



† Designated as an Exemplary Master's Project for 2019-2020

The Federal System of Hannah Arendt:

A Structure Built Upon Participation

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March 2020

This project was submitted in partial fulfillment of the requirements for the degree of Master of Arts in the Graduate Liberal Studies Program in the Graduate School of Duke University.

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2020

Abstract

In this thesis, I reconstruct Hannah Arendt's theory of federalism through a novel interpretation of the relationship between power and authority in her work. Though numerous scholars underscore the import of federalism for Arendt's politics, theorists have remained silent; some, who champion her council state, acknowledge its federal character – yet none have sought her federal theory. I argue the federal system for Arendt shares a necessary and constitutive relationship to the council state. For Arendt, federal authority is derived from an act of foundation by already constituted powers, while the preservation of this authority depends upon the ongoing capacity of those powers to act individually and collectively. This means, for Arendt, that the federal system demands the specific form of direct public participation in government institutionalized by the council state for its longevity, otherwise it will degenerate. Through exposing Arendt's federal thought, I show that her reflections on federalism offer valuable insights into the division of powers, the system of checks and balances, the relationship between law and politics, the role of a constitutional court, as well as the danger posed by representative democracy, in what amounts in the last instance to a radical re-conception of the federal republic.

Table of Contents

Contents

Abstract.....	iii
Acknowledgements.....	vi
Preface.....	1
Introduction.....	7
1. The Republican & Federal Principles and the Human Condition.....	18
Plurality & Action.....	18
The Republican & Federal Principles.....	23
Power & Promising.....	27
2: The Substantive Conditions of the Federal System for Arendt.....	34
The Equality & Distinction of Constituted Powers.....	34
Arendt’s Departure from the American Example.....	43
The Place of Authority in the Federal System.....	48
3: An Authority Between Constituted Powers.....	53
The Foundation of Authority.....	54
Authority in the Council State.....	62
The Source of Authority as the Source of Law.....	72
The Seat of Authority and Power.....	81

4: Representative Democracy vs. The Council State.....	91
Representative Democracy as Self-Rule.....	91
The Council State as Self-Government.....	95
The Voting Mechanism.....	99
The Common Good & Citizenship	100
Citizenship in Representative Democracy	103
Representation in the Council State.....	104
The System of Checks and Balances	107
The Common Good vs. the Invisible Hand	111
Conclusion	118
Bibliography	124

Acknowledgements

This thesis would not have been possible except for the guidance and support of numerous individuals at Duke University and beyond. My sincerest acknowledgements:

To Dr. Robert Mitchell, my supervisor. Your course on Hannah Arendt led me to select her thought specifically as the subject for my thesis. I learned from you to appreciate Arendt as a political thinker and not only a political theorist, as one who in her reflections approached a diverse array of subject matter and a multiplicity of philosophical issues from the perspective of the requirements of political life. I cannot thank you enough for your input and patience as the precise topic for this thesis evolved, or for the myriad hours you have spent reading and commenting on my drafts throughout this process. You have never let me take the easy way out, and I would not have it any other way.

To Dr. Geneviève Rousselière, who played an invaluable role in the formation and development of this thesis. As an individual who did not come from a political theory background, I learned from you to be a political theorist. Studying under you changed my political convictions and led to the composition of this text: it was in your course on republicanism that I gained from you the convictions of a republican and wrote the paper which formed the basis for this thesis. I am supremely grateful for the time you have dedicated to reading and commenting on my drafts, as well as for meeting with me numerous times subsequent to my move to New York. Your encouragement made all the difference in the world.

To the Graduate Liberal Studies Program and my advisor Dr. Kent Wicker for providing me a challenging interdisciplinary education without which I could have never grasped as multifaceted a thinker as Arendt.

To my parents – last, but certainly not least – for their unwavering love and support, even amidst turbulence, and for encouraging an insatiable curiosity since I was a child.

For Dr. Sergius Ingerman, in remembrance,

and

for the world, with love.

Preface

Though John Jay, first Chief Justice of the United States, wrote in *The Federalist* “that Providence has been pleased to give this one connected country, to one united people, a people descended from the same ancestors, speaking the same language, professing same religion, attached to the same principles of government, very similar in their manners in customs,” this was just as little true in 1787 as it is today.¹ Perhaps, 232 years later, one may be forgiven if he mistakes a shared political history for the trappings of nationhood, but the fact remains that a single nation, such as that which Jay professed to see, is precisely what the United States lacks. If an “American people” exists at all, they exist neither apart from nor prior to the United States; this people is distinguished by the public thing they share as a political community, whereas a nation is distinguished by private aspects of each individual which are the same and which bind them. One may perhaps also be forgiven if he mistakes the contemporary United States for a unitary state; surely, increasing centralization, the growth of Federal government, the expansion of the Executive, and the dominance of a national party system are likely to give that impression. However, just as there is no single American nation, there is no single source of American power. The United States at foundation was – and it still remains – the *federal* experiment par excellence, constituted from a vast sphere of diverse political communities – states, counties, townships, municipalities – all of which retain, in varying capacities, their distinction as independent powers. Indeed, James Madison distinguishes the extent of a national government’s powers from that of the United States’ federal government; he writes, “in [federal government] the local or municipal authorities form distinct and independent portions of the supremacy, no

¹ John Jay, "The Federalist No. 2," in *The Federalist with Letters of "Brutus"* (Cambridge, U.K.: Cambridge University Press, 2012), 6.

more subject within their respective spheres to the general authority, than the general authority is subject to them, within its own sphere.”² In such an arrangement, “the different governments will controul each other; at the same time that each will be controuled by itself.”³

In fact, it is the diversity of political communities in the United States, each powers in their own right, each with a distinct identity, and each with its own interests, that for Madison render a large republic best suited to preserve citizens’ rights. For Madison, when “you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.”⁴ However, comprehending this diversity of interests demands the federal system, as those units which form the federal republic, each of which correspond to only a part of the republic as a whole, will be more responsive to those citizens than a unitary state. Consequentially, whereas a unitary state acts only as a whole, the federal system instead encourages its parts to act on the basis of their diversity and discourages any feigned unity that would grasp this plurality as a single, homogenous entity. *In the place of unity, there is instead union.* With society thus “broken into so many parts, interests and classes of citizens,”⁵ the federal system promises to render all groups, in effect, minorities with respect to the whole. In the absence of a robust federal system, however, “oppressive combinations of a majority will be facilitated, the best security under the republican form, for the rights of every class of citizens, will be diminished” and, as the only remaining security, some member of government would be elevated to a position of coercive power whose rule is at odds with the project of self-

² James Madison, "The Federalist No. 39," *ibid.*, 186.

³ "The Federalist No. 51," 254.

⁴ "The Federalist No. 10," 45.

⁵ "The Federalist No. 51," 254.

governance.⁶ In this way, for Madison, it is the federal system in which competing powers could counteract and check each other that ensures “a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good,” preventing a tyranny of the majority from arising.⁷ To wit, when Madison writes that “the degree of security ... will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government,” he says no less than that a diversity of distinct powers is crucial to the stability of republican government, and that this finds its expression in the federal system.⁸

Although, in the estimation of the “Father of the Constitution,” the survival of the American republic rests upon its embrace of the federal system, of no less importance to the United States – and no less embedded in its fabric – is its tradition of political participation. Crucially, this tradition extends well beyond the franchise to political associations and participation in public affairs through institutions such as the township which once exemplified the ideal of self-governance. As with federalism, so with participation; one would not be mistaken to think participation conspicuously absent, or circumscribed, in the United States today. One may protest, lobby, and campaign, but unless she wins an election, she will never with her fellow citizens act in government as peers and conduct the business a shared world requires, even when that world is only a neighborhood. That is, participation is restricted to the vote, to electioneering, to pressure campaigns, or to sudden ground-shaking movements – but citizens, as *mere* citizens, do not exercise self-governance through participation in public affairs; if they can be said to exercise self-governance at all, they do so from without, and as private

⁶ Ibid.

⁷ Ibid., 255.

⁸ Ibid., 254. Madison continues, “This view of the subject must particularly recommend a proper federal system to all the sincere and considerate friends of republican government.”

individuals who lack space to share in a common political life and strive for the common good. Though we may *rule* ourselves, without institutionalized, public space in government within which to deliberate, form opinions, and make decisions with our peers, it is not possible to say we govern ourselves.

However, at the United States' foundation, this was not the case, and nowhere is this more evident than in the spirit of the township, where popular participation in public affairs constituted the actualization of freedom. In America, Alexis de Tocqueville observes, "one can say that the township had been organized before the county, the county before the state, the state before the Union," and in New England, where he sees the township most developed, "affairs that touch the interest of all are treated in the public square and within the general assembly of citizens, as in Athens."⁹ Though citizens, within the institutions of the township, elect officials charged with administering the township, in those same institutions citizens constitute a legislative body in which each represents himself, and through deliberation and joint decision, directly participates in public affairs. In a word, this is self-governance at a local level, enabling the issues which arise through interdependence to be resolved at the most practicable level, while inculcating a spirit of citizenship in all those partake in public affairs. Thus, Tocqueville writes that these institutions "are to freedom what primary schools are to science; they put it within the reach of the people ... without the institutions of a township, a nation can give itself free government, but it does not have the spirit of freedom."¹⁰ Through the township, it is as if "to *scatter* power to interest more people in public things," with the consequence that "many men thus exploit the power of the township for their profit and take an interest in it for themselves,"

⁹ Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 40.

¹⁰ *Ibid.*, 57-58.

and, in this attempt to govern society within a limited sphere, habituate themselves “to the forms without which freedom proceeds only through revolution.”¹¹

Yet, the exercise of this freedom in participation also rendered the townships the grassroots, naturally emergent building blocks of a federal system which, as fate would have it, were never to be incorporated into one. If we think there exists an uncanny resemblance between the way de Tocqueville frames the township above – in which he describes how it distributes power and multiplies interests – and the manner in which Madison frames the federal system, we would not be mistaken. Indeed, de Tocqueville believes that the townships are among the three things which “maintain a democratic republic in the New World” since they moderate “the despotism of the majority” while “at the same time give the people the taste for freedom and the art of being free.”¹² In this sense, de Tocqueville suggests that the townships, with their participatory institutions, are unparalleled as distinct powers, the diversity among which emanate from their seat so close to the ordinary relations of life. Through each township engaged in self-governance, exercising its power freely, as part of a great chain which extends through the county, to the state, to the republic, an active citizenry would, in the exercise of their freedom, animate diverse “interests and sects” across the republic, providing within the federal system the guarantee of both its security and their own rights.

On this account, the federal system and the freedom found institutionally in the township appear to be linked, and not only by their copresence at the foundational time in the United States’ history. This brief encounter with Madison and de Tocqueville suggests that republican government in the United States is not merely dependent upon the federal system, which stands today diminished in purpose and value, or upon direct participation, for which few if any

¹¹ Ibid., 64, 65.

¹² Ibid., 274. The other two are the federal system and “the constitution of the judicial power.”

institutions remain; it suggests there is an internal relation between them which neither author could yet foresee.

It is precisely this implicit relation between the federal system and citizens' direct participation in public affairs which captivated political theorist Hannah Arendt. In the following, I seek to elucidate how this connection stands at the heart of her political thought and reflections upon forms of government, even if she did not systematically address it.

Introduction

Hannah Arendt, a child of the twentieth century, a German Jew who in 1933 fled to France, and then to the United States, never explicitly formulated her own theory of federalism, although one emerges from the core of her political thought, and is found scattered throughout her work, in fitting style for a thinker who, despite her preoccupation with forms of government, resisted the impulse to treat her subject matter systematically. Best known for *The Origins of Totalitarianism*, in which she investigates the genesis of and theorizes totalitarianism as a novel form of government; *The Human Condition*, in which she distinguishes between the activities of labor, work and action and formulates a theory of modernity; and *On Revolution*, a comparative study of the American and French Revolutions, Arendt is a controversial thinker whose thought cannot be uniformly described as belonging to the political left or right. On the one hand, Arendt champions direct participation, and equates human freedom with action; on the other hand, she believes the inclusion of social issues in politics is an invasion of the public sphere which threatens freedom, thinking instead these tasks of “administration” should be left to professionals. Thus, in *On Revolution*, she castigates the French Revolution, in particular its aim to legislate away poverty, and simultaneously champions political institutions established by socialist revolutions, alienating both sides of an ideological divide in the course of a single text. Right or wrong, this is the mark of an independent thinker. Through interrogating the relationship between the federal system and participation within Arendt’s thought, we will think through what a federal system really is, its conditions of possibility, and what it requires if it is to remain intact, from the perspective of a political theorist *cum* public intellectual whose foremost concerns are the experience of freedom and the structure of political life required to share a world in common – a perspective which could not be more relevant today.

Nowhere is Arendt's equation of freedom with direct participation through self-governance more evident than in the closing chapter of *On Revolution*, entitled "The Revolutionary Tradition and its Lost Treasure." There, Arendt bemoans the loss of the "revolutionary spirit" following the American Revolution; that is, the disappearance of the principle of political freedom which inspired the men of American Revolution to act, political freedom which can mean no less than the right "to be a participator in government."¹³ For Arendt, the Constitution established no new space for such public participation, while its failure "to incorporate the townships and the town-hall meetings, the original springs of all political activity in the country, amounted to a death sentence for" the participatory spaces which already existed.¹⁴ Yet, the "lost treasure" which Arendt refers to in her chapter title is not participation in government *per se*, but rather a form in which she sees this institutionalized in each major revolution in modern Europe, anticipated by Thomas Jefferson's "ward system," which would have divided the United States into wards small enough to permit each citizen active participation in government, as well as the sections, municipal council, and political societies of the French Revolution.¹⁵ That is, Arendt discerns the reappearance of a single phenomenon, a council tradition, when she considers the Parisian Commune of 1871, the *soviets* of the 1905 and February 1917 Russian Revolutions, the *Räte* of the 1918-1919 German Revolution, and the councils of the 1956 Hungarian Revolution. These councils, writes political theorist James Muldoon, "sought to create a democratic socialist society based on participatory councils integrated into a federal structure of self-government and economic self-management."¹⁶ For

¹³ Hannah Arendt, *On Revolution* (New York: Penguin Books, 2006), 213, 10.

¹⁴ *Ibid.*, 231.

¹⁵ *Ibid.*, 240-47. To the extent that Arendt believes the townships "so obviously were the original model" of the ward system, she actually draws this line from the townships.

¹⁶ James Muldoon, "Council Democracy: Towards a Democratic Socialist Politics," in *Council Democracy: Towards a Democratic Socialist Politics*, ed. James Muldoon, Routledge Advances in Democratic Theory (New York, NY: Routledge, 2018), 4.

Arendt, who terms her reinterpretation of this council tradition the “council system,” these councils were distinguished by the spontaneity with which they arose in each revolution, their disposition as “organs of order as much as organs of action,” and their conscious and explicit desire for “the direct participation of every citizen in the public affairs of the country.”¹⁷ These were “spaces of freedom” which “made all attempts at establishing themselves as permanent organs of government,” and in which “party membership played no role whatsoever,” much to the consternation of, bluntly, the parties.¹⁸ Nonetheless, each time a council system emerged, it was destroyed, as the Hungarian council system was crushed by the imperial Soviet Union; or it was subverted, as the *soviets* were undermined by the Bolsheviks following the October 1917 Russian Revolution and made party organs.

However, interest in federalism – no less than the council system – permeates Hannah Arendt’s thought, and to the extent that there exists, for her, an “intimate connection between the spirit of revolution and the principle of federation,” there can be no cleavage between the council system – the institutionalization of that spirit – and the federal system – the institutionalization of the federal principle. Indeed, wherever Arendt sees the councils emerge, she witnesses the appearance of the federal principle; that is, for Arendt, the councils time and again represent the building blocks of incipient federal systems.¹⁹ To wit, while Arendt has a

romantic sympathy with the council system ... that is, something which builds itself up from the grass roots, so that you can really say *potestas in populo*, that is, power comes from below and not above... [she] also think[s] that the United States or any country can remain or become powerful only if there are many sources of power. That is, only if power is divided ... [inherent in the federal system] as it was in the original notion of the Founding Fathers, and before them—not so clear, but still—in Montesquieu.”²⁰

¹⁷ Arendt, *On Revolution*, 254-55.

¹⁸ *Ibid.*, 256-55.

¹⁹ *Ibid.*, 238, 57-59, 71.

²⁰ Hannah Arendt, "Hannah Arendt on Hannah Arendt," in *Thinking without a Banister: Essays in Understanding, 1953-1975*, ed. Jerome Kohn (New York: Schocken, 2018), 265.

And though Arendt's outspoken support for a council system might indicate its preeminence for her, her support for federalism as a political principle emerges in her published work prior to any mention of a council system. In 1943, Arendt bluntly declares that "Palestine can be saved as the national homeland of Jews only if ... it is integrated into a federation."²¹ Though Arendt speaks of Palestine, a small territory, she, no less than Madison, believes that the capacity of a federation to prevent the domination of any one people depends upon it comprehending a plurality. Thus, even three years earlier, in a private letter to Erich Cohn-Bendit, Arendt implores that "Our [Jews'] only chance—indeed the only chance of all small peoples—lies in a new European federal system," and throughout the subsequent decade publicly calls for Palestine's integration into a pluralistic Mediterranean or Near East federation.²² It would not be until 1948 that Arendt first explicitly advocates for a council system, in which she calls for "local self-government and mixed Jewish-Arab municipal and rural councils" in Palestine; however, even then, her cry is contextualized by the ideal of a federal structure, which would rest on the councils, meaning that "the Jewish-Arab conflict would be resolved on the lowest and most promising level of proximity and neighborliness."²³ Both federalism and the council system were early, recurring themes in Arendt's political theory, and – inextricably linked – would remain so until her death. In a 1970 interview with Adalberto Reif, she finally makes this link explicit: discussing the possibility of a non-sovereign state, one which could appeal to an authority rather than war as the last resort in international affairs, Arendt declares the very

²¹ "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?," in *The Jewish Writings* (New York: Schocken Books, 2007), 195.

²² Arendt, "The Minority Question (Copied from a Letter to Erich Cohn-Bendit, Summer 1940)," 129; "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?," 197; "Peace or Armistice in the near East?," 446.

²³ "To Save the Jewish Homeland," 400-01.

“rudiments” of a council state are “found in the federal system” and represent a wholly “new concept of state.”²⁴

Despite the intimate connection Arendt draws between the councils and the federal system, scholars of her thought have largely confined their commentary to the former at the expense of the latter. Even political theorist Margaret Canovan, who opines that “for most of Arendt’s readers” the council system is an unrealistic “embarrassment,” nonetheless discusses it at length, and stresses it is “unambiguously clear the idea is important for [Arendt].”²⁵ Yet, Canovan only mentions federalism in passing. Andreas Kalyvas, a political theorist who shares no such embarrassment, critically envisions the constitution of Arendt’s “republic of councils,” considering such facets as lawmaking, representation, and courts; however, Kalyvas neglects to examine what, for Arendt, is the nature of the federal system itself and its relation to the councils.²⁶ Like Kalyvas, a recent resurgence of otherwise superb scholarship on Arendt’s council system is guilty of the same omission: to the extent that these accounts mention federalism at all, they appear to take it for granted, as if what federalism *is* and what it *entails* for Arendt may be assumed and requires no further investigation.²⁷ It would unfortunately seem that – although federalism was a constant preoccupation for Arendt – it is only with rare exception that Arendt scholars acknowledge its importance to her political theory.

²⁴ “Thoughts on Politics and Revolution,” in *Crises of the Republic* (New York: A Harvest Book; Harcourt Brace & Company, 1972), 230.

²⁵ Margaret Canovan, *Hannah Arendt: A Reinterpretation of Her Political Thought* (Cambridge ; New York: Cambridge University Press, 1992), 236-37.

²⁶ Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (Cambridge ; New York: Cambridge University Press, 2008), 264-83.

²⁷ For instance, see: James Muldoon, “The Lost Treasure of Arendt’s Council System,” *Critical Horizons* 12, no. 3 (2011); “The Origins of Hannah Arendt’s Council System,” *History of Political Thought* 37, no. 4 (2016); Shmuel Lederman, “Hannah Arendt, the Council System and Contemporary Political Theory,” in *Council Democracy: Towards a Democratic Socialist Politics*, ed. James Muldoon, Routledge Advances in Democratic Theory (New York, NY: Routledge, 2018). ; *Hannah Arendt and Participatory Democracy: A People’s Utopia* (Cham: Palgrave MacMillan, 2019), 11-38.

Yet, *On Revolution*, in which Arendt details and champions both the founding of a *federal* republic – the United States of America – and the emergence of the council system – which she sees develop “into a federal form of government”²⁸ – reveals clearly the impossibility of considering federalism and the council system apart from one another. Arendt is struck that it takes the councils “no more than a few weeks, in the case of Russia, or a few days in the case of Hungary, to begin a process of coordination and integration through the formation of higher councils,” resembling for her “the early covenants, ‘cosociations’, and confederations in the colonial history of North America.”²⁹ As in America, in its development into the United States, so with the councils, in their development into a council system. Arendt writes: “we see [among the Hungarian councils] how the federal principle, the principle of league and alliance among separate units, arises out of the elementary conditions of action itself ... the common object was the foundation of a new body politic, a new type of republican government which would rest on ‘elementary republics’ in such a way that its own central power did not deprive the constituent bodies of their original power to constitute.”³⁰ Clearly, Arendt sees in the Hungarian councils – which she esteems above all others – the spontaneous, nonlinear appearance of the revolutionary tradition that she identifies in the United States’ founding; moreover, she sees the Hungarian councils as animated by the self-same political principles.

Arendt was not an historian, and her accounts of the American Revolution and the councils are not histories, but are political theory. As a consequence, she begins from reflection on events, but does not remain strictly tethered to their factuality. Instead, she excavates from those events the possibilities implicit in them which went unfulfilled, whose reappearance in

²⁸ Arendt, *On Revolution*, 271.

²⁹ *Ibid.*, 259.

³⁰ *Ibid.*

political life is contingent upon remembrance. Indeed, Arendt freely admits that in *On Revolution*, she “did something like Montesquieu did with the English Constitution” by “[construing] out of the American Constitution a certain ideal type.”³¹ Montesquieu, the eighteenth-century French jurist and political theorist, is famed for his discovery of the separation of powers, which he observed in the English Constitution, no matter that the theory was not explicit doctrine in that constitution and that the phenomenon he observed was merely a historically contingent circumstance.³² Through adapting Montesquieu’s method, Arendt indeed venerates the founding of the United States in a way that, at times, is constitutive of a selective remembering.³³ In doing so, Arendt brings to the fore those principles as they appeared in history at the expense of other datum, and offers a unique experience with the past. In a manner of speaking, she brushes history against the grain to unearth the specifically political achievements of the American Revolution. Likewise, Arendt took similar liberties in her depiction of the councils. For instance, when Arendt champions the councils which arose in the Hungarian revolution, she explicitly “deals[s] only with the Revolutionary Councils and the political aspect” at the expense of the Workers’ Councils, which “were supposed to handle economic life.”³⁴ However, through discounting the councils’ socialist aims in a manner

³¹ Arendt, “Hannah Arendt on Hannah Arendt,” 466.

³² Charles de Secondat Montesquieu, baron de, *The Spirit of the Laws*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge, U.K.: Cambridge University Press, 2011), 156-66.

