler (in the realm of politics) ... and the mind behind all thought and action – the subject behind Descartes’s cogito ergo sum. ... Nor is it an accident that the subjectivity (in the sense of uncertainty of judgment) ... stands in definite tension with the apparent stability of ... the state.\footnote{Fasolt, 9.}

This excerpt can be seen to suggest that with the transformation from the preceding form of onto-theology centered around the Christian God to one in which the autonomous human being is primary and central and given the capacity to make judgments, a problem of coexistence is posed by the sheer subjectivity of judgment. As such, Foucault is right to argue that this purpose of Hobbes Leviathan is to discover how a multiplicity of individual wills can be shaped into a single will known as sovereignty. It is important to consider here that Leviathan was published at the close of the European wars of religion between Protestant and Catholic states, suggesting that his fear of the potentially unlimited contention and bloodshed unleashed by autonomous subjectivity prompted him to conclude that modern autonomy must be limited by political sovereignty.
Thus, the more than coincidental relation between ontology and politics here lies in the nature of freedom. Radical democrats and Foucault seem to miss this connection continuing to argue for freedom as if it were an unproblematic good that can be enjoyed in itself. Radical democrats in particular seem to oscillate around this issue demanding more freedom, though ultimately acknowledging that the modern polity must be properly limited. It is difficult to see how they balance these competing priorities, and I suspect that they might rather avoid truly confronting this problem. Schmitt, who has been called the Hobbes of the twentieth century, 46 would ultimately disagree with the degree of pluralism desired by the radical democrats, finding any pluralism to constitute a threat to the state. The extent of his fidelity to Hobbes is questionable though, as Foucault’s discussion of exceptionalist normalization and racism in “Society Must Be Defended” suggests. His support of the Nazi party, even if temporary, lends support to the idea that Schmitt’s politics goes far beyond what is considered necessary by Hobbes.

I am not, however, suggesting that we must agree with Hobbes, because such a conclusion entails a prior commitment to modern subjectivity. Nor am I saying definitively that I am against modern subjectivity and that I am advocating for a return to so-called medieval universalism. I agree with Dupré that “Cultural changes leave a different reality in their wake,” and thus that such a return, even if desirable, would not be possible. 47 Nonetheless, I do find it useful to consider the differences between that preceding form of life and the one predominant in the modern West and being extended across much of the contemporary world. This is why I find Fasolt’s analysis to be so interesting – because he emphasizes that whereas so-called medieval universalism was

46 See McCormick, 249-289.
47 Dupré, 10.
characterized primarily by relation, modern sovereignty seems to be incapable of this, being characterized by separateness and indivisibility. Thus, the purpose of this exercise has been to pose the problem of modern subjectivity and sovereignty, both of which appear to be essentially solipsistic ontologically, to enable an approach to the problems of our times that does not reinscribe this violent manner of inhabiting the world.

Although Han’s preference for the humanist approach to finitude may recall Foucault’s provisionalist approach to knowledge, which appears to assume that the problem resides in the domain of epistemology and not ontology, Dupré’s description of the problem suggests that Han’s analysis is on the right track, as it argues that the disproportional emphasis on the subject became most pronounced with the rationalist philosophy of the Enlightenment:

In one sense the idea of self-making through self-expression may be traced back to early humanism. Yet the humanists mediated the self’s expressive power through its integration with nature and through its intrinsic dependence on a transcendent reality. The self of rationalist philosophy, however, serves a foundational purpose: the existence of the world and of God have to be established and defined by the thinking subject. In becoming pure project, the modern self has become severed from those sources that once provided its content. The metaphysics of the ego isolates the self. It narrows selfhood to individual solitude and reduces the other to the status of object.48

In arguing that the ontology of the modern subject is a violent one I do not mean to suggest that it is an intentionally violent one, a perspective adopted because it explicitly serves certain entrenched interests at the expense of others. Rather, I see its violence as consisting in its very mode of operation, narrowing selfhood to an individual solitude and reducing the other to the status of a mute and powerless object. In this solipsistic form of ontology, the subject is excused from truly relating and being exposed to the other,