³³ Lisa Disch underscores Arendt’s idealization of the American Revolution through comparison of what Disch sees as Arendt’s flawed historical account of the French Revolution. In particular, Disch castigates Arendt’s neglect of the Girondins, whom she asserts as superior forerunners to Arendt’s council form than the American revolutionaries. See: Lisa Disch, “How Could Hannah Arendt Glorify the American Revolution and Revile the French? Placing on Revolution in the Historiography of the French and American Revolutions,” *European Journal of Political Theory* 10, no. 3 (2011). Likewise, in an early reevaluation of *On Revolution*, John Nisbet complicates Arendt’s picture of pre-revolution America, emphasizing that she “failed to see in proper perspective the social character of the American Revolution.” See: Robert Nisbet, “Hannah Arendt and the American Revolution,” *Social Research* 44, no. 1 (1977): 79. It is worth mentioning that Arendt’s method, particularly her historical method, is deeply influenced by others, such as Walter Benjamin; however, her approach to forms of government is primarily indebted to Montesquieu.

³⁴ Arendt, “The Hungarian Revolution and Totalitarian Imperialism,” 135.

consistent with her broader political theory, she provides a distinctly *political* perspective on the councils and their potentialities when they had prior – and still – been considered predominantly from the vantage point of social and economic issues.³⁵ Political theorist Shmuel Lederman underscores the importance of this “forgetfulness” by Arendt. Through reinterpreting “the councils along a conception of politics that was ultimately foreign to most observers and theoreticians of the councils,” Arendt makes “what might be a genuinely important contribution to the council tradition” which emphasizes the councils’ political function importance for freedom.³⁶ Ultimately, Arendt makes both the United States and the councils examples for reflective political judgement, in which she perceives general concepts arise from within particular phenomena that will remain invisible when the phenomena are subsumed under pre-conceived ideas.³⁷ The coincidence of these two exemplars, the Constitution of the United States and the council system, emphasizes some connection between the very concepts Arendt sees in them, which exceeds the mere recognition that a council state for Arendt is federal, and that the federal United States ought to have institutionalized public participation in public affairs.

I will argue that Arendt’s concepts of power, authority, and mutual promise reveal why, for her, federalism and the council system are inseparable. Specifically, through a reconstruction of Arendt’s federal theory, I will demonstrate that for her there is a necessary and constitutive relationship between the federal system and the council state. However, this entails for Arendt that the stability of the federal system *itself* demands the council system as a republican form of government. That is, the council system, by enabling citizens to actualize freedom through

³⁵ For a rich account which traces the origins of Arendt’s council thought, see: Muldoon, “The Origins of Hannah Arendt’s Council System.” Also see: John Medearis, “Lost or Obscured? How V. I. Lenin, Joseph Schumpeter, and Hannah Arendt Misunderstood the Council Movement,” *Polity* 36, no. 3 (2004); Lederman, “Hannah Arendt, the Council System and Contemporary Political Theory,” 154-56.

³⁶ “Hannah Arendt, the Council System and Contemporary Political Theory,” 159, 60.

³⁷ Hannah Arendt, *Lectures on Kant’s Political Philosophy* (1992), 83-85.

direct participation in public affairs, is the *conditio per quam* of a lasting system of checks and balances as well as an effective federal authority; in its absence, therefore, the federal system will degenerate, and its authority deteriorate. Seen from this perspective, the exclusion of citizens from direct participation in public affairs – characteristic of contemporary federal republics – is an existential crisis: it is the unique relationship between power and authority effected by a council system on a constitutional foundation which for Arendt renders a federal system stable and lasting.

As I note above, political theorists and scholars of Arendt's thought predominantly consider Arendt's theory of the council state independent of reflection upon her theory of federalism. While Lederman, for instance, writes that "for Arendt, it was not federalism and *then* councils, but federalism *based* on citizen councils all the way through," he tells us little more than that a council state is a federal system in which each council is a federal unit.³⁸ Furthermore, he presumes that the contents of federalism for Arendt are exhausted by her fragmentary account of the council state alone. Likewise, Muldoon chronicles the outsize influence of federalism on Arendt's council thought, but characterizes the federal system for Arendt as no more than the structure for a council state,³⁹ such that when he invokes "federal" elsewhere, it seems to be no more than a mere adjective.⁴⁰ In contradistinction, intellectual historians, who have traced the development of Arendt's thought, have investigated her federalism specifically. Yet these scholars are neither concerned with Arendt's federal theory *per se* nor its relationship for her to the councils. Instead, they seek her understanding of or

³⁸ Lederman, *Hannah Arendt and Participatory Democracy: A People's Utopia*, 21.

³⁹ Muldoon, "The Origins of Hannah Arendt's Council System," 780.

⁴⁰ "The Lost Treasure of Arendt's Council System.," "Arendt's Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form," *Constellations* 23, no. 4 (2016).

support for federalism within specific, historically situated circumstances.⁴¹ “Federalism,” for Arendt, remains undefined.⁴² All acknowledge that, for Arendt, the council state is federal. None, however, have considered how her theory of federalism relates to her theory of the council state; that is, for Arendt, why a federated structure “would *have* to rest” on “community councils.”⁴³ My thesis brings together extant scholarship on Arendt’s political thought and the council state in order to answer this question and thus fill a gap in Arendt scholarship crucial to her theory of republican government.

My argument consists of four parts, beginning with an examination of the core concepts within Arendt’s political theory and culminating with an assessment of the council state’s capacity to preserve a federal system. First, I expose the relationship of the republican and federal principles to the constitutive concepts of Arendt’s political thought, and establish why she sees these principles as inherent to the syntax and grammar of political action itself. Second, I demonstrate that these principles impose further conditions upon a federal republic for Arendt, according to which each unit within the federal system must be equal and distinct in action, and without which the system of checks and balances will fail. I will argue that this precludes hierarchical relationships between federal units or the monopolization of power by one or several units, though it may engender agonistic relationships between units that would place a significant

⁴¹ The most exhaustive examinations of Arendt’s federalism have been intellectual histories which focus on her early thought about Jewish politics, or totalitarianism. See: Caroline Ashcroft, “Jewishness and the Problem of Nationalism: A Genealogy of Arendt’s Early Political Thought,” *Modern Intellectual History* 14, no. 2 (2017); G. I. L. Rubin, “From Federalism to Binationalism: Hannah Arendt’s Shifting Zionism,” *Contemporary European History* 24, no. 3 (2015); William Selinger, “The Politics of Arendtian Historiography: European Federation and the Origins of Totalitarianism,” *Modern Intellectual History* 13, no. 2 (2016).

⁴² Douglas Klusmeyer’s explication of Arendt’s case for federalism, one might hold, constitutes the singular exception. However, he takes a similar tack to the above. Though he clarifies Arendt’s rejection of sovereignty and embrace of federalism to highlight the importance of her federal thought in the international arena, reconstructing Arendt’s federal theory *per se* is not his object. See: Douglas Klusmeyer, “Hannah Arendt’s Case for Federalism,” *Publius* 40, no. 1 (2010).

⁴³ Arendt, “To Save the Jewish Homeland,” 400. Emphasis added.

burden on the federal republic's authority, the form of which Arendt contends must reflect the absence of a federal hierarchy. That is, authority, within a federal system, must paradoxically exist between units as a relation, and not above them. Third, I join Arendt's account of the foundation of authority, according to which the validity of a republic's founding arises from the principle which inspired its founding act, to her description of the council state's founding, in which the "higher" bodies such as a parliament are derivative from pre-constituted elementary councils. For Arendt, authority within the federal system, as a relation, cannot impede the equality shared by each federal unit, which entails the federal system must reconcile authority with equality. I explain why, for Arendt, this form of authority is inherent to a council state founded upon a constitutional basis. For Arendt, this constitution would act as both the source of authority and the source of law, requiring a constitutional court be vested with authority, and the laws understood as the expression of relationships between and within councils. Subsequently, I maintain that this authority is only preserved through the preservation of each council's power within the federal system vis-à-vis the direct participation of citizens in governance, in which they act upon the founding principle. Fourth, I argue that, for Arendt, the council state is eminently capable of preserving its own power structure, whereas a federal system which employs representative democracy cannot, and will instead fall prey to endemic corruption that will lead it to degenerate. Consequentially, Arendt believes the council state would preserve its federal system, and its own authority, while a federal system founded upon a representative democracy will do neither.

1. The Republican & Federal Principles and the Human Condition

Arendt's commitment to the federal republic as a form of government is evidenced in the basis of her political thought, in which the federal and republican principles are inherent within her concepts of political action and the phenomenon of "power." In this chapter, I first detail Arendt's concept of the human condition of plurality, and her corresponding theory of action, in order to grasp what Arendt identifies as the basis of genuine political life. Then, turning to her republican and federal principles, I establish a correspondence between these two principles and the condition of plurality. Finally, turning to Arendt's theory of power and mutual promises, I establish that, for Arendt, the federal and republican principles are inherent to the only means through which power remains together, whether institutionalized or not.

Plurality & Action

The human condition of plurality, according to Arendt, is "the fact that men, not Man, live on the earth and inhabit the world."⁴⁴ Action, "the capacity of beginning something anew," with which human beings are endowed by virtue "the new beginning inherent in [their] birth," corresponds to this plurality.⁴⁵ For Arendt, there is a dependence between the human condition of plurality and the human condition of natality, between the plurality of individuals who inhabit the world and the new beginning inherent in birth, which means action is impossible in isolation. This is the case as the impulse for action, as the actualization of the human condition of natality, arises from our entrance into the world at birth and "to which we respond by beginning something new on our own initiative."⁴⁶ Put another way, action is a response to a beginning

⁴⁴ *The Human Condition* (Chicago: University of Chicago Press, 1998), 7.

⁴⁵ *Ibid.*, 9.

⁴⁶ *Ibid.*, 9, 177.

which preceded it, with the consequence, notes political theorist Patchen Markell, “that action [is] always a *second* step rather than a first.”⁴⁷ This demands the presence of other distinct human beings, others equal in their capacity to act, each inserted into the world, to whom we respond. The actor, then, does not merely require the presence of others in order to act, but the condition of plurality is sufficient to produce her initiative to do so, whether she acts through deeds or in the mode of speech. Hence, “plurality is specifically *the* condition—not only the *conditio sine qua non*, but the *conditio per quam*—of all political life.”⁴⁸ That is, plurality is both a necessary and sufficient condition for all political life.

Human plurality, for Arendt, forms the basis for our sense of reality as well, and consequentially, is the precondition to share what she calls a “common world.” For human beings, writes Arendt, “appearance—something that is being seen and heard by others as well as by ourselves—constitutes reality,” meaning that our very sense of reality is dependent upon the political life produced by plurality in which many, within the public realm, despite their “differences of position and the resulting variety of perspectives,” are concerned with the same object.⁴⁹ Thus, the significance of “being seen and being heard by others” is derived “from the fact that everybody sees and hears from a different position,” entailing that “the subjectivity of privacy ... can never replace the reality rising out of the sum total of aspects presented by one object to a multitude of spectators.”⁵⁰ Reality, then, is fundamentally intersubjective, and the strength of our understanding of reality corresponds to the extent we escape our own myopic perspectives through engaging others in public, each of whom occupies a different position, in

⁴⁷ Patchen Markell, “The Rule of the People: Arendt, Archê, and Democracy,” *American Political Science Review* 100, no. 1 (2006): 12.

⁴⁸ Arendt, *The Human Condition*, 7.

⁴⁹ *Ibid.*, 50, 57.

⁵⁰ *Ibid.*, 57.

deliberation about that which appears between us and in this way achieve an objective – as opposed to subjective – viewpoint. In this way, the public realm births a common world in which human beings dwell, which “means essentially that a world of things is between those who have it in common, as a table is located between those who sit around it,” and this world, “like every in-between, relates and separates men at the same time.”⁵¹

Hence, not only is it through action and speech in public that we share an objective world in common, but it is through engaging in them that we appear as human beings to others and attain a worldly reality. Crucially, as “the basic condition of both action and speech,” Arendt asserts plurality possesses “the twofold character of equality and distinction.”⁵² She writes:

If men were not equal, they could neither understand each other and those who came before them nor plan for the future and foresee the needs of those who will come after them. If men were not distinct, each human being distinguished from any other who is, was, or will ever be, they would need neither speech nor action to make themselves understood. Signs and sounds to communicate immediate, identical needs and wants would be enough.⁵³

Even though all organic life possesses distinctions, human beings alone can express their distinctions and thus distinguish themselves, communicating not just something – a mood, an affect, a physical sensation – but *themselves*. Thus, “human plurality is the paradoxical plurality of unique beings,”⁵⁴ who, through action *and* speech, distinguish themselves as equals and appear to each other *as* human beings, surpassing mere biological existence. For Arendt, action demands speech since human action is always a new beginning initiated by a newcomer and must, therefore, answer *who* this newcomer is. While this disclosure is implicit in both words and deeds, without speech, action loses both its revelatory character and its very subject. In

⁵¹ Ibid., 52.

⁵² Ibid., 175.

⁵³ Ibid., 175-76.

⁵⁴ Ibid., 176.

silence and passivity, action ceases to be action because there is no longer an actor, whose deed is only disclosed and relevant so long as “he identifies himself as the actor, announcing what he does, has done, and intends to do.”⁵⁵ Thus, to appear before one’s equals through action and speech, writes Arendt, “is an initiative from which no human being can refrain and still be human.”⁵⁶ Wonderfully put by political theorist George Kateb, “the citizen, by acting in the company of his peers, attains to worldly reality because he reveals himself to more than a few, each of whom regards him from a different point of view,” meaning that “one is everything others truthfully say about oneself, when one has been observed in circumstances that induced one to stand up and speak out on a matter common to all.”⁵⁷ A life without action, for Arendt, is not only *idiotic*⁵⁸ – a life on one’s own – but a life absent a distinctly human identity. Of one who does not act, she may yet answer *what* she is – educated, brawny, right-handed – but *who* she is – judicious, courageous, prescient – will remain shrouded in oblivion. From Arendt’s perspective, being human itself requires exceeding our mere biological existence through action and speech, indicating that our capacity to be human demands the existence and preservation of human plurality, with its infinite diversity and twofold character of equality and distinction.

Yet, human plurality, which Arendt asserts as fact, is for her also a *contingent* fact. There are forces that may strive to “organize the infinite plurality and differentiation of human beings as if all humanity were just one individual,” as Arendt sees as the goal of totalitarian domination.⁵⁹ Should such an effort to “organize” plurality succeed – even in part – it would

⁵⁵ *Ibid.*, 178-79.

⁵⁶ *Ibid.*, 176.

⁵⁷ George Kateb, "Arendt and Individualism," *Social Research* 61, no. 4 (1994): 784.

⁵⁸ Our words idiot, idiotic, and idiocy are derived from the Ancient Greek word *idion*, which refers to the privacy which pertains to oneself. An “idiot,” then, is a person whose life is spent in this privacy, apart from the world common to all men with which one can only engage in public. In drawing out this etymology, Arendt underscores that the realm of privacy traditionally has meant “a state of being deprived of something.” See: Arendt, *The Human Condition*, 38.

⁵⁹ *The Origins of Totalitarianism* (New York, NY: Harcourt, Brace, Jovanovich, 1973; repr., 1951), 438.

leave the structure which ties human beings to each other and to reality decimated. That is, the political and epistemic functions of plurality, for Arendt, entail that any diminishment of human plurality will undermine both our sense of reality and the existence of a common world, which demand the perspectives of a plurality of actors.⁶⁰ It is for this reason that, in genocide, Arendt sees not only the annihilation of a people, but the destruction of “a portion of our common world ... an aspect of the world that has revealed itself to us until now but never again.”⁶¹ Yet, the decimation of plurality would equally strike at the capacity for human beings to distinguish themselves as individuals. For Arendt, any attempt to “organize” plurality, *ipso facto*, strives first and foremost to suppress the human capacity for action and eliminate human spontaneity.⁶² Action, which finds for its basic condition human plurality, is then the expression of precisely that which those who seek to “organize” humanity as if it were one individual hope to eliminate. In the absence of equal humans who could distinguish themselves through action, there would be for Arendt neither perspectives nor beginnings, and it would be as if all were indeed one individual, whose myopic sight none could escape and whose course of terror none could interrupt because each, less man than animal, is “superfluous.”⁶³ United in this single figure, the equality of human beings which resides in their relationships as distinct, interdependent actors would be substituted by their sameness “as mere living organisms,” which resides in the metabolic sameness of life and death, which are “non-worldly, antipolitical, [and] truly transcendent experiences” experienced “not only in isolation but in utter loneliness.”⁶⁴ As a

⁶⁰ However, to the extent that the epistemic function of plurality is predicated upon the generation of a public realm in which individuals respond through action and speech to the object between them, it is perhaps more accurate to say that Arendt sees politics perform this epistemic function rather than plurality *per se*.

⁶¹ Hannah Arendt, "Introduction into Politics," in *The Promise of Politics*, ed. Jerome Kohn (New York: Schocken Books, 2005), 175.

⁶² *The Origins of Totalitarianism*, 465-68.

⁶³ *Ibid.*, 455-57.

⁶⁴ Arendt, *The Human Condition*, 213, 15.

human organism, “we would be doomed to swing forever in the ever-recurring cycle of becoming” as “the victims of an automatic necessity.”⁶⁵ Whereas the antipolitics which corresponds to this “organization” of plurality excludes the distinct perspectives and new beginnings of plural individuals through their subsumption into one individual, Arendt’s politics, notes political theorist Brian Smith, “is necessarily radically inclusive.”⁶⁶ Both the common world, which relates human beings as actors, and the objective understanding of that world, which arises only through a diversity of viewpoints expressed in public, depend upon, and for Arendt are *improved* by plural perspectives. For her “the end of the common world has come when it is seen only under one aspect and is permitted to present itself in only one perspective.”⁶⁷ When Arendt considers forms of government, the preservation of human plurality, with its twofold character of equality and distinction, will be of paramount importance to her, and it is this concern that informs her understanding of the republican and federal principles.

The Republican & Federal Principles

Arendt approaches the question of forms of government in the spirit of Montesquieu, the eighteenth-century French jurist and political theorist whose theories of the separation of powers and the federal republic found expression in the United States Constitution.⁶⁸ However, Arendt departs from his conception of a federal republic, which he famously articulates in *The Spirit of the Laws*. For Montesquieu, a small republic will inevitably be destroyed by an invading force, whereas a large republic will unavoidably collapse under the weight of its own vice. Against

⁶⁵ Ibid., 246.

⁶⁶ Brian Smith, "Anarcho-Republicanism?: Arendt and the Federated Council System," *Science & Society* 83, no. 1 (2018): 100.

⁶⁷ Arendt, *The Human Condition*, 58.

⁶⁸ Montesquieu’s influence runs throughout Arendt’s political thought, and is perhaps found in its most explicit formulation in "What Is Freedom?," in *Between Past and Future: Eight Exercises in Political Thought*, Penguin Classics (New York: Penguin Books, 2006).

these dual threats, he believed a *federal* republic combined “all the internal advantages of republican government and the external force of monarchy.”⁶⁹ That is, because the federation must be comprised of small republics, and a republic’s spirit is peace and moderation, “it enjoys the goodness of the internal government of each one”; yet together forming a vast association over a large territory, the federation possesses “all the advantages of large monarchies” capable of repelling foreign or external force.⁷⁰ Unlike Montesquieu, Arendt sees the federal principle emerge out of elementary political action absent considerations of “republican government in large territories” or the threat of a “common enemy.”⁷¹ Thus, it appears Arendt directly critiques Montesquieu. However, this is not necessarily so, and her departure from his conception of a federal republic is in fact subtle. Arendt does not indicate she disagrees that a federal republic yields the advantages Montesquieu describes. Rather, she suggests that the federal principle arises independent of such concerns, and thus implies that the advantages Montesquieu identifies are secondary to other, principal qualities inherent in the federal republic.

For Arendt, the federal republic is distinguished as a form of government by its responsibility towards the human condition of plurality, which she discerns by attention to Montesquieu’s concept of principles. Montesquieu believes all forms of government are inspired by a “principle of action,” which he distinguishes from a form of government’s “nature”: while the latter “is that which makes it what it is ... its particular structure,” the former is “that which makes it act ... the human passions that set it in motion.”⁷² For Montesquieu, a government’s principle is paramount, as it is this principle which inspires citizens to act in accordance to the requirements of a government’s nature. As the destruction of this principle would constitute the

⁶⁹ Montesquieu, *The Spirit of the Laws*, 131.

⁷⁰ *Ibid.*, 132.

⁷¹ Arendt, *On Revolution*, 259.

⁷² Montesquieu, *The Spirit of the Laws*, 21.

degeneration of government, the laws and education within any government must be relative to its principle. Within republican government and monarchy, Montesquieu identifies these principles as “virtue” and “honor,” respectively.⁷³ Yet he believed that each principle arose from some fundamental experience common to a political community, the love of which then undergirds the principle and binds it with its structure. Crucially, Arendt sees a direct connection between the basic experiences Montesquieu ascribes to the principles of republican government and monarchy and the human condition of plurality. Arendt is struck that for Montesquieu, “virtue,” the principle of republican government, “springs from the love of equality, and honor,” while the principle of monarchy springs “from the love of distinction.”⁷⁴ The principles of republican government and monarchy, in Arendt’s reading of Montesquieu, arise, “from ‘loving’ one or the other of the two fundamental and interconnected traits of the human condition of plurality.”⁷⁵ A federal republic, though, which drew its advantages from both forms and demanded some admixture of virtue and honor could only arise through loving *both* of the interconnected traits of human plurality. Montesquieu, in identifying in the federal republic advantages such as defense and territory, concerns himself – in his terminology – with the “nature” of a federal republic. Hence, it embodies for him both republican government and monarchy. Arendt, in contradistinction, considers instead the “principle” of his federal republic. In doing so, she identifies that the federal republic is principally distinguished by its principled commitment to the human condition of plurality, beyond its nature as a mixed form of government.

⁷³ Ibid., 22, 26.

⁷⁴ Arendt, "Montesquieu's Revision of the Tradition," 66; Montesquieu, *The Spirit of the Laws*, 43-44, 27, 57-58.

⁷⁵ Arendt, "Montesquieu's Revision of the Tradition," 66.

When Arendt herself defines the republican and federal principles in *On Revolution*, she understands the love of equality and the love of distinction as springs for each. For her, the republican principle is that “according to which power resides in the people, and where a ‘mutual subjection’ makes of rulership an absurdity.”⁷⁶ Through drawing an equivalence between power which resides in the people, and a mutual subjection that renders rulership absurd, she intimates the republican principle arises from a collective experience in which no citizen claims political status above all the rest, instead choosing to retain their power as a community of equal actors. This love of equality, in the republican principle, is mirrored by the love of distinction, in the federal principle. For Arendt, the federal principle is “the principle of a ‘Commonwealth for increase’ ... according to which constituted political bodies can combine and enter into lasting alliances without losing their identity.”⁷⁷ By joining the lasting combination of political bodies to the preservation of each’s identity, she implies that the federal principle arises from a collective experience in which citizens, in recognition of each’s distinction as an actor, preserve in the formation of a political body the capacity of each to act rather than surrender this capacity to one representative of the whole. Thus, when political bodies which share this experience in common combine, each will be jealous of its own distinction, and bind themselves through acknowledgment of their difference, which could not be expressed through a single representative which acts exclusively on behalf of both. While Arendt hews close to Montesquieu, her republican and federal principles bearing an affinity to his springs of republican government and monarchy, respectively, she does so on her own terms. Seen

⁷⁶ *On Revolution*, 162. The phrase “mutual subjection” she borrows from seventeenth-century Puritan minister John Cotton. She quotes him further, echoing “if the people be governors, who shall be governed?” See: *ibid.*, 162n56.

⁷⁷ *Ibid.*, 162. Arendt borrows the phrasing “a Commonwealth for increase” from seventeenth-century English political theorist James Harrington’s *The Commonwealth of Oceana*. While there is certainly much that could be said about the influence of his thought on Arendt, specifically in *On Revolution*, such a discussion is beyond the purview of this thesis. See: James Harrington, *The Commonwealth of Oceana and a System of Politics*, trans. J.G.A. Pocock (Cambridge, U.K.: Cambridge University Press, 1992).

together, her two principles suggest the chief virtue of a federal republic, for her is that the republican and federal principle each correspond to one of the two interconnected traits of the human condition of plurality; accordingly, taken together, these principles correspond to plurality itself.⁷⁸ Any who embrace the federal republic, for Arendt, necessarily demonstrate their love for and commitment to human plurality. It follows, then that for Arendt a federal republic is the form of government best suited to preserve human plurality, and by extension, the basis for political life through which human beings can share a common world.⁷⁹

The correspondence of the republican and federal principles to the human condition of plurality means, for Arendt, that these principles rest at the basis of genuine political life. Accordingly, as plurality forms the basis for action and political life, the republican and federal principles are salient in the other essential concepts which form Arendt's theory of action. These concepts are Arendt's theory of "power" and her theory of "mutual promises." Hence, by understanding these, we will better grasp Arendt's republican and federal principles, and see how they emerge from political action itself.

Power & Promising

Arendt embraces an unorthodox view of power, in which she emphatically rejects the idea that power can be identified as coercion, domination, strength, force, violence, authority, or anything material. Instead, Arendt holds that power "corresponds to the human ability to not just act but to act in concert."⁸⁰ However, this means that power is not something any individual can

⁷⁸ Klusmeyer also notes this correspondence, though he analyzes its consequences predominantly in terms of international politics, and in comparison to the global federalism of Immanuel Kant. See: Klusmeyer, "Hannah Arendt's Case for Federalism," 47-51.

⁷⁹ It must be emphasized that we have not yet approached what constitutes, apart from its two elementary principles, a federal republic for Arendt.

⁸⁰ Hannah Arendt, *On Violence* (New York: A Harvest Book: Harcourt, Inc., 1970), 44.

possess. For Arendt, power exists only in its exercise, when individuals in public form a group and on the basis of a common purpose engage in action together.⁸¹ Though that group may have a leader, this leader does not possess power but is rather *empowered* by all the others on whom she depends to act.⁸² Consequentially, for Arendt, power is a phenomenon which arises between a community of equals, each with the equal capacity to act, only when they are in the midst of their joint action. When this is not the case, power exists only as a *potential* which can be exercised *as* power only when the group takes initiative to act.⁸³ Power thus exists exclusively in the “space of appearance” between individuals who come “together in the manner of speech and action,” and this space, unlike, for example, a built environment, such as a legislative hall, “disappears not only with the dispersal of men ... but with the disappearance or arrest of the activities themselves.”⁸⁴ To wit, if plurality forms the basis for political life, and it is through action that human beings appear to one another explicitly as who they are, the space of appearance is that in-between which exists as a potential wherever people gather, but is actualized only in the exchange of words and deeds; it is the metaphorical *polis*, “the organization of people as it arises out of acting and speaking together ... [whose] true space lies between people living together for this purpose, no matter where they happen to be.”⁸⁵ Thus, the exercise of power is not only constitutive of the space of appearance, but that which sustains the space of appearance as well.⁸⁶ Consequentially, power, once exercised, must somehow be kept together in its potential state to preserve the public sphere; the actors must not abandon the organization which arose in the course of acting, or all action is sure to cease. For Arendt, those

⁸¹ *The Human Condition*, 200.

⁸² *On Violence*, 44.

⁸³ *The Human Condition*, 200.

⁸⁴ *Ibid.*, 199.

⁸⁵ *Ibid.*, 198.

⁸⁶ *Ibid.*, 200.

who simply topple a government but go no further not only leave a vacuum in their wake, but through dispersing as soon as action has come to an end, deprive each other of the only requisite action demands – other people – and thus abandon their own power and the public realm in favor of their privacy.

Yet, in Arendt’s understanding of action, the nature of action *itself* threatens to disperse individuals who exercise power through acting together. Since action is the human capacity to begin something new, Arendt asserts that, through action, “the unexpected can be expected from [man], that he is able to perform what is infinitely improbable” as “it is in the nature of beginning that something new is started which cannot be expected from whatever may have happened before.”⁸⁷ Those who act, by that fact, disturb whatever course of events any individual may have expected; their action is *inherently* unpredictable, so that when they act, the outcome will always be uncertain, and the consequences of their action impossible to predict as each actor is equal and each possesses the same capacity to act.⁸⁸ Consequentially, action renders the future undetermined, as through acting, one prevents an automatic procession of events, which could therefore be known, from coming to pass. By the same token, those who act together today, no matter that they appear before each other as who they are now, “never can guarantee today who they will be tomorrow,” their unreliability as human beings the other side to the unpredictability of their actions.⁸⁹

However, Arendt asserts that the danger of this two-fold unpredictability inherent in all action is mitigated by the capacity to make and keep promises. Promising embraces the inherent “unpredictability of human affairs and the unreliability of men” and erects “guideposts of

⁸⁷ Ibid., 177-78.

⁸⁸ Ibid., 244.

⁸⁹ Ibid.

reliability,” or “isolated islands of certainty in an ocean of uncertainty.”⁹⁰ Promising is the force which keeps actors together: through the making and keeping of promises, actors who bind themselves together can “dispose of the future as though it were the present,” establishing, amidst the dark forest of an incalculable future, a *limited sovereignty* available only to these plural individuals, the limits of which are identical to the limits by which promises may be made and kept.⁹¹ Actors who promise, therefore, extend their power into a wholly new temporal dimension; they secure their power beyond the present act, the present moment, and through their capacity to act into the future, guarantee they will not disperse and thus their power not dissipate. Crucially, as it is this force which keeps the actors together, it is through mutual promises, or contract alone that power is kept intact.⁹²

Though this “limited sovereignty” available to actors who mutually promise may seem precarious, Arendt is adamant that this is in fact the most secure state possible in political life. For Arendt, action is not only unpredictable and reliant upon others; it is also irreversible, and it unleashes an indeterminable process which knows no bounds.⁹³ These characteristics taken together mean, for Arendt, that sovereignty is inherently “spurious if claimed by a single entity, be it the individual entity of the person or the collective entity of the nation.”⁹⁴ Action cannot occur in isolation, and when one acts in public, she acts into a web of human relations in which the outcome of her deed is contingent upon the action others take in response. While she interrupts the expected course of events through acting, at the same time, she sets in motion a new process that threatens to proceed automatically and without end through eliciting others to

⁹⁰ Ibid.

⁹¹ Ibid., 245.

⁹² Arendt, *On Revolution*, 166.

⁹³ *The Human Condition*, 230-47.

⁹⁴ Ibid., 245.

act in response. She, unlike the sculptor who can destroy work he is unhappy with and begin again, must suffer this process she unleashes; she cannot undo the deed which set it in motion.⁹⁵ So long as human beings act, the necessity by which control is absolute, and takes the figure of mastery, will be regularly refuted by the utter contingency of human affairs. Thus, for Arendt, all claims to sovereignty by a single entity are absurd, because *no single entity can be master of itself and its fate* when action unleashes an unpredictable, irreversible, and boundless process which is fundamentally dependent upon others, whether those others are people or entities themselves. That is, Arendt sees the sovereign entity as illusory because it is drawn through action into an already existing web of relations in which the guarantee of its own state cannot come from within but must come from without. Hence, the “limited sovereignty” which mutual promises establish is the most secure state which political life allows for *and is never available to a single entity*. It is an expression of power itself, an action taken in concert; through the contract of mutual promises, equal and distinct actors together *constitute* – by which we mean formalize or institutionalize – their power.⁹⁶

Yet Arendt’s account of promising, as the remedy to the two-fold uncertainty inherent in action, is an acknowledgement on her part that the republican and federal principles arise as a direct consequence of promising itself, and therefore appear whenever actors keep their power intact. That is, if promising acknowledges that none “can guarantee today who they will be tomorrow” and that none can foretell “the consequences of an act within a community of equals where everybody has the same capacity to act,”⁹⁷ those who make and keep promises acknowledge both their distinction as actors as well as their equality in action. Promising,

⁹⁵ Arendt believes this irreversibility of action is mitigated by the capacity to forgive. See: *ibid.*, 236-43.

⁹⁶ Accordingly, whenever we speak of a “constituted power,” we speak of an organization of actors who have formalized or institutionalized their power through the contract of mutual promises.

⁹⁷ Arendt, *The Human Condition*, 244.

indeed, as it embraces this two-fold uncertainty, entails that “power resides in the people” as those who promise consecrate a mutual dependence in which their power is contingent upon each keeping her promise to all the others. Likewise, since the exercise of power in action is ephemeral, promising is the literal means through which a plurality of distinct actors “can combine and enter into lasting alliances without losing their identity,” establishing through mutual promises a union in which each nonetheless retains his capacity to act.

Consequentially, for Arendt, the establishment of “limited sovereignty” is coeval with the appearance of the republican and federal principles, as each spring from the constitution of power by the contract of mutual promises. For Arendt, these principles are contained “*in nuce*” in “the mutual contract where power is constituted by means of promise,” while at the same time, sovereignty “assumes, for many men mutually bound by promises, a certain limited reality.”⁹⁸ Power, for Arendt, cannot be constituted any other way, and to this end it is clear she believes the exercise of power cannot be institutionalized in a political community except through the republican and federal principles. Simultaneously, the coincidence of the appearance of these principles with a “limited sovereignty” that consists in the temporal projection of power indicates Arendt believes the security of a political community founded upon those principles resides in the preservation of opportunities for individuals to act as much as it does the extent to which promises can be kept. This is to say that, once power is constituted, it remains a phenomenon which arises between a community of equals each with the same capacity to act who, in doing so, distinguish themselves amongst their peers. Thus, the members of the political community experience freedom.⁹⁹

⁹⁸ *On Revolution*, 162; *The Human Condition*, 245.

⁹⁹ *The Human Condition*, 177-78.

While a single constituted power, for Arendt, may be founded upon the republican and federal principles, a federal republic must be made up of many such powers. Throughout this chapter, we saw Arendt has placed enormous emphasis on equality and distinction, which together form a thread which runs through human plurality, her theories of action and power, mutual promises, and the republican and federal principles themselves. Yet, “equality” and “distinction” are predominantly considered by Arendt as they apply to human beings, as opposed to constituted powers, which form the units of a federal system. Moreover, her republican and federal principles do not spell out the substantive requirements of a federal system. Thus, in the next chapter, we will seek these substantive requirements, beginning with an exploration of what it means for constituted powers to be “distinct” and “equal.”

2: The Substantive Conditions of the Federal System for Arendt

Constituted powers in the federal system are equal and distinct in action for Arendt, forming an agonistic system of checks and balances which upholds the federal republic's structure of lawfulness and bestows upon authority a union-preserving function. First, I investigate what, specifically, this equality and distinction consists in through an exploration of her concept of the division of powers as it relates to the structure of lawfulness through a system of checks and balances. I establish that each unit of the federal system, for Arendt, must be equal in their capacity to act, and distinct in their capacity to act independently. Second, I demonstrate, by comparison to Madison, how Arendt departs from the American example of federalism, despite what she draws from it. In doing so, I show how her conception of the division of powers and their checks and balances differ fundamentally from his, entailing, in Arendt's case, a non-sovereign federation in which each federal unit checks and balances each other, precluding a federal hierarchy or the monopolization of power by a central government. Last, noting that Arendt's system of checks and balances threatens to fracture the union through its inherent agonism, I uncover that authority, which serves to mitigate this threat as the highest control agency, must paradoxically rest in between the units of the federal system and not above them.

The Equality & Distinction of Constituted Powers

Arendt's understanding of the phenomenon of power precludes comprehending a constituted power which federates vis-à-vis the model of the individual human being. In other words, since a constituted power cannot be understood as a single entity, but as a plurality of equal and distinct actors bound together by mutual promise, its distinction as a unit within the

federal system cannot be understood as anything which would be ascribed to a single entity, as nationality is to a nation. Likewise, the equality of these units cannot reside in an inherent equal power potential, as if each one was a reproduction of the same original. Consequentially, for Arendt, the distinction amongst constituted powers which federate is not equivalent to that of nation-states which enter into a mere alliance, while their equality must reside in a capacity rather than a quality.

Reflecting upon J.T. Delos's 1946 *La Nation*, Arendt sees the federal system as a non-sovereign structure which would displace nationality to the private sphere and the units of which would be distinguished on a basis which would restore the state as an instrument of law. *La Nation*, a study of nations and the phenomenon of nationalism, has, according to Arendt, for its "leading questions ... to find a political principle which would prevent nations from developing nationalism and would thereby lay the fundamentals of an international community, capable of presenting and protecting the civilization of the modern world."¹⁰⁰ Yet, it is far from clear in Arendt's review that these are in fact Delos's leading questions; rather, they appear to be the questions she asks of his text. Indeed, Arendt finds the thrust of his analysis is that the conquest of the state, "a legal institution," by the nation, begins "with the declaration of the sovereignty of the nation."¹⁰¹ In this development, the dichotomy between a modern state tending towards centralization which "monopolized the whole of political life" and the "atomized society whose very atomization the state was called to upon to protect" was held in place only by the glue of the nation, which once a sovereign nation-state, "became the supreme individual before which all other individuals had to bow."¹⁰² This transformation, finally, leads for Delos to totalitarianism.

¹⁰⁰ "The Nation," in *Essays in Understanding, 1930-1954*, ed. Jerome Kohn (New York: Harcourt, Brace & Co., 1994), 207.

¹⁰¹ *Ibid.*, 208-09.

¹⁰² *Ibid.*, 209.

Yet, rather than simply summarizing Delos's argument, Arendt closes her review by returning to what she thought were Delos's "leading questions." Against the threat of nationalism and its development into totalitarianism, Delos points to the idea of federation.

Arendt's review is distinctly supportive and sympathetic of this focus, and she seems to endorse his position on federalism.¹⁰³ She writes that "within federated structures, nationality would become a personal status rather than a territorial one. The state [as a federated unit], on the other side 'without losing its legal personality would appear more and more as an organ charged with competencies to be exerted on a limited territory.'"¹⁰⁴ In the very next sentence, she extols Delos's text, writing – uncharacteristically – that it "is much too important to be criticized within the limits of a review," confirming at minimum the strong affinity she shares with his ideas.¹⁰⁵ Thus, we may infer that for Arendt, although national or other characteristics may be present within the federal system and unify some individuals who exercise power in a federation, a federal unit's distinction is related to its "legal personality" rather than these characteristics. Likewise, a federal unit's equality is clearly related to the "competencies" it exerts internally, as these competencies must be shared by the other units which make up the federation to exert in their respective territories. This indicates, furthermore, that the equality and distinction of units in the federal system are for Arendt intertwined: while a federal unit's "legal personality" and its "competencies" are distinct, these two terms necessarily refer back to

¹⁰³ Lederman strongly implies the same; at minimum, that Arendt agrees with Delos's analysis. See: Lederman, *Hannah Arendt and Participatory Democracy: A People's Utopia*, 13-15.

¹⁰⁴ Arendt, "The Nation," 210-11.

¹⁰⁵ *Ibid.*, 211. Indeed, when Arendt would write her seminal text on totalitarianism only a few years later, she would cite *La Nation* as "an outstanding study on the subject" in her own discussion of the state's "transformation from an instrument of the law into an instrument of the nation," evincing the considerable impression he leaves on her. See: Arendt, *The Origins of Totalitarianism*, 230n29, 30. Likewise, her definition of the nation principle as that "according to which there must be one representative of the nation as a whole," appears linked to her reflections upon Delos, to the extent this principle finds expression in her review in similar language quoted in the previous paragraph. See: *On Revolution*, 162-63.

the structure of lawfulness from which they derive their meaning, entailing there can be little cleavage between them.

Thus, the existence of the federal republic depends upon the preservation of the structure of lawfulness, which for Arendt means the equality and distinction of its units consists in their capacity to act. Reflecting upon Montesquieu, she criticizes the French theorist for failing to provide “the common ground of structure and action in tyrannies”: although he stipulates the principle of tyranny is fear, he does not indicate the experience which births this principle, as he claims that a love of equality gives rise to the principle of virtue for republics.¹⁰⁶ Arendt searches for this spring herself, and on the basis of his work, identifies that spring as “the impotence all men feel who are radically isolated” and thus unable to act.¹⁰⁷ It follows, for Arendt, that all forms of government based on equality face a specific danger: “the moment the structure of lawfulness—within whose framework the experience of equal power receives its meaning and direction—breaks down or is transformed, the powers among equal men cancel each other out and what is left is the experience of absolute impotence.”¹⁰⁸ As a federal republic is a form of government based upon equality, power must be arranged in such a manner to uphold the structure of lawfulness. Whereas the “monopoly [of power] by a central state apparatus” renders “both the individual and the group” powerless, and thus unable to do so, for Arendt it is the “diffusion of power into the many power sources of the federal system” which enables them each to take “active responsibility for public affairs.”¹⁰⁹ Thus, Arendt believes federal units possess the capacity to preserve the structure for lawfulness because they can each act independently, or with another, to uphold it or subdue another who transgresses it. In a word,

¹⁰⁶ "On the Nature of Totalitarianism," 336.

¹⁰⁷ *Ibid.*, 337.

¹⁰⁸ *Ibid.*

¹⁰⁹ Arendt, "Nation-State and Democracy," 261.

for Arendt, the structure of lawfulness is preserved by a system of checks and balances inherent to the federal system, in which each of its units acts with and against the others out of responsibility to that structure through which the equality that gives their power meaning springs in the first place. Otherwise, their equality as actors lost, impotence will reign, and out of “the fear of the power of all others,” the tyrant, whose lust is to dominate, will arise and so the republic will cease and, in its place, will appear a tyranny.¹¹⁰

Arendt sees the possibility for the division of powers and their checks and balances as inherent in power itself, and asserts that divided powers do not stand in a hierarchical relationship. As the human ability to act in concert, power, like action, corresponds to the human condition of plurality. Thus, power’s “only limitation is the existence of other people,” meaning that power is inherently “boundless,” dependent on the organization of the group which acts together but largely independent of material factors such as numbers or means.¹¹¹

Consequentially, “power can be divided without decreasing it, and the interplay of powers with their checks and balances is even liable to generate more power, so long, at least, as the interplay is alive and has not resulted in a stalemate.”¹¹² In other words, the division of power does not sever the relationships between the actors, nor does it entail their organization will atrophy; instead, the appearance of a new power erects a new organization, creates new relationships amongst the actors, and offers new, heretofore non-existent possibilities for action between them. For Arendt, “dividing” power means simply that the opportunities for actors to exercise their

¹¹⁰ "On the Nature of Totalitarianism," 337.

¹¹¹ *The Human Condition*, 201. On the independence of material factors, Arendt points out, regarding numbers, “a comparatively small but well-organized group of men can rule almost indefinitely over large and populous empires” and that “not infrequent[ly] ... small and poor countries get the better of rich nations”; on the independence of means, she writes “popular revolt against materially strong rulers ... may engender an almost irresistible power even if it foregoes the use of violence in the face of materially vastly superior forces.” To this effect, we must note that phenomena such as violence or force often appear alongside power; the point being, however, that power is a distinct phenomenon whose efficacy is largely independent.

¹¹² *Ibid.*

power will have increased, with the consequence that a union whose powers exploit these possibilities for action will be more powerful than a single power which encompassed them all. Recalling that power, for Arendt, demands a community of equals each with the equal capacity to act, it is salient that she views power as an undifferentiated, non-hierarchical phenomenon whose division offers untold opportunities to not merely sustain but increase the power between equal units. Thus, she asserts that when constituted powers combine through mutual promises, they thereby divide themselves and generate a new power which, once constituted, does not establish a power hierarchy. This new power stands *with*, and not above, the others and does not deprive any of their respective power, but rather increases the power of all.

For Arendt, the federal system therefore generates a mutual dependence that preserves the structure of lawfulness by eradicating the majoritarian principle through this division of powers. Commenting on the crisis of Jewish Zionism in Palestine, Arendt stipulates that “a federation is—in contrast to a nation—made up of different peoples with equal rights.”¹¹³ In a related context, discussing the conflict between Jews and Arabs in Palestine, Arendt proclaims that “a genuine federation is made up of different, clearly identifiable nationalities or other political elements that together form the state” such that “national conflicts can be solved ... because the unsolvable minority-majority problem has ceased to exist.”¹¹⁴ She contrasts this

¹¹³ Arendt, "The Crisis of Zionism," 336.

¹¹⁴ "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?,"" 195. The “unsolvable minority-majority problem,” for Arendt, is specific to “the idea of a sovereign state or empire whose majority people is identical with the state.” That is, the sovereignty of this state resides in its majority, which in this context takes the form of a nation, meaning that if the is “made up of various nationalities,” it can only “attempt to solve national conflicts ... [through] guaranteeing minority rights.” Following World War I, numerous sovereign states were formed in Eastern and Central Europe according to this principle, in which Arendt contends “the failure to grant minorities the justice due them was surpassed only by the fact that these minorities enjoyed, at least theoretically, the most splendid legal protection.” This minority-majority problem is inherently insoluble for Arendt because a state which is identical to its majority people is by definition the state of one people, while the nation-state is by definition the national state of one nation, and in both cases the state will be subservient to its majority people or nation. See: *ibid.*, 194-96.

“genuine” federalism to other “federalisms” proposed for Palestine, such as a “binational state within an Arab federation . . . tantamount to a loose union of the various Arab states,” which she accuses of smuggling in the system of sovereign “national states,” rendering the term federation “an intentional misnomer.”¹¹⁵ Taken together, Arendt asserts that the division of powers in a federal system can equalize different peoples. As opposed to a unitary state, the division into federal units, through dividing a population geographically, renders the legal establishment of “majority” and “minority” groups absurd.¹¹⁶ At the same time, this division increases the responsiveness of the state, vis-à-vis its independently acting units, to the needs of different peoples, allowing it to absorb a greater diversity. Significantly, as each unit can act independently, a majoritarian exercise of power will be made impossible without the acquiescence of minority elements, providing a bulwark in the case a majority forms which aims to undermine this equality among peoples and the structure of lawfulness in which it has meaning. That is, a common purpose shared amongst a *popular* majority within the federal republic is necessary but not sufficient to effect a majoritarian exercise of power, whereas a common purpose shared between a supermajority of *units* within the federal system is *both* necessary and sufficient; the federal state cannot act all at once, but must act through its separate parts, meaning that a popular majority will lack the means to liquidate a minority. For instance, Article V of the United States Constitution stipulates that, regardless of the precise mechanism employed, Constitutional amendments can only be proposed and ratified by supermajorities. Had it not, it is salient that the federal system within the United States, insofar as it diffuses power,

¹¹⁵ Arendt, "The Crisis of Zionism," 336; "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?,"" 194-95.

¹¹⁶ This would remain the case in a federal system reminiscent of the Soviet Union, which Arendt cites approvingly as “a union of nationalities, each with equal rights regardless of their size.” See: "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?,"" 196; Rubin, "From Federalism to Binationalism: Hannah Arendt's Shifting Zionism," 402.

would have *de facto* established the same principle nonetheless. Hypothetically, if a popular majority proposed and ratified an amendment curtailing the political rights of minority groups, the dispersal of power within the federal system would mean that amendment could neither be enforced across the United States nor be ingrained into the republic's fabric until a supermajority of States assent to it, while States that withhold their support could exercise their power in defiance of it. This amendment, absent that support, would be mere words, and not an expansion of the United States' foundation. As a result, Arendt sees the resolution of the conflicts which arise between different peoples referred to a political and legal sphere which functions on the principle of equality, rather than a majoritarian principle, in an expression of the federation's interdependence. In order to make the federal republic as a whole act, national elements are forced to contend with one another on the basis of their mutual dependence and seek from that position of equality their lawful coexistence and the common good. In this way, the "minority-majority problem" ceases to exist.