48 Dupré, 119.
effectively insulated from the world. Informed by this ontological structure, Schmitt’s exceptionalism distinguishes what is fitting for inclusion in the modern polity from what is not. Radical democrats, moreover, replicate this logic, affirming the contention, endemic to modern thought generally and not just political thought, that at some point the line must be drawn, an operation necessary to ground the security of the modern subject, performed at the expense of what is excluded from subjectivity by that inscription. It is not enough to de-rigidify the line drawn by exceptionalism, as the radical democrats propose to do, because the boundary it draws between self and other remains, meaning to be clear that exceptionalism is an inherently exclusive practice, just as it is monistic or solipsistic. This is why radical democrats fail to change the form of politics, ultimately siding with Schmitt on the judgment that the stability of political identity, the condition of possibility of pluralism, emancipation, and progress, must necessarily be limited, much as aspects of it may be radically altered. Since they fail to fundamentally challenge the way in which Schmitt limits contemporary political thought, is it any wonder that Schmitt’s exceptionalism has such purchase today? Instead of radical democracy, a serious interrogation of the problem of the modern subject is required in order not to reproduce the problem. Foucault made a serious and sustained attempt to do this, but the success of his endeavor is limited by his commitment to the human freedom and creativity, as well as his emphasis on the importance of epistemology at the expense of ontology, both of which show his apprehension of the nature and significance of the problem of the modern subject to be less than thoroughgoing.

Given the exclusivist and solipsistic nature of modern subjectivity and sovereignty, it is worth asking whether it might be possible to conceive of community
and the role of the human being in terms other than sovereignty. The problem with which contemporary thought, political and otherwise, has to grapple in this respect is the question of how it is possible and perhaps legitimate to make particularist judgments. The modern subject is the finite knower, called upon to fill in when it seemed apparent that God, thought has to grapple in this respect is the question of how it is possible and perhaps legitimate to make particularist judgments. The modern subject is the finite knower, called upon to fill in when it seemed apparent that God, thought has to grapple in this respect is the question of how it is possible and perhaps legitimate to make particularist judgments. The modern subject is the finite knower, called upon to fill in when it seemed apparent that God, transcendent mediator of human observer and cosmos, could no longer be considered reliable (as a result of transformations brought about by nominalist theology). The problem is how such a finite being can fill that gap left by the vacated God who used to ensure the certainty of knowledge. Schmitt appears to believe that such particularist judgments must be made, for the sake of life or existence, which would be at risk of being eliminated if the necessity of such judgments were left unrecognized. His primary opponent, liberal legalism, on his interpretation at least, would prefer the destruction of all life (through inaction) to the essentially arbitrary justification of a particularist judgment. McCormick, a liberal democrat is slightly different because of his belief that ‘we’ can come to such judgments together, but remains powerfully influenced by the liberal legalist approach, believing also that the appropriate procedures must limit the manner in which such judgments can be made. At the very least, McCormick is incredibly uncomfortable with the problem posed by the question of particularist judgments, though it appears that the influence Schmitt has had
in contemporary political and philosophical discourse has persuaded him to not simply deny the need to think about it. Mouffé, paradoxically, seems to have no problem with the problem: 'Yes, “we” must make particularist judgments appropriate to “us,” and to do so “we” need to distinguish between “us” and “them.” However, “we” cannot be too particularist, otherwise “we” would be engulfed in chaos and anarchy. “Our” particular judgments must be ordered. The proper determination of “our” limits will ensure that “our” judgments are appropriately ordered. “We” can talk about these things, but “we” cannot alter the necessities by which “we” must be bound.’ Brown appears most interested in opening up the manner in which such judgments are made, but cautions that the polity not grounded in a basis of commonality is no polity at all. Thus she appears to maintain that if ‘we’ are too particularist, judgment would not be possible, since such judgment would be engulfed by centrifugal forces. In the end, in “Life: Experience and Science,” Foucault rejects the transcendental unsituated perspective for that of a more land-bound judgment. Perhaps more so than the others, though, this perspective is constantly roaming, playing things by ear, practically testing rather than arguing about or discussing its limits. It is possible that Schmitt may have considered such a fluid approach to be just as deficient in responding to the needs of life, conceived as existence and not mere survival, as the liberal legalist refusal to make particularist judgments in the first place.
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