Though she does not use the words, in the above, Arendt demonstrates her attunement to the danger of "the tyranny of the majority," and the importance, through the division of powers, of comprehending a diversity of interests to guard against that danger.¹¹⁷ This draws her near to the example of American federalism, which she sees as "the first [genuine] federation."¹¹⁸ Specifically, her understanding of federalism is here unmistakably reminiscent of James Madison's in *The Federalist*, which we encountered in the preface. Indeed, recall Madison's words from earlier: "a greater variety of parties and interests ... make[s] it less probable that a

¹¹⁷ This is hardly surprising. Rubin rightly underscores that Arendt's political support for federalism did not emerge through "her commitment to Jewish national culture and the concern Jews would assimilate into the dominant culture, but rather on the fear that Jews would be excluded from a political community dominated by a majority ethnic group." See: "From Federalism to Binationalism: Hannah Arendt's Shifting Zionism," 408.

¹¹⁸ Arendt, "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?," 196.

majority of the whole will have a common motive to invade the rights of other citizens.”¹¹⁹ As he envisions this diversity expressed in a federal system through the division of powers in which “the different governments will controul each other; at the same time that each will be controuled by itself,” his aim is not merely to protect minorities, but to render the existence of a majority impossible except on the basis “of justice and the general good.”¹²⁰ Clearly, what Madison offers is a solution to the “minority-majority problem” which preoccupies Arendt, and which she sees eliminated by the federal system. Like Arendt, Madison envisions this to both preserve the structure of lawfulness, through which citizens have rights, as well as induce different elements to act on the basis of the common good.

The federal system, for Arendt, is then a necessarily republican form of government, and consists of a constellation of constituted powers which must retain their *distinct* powers as *equal* units with a significant degree of autonomy to preserve the structure of lawfulness within the republic as a whole. In other words, a federation is defined for Arendt by the equal capacity of its units to act, and these units are distinct in that they may act on their own accord no matter their dependence on all the others. Accordingly, none can achieve a position of dominance over its equals nor undermine the structure of lawfulness without provoking a reaction from the totality of powers which compose the federal system. Without reservation, Arendt embraces Montesquieu’s maxim, “so that one cannot abuse power, power must check power by the arrangement of things,”¹²¹ though Arendt believes this arrangement will principally be found in the division of power into separate units within a federal system, as opposed to the division of power into separate branches of government within one unit. For her, the multiplication of

¹¹⁹ Madison, "The Federalist No. 10," 45.

¹²⁰ "The Federalist No. 51," 254, 55.

¹²¹ Montesquieu, *The Spirit of the Laws*, 155.

opportunities for action within a federal system, which increases the power of the whole, consists of the interplay between units through their arrangement in a system of checks and balances, in which each acts and through acting guards against abuse. In precisely this manner, equality and distinction is the *first* substantive condition for a federal system in which, Arendt writes, “power moves neither from above, nor from below, but is horizontally directed so that federated units mutually check and control their powers.”¹²²

Arendt’s Departure from the American Example

This understanding of the federal system, in which the republican structure of lawfulness is contingent upon the equality and distinction of federal units in action, is reflected in Arendt’s understanding of American federalism, of which she writes, that “no individual state has any dominion whatever over any other, and all the states together govern the country.”¹²³ In other words, her emphasis on the division of powers as a system of checks and balances again draws her close to American federalism, particularly as understood by the framers of the Constitution. Already, we saw that Madison believed the distinct powers which constituted the United States “will controul each other; at the same time that each will be controuled by itself.”¹²⁴ A crucial illustration of this two-fold “controul” comes when Madison considers a State’s ability to defy unwarranted overreach by the Federal Government. He writes:

The disquietude of the people, their repugnance and, perhaps refusal to co-operate with the officers of the Union, the frowns of the executive magistracy of the State, the embarrassments created by legislative devices, which would often be added on such occasions, would oppose in any State difficulties not to be despised; would form in a large State very serious impediments, and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the Federal Government would hardly be willing to encounter.¹²⁵

¹²² Arendt, "Thoughts on Politics and Revolution," 230.

¹²³ "Between Silence and Speechlessness: "Can the Jewish-Arab Question Be Solved?,"" 196.

¹²⁴ Madison, "The Federalist No. 51," 254.

¹²⁵ "The Federalist No. 46," 231.

Crucially, Arendt's understanding of federalism aligns with Madison's in that both believe the final check on a constituted power in the federal system must be another constituted power; that it is only through the unreserved exercise of power that encroachments upon the structure of lawfulness – which when they strike, for Arendt, strike at equality – can be stopped. Yet Madison realizes that it is unlikely such an encroachment would involve only one State, or even only “several adjoining States”: instead, unwarranted acts by the Federal Government would “be signals of general alarm” that press all States to “espouse the common cause” and band together in action, moved by “one spirit” which animates the whole.¹²⁶ This, likewise, dovetails with our conclusion to the previous section. For Arendt, the distinction of units in the federal system entails that these powers must be jealous of their capacity for action, meaning that any encroachment upon that capacity, or the structure of lawfulness which guarantees their equality as actors, must be met by a response from all.

However, Arendt departs from Madison and the American example in a fundamental way which indicates she envisions the power structure of a federal republic as distinct from that of the United States. For Madison, the danger of armed conflict inherent in States banding together against the Federal Government in response to unwarranted actions by the latter will act as a preventative measure against the unjustifiable actions by the Federal Government or its encroachment upon the State governments.¹²⁷ Unlike Madison, Arendt believes that it is action *itself* and not the *threat* of action which serves as a preventative measure against a federated power which seeks to undermine the structure of lawfulness or another unit's equality and distinction within the federal system. To the extent that divided powers, for Arendt, with their

¹²⁶ Ibid., 232.

¹²⁷ Ibid.

checks and balances, only generate more power so long as “the interplay is alive and has not resulted in a stalemate,”¹²⁸ the *détente* Madison describes – that is, a unit within the federal system restricting its actions out of fear for how other units will act in response – amounts to a deadlock which indicates the system of checks and balances has already failed. To wit, this *détente* means the atrophy of the federal republic’s power itself, and thus the incapacity to preserve the structure of lawfulness. In contradistinction to Madison’s *détente*, we may infer that Arendt sees the multiplication of opportunities for the exercise of power through action as the best ward against stalemate; each action, as an interruption of what was expected, amounts to one heartbeat of the interplay between the units of a federal system, which, no different than a beating heart, is an interplay which Arendt asserts cannot cease, meaning that the federal system demands continuous action.

Yet Arendt departs from the American example in a second, interrelated way, which multiplies the opportunities for each unit in the federal system to exercise its power. Madison envisions the States acting as a check on the Federal Government but not each other, as he conceives the States as both sovereign and – largely – independent of each other, what codependence they share expressed only vis-à-vis the Federal Government. This federal hierarchy would restrict the relationships between actors or powers and limit possibilities for action, thus establishing the preconditions for stalemate. Arendt utterly rejects this model: in her understanding of the federal system, the horizontal direction of power precludes precisely this sort of hierarchical relationship between the system’s units, even between units which correspond to different geographic extents. Consequentially, Arendt envisions that all the units within the federal system check and balance each other. For her, they are interdependent, and

¹²⁸ Arendt, *The Human Condition*, 201.

this is not only expressed vis-à-vis a central government, but through their direct relationships with one another as well.

Crucially, these features which distinguish Arendt's understanding of federalism from the American example renders the federal system a more elastic structure which better responds to the needs of distinct, yet mutually dependent, communities. For Arendt, federalism is inherently non-sovereign, both at the state level and at that of the units which compose the federal state, which is expressed in the capacity of each to check and balance each other directly. This, by extension, precludes in practice the monopolization of power by any one unit – such as a central government – as this expropriation of power is fundamentally at odds with the equality and distinction in action of the rest of the federal system's units, and would be met with insurmountable resistance. Consequentially, this preserves the power of the federal republic itself as well as the responsiveness of each federal unit to its citizens. Whereas an expropriation of power would impinge upon the opportunities for each unit within the federal system to act independently, through minimizing this possibility, Arendt imagines that each unit possesses significant autonomy with respect to its own laws which allow it to act locally, federally and immediately to address the concerns of its particular citizens. Corresponding to this capacity is the limitation set upon it by other units in the system of checks and balances, through which the units mutually control their powers and preserve the structure of lawfulness. Thus, vis-à-vis each unit, policy within the federal republic is made and enacted closest to the seat of daily life, while each unit is prevented by all the others from transgressing the laws through which citizens are equal, ensuring the republic as a whole can comprehend the diversity of human plurality.

That Arendt fails to “clearly, or consistently, distinguish between a federal state and a confederation,” as political theorist and sociologist Roland Axtmann stresses, is rather

irrelevant.¹²⁹ For Arendt, federalism does not admit our contemporary understandings of a federal state, which *de facto* establishes a power hierarchy dominated by a central government, or a confederation, which *de facto* is a mere coalition of sovereign (nation-)states. On the one hand, the federal system for Arendt does not merely diffuse “the centralization of power in the nation-state,”¹³⁰ but safeguards against the centralization of power *in toto*; on the other hand, its units enjoy independence in action yet are nonetheless intimately related to and dependent upon each other. *A federal system, for Arendt, allows for myriad combinations between the extremes of a centralized federal state and a decentralized alliance, and due to this flexibility can be employed across a diverse spectrum of political situations.* For instance, a European federation, which would be composed of numerous geographically distinct nations, each with its own language, culture, and national history, would require a greater degree of decentralization to accommodate the diverse needs of its people in comparison to the United States, in which the absence of an American nation, let alone geographically distinct nations, has meant that, today, its people predominately share a language, culture, and political history irrespective of the State in which they are raised, and are thus apt to move throughout the federal republic. So long as the former is not decentralized to the degree it becomes an alliance of nation-states and the latter not centralized to the extent the Federal government undermines the power of the States, both are equally valid for Arendt as federal systems. Indeed, as historian Caroline Ashcroft astutely notes, “Arendt’s interest in politics had been provoked by the Jewish situation, but by the mid-1940s Arendt was thinking about politics in broader terms” such that federalism was no longer seen as the solution to a problem particular to the Jewish people; instead, “increasing

¹²⁹ Roland Axtmann, "Globality, Plurality and Freedom: The Arendtian Perspective," *Review of International Studies* 32, no. 1 (2006): 107.

¹³⁰ Arendt, "Nation-State and Democracy," 261.

globalization and a corresponding breakdown of sovereignty as an efficient political principle meant that federalization was now seen as the future for all Western peoples.”¹³¹ Federalism, for Arendt, is theoretically justified as imperative to politics in conditions of non-sovereignty, wherein politics must be conceived “in terms of the cooperation and quasi-integration of different peoples.”¹³²

The Place of Authority in the Federal System

The equality and distinction in action of federal units entails that their relationship will not only be deliberative, but highly agonistic. That is, Arendt’s federal republic depends upon these units to each check and balance each other through action in an unceasing interplay; at the same time, a central government would not possess a monopoly on power, and thus is unable to overpower, and unlikely to coerce, other units to resolve seemingly intractable conflicts. While the federal system, to an extent, thus institutionalizes agonism, Lederman is correct to note that “Arendt did not regard [agonism] as an unconditional ideal.”¹³³ Indeed, Arendt sees the agonal spirit, “the passionate drive to show one’s self in measuring up against others,” which prevailed within the ancient Greek *polis*, as responsible for both “the incredible development of gift and genius in Athens ... *as well as* for the hardly less surprising swift decline of the city-state.”¹³⁴ The units within a federal republic must be continuously engaged in action, but all action unleashes an unpredictable chain reaction, meaning that, left to its own devices, the federal republic could bring about its own demise. Yet, for Arendt, “government itself consists of power and authority,”¹³⁵ and it is *authority*, rather than power, which therefore must insert itself

¹³¹ Ashcroft, "Jewishness and the Problem of Nationalism: A Genealogy of Arendt's Early Political Thought," 435.

¹³² Ibid.

¹³³ Shmuel Lederman, "Agonism and Deliberation in Arendt," *Constellations* 21, no. 3 (2014): 328.

¹³⁴ Arendt, *The Human Condition*, 194, 97. Emphasis added.

¹³⁵ *On Revolution*, 170.

between the structure of lawfulness and the units of the federal system, endowed with the capacity to resolve what conflicts arise between them, which can address the action processes unleashed by units within the federal system in a manner recognized by them all.

Authority, for Arendt, can be vested in persons, such as the relation “between teacher and pupil,” or in offices, such as “in the Roman senate.”¹³⁶ In either case, “its hallmark is unquestioning recognition by those who are asked to obey,” such that remaining in authority “requires respect for the person or the office.”¹³⁷ However, Arendt stresses that in the exercise of authority, “neither coercion nor persuasion are needed,” meaning that the actors’ obedience is guaranteed only by their own reverence for the office in which it has been vested.¹³⁸ Consequentially, the exercise of authority by those in whom it has been vested does not consist in action, but rather takes the form of a directive to those who themselves act. In other words, those in whom authority is vested respond to the exercise of power through indicating how an action appears to them, and through the unquestioning obedience generated by the relationship between them and the actors, both add to and sanctify action itself.¹³⁹

While the federal republic is a union of constituted powers, the authority of a federal republic is singular and represents a highest control agency which offers recourse to these units in the event of a conflict, preventing the union from fracturing. Arendt rarely addresses the question of authority in her discussions of the federal system, and it is not yet clear what specific form of authority her conception of the federal system demands. However, she does explicitly state one characteristic of federal authority, without which the federal system could not exist.

¹³⁶ *On Violence*, 45.

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ The concept of authority will be treated in detail in the following chapter; here, we only need distinguish it from power. Though power and authority are related, they are often confounded, and it is this error we seek to avoid.

While discussing the possibility of a federal state that could appeal to authority rather than war as a last resort in international affairs, Arendt laments that “the real difficulty speculating on these matters is that the final resort should not be *supernational* but *international*.”¹⁴⁰ In other words, Arendt stipulates federal authority should not exist above federal units, but instead between them. Though she speaks in the context of a global form of federalism in which she implies that federal states, unlike nation-states, could resolve their disputes through a common authority rather than through war, her statement is nonetheless valid for the federal system in the abstract, geographically limited or not. That is, as the federal principle for Arendt is “the principle of a ‘Commonwealth for increase’ ... according to which constituted political bodies can combine and enter into lasting alliances without losing their identity,” differences of scale are inconsequential for our purposes, the principle remaining the same whether a federal state occupies a region, a continent, or the whole of the earth.¹⁴¹ The need for a highest control agency, likewise, is not limited to the avoidance of war – which remains a possibility within federal systems, as the United States’ history shows – but is called forth by the possibility that, between federal units who act with and against each other, an intractable conflict may arise between them and amount to a stalemate which would lead to the degeneration of the federal republic’s power. Therefore, while the first substantive condition for the federal system is the equality and distinction of its units in action, the *second* substantive condition for the federal system is that its authority must rest *in between* and not *above*.

While there appears to be some connection between the non-hierarchical power structure of Arendt’s federal system and her idea of an authority found in between federated units, the latter appears difficult to reconcile with the concept of authority in the first place.

¹⁴⁰ Arendt, "Thoughts on Politics and Revolution," 230.

¹⁴¹ *On Revolution*, 162.

Hence, Arendt asks: “Where do we find models that could help us in construing, at least theoretically, an *international* authority as the highest control agency? This sounds like a paradox, as what is highest cannot well be in between, but it is nevertheless a real question.”¹⁴² Curiously, both Axtmann, in his reconstruction of Arendt’s federalism as a democratic response to globalization, and political theorist Douglas Klusmeyer, in his explication of Arendt’s case for federalism, implicitly recognize the power structure Arendt’s federal system demands, yet ignore Arendt’s question and the problem of authority altogether.¹⁴³ Perhaps they thought it unnecessary, as Arendt immediately gives a vague answer to her own question, and says she “had in mind” something which she “tried to elaborate a bit” in *On Revolution*, proceeding immediately into a discussion of the council state.¹⁴⁴

Nevertheless, it is inaccurate to think that she refers to her description of the council state as a sufficient answer, if for no other reason than Arendt sees power and authority as “interrelated.”¹⁴⁵ We may recall her words, “that all authority in the last analysis rests on opinion is never more forcefully demonstrated than when, suddenly and unexpectedly, a universal refusal to obey initiates what then turns into a revolution.”¹⁴⁶ Authority’s efficacy, therefore, is contingent on its relationship to power. Yet it is precisely the relationship between the two which is absent from her illustration in *On Revolution* insofar as she explains the power structure of the council state at the expense of the nature of its authority. Perhaps this is because the historical councils which served as her theoretical influences – the Russian *soviets*, the German *Räte*, the Hungarian councils – were crushed by their opposition, whether that

¹⁴² "Thoughts on Politics and Revolution," 231.

¹⁴³ Axtmann, "Globality, Plurality and Freedom: The Arendtian Perspective," 107-12, 16-17; Klusmeyer, "Hannah Arendt's Case for Federalism," 46-47, 51.

¹⁴⁴ Arendt, "Thoughts on Politics and Revolution," 231.

¹⁴⁵ *On Revolution*, 146.

¹⁴⁶ *Ibid.*, 220.

opposition was the party system or an imperial state, and so never established what to Arendt would constitute authority. While political theorist John F. Sitton infers that Arendt believes the problem of authority “would be alleviated among the federated councils,” it is abundantly clear she holds doubts this would be the case, thinking instead it is an open question requiring further investigation.¹⁴⁷ When Arendt identifies the council state as a possible model for federal authority, she invites us to spin out – not the precise functions of the councils – but the relationship between power and authority in the council state which establishes the federal system as a stable political order.

¹⁴⁷ "Hannah Arendt's Argument for Council Democracy," *Polity* 20, no. 1 (1987): 88.

3: An Authority Between Constituted Powers

An authority between federated powers is, for Arendt, the consequence of the council state's power structure in the act of foundation, and will be vested in a constitution whose function as the source of law entails this authority depends upon the preservation of power through participation. First, we will interrogate Arendt's understanding of the foundation of authority. For Arendt, the act of foundation contains its own validity in the form of its guiding principle, through which the act of foundation develops its own permanence and stability. Consequentially, authority for Arendt resembles the Roman *auctoritas*, according to which the exercise of authority consists in the preservation of foundation through augmentation. That is, change and conservative care of foundation coincide. Those vested with authority bind all innovations back to foundation, by virtue of which they enlarge foundation itself. Subsequently, we will examine how this authority, in the context of the council state, is an authority between federated powers, which requires the reconciliation of authority and equality. For Arendt, this reconciliation lies in the coincidence of the peculiarity of the council state's foundation with the derivative nature of authority. She sees this embodied in the nature of constitutional authority, which suggests that, for Arendt, the council state would have to be founded through a written constitution, and its authority vested in a constitutional court. Finally, as the function of authority is legal, and a constitution acts both as the source of authority and the source of law, we will investigate the form of law the federal system requires for Arendt. Crucially, law must be relational, such that the boundaries established by a constitution are the object of political action, with authority dependent upon the changing relationships between federal units. Thus, authority depends upon the preservation of the power sources in the federal republic through the power exercised at the grassroots.

The Foundation of Authority

Despite the emphasis Arendt places on mutual promises as the act through which power constitutes itself and preserves its appearance in the world, mutual promises alone are not sufficient to guarantee a constituted power's existence over time. Arendt writes:

Neither compact nor promise upon which compacts rest are sufficient to assure perpetuity, that is, to bestow upon the affairs of men that measure of stability without which they would be unable to build a world for their posterity destined and designed to outlast their own mortal lives.¹⁴⁸

To wit, mutual promises alone are “by no means enough to found a ‘perpetual union,’” to which the federal system must aim, and which corresponds to the foundation of “a new authority.”¹⁴⁹

Though mutual promises generate a limited sovereignty which mitigates the uncertainty inherent in action, power remains an unstable phenomenon whose exercise, as a new beginning, inherently cuts across the expected course of events. Thus, the act of foundation – simultaneously the deed in which actors constitute a new power through mutual promises and the appearance of that power in the world for the first time – is a new beginning *nonpareil* in which “an unconnected, new event break[s] into the continuous sequence of historical time.”¹⁵⁰ As Kalyvas correctly stresses, this interruption is not an absolute temporal rupture, but rather “a break from the preestablished political, institutional, and legal order.”¹⁵¹ Human affairs are relative by definition; no beginning is *ex nihilo* but exists in relation to an antecedent event. Nonetheless, the act of foundation defies a consistent sequence of cause and effect and seems “as though it came out of nowhere in time and space,” with the consequence that it carries “with itself a measure of complete arbitrariness.”¹⁵² In the wake of this degree of sheer arbitrariness,

¹⁴⁸ Arendt, *On Revolution*, 174.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*, 197.

¹⁵¹ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 223.

¹⁵² Arendt, *On Revolution*, 198.

the act of foundation requires some explanation which will account for the new beginning it introduces into the world and bestow upon it validity.

Within the federal republic, Arendt sees the problem of authority as consisting in the validity of the act of foundation which would sanction the positive law legislated by its units. While the laws owe “their factual existence to the power of the people ... in the legislatures,” these people “could not at the same time represent the higher source from which these laws had to be derived in order to be authoritative and valid for all, the majorities and the minorities, the present and the future generations.”¹⁵³ Thus, while the units of the federal system erect the structure of lawfulness, and through their checks and balances preserve it, power itself cannot bestow the validity positive law demands to effect a stable political order. Indeed, within the context of Arendt’s thought, power is incapable on its own of bestowing this authoritative validity upon law as it consists in action taken in concert, which entails that, absent some other authority, the validity of a law would be restricted to those who passed it. That is, as power’s origin is in “the ‘grass roots’ of the people,”¹⁵⁴ any uninvolved in legislation would be unencumbered to act *against* the law, as law-making itself, as a contingent action, cannot produce obedience; at the same time, as the validity of law would be drawn from the people, power would stand above and outside the law. The law would not be a stable, lasting structure as any legislation would, as an expression of power which refers to its source in the people, be legal *ipso facto*, meaning that *all* laws would be drawn into an unrelenting *action process* and stand in constant danger of nullification and reconstitution, while the structure the law provides would collapse in an amorphous cycle of relentless becoming. Arendt asserts this was the case in the early constitutional history of France, where law and power shared an identical source in the

¹⁵³ Ibid., 174.

¹⁵⁴ Ibid.

nation. There, the action process unleashed by the French Revolution became the source of law itself, and “relentlessly produced new ‘laws’, namely, decrees and ordinances, which were obsolete the very moment they were issued,” revealing that “the so-called will of a multitude ... is ever-changing by definition, and that a structure built on it as its foundation is built on quicksand.”¹⁵⁵ Accordingly, power, although responsible for the existence of law, cannot be the *source* of law, “whose seat,” for Arendt, “is ‘above’, in some higher and transcendent region.”¹⁵⁶ Consequentially, the foundation of a new authority requires reference to an “absolute” which constitutes its validity and dispels the arbitrariness inherent in the act of foundation.¹⁵⁷

However, the “absolute” which the erection of a new authority demands cannot transcend the act of foundation itself. The appeal to an “absolute” which stands outside the act of beginning, whether this “absolute” is the nation or a higher power, is tantamount to an appeal to a fabricator who stands outside his own creation, as the sculptor stands outside his statue. This, for Arendt, is:

...the introduction of a beginner whose own beginnings are no longer subject to question because he is from ‘eternity to eternity’. This eternity is the absolute of temporality, and to the extent that the beginning of the universe reaches back into this region of the absolute, it is no longer arbitrary but rooted in something which, though it may be beyond the reasoning capacities of man, possesses a reason, a rationale of its own.¹⁵⁸

Thus, an “absolute” which transcends the act of foundation corresponds to the attempt to achieve a total rupture from the past – an *ex nihilo* beginning – and while this beginning is no longer arbitrary, the substance of its validity need not be understood by the political community as a whole. This attempt at an *ex nihilo* founding, writes Kalyvas, “sublimates the political

¹⁵⁵ Ibid., 175, 54.

¹⁵⁶ Ibid., 174. Note the airquotes around 'above'; that is, we should not take Arendt to mean that the source of law transcends the realm of human affairs, but rather that it is external to the actors who exercise power.

¹⁵⁷ J. Matthew Hoye and Benjamin Nienass, "Authority without Foundations: Arendt and the Paradox of Postwar German Memory Politics," *The Review of Politics* 76, no. 3 (2014): 420; Arendt, *On Revolution*, 174.

¹⁵⁸ *On Revolution*, 198.

community into a demiurgic artist or potent dictator, both of which aspire to redesign from the beginning the legal, institutional, and political structure, of society.”¹⁵⁹ Consequentially, the act of foundation is rendered in terms of fabrication, transforming a political act into an antipolitical expression of violence in which the few will have to command the many through instrumental means. That is, the foundation of a new power is seen as something which must be imposed upon a political community, rather than mutually established. One who seeks to “make” a republic does not engage in action and speech with her equals in public or bind herself to them through mutual promises, but alone has a plan through which she will bend reality to her design through the transformation of the living political community into something absolutely new. Thus, Arendt contends that it is futile to search for an “absolute” to break the “vicious cycle” of validity, explanation, and justification because “this ‘absolute’ lies in the very act of beginning itself.”¹⁶⁰ She writes: “what saves the act of beginning from its own arbitrariness is that it carries its own principle within itself,” meaning that “beginning and principle, *principium* and principle, are not only related but coeval.”¹⁶¹

All action, for Arendt, manifests a principle immanent to the act itself, and it is the principle manifest in the act of foundation which constitutes the “absolute” a new authority demands.¹⁶² These principles – such as “justice,” “solidarity,” or “freedom” – become “manifest only in the performing act itself” and retain their appearance “in the world as long as the action

¹⁵⁹ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 226.

¹⁶⁰ Arendt, *On Revolution*, 196.

¹⁶¹ *Ibid.*, 205.

¹⁶² Although Arendt discusses principles at various points in her work, her most explicit formulation comes in “What Is Freedom?,” 150-55. Also see: *On Revolution*, 186-206. For detailed discussions of Arendt’s conception of principles, see: Lucy Cane, “Hannah Arendt on the Principles of Political Action,” *European Journal of Political Theory* 14, no. 1 (2015); James Muldoon, “Arendtian Principles,” *Political Studies* 64, no. 1_suppl (2016); Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 241-53. Though I invoke the “principle” of foundation throughout, this is simply for consistency and clarity; as Cane correctly points out, Arendt, unlike Montesquieu, believes multiple principles can be manifest in act.

lasts, but no longer.”¹⁶³ While principles “are much too general to prescribe particular goals,” they nonetheless provide actors a basis upon which to coordinate the accomplishment of their enterprise, and thus both orient and circumscribe their undertaking as a “law of action.”¹⁶⁴ In this light, Kalyvas aptly observes that the principle manifest in the act of foundation functions as a form “of self-limitation coming from within, dictated by the instituting act itself,” and thus represents a stabilizing force in the founding of a new federal republic.¹⁶⁵ Though Arendt does not explicitly address why principles exert a regulatory effect upon action, it is salient she believes the reason why is related to the act of judgement, as evident when she asserts that “every particular aim can be judged in the light of its principle once the act has been started.”¹⁶⁶ For Arendt, the judging “spectator sits in every actor,” meaning, as political theorist Linda Zerilli astutely observes, that the spectator “is not another person, but simply a different mode of relating to, or being in, the common world.”¹⁶⁷ Accordingly, we may infer that for Arendt, the actors *qua* spectators themselves, and not merely non-actors, judge their particular aims in light of the principle which they manifest. In so doing, they grasp the ways in which they have exemplified or deviated from that principle through their action, and by exercising their judgement, may revise their plans for action accordingly. In the context of the foundation of a federal republic, this entails that the principle manifest in the act of foundation forms the basis for political judgement within the newly constituted republic as well. As such, that principle possesses the capacity to validate the source of law through which positive laws in the federal

¹⁶³ Arendt, "What Is Freedom?," 151.

¹⁶⁴ Ibid.; Arendt, *On Revolution*, 205.

¹⁶⁵ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 242.

¹⁶⁶ Arendt, "What Is Freedom?," 151.

¹⁶⁷ *Lectures on Kant's Political Philosophy*, 63; Linda M. G. Zerilli, "'We Feel Our Freedom': Imagination and Judgment in the Thought of Hannah Arendt," *Political Theory* 33, no. 2 (2005): 179.

republic are derived, to the extent that positive law is legislated through action guided by that principle.¹⁶⁸

Critically, principles for Arendt are universally valid. Otherwise, the stability they bestow upon action and the sanction they confer upon positive law would be fleeting. Though it may seem surprising to describe these principles as universal, political theorist Lucy Cane observes that principles are “thoroughly *worldly*” as, for Arendt, we make our appearance as human beings through action.¹⁶⁹ Significantly, writes Cane, this means that “from a political perspective, the self is not understood as an entity constituted prior to action,” but one “constituted through the action that takes place in a public space of appearance.”¹⁷⁰ As the self is constituted through action within the space of appearance shared by a plurality of actors, there is no such thing as an interior to the self for Arendt. The self appears *through* action in the space between actors as a response to the world they share. Thus, principles do not “operate from within the self” for Arendt, but “inspire, as it were, from without.”¹⁷¹ The manifestation of a principle is a distillation of its constituting action at the moment of its exercise, and is therefore intrinsic only to the action itself but *not* the actors, whose selves are distinct from “what” they are and, in a manner of speaking, are not only constituted but determined by their act. Consequentially, “the validity of a principle is universal, [and] it is not bound to any particular person or to any particular group.”¹⁷² Crucially, this means that the principle manifest in the act of foundation, in its capacity to validate the source of law from which positive laws are derived, renders these laws valid for all, encompassing future generations and thus bestowing a measure

¹⁶⁸ We may not only infer this from Arendt’s writings on principles, but in her essay “Civil Disobedience” as well, in which she relates consent to statutory laws to the “spirit of American laws.” See: Arendt, “Civil Disobedience,” 82-102.

¹⁶⁹ Cane, “Hannah Arendt on the Principles of Political Action,” 63.

¹⁷⁰ *Ibid.*

¹⁷¹ Arendt, “What Is Freedom?,” 150-51.

¹⁷² *Ibid.*, 151.

of permanence upon the federal republic. Likewise, as this principle is available to all as a basis upon which to act, it “inspires the deeds that are to follow” foundation, orienting all who participate in the public affairs of the newly constituted federal republic and cementing its stability.¹⁷³ For these reasons, Arendt writes, “the stability and authority of any given body politic” ought to be derived “from its beginning.”¹⁷⁴ Clearly, the “absolute” the act of foundation requires for its validity is not an absolute at all. This “absolute,” as a principle *immanent to a human act*, is relative by definition; specifically, it is relative to the federal republic constituted through the act of foundation itself.

However, since principles manifest in the world only so long as action lasts, the stability and permanence of a federal republic depends upon the preservation, and the continuous animation, of the principle manifest in the act of foundation. Significantly, this is possible for Arendt insofar as institutions are designed to “assure the survival of the spirit out of which the act of foundation sprang, [which is] to realize the principle which inspired it.”¹⁷⁵ That is, through institutional design, it is possible to preserve the appearance of a principle in the world.¹⁷⁶ Through the structure of government, a federal republic may effect its permanent existence. Yet, for Arendt, political institutions “depend for [their] continued existence upon acting men,” such that “*their conservation is achieved by the same means that brought them into being.*”¹⁷⁷ Not only does this mean that the survival of political institutions depends upon continuous action, but that their design must correspond to the salient features of the act of foundation. Thus, if the federal republic is founded through mutual promises in a free act among

¹⁷³ Arendt, *On Revolution*, 205.

¹⁷⁴ *Ibid.*, 190.

¹⁷⁵ *Ibid.*, 117.

¹⁷⁶ Cane, "Hannah Arendt on the Principles of Political Action," 69-71; Linda M. G. Zerilli, *A Democratic Theory of Judgement* (Chicago ; London: The University of Chicago Press, 2016), 206.

¹⁷⁷ Arendt, "What Is Freedom?," 152. Emphasis added.

equal and distinct powers, the institutional design they establish must include political space for citizens to act together freely as equals *on the basis of the mutual promise of foundation*.

Through this, citizens realize the principle manifest in the act of foundation in an ongoing manner without interruption. Accordingly, the source of law, in which the principle is embedded, retains the validity through which it sanctions positive law, while citizens legislate upon that principle.¹⁷⁸

Arendt implies that this model of authority established by the act of foundation will resemble that of Ancient Rome. In a federal republic in which power is exercised on the basis of the mutual promise of foundation, and in its exercise manifests the principle which inspired it, citizens find in that beginning the wellspring for their future action. Thus, citizenship inculcates a “religious” attitude towards the republic’s foundation, in which “the word ‘religion’ must be understood in its original Roman sense, and their piety would then consist in *religare*, in binding themselves back to a beginning, as Roman *pietas* consisted in being bound back to the beginning of Roman history, the foundation of the eternal city.”¹⁷⁹ Through citizens binding themselves back in action, the act of foundation through which the federal republic is established automatically develops its own stability and permanence. For Arendt, authority in this context is the Roman *auctoritas*, in which authority consists in “nothing more or less than a kind of necessary ‘augmentation’ by virtue of which all innovations and changes remain tied back to the foundation which, at the same time, they augment and increase.”¹⁸⁰ This Roman authority, in contradistinction to power, “had its roots in the past, but this past was no less present in the

¹⁷⁸ As Cane points out, principles may be embedded in “stories, political theory, poetry, and other cultural artifacts. Thus, it is clear a principle can be embedded in the source of law, regardless of what this source is. See: Cane, “Hannah Arendt on the Principles of Political Action,” 69.

¹⁷⁹ Arendt, *On Revolution*, 190.

¹⁸⁰ *Ibid.*, 194.

actual life of the city than the power and the strength of the living,” meaning that the authority of the living was always derivative from the authority of the founders, and their spirit represented in the foundation of Rome itself.¹⁸¹ Augmentation, in this context, means something *added* to political decisions, whose binding force was “closely connected with the religiously binding force of the *auspices*,” which “reveal divine approval or disapproval of decisions made by men,” and thus “‘augment’ and confirm human actions but do not guide them.”¹⁸² Thus, all authority, which derived from the foundation of Rome, bound “every act back to the beginning of Roman history, adding as it were, to every single moment the whole weight of the past,” rendering the precedents and deeds established in action binding and authoritative examples for all, and thus expanded the foundation of Rome itself.¹⁸³ Crucially, this *auctoritas* implies “a coincidence of foundation and preservation by virtue of augmentation,” meaning that the new beginning inherent in action and the conservation through which this beginning will retain its appearance in the world “through the centuries” are intertwined.¹⁸⁴ Hence, Arendt underscores that *auctoritas*, in its capacity to enlarge the foundations of Rome, and therefore preserve those very foundations, “depended upon the vitality of the spirit of foundation.”¹⁸⁵

Authority in the Council State

When Arendt refers to *On Revolution* as a starting point to uncover a model of authority which rests in between constituted powers, we must pay close attention to her precise question. Asking where we might find such a model, her question neither concerns authority *per se* nor the foundation of authority, both of which for her are rooted in the Roman *auctoritas* and must be

¹⁸¹ Arendt, "What Is Authority?," 122.

¹⁸² *Ibid.*, 123.

¹⁸³ *Ibid.*

¹⁸⁴ Arendt, *On Revolution*, 195.

¹⁸⁵ *Ibid.*, 193.

derived from the act of foundation; instead, her question pertains exclusively to the location of authority. Crucially, if authority sits between constituted powers, it must – like any in-between – correspond to that which relates them, whose relationships as equals are expressed through the exercise of power. Consequentially, by virtue of being an in between, authority not only relates federated powers, but must owe its existence to the relationship between them. The source of authority, as a relation, cannot be absolute, but must be relative to the power exercised by federal units, while at the same time, those vested with authority must inspire unquestioning obedience from each unit equally to qualify this power, otherwise they cannot serve as the “highest” control agency within a federal republic. As a result, *the presence of this authority cannot undermine the equality of the units within a federal system*. In a manner of speaking, this is entailed in the federal republic as it is constituted through mutual promises – that is, the act of foundation itself is the expression of a relationship – and it is from this beginning that authority is derived. Yet, this merely tells us that, at its foundation, authority in the federal republic is found in between its units – but it does not tell us the precise source of this authority, in whom or what it is vested, or the mechanisms through which authority remains an on-going relation between equal powers.

Arendt sees the foundation of the federal council state as constitutive of this authority. In the final chapter of *On Revolution*, she sketches a model of the council state’s power structure, which she contends “could constitute the solution to one of the most serious problems of all modern politics, which is not how to reconcile freedom and equality but how to reconcile equality and authority.”¹⁸⁶ There, she asks us to imagine myriad councils which emerge spontaneously at the grassroots – “elementary republics” – which lack electoral requirements and invite all to participate directly in public affairs. Subsequently, each elementary council would

¹⁸⁶ Ibid., 270.

select a representative to sit on a “higher” council, which corresponds to a larger geographic division, creating a new “layer” above the grassroots. These representatives, in their own councils, would likewise choose amongst their own and select representatives to form a third “layer.” For Arendt, this process would continue until, in the final instance, it would constitute a federal council state which would take the shape of a pyramid, with a parliament at the pyramid’s apex.¹⁸⁷

Yet, Arendt’s proposal of a pyramid-shaped government is sufficient for one – rightfully – to question whether she has in fact reconciled equality and authority. Arendt herself, even, is quick to point out that a pyramid “is the shape of an essentially authoritarian government,” in which authority is generated at the top and filtered down successively through the layers below.¹⁸⁸ Nonetheless, she insists that, in the council state, this would not be the case: here, she tells us, authority would not be “filtered down from above.”¹⁸⁹ Within this pyramid, authority “would have been generated neither at the top nor at the bottom, but on each of the pyramid’s layers.”¹⁹⁰ Here, it is crucial to note Arendt’s use of the perfect continuous conditional. She does *not* tell us, as Muldoon believes, that authority would be generated on an ongoing basis on each “level” of the pyramid;¹⁹¹ rather she tells us that authority “would have *been*” generated at each “level.” Arendt, through her use of the perfect continuous conditional, emphasizes that the construction of this pyramid corresponds to the council state’s foundation: the moment in which authority *would have been generated* is a singular occurrence which is identical to the act of foundation from which this authority is derived. Decisively, as a representation of the council

¹⁸⁷ Arendt, "Thoughts on Politics and Revolution," 232; *On Revolution*, 270.

¹⁸⁸ *On Revolution*, 270.

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Muldoon, "The Lost Treasure of Arendt's Council System," 408.

state's power structure, it is not a description of its authority. Thus, following the council state's foundation, those citizens who participate in public affairs would be *authorized* to do so by the source in which authority is vested, which is to say that while they would not generate authority, they would not lack it either. For instance, a citizen who proposes an amendment to non-discrimination legislation within a council would believe herself authorized to do so, but neither she nor her peers would see themselves as the source which authorizes her action. Meanwhile, the source of authority does not generate authority, but as the repository for the authority generated by the councils in the state's foundation, reallocates that authority through the approbation of specific acts and powers. If citizens were to generate authority, they would be establishing a new authority altogether, and their action would take place outside the frame of their own government.

We may clarify the way in which authority derived from the foundation of the council state reconciles this authority with equality when we consider the pyramidal power structure of the council state against another "pyramid" to which Arendt refers. Discussing the Roman *auctoritas*, which serves as a model for the basis of authority in the council state, Arendt underscores that the ancient Romans, by binding themselves to the beginning of Roman history and through seeking authoritative examples in the precedent set by ancestors, "felt that growth was directed toward the past."¹⁹² Thus, she writes:

If one wants to relate this attitude to the hierarchical order established by authority and to visualize this hierarchy in the familiar image of the pyramid, it as though the peak of the pyramid did not reach into the height of a sky above (or, as in Christianity, beyond) the earth, *but into the depth of an earthly past.*¹⁹³

¹⁹² Arendt, "What Is Authority?," 123.

¹⁹³ *Ibid.*, 123-24. Emphasis added.

For Arendt, where authority is derived from the act of foundation and actors are bound back to that foundation, the past – beginning – is sanctified, and in this context the order established by authority does not correspond to transcendent ideas but to the worldly words and deeds of that consecrated past. Foundation is bedrock, and the structure of authority erected upon this groundwork will, for Arendt, be determined by it, as it is to this beginning which those vested with authority form the link. In the council state’s formation, each “layer” would constitute itself successively, each an independent power which nonetheless would owe its very existence to the delegating councils “below” it, directly binding the entire edifice to the elementary councils of the grassroots, in which all citizens may engage in action and speech with their peers and partake in the business of government, and whence all power is derived. Yet, Arendt sees the “lack of power” and “want of authority” as “concomitant,”¹⁹⁴ which means that each council, as it arises in the formation of this pyramid, possesses a well of authority *prior* to the foundation of the council state itself.¹⁹⁵ Thus, when the totality of already constituted councils act in a joint exercise of power in the foundation of the council state, they would constitute a federal republic through mutual promise, in which they establish a parliament, and found a new source of authority upon the principle manifest in that act, the authority of which would be *derivative* from the preexistent reservoirs of authority in each council. Consequentially, the foundation of the pyramidal council state would be a radically *equal* act among distinct powers in which a new authority is generated by each level of the pyramid. In this context, the source of authority in the council state would reach “into the depth of an earthly past” to a mutual promise authorized by

¹⁹⁴ Arendt, *On Revolution*, 137.

¹⁹⁵ Edgar Straehle notes that in her German translation, Arendt writes in the same passage “about a kind of authority of the people (*Autorität im Volke*) that she did not mention in English.” See “Rethinking the Relationship between Past, Present, and Future: Arendt’s Account on Revolution,” *Arendt Studies* (2018): 11.

equal and distinct powers, finding, at its “peak,” the elementary councils which surfaced spontaneously at the grassroots and from which all other councils arose.

Therefore, the authority generated in the council state’s act of foundation must be vested in an ongoing source of authority which *itself* corresponds to the mutual promise of the act of foundation. Contextualized by Arendt’s analysis of the American Revolution and the foundation of the United States, we might suppose she imagines the council state similarly founded with the assistance of a written constitution. However, political theorist Wolfhart Totshnig believes this speculation is dangerous and self-defeating; he believes the question of whether Arendt’s council state will have a constitution belongs among those a theorist “should not try to answer,” the question reserved, it seems, for political practice.¹⁹⁶ Even so, in the context of Arendt’s thought, he is simply incorrect, as she in fact *does* give us an answer, which can only be ignored if we divorce her conception of the council state from the totality of her political thought. In *On Revolution*, she proclaims that “the act of foundation is identical with the framing of a constitution.”¹⁹⁷ Significantly, a written constitution therefore embodies the derivative nature the source of authority in the council state must possess. As political philosopher Edgar Straehle aptly observes, for Arendt, a constitution derives its authority “indirectly ... from the people”

¹⁹⁶ Wolfhart Totshnig, "Arendt's Argument for the Council System: A Defense," *European Journal of Cultural and Political Sociology* 1, no. 3 (2014): 268.

¹⁹⁷ Arendt, *On Revolution*, 116. Arendt qualifies this statement with the words “Under modern conditions,” which may lead some to believe it inapplicable to the present day, for one of two reasons. One might believe that Arendt refers exclusively to the modern age – particularly as her statement comes amidst a discussion of the Constitutional Conventions of the American and French revolutions – which she stipulates in the *Human Condition* ended with the beginning of the twentieth century. Or, one might believe that we are no longer subject to modern conditions and rather subject to a post-modern condition, in which case he would have to jettison what is Arendt’s perhaps most vital concept – the modern *world*, as distinguished from the modern age, which she asserts began with the first atomic explosions. While there is noticeably a hiatus between the modern age and the modern world for Arendt, much of the *Human Condition* can be read as an exploration of the interrelationship between the two. Thus, in the context of Arendt’s thought, to speak of “modern conditions” writ large is to implicate a multiplicity of phenomena, many of which have not ceased, and from Arendt’s perspective, ought be considered the defining characteristics of political life today. To wit, from Arendt’s perspective, while the substantive contents of “modern conditions” at a given point in time are variable, there would be no question that we are still under modern conditions. See *The Human Condition*, 1-6.

who together participate in its establishment.¹⁹⁸ Consequentially, in the act of foundation through which the council state is constituted through mutual promise, the councils would frame a constitution as the mutual promise between them, they would authorize the constitution as the structure which corresponds to the relationships established by that promise, and they would vest their authority in the constitution as the ongoing source of authority through whose sanction they now exercise their power. In doing so, the principle manifest in the council state's act of foundation would be embedded in the document itself, validating the constitution in its multiple capacities. In this light, a constitution for Arendt is threefold, and would exist *between* councils in the federal system: it is the act of foundation which constitutes the relationships between councils in the federal system through mutual promise and generate a new power figured in the parliament; it is a written document that codifies the structure of those relationships as a source of law validated by the principle manifest at foundation; and it is the source of authority by which the renegotiated relationships between the federated powers are sanctified through augmentation.¹⁹⁹

Thus, the model of authority Arendt implies the council state would possess is, more or less, identical to that which she ascribes to the United States of America at its foundation. There, Arendt writes that the authority of the United States Constitution was derived from the already constituted states, repeating “on a national scale what had been done by the colonies themselves when they constituted their state governments,” where each state derived *its* authority from the already constituted, and thus authorized, “districts, counties, [and] townships.”²⁰⁰ When these

¹⁹⁸ Straehle, "Rethinking the Relationship between Past, Present, and Future: Arendt's Account on Revolution," 11.

¹⁹⁹ Although Arendt only explicitly points to the “twofold” meaning of the word constitution – the constituting act by which a government is formed, and the written document itself – it is clear she really sees a constitution as threefold, otherwise it could not simultaneously be the act of foundation, the source of law, and the source of authority, all three of which she underscores individually in *On Revolution*.

²⁰⁰ Arendt, *On Revolution*, 156.

diverse bodies broke out in revolution, and laid the foundations of a new republic, Arendt discerns that “the principle which came to light during those fateful years ... was the interconnected principle of mutual promise and common deliberation,”²⁰¹ and though principles manifest only in action, it is theoretically difficult to imagine Arendt envisages the council state as possible except upon that principle.²⁰² In the United States, as in the council state, she sees the Constitution is a mutual promise which corresponds to the act of foundation, the source of law, and the source of authority.²⁰³ If in the United States, the Constitution is an object of worship to which Arendt observes citizens are bound back,²⁰⁴ likewise in the council state, it would be the constitution to which, as the act of foundation, actors are bound and in which they find a wellspring for their future action. Precisely, in acting on the basis of the mutual promise of foundation, actors in the council state would act on the basis of their constitution, and thus in its spirit as well, manifesting the principle embedded within it.

Unlike in ancient Rome, in which the seat of authority was the Senate, and where “the function of authority was political,” we would expect the council state to locate the seat of authority in a constitutional court in which, like the United States, “the function of authority is legal.”²⁰⁵ To wit, in the modern system of separated powers, the division of power within one governing unit into separate branches to which Arendt subscribes and believes the council state would possess,²⁰⁶ no branch of government *except* the judiciary is fit to wield authority, insofar as authority is distinguished for Arendt by unquestioning recognition which requires neither

²⁰¹ Ibid., 206.

²⁰² Specifically, the principle reflects the salient aspects of Arendt’s theory of action, which I contend make it likelier than not she saw its appearance as necessary and constitutive in the founding of federal republics. Admittedly, this is an argument I cannot make here, and hence assert that this is only the case in all likelihood.

²⁰³ Arendt, *On Revolution*, 116, 48, 92-94.

²⁰⁴ Ibid., 190-91.

²⁰⁵ Ibid., 192.

²⁰⁶ Ibid., 259.

coercion nor persuasion. Unlike the judiciary, the legislative and executive branches each necessarily employ persuasion or coercion as part of their very function. On the one hand, to pass a law requires that one persuade her peers to lend their support; on the other hand, to enforce a law requires that one either persuade or coerce others to act in accordance with it. Moreover, apart from any coercion, the predominant activities of the legislative and executive branches of government consist in the exercise of power, which cannot produce obedience through unquestioning recognition. Since the valence of a response to action is a matter of sheer contingency, a law may pass, or executive action may be taken, but citizens may choose to dissent and act against these branches of government. On the other hand, if they obey, it is not through *unquestioning* recognition, but rather a recognition contingent upon their support for the exercise of power by these branches of government itself. For Arendt, “in politics obedience and support are the same.”²⁰⁷ Obedience towards the executive or legislature is but support for power formations which perpetually shift, disturb expectations through action, and thus demonstrate the uncertainty and contingency inherent to human affairs. This obedience is a form of support which is in constant danger of being withdrawn; it can neither be nor remain undoubting and unwavering as power is an inherently volatile phenomenon.

In contradistinction, Arendt finds “the most conspicuous characteristic of those in authority is that they do not have power,” as the augmentation in which authority consists adds something to power which is not power itself, while “institutionally it is the lack of power, combined with permanence of office” which indicates “the true seat of authority” in a federal republic.²⁰⁸ In this context, it is decisive that a constitutional court, such as the Supreme Court

²⁰⁷ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin Books, 2006), 279.

²⁰⁸ “What Is Authority?,” 122; *On Revolution*, 192.

of the United States, lacks power, as the activity in which their legal function consists is interpretation, while those who sit on the Court enjoy lifetime appointments.²⁰⁹ Like the advice of the Roman Senate, a constitutional court's interpretation of the constitution adds to the power of political decisions with the full weight of the past and would require neither persuasion nor coercion to make itself heard and generate obedience from the councils. Just as the binding force of the Roman Senate was connected with the *auspices*,²¹⁰ which themselves "were traced back to the great sign by which the gods gave Romulus the authority to found" Rome,²¹¹ the binding force of the council state's constitutional court, for Arendt, would be linked to the vitality of the principle first manifest in the foundation of the council state and the piety with which actors bind themselves back to its beginning in the constitution, from which the court's authority would be derived. At the same time, lifetime appointments to the court would enable justices the perspective from which to regard the constitution as a durable, lasting document. Legal theorists Marco Goldoni and Christopher McCorkindale aptly observe that permanence in office places a constitutional court "on a different temporal plane from the legislature and the executive," indicating that it is the court's task "to solve the riddle of action and permanence, of foundation and preservation."²¹² Irrespective of specifically how a justice, for Arendt, ought to be selected, "her lifetime appointment transcends the moment of her appointment itself" and the circumstances in which it occurred.²¹³ Her permanence in office means she stands apart from the power formations which would rise and fall *within* councils, while the distinct temporal plane of her appointment renders her judgement a stabilizing force that preserves the constitution

²⁰⁹ *On Revolution*, 192.

²¹⁰ The practice in which an *augury* interpreted the flight path of birds to discern fortunate signs, which we saw Arendt describe as "reveal[ing] divine approval or disapproval of decisions made by men."

²¹¹ Arendt, "What Is Authority?," 123.

²¹² Marco Goldoni and Christopher McCorkindale, "The Role of the Supreme Court," in *Hannah Arendt and the Law*, ed. Marco Goldoni and Christopher McCorkindale (Oxford ; Portland, Or.: Hart Publishing, 2012), 124.

²¹³ *Ibid.*

which *relates* the councils. Still, in order to grasp how Arendt sees a constitutional court would exercise its authority, that is, *how* it would augment the foundation of the council state through legal interpretation, we must investigate in what way, for Arendt, a constitution functions as the source of law.

The Source of Authority as the Source of Law

Though Arendt understands a constitution as thoroughly relational, as the act of foundation it would delineate the boundaries of the new council state, including only those who mutually promise. Thus, we may be inclined to agree with political and legal theorists Emilio Christodoulidis and Andrew Schaap when they observe that a constitution for Arendt, as the source of law, acts in two capacities: as the Greek *nomos*, it has a “wall-like aspect enclosing the common,” and as the Roman *lex*, it “creat[es] relationships between people.”²¹⁴ That is, a constitution is at once part of the human artifice, the durable material world constructed by human beings through work, and the web of human relations, the intangible ties which arise between actors through action processes; it “provid[es] a measure of permanence to human affairs” as *nomos* and “a measure of predictability through established shared relations” as *lex*.²¹⁵ While Christodoulidis and Schaap are undoubtedly correct about a *constitution* for Arendt in sum, in exclusively ascribing *nomos* to the delineation of the political community, and exclusively *lex* to relationships between actors, they dichotomize these understandings of law in a way which is incompatible with Arendt’s conception of authority. For a constitution, as the source of law, to be the source of authority from which a constitutional court in the council state

²¹⁴ Emiolios Christodoulidis and Andrew Schaap, "Arendt's Constitutional Question," *ibid.*, 109.

²¹⁵ *Ibid.*

would derive and exercise its own, a more nuanced understanding is required of the function of law.

Arendt emphasizes that, although *nomos* “came to assume different meanings throughout the centuries of Greek civilization, it never lost its original ‘spatial significance’ altogether, namely, ‘the notion of a range or province, within which defined power may be legitimately exercised.’”²¹⁶ This permanent “fence of law” was required for the *polis*, writes Arendt, “because only [there] people lived together in such a way,” each man an actor, each striving to distinguish himself through action and speech, “that space itself was no longer a sufficient guarantee of assuring each of them his freedom of movement.”²¹⁷ That is, *nomos* established the boundaries of the ancient Greek *polis*, where equal men exercised power within a space identical to those boundaries, such that they related to the laws, their *nomos*, much as they would the fortified wall which protected the city-state. Yet, space is principally understood by Arendt in a relational capacity as the space between individuals, and it is no wonder then, that Arendt distinguishes the *polis* from the city-state, and asserts the *polis* was the space which arose through action and speech between participants who lived together in order to share words and deeds, as opposed to “its physical location.”²¹⁸ We may recall as well that for Arendt, sharing a common world means that the human artifice of the world is *between* those who share it, and this world “relates and separates men at the same time.”²¹⁹ That is, living together in the world is characterized by the space the world puts between individuals, which in its extremes might press them together or pull them apart entirely. In this context, Arendt finds that freedom’s “place of origin is ... in the space between human beings, which can arise only when distinct individuals

²¹⁶ Arendt, *On Revolution*, 178-79.

²¹⁷ "The Great Tradition," 47.

²¹⁸ *The Human Condition*, 198.

²¹⁹ *Ibid.*, 52.

come together, and can continue to exist only as long as they remain together.”²²⁰ The appearance of freedom consists in action, and as we have previously seen, action is inherently unstable, and the space of appearances in which freedom originates prone to dissolve. While mutual promises prevent actors from abandoning this space, Markell rightly stresses that action “is an ongoing activity” in which “the character of one act as a beginning hangs on its future reception.”²²¹

This leads Arendt to excavate from *nomos* a relational meaning distinct from the traditional spatial understanding she cites. The appearance of freedom through action also requires the remembrance of the prior words and deeds which have transpired within the political community, and which on their own, are ephemeral and boundless. Here, Arendt sees *nomos*, as a wall of law, “impart[s] to human affairs a solidity that human action itself, in its intrinsic futility and dependence on the immortalizing of poets, can never possess.”²²² Inherently, human action lacks moderation; when one acts, one acts upon others who are themselves capable of action, such that “every reaction becomes a chain reaction” in an ever-expanding web of relationships that extends “without limits.”²²³ Against the insatiable character of action, *nomos* encloses the political community and establishes boundaries which the actor should not overstep. Thus, it limits action to what transpires between those within that political community, and when action draws the political community “into matters lying beyond it,” refers those matters back to the political community itself.²²⁴ Consequentially, through the demarcation of its boundaries, *nomos* enabled the *polis* to function as “a kind of organized remembrance,” in which past action

²²⁰ Arendt, "Introduction *into* Politics," 170.

²²¹ Markell, "The Rule of the People: Arendt, Archê, and Democracy," 10.

²²² Arendt, "The Great Tradition," 46.

²²³ *The Human Condition*, 190; "Introduction *into* Politics," 186.

²²⁴ "Introduction *into* Politics," 187.

will retain its reality enclosed within the political community, rather than dissipate in an unending web of relationships.²²⁵ That is, the *polis* as a whole could ensure that whatever occurred within it, the words and deeds of acting individuals, “would not perish with the life of the doer or the endurer, but live on in the memory of future generations.”²²⁶ Crucially, as legal theorist Christian Volk stresses, Arendt excavates “the relationship-establishing dimension of law” political and legal theorists typically ascribe to *lex* in *nomos*, which, through imparting permanence upon human affairs, establishes “a relation between the citizens.”²²⁷ In this context, a “wall of law” is a potentially misleading metaphor with which to describe Arendt’s understanding of *nomos*, as what this wall surrounds are the words and deeds which occur in the relational, and therefore relative, space between those human beings who form a specific political community.

In contradistinction to *nomos*, *lex* does not enclose the actions which transpire within a political community but is itself a relation. For Arendt, *lex* is “something that links human beings together,” which arises neither through command nor force, but instead through mutual agreement between different parties.²²⁸ Critically, unlike *nomos* which encloses the political community and thus establishes a relation between citizens, *lex* is a contractual form of law which is capable of relating both individuals and entities. Arendt notes that the Twelve Tables, the ancient Roman basic law, was “a contract between two warring factions, the patricians and the plebes” that did “not unite the quarrelling parties by simply erasing the distinction between” them, but led to a cessation of hostilities which was a matter of law because “a listing tie,

²²⁵ *The Human Condition*, 198; “Introduction into Politics,” 187.

²²⁶ “The Great Tradition,” 46.

²²⁷ Christian Volk, “From Nomos to Lex: Hannah Arendt on Law, Politics, and Order,” *Leiden Journal of International Law* 23, no. 4 (2010): 776-77.

²²⁸ Arendt, “Introduction into Politics,” 179.

[which] linked patricians and plebes to each other” had been established.²²⁹ The very contractual nature of *lex*, for Arendt, resides in its respect for distinction and its location in the space between parties, as embodied in the Twelve Tables. In this context, Arendt underscores that “the *res publica*, the life of public affairs, which arose out of [the Twelve Tables] and evolved into the Roman Republic, was located in that in-between space between formerly hostile partners.”²³⁰ For her, it was only through this conception of *lex*, and its contractual nature, that the ancient Romans could make treaties and forge alliances with their defeated adversaries, integrating former hostile opponents into the Republic as partners “for the sake of expanding Rome.”²³¹ Thus, while *nomos* may enclose the political community of the council state, it is *lex* through which the legal relations between councils must be established. In other words, *nomos* is incapable of establishing relationships between constituted powers, while, as Volk points out, “*lex* is ambivalent with respect to [the] boundary and demarcation” established by *nomos*.²³²

Consequentially, neither *nomos* nor *lex* alone appear capable to form the basis for the understanding of law in the council state. A federal system cannot understand law as *nomos*, as this would mean constituted powers could not combine, while a political order dependent upon the unceasing exercise of power could not achieve stability upon *lex*, as action would lack boundaries and be drawn into a web of relations outside the federal system. For Arendt, the ancient Romans were “victims of their own law, of their *lex*,” which absent the bounds pressed upon action by *nomos*, was “in itself unlimited and thus forced them against their own will ... to rule the entire globe, a dominion that once achieved could only collapse.”²³³ She also believes

²²⁹ Ibid., 179-80.

²³⁰ Ibid., 180.

²³¹ Ibid., 183-86.

²³² Volk, "From Nomos to Lex: Hannah Arendt on Law, Politics, and Order," 776-77.

²³³ Arendt, "Introduction *into* Politics," 187.

the ancient Greeks were no less the victims of their own law. Arendt asserts that “all Hellas ultimately perished because of the *nomos* of the *poleis*, the city states,” which meant they “could never join together in a permanent alliance.”²³⁴ In this context, it is clear that law in the council state must act as both *nomos* and *lex*, establishing relationships between powers and enclosing the federal republic itself, in which *lex* would form the condition for its possibility and *nomos* the condition for its stability and longevity as a “perpetual union.”

However, this requirement is complicated by Arendt’s rejection of *nomos*. While for her, like “the ancient Greeks and Romans ... law [is] the result of this-worldly action,”²³⁵ the differences between what these actions consist in lead Arendt to embrace *lex*, which she finds an eminently political form of law. Arendt insists that the ancient Greek *nomos*, unlike *lex*, is a pre-political form of law, in which legislation is therefore a pre-political activity. The laws, for the ancient Greeks, were “made” by a lawgiver often from outside the political community, and these laws were identical to the constitution of the public realm, such that prior to their establishment no political activity could occur.²³⁶ As these laws are “made” by a sole mover, Arendt sees inherent in *nomos* the “violent” force which characterizes anything which “comes into being by means of production” as opposed to the action between equals.²³⁷ In contradistinction, Arendt stresses the ancient Roman *lex* was not identical to foundation, but arose from the exercise of power as a lasting tie between partners brought together by external circumstances. Vitaly, *lex* is not made, as political philosopher Keith Breen observes, but as mutual agreement finds its basis in “reciprocal persuasion and speech” rather than in “rule or

²³⁴ Ibid.

²³⁵ Keith Breen, “Law Beyond Command?,” in *Hannah Arendt and the Law*, ed. Marco Goldoni and Christopher McCorkindale (Oxford ; Portland, Or.: Hart Publishing, 2012), 20.

²³⁶ Arendt, *The Human Condition*, 194-95; “Introduction into Politics,” 181.

²³⁷ “Introduction into Politics,” 181.

obedience.”²³⁸ *Lex* is the product of action which, occurring *between* individuals or entities, preserves their respective equality and distinction. Thus, Arendt emphasizes that the law as *lex*, through expressing the relation which subsists between different entities, is not an imperative but relative by definition, meaning its validity does not rest on an “absolute” which is from eternity to eternity and could exist only outside the act of foundation.²³⁹ As Volk aptly points out, the relative quality of *lex* “perfectly suits a notion of the political which emphasizes ‘acting in concert.’”²⁴⁰ By the same token, *lex* perfectly suits Arendt’s notion of a federation, which constitutes a union and not a unity. While law as *nomos* is “something which [the polis] cannot abolish without losing its identity,” law as *lex* entails “the existence of a people in the sense of an ethnic, tribal, organic unity is quite independent of all laws.”²⁴¹ Though Arendt recognizes the differences between these two forms of law, it is nonetheless clear that she sees *nomos* as inappropriate to political life and the requirements of the federal system. She makes, as Volk describes at length, a move from *nomos* to *lex* in which she “de-substantiates” law through rejecting the force inherent in *nomos* and imperative forms of law, and embracing the relative understanding of law in *lex*, which leads her to celebrate Montesquieu’s definition of laws as “the necessary relations deriving from the nature of things.”²⁴²

Arendt’s adoption of *lex* as a relative form of law, and corresponding rejection of *nomos*, raises an immediate perplexity: how, in the council state, could law act in both capacities, establishing lasting ties between councils and delineating the boundaries of their union? For Arendt, laws “are always in danger of being abolished by the power of the many, and in a

²³⁸ Breen, "Law Beyond Command?," 23.

²³⁹ Arendt, *On Revolution*, 180-81.

²⁴⁰ Volk, "From Nomos to Lex: Hannah Arendt on Law, Politics, and Order," 776.

²⁴¹ Arendt, "Introduction into Politics," 181; *On Revolution*, 179.

²⁴² Volk, "From Nomos to Lex: Hannah Arendt on Law, Politics, and Order," 3; Montesquieu, *The Spirit of the Laws*. Arendt draws a strong equivalence between Montesquieu’s understanding of law and the Roman *lex*. See: Arendt, *On Revolution*, 180-81.

conflict between law and power it is seldom the law which will emerge as victor.”²⁴³ Although laws set a limitation upon power, this limitation will only diminish power, and risks replacing power with impotence. Thus, Arendt emphasizes that “power can be stopped *and* still be kept intact only by power,” the principle of which is embodied in the system of checks and balances between divided powers.²⁴⁴ In this context, it is decisive that Arendt sees the purpose of a constitution, put best by Kalyvas, “as the preservation, organization, and increase of power” rather than “a list of legal limitations and normative restrictions imposed on the public realm and the government in the name of some prepolitical natural rights.”²⁴⁵ Although a constitution “lays down the boundaries of the new political realm,”²⁴⁶ these boundaries are understood by Arendt as defined by the relationships between the federal units from which the constitution’s authority was derived, and are therefore neither immutable nor able to command on their own. Consequentially, we may infer that within the federal system, the external limit placed upon action by *nomos* which Arendt identifies historically would be replaced by an internal limit pressed against action by *action*. Whereas *nomos* was, for the ancient Greeks, a legal boundary which none should cross, Arendt believes that, within a federal republic, constitutional boundaries are enforceable only through the system of checks and balances.

Significantly, this implies as well that constitutional boundaries are not only something which can be transgressed or protected, but by virtue of their relativity, can be the *object* of political action. As Volk stresses, stability and change are entwined for Arendt, meaning that “a desirable political order is not static in space and time.”²⁴⁷ Constitutional boundaries may be

²⁴³ *On Revolution*, 142.

²⁴⁴ *Ibid.*

²⁴⁵ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 266; Arendt, *On Revolution*, 143, 45.

²⁴⁶ *On Revolution*, 117.

²⁴⁷ Christian Volk, "Hannah Arendt and the Constitutional Theorem of De-Hierarchization. Origins, Consequences, Meaning," *Constellations* 22, no. 2 (2015): 182.

enlarged, or otherwise changed, to preserve the constitution itself. Indeed, as the constitution would be the foundation of the council state, this is identical to the augmentation in which authority consists. Thus, Arendt asserts, the authority of a constitution “resides in its inherent capacity to be amended.”²⁴⁸ In a constitutional amendment, the foundation of the council state would be enlarged through the re-articulation of the relationships between councils, citizens, and each other, while this change would be tied back to the mutual promise expressed by the constitution, thus preserving the foundation of the council state itself. While authority consists in augmentation, recall that, for Arendt, authority augments foundation *through* augmenting power: a constitutional court, no less than the Roman Senate, is powerless, and through interpretation adds something to power which is not power itself. Since constitutional boundaries are relational objects of political action, and the re-articulation of relationships through constitutional amendment within a federal republic amends to a mutual promise, it is clear that, while Arendt believes a constitutional court must play a significant role in the council state’s amendment process, the court could neither propose nor ratify amendments. A constitutional amendment is an exercise of power and must spring from the councils rather than the court, meaning that the augmentation in which authority consists, exercised by a constitutional court, finds its basis in the exercise of power within the federal system. Therefore, authority in the federal system is wholly dependent upon the relationships between its units which change *in relation to* the mutual promise of foundation from which a constitution’s authority derives. This dependence of authority upon power in the federal system means that law, whose source is the

²⁴⁸ Arendt, *On Revolution*, 194.

constitution, and politics, whose source is power, “refer internally to each other,” meaning that primacy can be assigned to neither if they are to remain intact at all.²⁴⁹

The Seat of Authority and Power

For Arendt, *legal decision-making must create space for political action* in a federal system, while *political action must seek recognition by the law*. When Volk persuasively argues that Arendt envisages this de-hierarchization of law and politics, he underscores that “legal decisions are always made on the basis of the Constitution, whose authority, however, originates from its potential to also enable political participation,” which is not assured by the guaranteeing of rights alone.²⁵⁰ Specifically, the authority of a constitution for Arendt originates from its being the constitution of power by numerous already constituted powers, that together would form the federal council state to which all legal decisions by a constitutional court refer. Within the council state, the substance of change is the shifting relationships between and within federal units, the impetus for which would arise when a council touches upon a matter of constitutional concern. For Arendt, “change itself is always the result of extra-legal action,” while the law can *only* “stabilize and legalize change once it has occurred.”²⁵¹ A constitutional court which attempts to effect change through strong judicial review would, in so doing, usurp power within government through resolving political problems itself, instead of referring their resolution to the councils from which their authority is ultimately derived. Thus, I agree with Volk that Arendt endorses a “weak” system of judicial review in which, whenever a constitutional court declares a statute unconstitutional, the offending law would be referred back to legislative bodies for

²⁴⁹ Volk, "Hannah Arendt and the Constitutional Theorem of De-Hierarchization. Origins, Consequences, Meaning," 179.

²⁵⁰ Ibid., 170.

²⁵¹ Arendt, "Civil Disobedience," 80.

resolution through a fast-track mechanism.²⁵² Although Volk does not detail this mechanism, he nonetheless underscores that, in contrast to strong judicial review, a constitutional court's "declaration of incompatibility" in this case "seeks to actualise a common democratic consensus."²⁵³ That is, a constitutional court's referral of statutes it deems violations of the constitution to legislatures would open a new political context for citizens to act together and deliberate as they seek to resolve the incompatibility.

Nevertheless, there is an inherent tension in Arendt's thought between judicial review and constitutional amendment which obfuscates her beliefs regarding both. On the one hand, Arendt identifies the authority of the Supreme Court as derived "from the Constitution as a written document," celebrates that its authority is exerted "in a kind of continuous constitution-making" through judicial review, and favorably (mis)quotes Woodrow Wilson's depiction of the Court as "a kind of Constitutional Assembly in continuous session," never mind that his description is emphatically not a positive one.²⁵⁴ On the other hand, Arendt believes the authority of the United States Constitution resides in its capacity to be augmented through amendment, implying that the Supreme Court, through judicial review, does not even approach "constitution-making" and in the United States is uninvolved in the preservation of foundation through augmentation.²⁵⁵ One can see why political theorists Andrew Arato and Jean Cohen, upon taking into account the near-impossibility of amending the United States Constitution under Article V, believe that Arendt, who was certainly aware of this fact, "bought into [Wilson's] conception of a constitution of judges."²⁵⁶ At the same time, one can understand why legal

²⁵² Christian Volk, *Arendtian Constitutionalism: Law, Politics and the Order of Freedom* (Oxford: Hart Publishing, 2015), 244-48; *ibid.*, 181.

²⁵³ *Ibid.*, 247.

²⁵⁴ Arendt, *On Revolution*, 192-93. The correct quote is "a constituent assembly in permanent session."

²⁵⁵ *Ibid.*, 194.

²⁵⁶ Andrew Arato and Jean Cohen, "Banishing the Sovereign? Internal and External Sovereignty in Arendt," *Constellations* 16, no. 2 (2009): 317.

theorist Jan Klabbers believes, as Volk and I do, that Arendt had a distaste for strong judicial review, but thinks that she “would have been more sympathetic” to a form of judicial review “limited to testing whether legislation and administrative action had, indeed, come about in the right manner, and provided there were a clear constitutional mandate.”²⁵⁷ There is no obvious answer to what appears to be an aporia within Arendt’s thought, and as a result, numerous interpretations of her beliefs about judicial review and the augmentation of a constitution through amendment exist which reflect one side or the other of this contradiction.²⁵⁸

Yet, the previously cited quotations which exemplify this aporia equally suggest Arendt believes that judicial review and amendment would be mutually imbricated in augmenting a constitution. This is further suggested by a curious claim Arendt makes when she discusses the origins of judicial review. She asserts that judicial review has an “ancient counterpart in the Roman office of censors,” but stresses that in Pennsylvania, at the time the Constitution was debated, “it was still” a Council of Censors charged to probe constitutional violations.²⁵⁹

Although her claim is not quite counterfactual, the salient origins of judicial review in the United States reside in the confluence of the English common law tradition and early American

²⁵⁷ Jan Klabbers, "Possible Islands of Predictability: The Legal Thought of Hannah Arendt," *Leiden Journal of International Law* 20, no. 1 (2007): 21.

²⁵⁸ For instance, besides those already mentioned: Muldoon assigns judicial review exclusively to a constitutional court and amendment exclusively to the people, in a reflection of the actual structure of the United States political system. He acknowledges that amendment must have a high bar to render a constitution a lasting document, but simultaneously questions why Arendt does not address the stringent requirements of Article V in the United States. Ultimately, he believes the institutions of the council state would grease the wheels to enable amendment. Kalyvas actually divides the function of authority, preservation through augmentation, in two, assigning preservation to a constitutional court through judicial review and augmentation to the councils through legislation. Implicitly, when some proportion of councils touch upon a matter of constitutional concern, they amend their constitution, although he does not specify. Goldoni and McCorkindale, meanwhile, take Arendt’s statement that the Supreme Court’s authority is derived from the written Constitution to mean that “the Court sat as the (fictional) personification of the Constitution itself” and imply that the Court’s interpretation is sufficient to augment the Constitution. At the same time, they suggest that it is therefore the *written* Constitution and not the *act* of foundation *qua* Constitution to which citizens are bound back, in a blatant departure from Arendt. See: Muldoon, "Arendt's Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form," 602-03; Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 277-80; Goldoni and McCorkindale, "The Role of the Supreme Court," 120-22.

²⁵⁹ Arendt, *On Revolution*, 192.

constitutionalism, with judicial review found exercised in case law from the revolutionary period onwards.²⁶⁰ This provided a firm basis for several State courts to strike down legislation incompatible with their constitutions, events which Alexander Hamilton alludes to in *The Federalist* “No. 78.”²⁶¹ Through conspicuously locating the origins of judicial review in the United States in Pennsylvania’s Council of Censors, Arendt gestures towards an institution which, in principle, could serve as the rudiments for a model of a constitutional court. This Council, though it met infrequently, had the duty to

...enquire whether the constitution has been preserved inviolate in every part ... whether the legislative and executive branches of government have...exercised other or greater powers than they are intitled to be the constitution ... whether the laws have been duly executed ... [and critically possessed the authority] to recommend to the legislature the repealing such laws as appear to them have been enacted contrary to the principles of the [Pennsylvania] constitution.²⁶²

These responsibilities, taken together, visibly appear to form the rudiments for a weak system of judicial review which would refer incompatible legislation back to legislatures for debate and revision. That is, although executive and legislative action was subject to review by the Council, it lacked the means to alone resolve issues of a constitutional nature, and had to embrace a relationship with the legislature to which the Council would offer a directive upon determining a law is incompatible with the constitution, opening a new political context in which the legislature can consider the error. Yet, the Council of Censors also possessed the sole capacity “to call a [constitutional] convention if there appear to them an absolute necessity of amending any article of the constitution which may be defective” and alone could propose amendments.²⁶³ With a

²⁶⁰ See: William Michael Treanor, "Judicial Review before Marbury," *Stanford Law Review* 58, no. 2 (2005).

²⁶¹ Alexander Hamilton, "The Federalist No. 78," in *The Federalist with Letters of "Brutus"* (Cambridge, U.K.: Cambridge University Press, 2012), 383. Notably, Arendt cites Hamilton’s text only several lines above her invocation of Pennsylvania’s Council of Censors. That she could not have been unaware of the events he references makes her claim all the more curious. See: Arendt, *On Revolution*, 192.

²⁶² Penn. Const. of 1776, Frame of Government, § 47 (superseded 1790).

²⁶³ *Ibid.*

weak, rudimentary form of judicial review and the authority to call conventions concentrated within it, the Council was in principle charged precisely to preserve the constitution through change. Vitaly, the authority to *call* a constitutional convention does not for its execution require power, as the unquestioning recognition of authority itself could suffice to compel representatives to assemble. For Arendt, this call, through the obedience authority produces, would open a new political context *in which* power could be exercised.

But the amendment proposal powers the Council of Censors possessed is indicative of its nature, as the power to propose an amendment is one an authority for Arendt cannot possess. The Council was a body elected by the people which was also authorized “to pass public censures, order impeachments,” and inquire into the just distribution and collection of taxes, meaning the source of the Council’s legitimacy was public support, while what the Council exercised was power, even though several of its constitutional duties required the unquestioning obedience which only authority produces. Nonetheless, Arendt remarkably asserts the Council of Censors was institutionally “incorporated into the Constitution” as the Supreme Court, and in its transformation into the United States’ seat of authority, “lost, together with its name, its ancient characteristics—the power of the *censores*, on one hand, their rotation in office, on the other.”²⁶⁴ It lost as well any role in the amendment process, while Arendt’s conception of authority in the council state demands the recovery of this role, although in modified form. Whereas the source of the Council of Censor’s power was in the people, the source of a constitutional court’s authority is the constitution, and the exercise of its authority consists in –

²⁶⁴ Arendt, *On Revolution*, 194. This claim is made all the more conspicuous by Arendt’s invocation of Madison in making it, citing his description of the Council as an “important and novel experiment in politics.” What she neglects to mention is that this quote refers to the Council’s amendment powers and not judicial review and comes at the beginning of what is ultimately a critique of how the Council functioned. See: Madison, “The Federalist No. 50.”

and is restricted to – interpretation. For Arendt, a constitutional court would not exceed its authority by calling a constitutional convention so long as this call arises through its interpretation of the constitution.

Though we are, by now, in speculative territory, it would be consistent with and in the spirit of Arendt’s political thought to suppose that the authority to call a constitutional convention within the council state would reside in a constitutional court, and that it would exercise this authority through judicial review. Notably, Pennsylvania’s Council of Censors, upon deeming a constitutional amendment necessary, was required to explain what in the defective article “may be thought not clearly expressed” in order to call a convention, while the amendment they proposed was required to be “necessary for the preservation of the rights and happiness of the people” in light of the ambiguity they discovered.²⁶⁵ This is instructive, particularly when we consider the Council had the obligation to inquire if “the legislative and executive branches of government have performed their duty as guardians of the people.”²⁶⁶ Posed to a constitutional court with a weak system of judicial review and a fast-track mechanism, a suit which turns on an unreconcilable ambiguity in the text of the constitution could not be solved by the legislation’s referral to the appropriate council. At the same time, a suit which concerns the responsibilities of legislatures and executives in the exercise of their own power would sometimes be what is called in the legal system of the United States a “political question.”²⁶⁷ Arendt underscores that political questions, such as the constitutionality of a war,

²⁶⁵ Penn. Const. of 1776, Frame of Government, § 47 (superseded 1790).

²⁶⁶ Ibid.

²⁶⁷ The Supreme Court’s opinion in *Baker v. Carr* outlined several characteristics of political questions: “It is apparent that several formulations which vary slightly according to the settings in which the questions arise may describe a political question, although each has one or more elements which identify it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court’s undertaking

place a constitutional court in a bind: if it does not interpret a constitutional question, it radically diminishes its own authority, but if it considers a political question and exercises judicial review, it risks its unquestioning recognition as it cannot enforce its decisions, meaning that its “authority [also] depends on prudence.”²⁶⁸ A constitutional court’s authority to call a constitutional convention would form the corollary to the mechanism through which it refers incompatible legislation to the corresponding council. In the former, the court would refer *the constitution* to the people when, through interpretation, it judges the question it has been asked is political in nature or hinges on a pivotal uncertainty within the constitution. In the latter, the court would refer legislation to a specific council when, through interpretation, it judges the law clearly and expressly contradicts the text of the constitution. In both cases, legal decision-making would open a new political context for citizens to act, in the first case, to remedy an inadequacy within the constitution through amendment, and in the second, to remedy incompatible legislation, while in both, political action seeks its acknowledgment in law, whether constitutional or statutory.²⁶⁹

With the impetus for the amendment process internal to judicial review in this way, the augmentation of a constitution by a constitutional court would consist in the approval or disapproval of an extra-legal exercise of power expressed through its interpretation of the constitution. Through the constitutional court’s sole authority to call a constitutional convention, the councils would amend the constitution – quite literally – under the auspices of the court, while the court’s interpretation would conserve for the councils “the link to the original

independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.” See: *Baker V. Carr*, 369 U.S. 186, 217 (1961).

²⁶⁸ Arendt, "Civil Disobedience," 101; Goldoni and McCorkindale, "The Role of the Supreme Court," 130-31.

²⁶⁹ Note that I do not address ratification, which is another matter entirely.

understanding of the founding moment.”²⁷⁰ Thus, a constitution in the council state for Arendt would be preserved through “change [which can] only mean increase and enlargement of the old.”²⁷¹ While Goldoni and McCorkindale are correct to observe that, for Arendt, the powerless constitutional court stands between the constitution, as the source of law, and the people, as the source of power, “to protect [the constitution] from the ebb and flow of power (always moving, always changing, always *subjective*) embodied in the legislative and executive branches,” it is clear it cannot do so *absolutely* without abdicating its own authority.²⁷² A constitution is first and foremost *foundation itself*, which those vested with authority augment through “adding” to power, while the constitution, second, as the source of authority, is authoritative insofar as it *can* be and *is* amended; for Arendt it is the structure through which power is preserved and increased. A constitutional court for her must protect a constitution from power exercised *in spite of* the mutual promise of foundation, and this does not imply it must necessarily “protect” the constitution from any power whose exercise contradicts the text of its law. Rather, Arendt believes a constitutional court must add to extra-legal political decisions of a constitutional nature which are made in the spirit of foundation through revealing their approval or disapproval and opening a new political context for amendment in which the constitution is preserved through the change which only power, in the councils, can produce.

Consequentially, the preservation of authority depends upon the preservation of institutions for political participation by an active citizenry. For Arendt, the loss of authority corresponds with the failure of constituted powers to act in accordance with the mutual promise of foundation, or the failure of the channels for change through which augmentation occurs.²⁷³

²⁷⁰ Or Bassok, "The Arendtian Dread: Courts with Power," *Ratio Juris* 30, no. 4 (2017): 423.

²⁷¹ Arendt, *On Revolution*, 193.

²⁷² Goldoni and McCorkindale, "The Role of the Supreme Court," 119.

²⁷³ Arendt, "Civil Disobedience," 74.

These are failures of a “necessary and desirable restoration of the *status quo*” or a “necessary and desirable change.”²⁷⁴ Therefore, the loss of authority is *identical* to a loss of power: the failure to preserve the mutual promise of foundation means that the equality and distinction of the federal system’s units has been impinged, while the failure of the channels for change means that power in the federal system has atrophied. Within this context, it is clear why Arendt understands our consent to constitutional authority consists in the exercise of our capacity for action through political participation.²⁷⁵ In a federal republic founded upon mutual promise, this consent must be voluntary which, in the case of tacit consent, is only possible if “dissent is also a legal and *de-facto* possibility.”²⁷⁶ That is, citizens’ unquestioning recognition of authority depends on there being space for their participation through the exercise of power, in which, through realizing the spirit of the mutual promise of foundation, they bind themselves back to foundation and preserve the worldly appearance of the principle embedded within the constitution, the vitality of which the binding force of the constitutional court depends. Only then can the power citizens exercise form the change by which authority augments foundation; only then will a constitutional court retain its own authority to do so. In this context, Arendt’s pragmatic recommendation for civil disobedience to be institutionalized in the United States so that the civil disobedients will be “reckoned with in the daily business of government” is comparable to her observation that the derivative nature of constitutional authority requires federated powers be preserved “unimpaired in their power” as equal and distinct units.²⁷⁷ This is all the more evident if we consider that she makes this proposal in response to the Supreme

²⁷⁴ Ibid., 75.

²⁷⁵ Ibid., 88-89. See also: William Smith, "A Constitutional Niche for Civil Disobedience?," in *Hannah Arendt and the Law*, ed. Marco Goldoni and Christopher McCorkindale (Oxford ; Portland, Or.: Hart Publishing, 2012), 137-39.

²⁷⁶ Arendt, "Civil Disobedience," 87-88.

²⁷⁷ Ibid., 101; Arendt, *On Revolution*, 156-57.

Court's "denial of certiorari to cases in which the government's 'illegal and unconstitutional' acts with respect to the war in Vietnam were contested," on the grounds that political questions are nonjusticiable.²⁷⁸ For Arendt, "this ultimate failure of judicial review," in which the Court neglected its duty to interpret the Constitution, diminished the Court's authority and revealed that, insofar as the Court's authority depended as well on "not raising issues or making decisions that cannot be enforced," the resolution of certain Constitutional issues depended upon their referral to the people themselves, organized and instituted in government.²⁷⁹ At the same time, it revealed there is no substitution for organized power in the system of checks and balances to rescue *the Court* from its predicament. In other words, Arendt believes that the only way to preserve constitutional authority is through the preservation of the power sources which, in the act of foundation, bound themselves through mutual promise, and this consists in political participation which must spring from power's source, the grassroots. Precisely, this is the promise of the council state.

²⁷⁸ "Civil Disobedience," 99-100.

²⁷⁹ *Ibid.*, 101.

4: Representative Democracy vs. The Council State

Although one may agree from the preceding that for Arendt, the council state and the federal system share a constitutive relationship, he may yet contend this relationship is not a necessary one. He would underscore that extant federal republics, such as the United States, Germany, and India, are representative democracies as well, and argue that representative democracy can preserve the federal system's power structure, and thus its own authority. For Arendt, however, the absence of participation within representative democracy constitutes the precondition for the degeneration of the federal system. Through a comparison with the council state, I argue that Arendt does not believe representative democracy is sufficient to preserve a federal system, and demonstrate why, for her, the federal system and the council state share a necessary relationship.

Representative Democracy as Self-Rule

Representative democracy,²⁸⁰ which I define broadly as a form of government in which a citizen's participation in government *per se* is predicated upon her election as the representative of a specified constituency, would for Arendt violate the republican principle.²⁸¹ Whereas the republican principle for Arendt is that "according to which power resides in the people, and

²⁸⁰ Although Arendt discusses democracy, representation, the party system, voting, and elections throughout her corpus, nowhere does she explicitly define representative democracy or discuss it *per se*. Instead, her understanding of and views on representative democracy emerge from her reflections on these phenomena. Apart from her critique of democracy *qua* majority rule, Arendt addresses these phenomena as they exist within contemporary representative democracies, in which the particular form of these phenomena arises from representative democracy's electoral requirement. Accordingly, I implicitly follow Arendt in the subsequent definition, insofar as I interpret her to say representative democracy is defined by an electoral requirement to participate. See, especially, "The Revolutionary Tradition and its Lost Treasure": Arendt, *On Revolution*, 207-73.

²⁸¹ Here, and in the following, I principally address the trustee model of representation, as, put best by Arendt, it is "somewhat closer to realities," and reflects the independence of representatives in most contemporary electoral systems to act as they see fit, despite what pressure they receive from their constituencies. Notably, she also takes issue with the delegate model of representation, as in it "government has degenerated into mere administration" and "the public realm has vanished" because delegates are reduced to mere mouthpieces for their constituents, and in this way are denied the political freedom to act. See: *ibid.*, 229; Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 274-75.

where a ‘mutual subjection’ makes of rulership an absurdity,”²⁸² representation in representative democracy re-asserts the division between rulers and ruled, between elected representatives who hold public office, and those who do not, and entails that that power resides in the people “only for the day of election.”²⁸³ The people, although they rule themselves vis-à-vis their representatives, do not govern. For Arendt, this “power” which the people retain on election day can itself hardly be called power: the participation in government in which this power consists is the vote, which is exercised individually, alone, and in private.²⁸⁴ Voters do not exercise power so much as they merely convey a preference, the expression of which is more closely related to the choice between consumer articles than the joint action of equals in a public space through deeds and speech. Within representative democracy, Arendt identifies only two political rights, “the franchise and eligibility for office,” and though the equality of the public realm is expressed in these rights, it is obvious that elected representatives have a superior claim to political activity relative to their constituents.²⁸⁵ In a representative democracy, only elected representatives are authorized to exercise power in government; only they conduct public business through action and speech, through discussion and joint decision, within a space of appearance in which they distinguish themselves. As Kalyvas correctly observes, “the function of government is transferred from the citizens ... to special state organs that alone can deliberate about and speak in the name of the public good.”²⁸⁶ Within these political institutions, elected representatives are equal actors; yet their equality consists in a freedom which their constituents, upon whose vote they depend, cannot experience. For Arendt, it is only these “few [representatives], *who among*

²⁸² Arendt, *On Revolution*, 162.

²⁸³ *Ibid.*, 229.

²⁸⁴ Arendt, "Public Rights and Private Interests," 507.

²⁸⁵ "Reflections on Little Rock," in *Responsibility and Judgement*, ed. Jerome Kohn (New York: Schocken Books, 2003), 205.

²⁸⁶ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 273.

themselves constitute a public space,” who experience freedom through political action, while their constituents suffer from profound political inequality outside the public space and “in obscurity.”²⁸⁷ Whereas elected representatives lead public lives in addition to their private lives, their constituents lead private lives only: through erecting a barrier between the people and the public space in which they might *act as* citizens, the electoral system reduces them to private persons, in which capacity they act as voters.²⁸⁸ Arendt emphasizes that these citizens excluded from participation in government, as private persons, will turn their attention from public business and fall into a lethargic stupor, resulting in a passive, depoliticized society.²⁸⁹

Because of the exclusion of the people from participation in government, politics will not concern the common good, but instead the partial interests of private individuals. Obviously, representatives can “represent” neither the actions nor speech of their constituents, as action and speech exist only in their exercise.²⁹⁰ But neither can they “represent” the opinions of their constituents: for Arendt, “opinions ... never belong to groups but exclusively individuals” and must be “formed in a process of open discussion and public debate” in which they are “tested” through the public “exchange of opinion against opinion.”²⁹¹ Consequentially, Arendt asserts there are no opinions in a representative democracy, as opinion formation demands being seen and heard in a public space to which only elected representatives have access.²⁹² While an elected representative may act as she imagines her constituents would, she can only act on the basis of her constituents’ “fickle” and “unreliable” moods.²⁹³ In contradistinction, Arendt asserts

²⁸⁷ Arendt, *On Revolution*, 269. Emphasis added.

²⁸⁸ *Ibid.*, 245.

²⁸⁹ *Ibid.*, 229, 30; Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 270.

²⁹⁰ Arendt, *On Revolution*, 260; Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 273-74.

²⁹¹ Arendt, *On Revolution*, 219, 61, 19.

²⁹² *Ibid.*, 260-61.

²⁹³ *Ibid.*, 261.

that interests are eminently representable: questions of interest “can be ascertained objectively,” while the “action and decision” these questions require arise “out of the various conflicts among interest groups.”²⁹⁴ The “certain control” constituents have over their representatives in a representative democracy by virtue of their vote will thus be predominantly directed towards the fulfillment of these constituents’ own interests.²⁹⁵ Accordingly, the people’s exclusion from the public space of their representatives is tantamount for Arendt to an exchange of their freedom for protection in their private interests and pursuits.²⁹⁶ These interests, for Arendt, possess a “partial character” and politically “are relevant only as group interests,”²⁹⁷ such that the pursuit of one’s interests politically requires, at worst, a selfish concern for one’s group, and at best, observes Kateb, “a conversion of politics into an instrument of something self-regarding.”²⁹⁸ In this context, when constituents exercise their control over their representatives, Arendt contends they “force their representatives to execute their wishes at the expense of the wishes of other groups of voters.”²⁹⁹ That is, whether through electioneering, activist organizations, lobbies, or other mechanisms, constituents experience politics as a zero-sum game within which the object is to advance their own partial interests against the partial interests of others vis-à-vis the pressure they exert upon their representatives, and through this force demand subservience from their representatives. Politics concerns what is *mine own* and government is *mine own to control*. Lost is the experience of politics as acting *with each other* on the basis of common deliberation, wherein the common good “is localized in the *world* we have in common *without owning it*.”³⁰⁰

²⁹⁴ Ibid.

²⁹⁵ Ibid., 260.

²⁹⁶ George Kateb, "Death and Politics: Hannah Arendt's Reflections on the American Constitution," *Social Research* 54, no. 3 (1987): 608.

²⁹⁷ Arendt, *On Revolution*, 219.

²⁹⁸ George Kateb, "Arendt and Representative Democracy," *Salmagundi*, no. 60 (1983): 24.

²⁹⁹ Arendt, *On Revolution*, 261.

³⁰⁰ "Public Rights and Private Interests," 506.

Accordingly, Arendt underscores that constituents' control in a representative democracy is nothing like power; instead, it resembles "the reckless coercion with which a blackmailer forces his victim into obedience."³⁰¹

The Council State as Self-Government

In contradistinction to this "control," the council state would be for Arendt principally distinguished by the institutionalization of public participation in government through the spontaneous, successive constitution of councils. As we noted briefly in the previous chapter, the first layer – the grassroots – councils, whose representatives would form the successive councils in the council state, would be constituted powers. Likewise, we observed that Arendt envisages these councils would lack electoral requirements, allowing all citizens the liberty to participate in public affairs, and thus directly enter the public space. The importance of these points cannot be overstated. The councils which form the first layer of the council state, no different than those which form the "higher" layers, would be, at the federal republic's foundation, each an equal and distinct unit within the federal system whose exercise of power would be constituent to the council state's system of checks and balances.³⁰² As units within the federal system, these elementary councils would be no less "permanent organs of government" than the "higher" councils, and accordingly would be "organs of order as much as organs of action" as well.³⁰³ Thus, citizens who participate in these elementary councils would find a space "for debate, for instruction, for mutual enlightenment and exchange of opinion," *as well as*

³⁰¹ *On Revolution*, 261.

³⁰² *Ibid.*, 259.

³⁰³ *Ibid.*, 256, 55.

space in which to act as citizens had at foundation, “namely, to act on their own and thus to participate in public business as it [is] being transacted from day to day.”³⁰⁴

Though, as Muldoon notes, Arendt “leaves undefined the precise role” each layer of councils would play, there is nonetheless a minimum level of competencies which these elementary councils must possess, and which we may therefore define.³⁰⁵ That is, no matter that the geographic division to which these elementary councils correspond may be only a neighborhood, as units within the federal system, these councils must be self-governing organs which, through action, would be capable of touching upon the concerns of the federal system as a whole. As Arendt writes, the councils would not be deprived “of their original power to constitute.”³⁰⁶ Consequentially, we may infer that even elementary councils must possess legislative, executive, and judicial competencies exercised according to the separation of powers,³⁰⁷ and through which it governs.³⁰⁸ Absent these competencies, self-governance within elementary councils would be impossible, their equality and distinction as constituted powers a chimera, and their capacity to check and balance other councils within the federal system through acting directly on matters of constitutional concern nonexistent. Without the capacities

³⁰⁴ Ibid., 238, 43.

³⁰⁵ Muldoon, "Arendt's Revolutionary Constitutionalism: Between Constituent Power and Constitutional Form," 604.

³⁰⁶ Arendt, *On Revolution*, 259.

³⁰⁷ Kalyvas likewise observes that the councils possess legislative powers, though he is silent regarding their executive and judicial competencies. Additionally, it is unclear in his analysis whether he believes the councils retain their legislative powers, or whether these powers are limited to a specific temporal moment and subsequently vested exclusively in the parliament. On the one hand, he writes that the popular councils are “lawmaking bodies,” and that through the councils, “the constituent power would retain its singular legislative, institution powers, limited however to the making of every day laws.” On the other hand, he later writes, “[Arendt] cannot reconcile the divide separating those who will make the laws in the superior federal parliament from those who, in the inferior councils, can only speak, deliberate, and display themselves and who are deprived of the practice of lawmaking.” See: *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 276-78, 82-83.

³⁰⁸ We must note that it is not far-fetched to ascribe these competencies to a unit which corresponds to a limited geographic division. Any local government in the United States under the mayor-council or council-manager form possess legislative and executive competencies; at the same time, the cities of New York and Chicago, as well as counties in numerous U.S. States, possess judicial competencies. Simply put, the council state ascribes these competencies beginning at a smaller geographic division.

to legislate, execute and administer the laws, and adjudicate disputes which arise, participation in the elementary councils would be meaningless. Political action, for Arendt, must generally speaking consist in participation *in government*, or it is not political action at all.³⁰⁹ Therefore, all citizens would possess the unqualified right to exercise their capacity for action and experience political freedom through self-government within an elementary council.³¹⁰ While the extent of the activities in which this self-governance consists within the elementary councils may differ from that of the “higher” councils, citizens would possess the same right to political activity. Regardless of the council on which one sits, she would find an identical opportunity to act, exercise power, and participate in the business of government.

Thus, whereas representative democracy violates the republican principle, the council state would concretize it. Citizens within the council state would be equal; however, this equality would not be tethered to the concept of justice, but rather that of the freedom which appears through acting. To wit, Arendt believes the council state would be a form of *isonomy*, such as the ancient Greek *polis*, in which citizens are equal for they “all have the same claim to political activity.”³¹¹ For Arendt, political equality cannot consist in natural equality, “which stands in need of agreement,”³¹² or equality of condition, as this equality, to a limited extent, Arendt sees as a condition of political activity.³¹³ Instead, she sees equality as something

³⁰⁹ Arendt, *On Revolution*, 210. This is implied. Her exact words are: “for political freedom, generally speaking, means the right ‘to be a participator in government’, or it means nothing.”

³¹⁰ Although Arendt identifies within the Hungarian Revolution “neighborhood councils,” “revolutionary councils,” “councils of writers and artists,” “student and youth councils,” “military councils,” “councils of civil servants,” and “workers’ councils,” she does not specify how, within the structure of the council state, a citizen would be assigned to a particular council. It is evident, however, that a principle of pure association would be untenable. Thus, in light of Arendt’s emphasis on councils as means to resolve the Jewish-Arab conflict on the level of neighborliness, we may suggest that the elementary council in which a citizen participates would be determined based upon the neighborhood in which she lives, works, or studies. See: “The Hungarian Revolution and Totalitarian Imperialism,” 138-39.

³¹¹ “Introduction *into* Politics,” 118.

³¹² *On Revolution*, 185.

³¹³ Asking what must be done to enable the poor to experience public happiness through political participation, Arendt writes: “To ask sacrifices of individuals who are not yet citizens is to ask them for an idealism which they do

artificial which must be established by human beings through an exercise of power, in which unequal human beings act in concert as equal actors. Equality is thus restricted to a *political* equality which, Lederman notes, “as a product of human action, [is] expressed in a form of government.”³¹⁴ In this context, the council state would preserve the equality in action inherent in power through institutionalizing public participation in government, and thus render unequal human beings equal as citizens. Crucially, this political equality corresponds to “conditions of no-rule,” meaning that the council state would lack “a division between rulers and ruled” as the “notion of rule” would be “entirely absent.”³¹⁵ To appreciate this point, we must not confuse the self-governance of the councils, in which citizens participate, with self-rule, which smuggles in the principle of sovereignty. In the councils, for Arendt, “where men [would] meet as citizens and not as private persons,” one would move “among his *peers*,” and could only act and have others join him so long as they remain his political equals in government.³¹⁶ Crucially, this equality could not subsist alongside relationships of rule between citizens, as rule *ipso facto* establishes a disparity between the political activity in which citizens may engage. Accordingly, it is the public participation in government which would constitute the political equality found in the council state, and through which the council state would render rulership an absurdity.³¹⁷

not and cannot have due to the urgency of the life process. Before we ask the poor for idealism, we must first make them citizens: and this involves so changing the circumstances of their private lives that they become capable of enjoying public life.” To accomplish this, Arendt observes, “education is very nice, but the real thing is money.” Whereas for the ancient Greeks, the political realm was open only to those whose were unburdened by labor through the possession of property and slaves, Arendt suggests that the political realm, under modern conditions, is *de facto* closed to those whose lives are consumed by labor, and thus recommends (re)distributing wealth to raise the condition of the poor such that they may participate as citizens. See: “Public Rights and Private Interests,” 510.

³¹⁴ Shmuel Lederman, “Philosophy, Politics and Participatory Democracy in Hannah Arendt’s Political Thought,” *History of Political Thought* 37, no. 3 (2016): 490.

³¹⁵ Arendt, *On Revolution*, 20.

³¹⁶ *Ibid.*, 21. Emphasis added; Arendt, “Introduction into Politics,” 117-18.

³¹⁷ Lederman correctly highlights that, although republicanism typically seeks to prevent arbitrary rule, Arendt exceeds this end through seeking to “prevent *rule as such*.” While this distinguishes Arendt from most within the republican tradition, it also affirms the extent to which she, and the council state, fall within the republican tradition and should not be confused for a form of radical democracy. See: “Agonism and Deliberation in Arendt,” 331.

The Voting Mechanism

Nonetheless, representative democracy may seem to suggest itself as an ideal form of self-rule, as the vote is a mechanism through which candidates are successful only when they exemplify the virtues of citizenship to their constituents. Although eligibility for office is a right held equally by all, it is obvious that what counts in an election is not a candidate's equality but instead her distinction. Yet, her election is intimately bound to the equality she shares with her constituents. Thus, Arendt, observes,

...the political qualities needed for winning office are so closely connected with being an equal among equals, that one may say that, far from being specialties, they are precisely those distinctions to which all voters aspire—not necessarily as human beings, but as citizens and political beings. Thus, the qualities of officials in a democracy always depends upon the qualities of the electorate. Eligibility, therefore, is a necessary corollary of the right to vote; it means that everyone is given the opportunity to distinguish themselves in those things in which all are equals to begin with.³¹⁸

In an election, a candidate is indeed an “equal among equals,” as on election day power does not reside in representative institutions but with the people. Indeed, even the incumbent candidate in an election is equal in his political rights to his constituents as they, no less than he, may vote and run for office. Accordingly, the successful candidate must distinguish herself to a constituency which has been rendered numerically equal through electoral mechanisms, meaning that “everybody is reduced to being one.”³¹⁹ Thus, through an election, the qualities which a candidate must distinguish herself in are those which arise from the equality she shares with her constituents. For Arendt, these qualities are identical to those which voters aspire as citizens since “equality not only has its origin in the body politic; its validity is clearly restricted to the political realm... [equality is] its innermost principle.”³²⁰ That is, since the electoral mechanism

³¹⁸ Arendt, "Reflections on Little Rock," 204.

³¹⁹ Ibid.

³²⁰ Ibid., 204-05.

renders all equal in their political activity, which means its validity is strictly political, the successful candidate distinguishes herself in precisely the ways she and her constituents are equal *as citizens*; the qualities by virtue of which she wins office are those which reflect her constituency's shared conception of citizenship such that, as their representative, she exemplifies whom they regard to be a citizen.

The Common Good & Citizenship

However, what exemplifies the citizen for Arendt, in contradistinction to the private person, is her commitment to the common good, which she can only grasp through participation in government with her peers. For Arendt, "the principal characteristic of the common good with respect to the plurality of individuals who share it is that it is much more durable than the life of any one individual" and it consists in "the interest of the common world which they inhabit."³²¹ By this, she means that the common good consists in the *preservation* of the common world, and this preservation is intrinsically in conflict with the partial interests of human beings: whereas the common world must be a permanent home for human beings if they are to act together and exercise power, human beings are nonetheless mortal and accordingly driven by the "overwhelming *urgency* of [their] individual interests."³²² If the common world were subject to the cyclical life process, we would not share a world in common which we find already in birth and leave behind in death, and which remains iridescent through time so long as it is illuminated in public. Thus, Arendt writes: "if the world is to contain a public space, it cannot be erected for one generation and planned for the living only; it must transcend the life-span of mortal men."³²³ The common good demands citizens act *impartially* and not in their

³²¹ Arendt, "Public Rights and Private Interests," 508.

³²² Ibid.

³²³ Arendt, *The Human Condition*, 55.

self-interest, so that their words and deeds do not concern themselves but the world between them, whose interests they recognize when from their own perspectives they form opinions on a common object.³²⁴ By the same token, the common good exists *neither prior to nor external to politics*, but arises in the course of political action itself. Thus, the common good itself depends upon the permanence of the public spaces in the world in which human beings can grasp it through joint action. That is, politics must preserve the conditions for its existence in perpetuity; power must immortalize itself. As Kateb observes, this means that those who act for the common good “are those who act with the feeling that others will come after them to take their place on the stage of action.”³²⁵ The citizen who acts for the common good acts knowing that newcomers, who yet may not be born, will participate in the same council she does now, and that her failure to preserve her council’s equality and distinction within the federal system will deprive these newcomers the experience of freedom, the regard for the world which constitutes the common good, and the opportunity to preserve the common world through beginning something new.

It is salient that Arendt believes the actualization of one’s citizenship requires participation in government, without which it remains only a potential. Critically, this stems as well from her belief that political equality and freedom are neither attributes of human beings nor qualities found in human nature; instead, as in the ancient Greek *polis*, they are attributes of political institutions such as the councils.³²⁶ Hence, if “political equality and political freedom ... are only possible” within the councils, as Lederman concurs, because “all [would] have the right and *the space* to participate,”³²⁷ it follows that the political contents of citizenship do not

³²⁴ "Public Rights and Private Interests," 508.

³²⁵ Kateb, "Arendt and Representative Democracy," 25.

³²⁶ Arendt, *On Revolution*, 21.

³²⁷ Lederman, "Hannah Arendt, the Council System and Contemporary Political Theory," 158.

exist apart from their very exercise. A citizen who does not participate within the council state would yet be a citizen, although his passivity means he would not be a citizen in the *positive* sense; by implication, for Arendt, he would be a citizen legally, in that he would retain his rights, but through rejecting his share in the public, he would not be a citizen politically. By abstaining from participation in government, in which he would act with his peers and shed his private concerns for those in the public interest, he would know only how to act as a private person. In accordance with the republican tradition, *political norms for Arendt are established and experienced only through participation itself*. Absent participation, Volk stresses, it is impossible to “grasp [action’s] importance for exercising political freedom and for the durability of a political order.”³²⁸ Thus, the private person could not appreciate the importance of participation and the political meaning of their citizenship until he exposes himself by acting with others within an elementary council and reveals, for the first time, “who” he is to his peers. The public interest, observes Kateb, demands from actors a solidarity which must prevail “over the desire of individuals to preserve themselves, and even to think themselves apart from the body of equals.”³²⁹ This solidarity cannot be expected from private persons, and is unique to the public action in which participation in government consists. While citizens risk themselves and sacrifice their individual interests when they act together as equals, private persons protect their self-interests; while citizens are rewarded for their sacrifice in the public interest “by the kind of ‘happiness’ which men can only experience in the public realm,” private persons find happiness in what is their own.³³⁰

³²⁸ Volk, "Hannah Arendt and the Constitutional Theorem of De-Hierarchization. Origins, Consequences, Meaning," 182.

³²⁹ Kateb, "Death and Politics: Hannah Arendt's Reflections on the American Constitution," 614.

³³⁰ Arendt, "Public Rights and Private Interests," 509.

Citizenship in Representative Democracy

Whom do voters regard as exemplary of citizenship in a representative democracy? If “all power [has] been given to the people in their private capacities and ... no space established for them in their capacity of being citizens,” to what distinctions might these private persons aspire as political beings, when acting as political beings is precisely what representative democracy has denied them?³³¹ If voters experience politics as a struggle over partial interests, in which one wins or loses at the expense of or at the hands of an opponent, what might they possibly conceive citizenship to consist in? Considering that voters are denied space in which to participate, none are citizens for Arendt, politically speaking, and it is inevitable that this form of politics which they experience inculcates a corrupt *notion* of citizenship which stands opposed to the *experience* of being a citizen. That is, the candidate whom a voter sees as exemplary of citizenship is foremost determined by the interests he will represent and those qualities which exemplify him to represent those interests. By the same token, if a voter’s interests – to the extent they are only politically relevant as group interests – are expressed by a political party, the candidate a voter views as exemplary of citizenship will undoubtedly be determined by his adherence to the party line.³³² The notion of citizenship which voters in a representative democracy possess will reflect their private needs, and thus for Arendt be patently untethered from the common good, which she underscores will frequently be “antagonistic to whatever we may deem good to ourselves in our private lives.”³³³ Whereas the common good demands the

³³¹ *On Revolution*, 245.

³³² Although, in her critique of representative democracy, Arendt often speaks of the party system, I have chosen to restrict my invocations of the party system to limited circumstances such as this. While this slightly obfuscates the target of her critique, my intention is to highlight that the issues she identifies – and often attributes to the party system – remain when there is an electoral requirement in the absence of a party system. That said, it is rather inconceivable that there would be an electoral system without a party system, but in addressing representative democracy thus, I aim to head-off any objection that would pose the suitability for Arendt of a theoretical representative democracy which lacked a party system.

³³³ Arendt, "Public Rights and Private Interests," 507.

willingness of citizens to sacrifice their individual and partial interests, representatives are exemplary citizens within a representative democracy to the extent they are willing to sacrifice the common good for the partial interests of their constituents or those represented by their political party. Consequentially, candidates within a representative democracy distinguish themselves on the basis of interest, which is to also say that representatives are selected according to criteria that for Arendt is external to politics and thus patently unpolitical.³³⁴

Representation in the Council State

Although the council state eliminates the electoral requirement characteristic of representative democracy, it would employ a system of representation in which representatives distinguish themselves as political actors, and not servants of interest. As Kalyvas points out, “Arendt was critical of the principle of *representative government*,” characterized by an electoral requirement, “but not of *representation* as such.”³³⁵ Accordingly, the council state by virtue of its design would deny suffrage to nonparticipants and exclude them from influence in government, as the participants who form elementary councils, from whom the membership of all “higher” councils would be drawn, would be self-selecting.³³⁶ Those who participate, through selecting themselves, would be by that fact “not nominated from above and not supported from below,” and through their initiative would demonstrate their care for the world and concern for the public realm.³³⁷ Within each elementary council, these self-selecting participants committed to the public interest would choose a representative “from the bottom by a direct vote,”³³⁸ an election which Arendt implies would not be conducted by secret ballot but

³³⁴ *On Revolution*, 269-70.

³³⁵ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 282.

³³⁶ Arendt, *On Revolution*, 271.

³³⁷ *Ibid.*, 270; Sitton, "Hannah Arendt's Argument for Council Democracy," 88-89.

³³⁸ Arendt, "The Hungarian Revolution and Totalitarian Imperialism," 137.

as a forum, which we may infer she sees consist of a recorded vote preceded by deliberation.³³⁹ Yet, the substance of politics, for the councils, would be the commitment to a joint endeavor in which those concerned for the world experience freedom through action for the common good; by suggesting a form through which the people can be represented in accord with this experience, the councils would, as Arendt sees in the Hungarian case, “orient themselves against representation determined by class interests on the one hand, and ideology or *Weltanschauung* on the other.”³⁴⁰ Critically, participants within the council state would experience politics as their mutual deliberation and joint action within government, activities in which they would “reveal actively their unique personal identities” and disclose “who” rather than “what” they are.³⁴¹ Thus, within the intimate setting of the councils, where citizens would meet as equals and together directly self-govern, these representatives would be selected according to “the principle of personal trust” rather than any other criteria.³⁴² That is, the citizen whom a council would elect is he who, through the action he has *already taken with his peers*, demonstrated he will neither misuse power nor deprave power through violence, and has distinguished himself by his political talents, which stand as his personal qualifications.³⁴³ Hence, Arendt writes, “the candidate in the council [state] must simply inspire enough confidence in his personal integrity, courage, and judgement, for someone to entrust him *with representing his own person in all political matters.*”³⁴⁴

³³⁹ *On Revolution*, 245; “Thoughts on Politics and Revolution,” 233. It is worth noting that the secret ballot is *ipso facto* private, and thus for Arendt could have no place in the public realm by that fact alone. In secret, one expresses a private choice, whereas in public, his choice is determined by an exchange of opinion in which his views may be clarified, confirmed, revised, proved wrong, and subject to the scrutiny of his peers.

³⁴⁰ “The Hungarian Revolution and Totalitarian Imperialism,” 136.

³⁴¹ *The Human Condition*, 179-80.

³⁴² *On Revolution*, 270-71.

³⁴³ “The Hungarian Revolution and Totalitarian Imperialism,” 138.

³⁴⁴ *Ibid.*, 137. Emphasis added.

Significantly, as a representative within the council state would represent none but himself, he is not a representative in any sense which we would typically apply the term. He would be neither a trustee, who acts on behalf of his delegating council, as Kalyvas believes,³⁴⁵ nor a delegate, who must act as his council instructs, nor would he embody a “middle ground” between the two, as Lederman confusedly suggests.³⁴⁶ The qualities in which his distinction would consist are those without which the joint endeavor of self-government is not possible, which is to say the representative would distinguish himself in these qualities in the course of political action itself: the criteria for his election would be *internal* to the political action he takes with his peers. To wit, as his title would rest “on nothing but the confidence of [the] equals” with whom he acts, and as he would be selected absent “any pressure either from above or from below,” his representation would consist in his *empowerment* by his peers through his election.³⁴⁷ Thus, political theorist Lisa Disch is absolutely correct when she observes that representation within the council state would be “a unique model of self-authorization, one that is not spontaneous but, rather, mediated by the principle of peer selection.”³⁴⁸ Through this representative representing himself on a “higher” council, he would represent as well the power potential of those who elected him, though he would represent neither their opinions nor their interests; as he would be bound by nothing “other than the duty to justify [the] trust in his personal qualities,”³⁴⁹ his delegating council would be represented by him insofar as they trust he, acting freely, exemplifies the qualities in which their shared citizenship consists.

³⁴⁵ Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, 280.

³⁴⁶ Lederman, *Hannah Arendt and Participatory Democracy: A People's Utopia*, 188.

³⁴⁷ Arendt, *On Revolution*, 270.

³⁴⁸ Disch, "How Could Hannah Arendt Glorify the American Revolution and Revile the French? Placing on Revolution in the Historiography of the French and American Revolutions," 352-53.

³⁴⁹ Arendt, "The Hungarian Revolution and Totalitarian Imperialism," 137.

The System of Checks and Balances

To grasp Arendt's conviction that representative democracy and the council state differ in their capacity to preserve the federal system, we can return to Madison, whose writings about the system of checks and balances illustrate, in their contradictions and evolution, the divergent assumptions these two forms of government make. In *The Federalist* "No. 51," Madison famously argues that the greatest safeguard against the monopolization of power within the federal system "consists in giving to those who administer each department, the necessary constitutional means, and personal motives to resist the encroachment of the others."³⁵⁰ In this system of checks and balances, he writes, "ambition must be made to counteract ambition," which means "the interest of the man must be connected with the constitutional rights of the place."³⁵¹ Crucially, although Madison stipulates the system of checks and balances depends upon an actor's "personal motive" and "ambition," these are qualified by the "constitutional rights" of the federal unit in which he acts, with which his interests must be aligned. By implication, the personal motive and ambition upon which the system of checks and balances depend do not spring from private interests, *or any interest which is external to politics itself*: one's interest must be the preservation of his unit within the federal system in accordance to the mutual promise of foundation. Put another way, the constitutional rights of the place, to which his interests are aligned, and from which his ambition and personal motive arise, correspond for Madison to the constitutional means at his disposal. Constitutional rights and constitutional means here both refer to *positive* rights which stipulate a federal unit's powers. They refer to what a federal unit *can* do as authorized by the founding constitution, and not merely *negative* liberties which would indicate what another unit *cannot* do. Thus, to act in the interests of the

³⁵⁰ Madison, "The Federalist No. 51," 252.

³⁵¹ *Ibid.*

constitutional rights of one's federal unit requires that one act to preserve that power, upon which the future exercise of action depends; where one's interest is to preserve positive constitutional rights through positive constitutional means, one preserves power with power. At once, this is constituent of what it means for Arendt to act in the common good – for the public interest – and is plainly a requirement to sustain a federal system. Accordingly, one's ambition does not concern his private life, but consists in his passion to distinguish himself; yet, he only distinguishes himself when he acts through exercising the constitutional means at his disposal, while the opportunity for him to do so in the future is contingent upon the use of those means to preserve the corresponding constitutional rights. In other words, we must understand ambition in this case does not mean “the thirst and will to power as such,” which Arendt underscores “tends to destroy all political life,” but rather the “desire to excel which makes men love the world and enjoy the company of their peers, and drives them into public business.”³⁵² Here, one's ambition is identical to his agonal spirit, such that by ambition we understand the desire to “win ‘immortal fame’”³⁵³ through the action one takes in the spirit of the constitution, in which his desire to excel others means he is jealous of his own power and acts to preserve the public space in which he appears.

Nonetheless, when Madison extrapolates upon his theory within the same paper, his position radically shifts. He describes “this policy of supplying by opposite and rival interests” as “the defect of better motives,” in which “the *private interest* of every individual, may be a centinel over the public rights.”³⁵⁴ Clearly, there is a palpable tension between this and his statements quoted above. Whereas Madison first stipulates that the preservation of the federal

³⁵² Arendt, *On Revolution*, 110-11.

³⁵³ *The Human Condition*, 197.

³⁵⁴ Madison, “The Federalist No. 51,” 252-53. Emphasis added.

system depends upon those in government identifying their interests with the power of their respective federal units, now Madison describes the federal system as established under the United States Constitution as one which is preserved as a *byproduct* of individuals pursuing their private interests within it. If, originally, it appears that the federal system depends upon the willingness of participants in government to sacrifice their self-interest for the interest of their federal unit, it now appears that the federal system is preserved by the pursuit of self-interest within its constitutional framework from which the public interest is distilled as if by Adam Smith's invisible hand. This divergence is in fact unreconcilable; while one may object that "personal motive" or "ambition" cannot be understood as we have above, Madison's explicit invocation of "interest" nevertheless remains, and the two "interests" he invokes could hardly be further apart.

This contradiction we find in *The Federalist* "No. 51" is illustrative of how the council state and representative democracy fundamentally differ, in their theoretical assumptions, regarding the role of private interest in the preservation of a federal system. Whereas the council state, through direct participation in government, would allow the people to act as citizens and grasp the common good, representative democracy instead renders the people private persons and, through the vote, produces representatives whose distinction is their responsiveness to the partial interests of their constituents or political party. The preservation of the federal system in each corresponds to one of the two sides to Madison which constitute the inner contradiction in "No. 51": in the council state, the preservation of the federal system would consist in each council acting in the spirit of foundation to preserve its equality and distinction, wherein the glory of each is inextricably linked to the permanence of the world upon which their public space depends; in representative democracy, a system of instrumental politics determined by partial

interests, the preservation of the federal system depends upon the structure of government inducing representatives to act in the public interest whenever they act on behalf of private interests, and thus circuitously preserve their own power within the federal system.

However, it seems even Madison realized no structure of government can transform the pursuit of private interest into action in the public interest, as within three years of *The Federalist*, he disowns this position.³⁵⁵ Comparing republican government to aristocracy and monarchy in the *National Gazette*, Madison claims that “to secure all the advantages of [a federal republic], every *good citizen* will be at once a centinel over the rights of the people; over the authorities of the confederal government; and over both the rights and the authorities of the intermediate governments.”³⁵⁶ Critically, this statement is a clear revision of Madison’s words in “No. 51” quoted above. Madison now believes that only good citizens can serve as a “centinel” over the public rights, as opposed to those who only follow their private interests. As Madison expands upon his new position, it is salient this view is commensurate with our first view of “No. 51.” For Madison, to preserve the federal system intact, without schism or consolidation, it must “be the patriotic study of all, to maintain the various authorities established by our complicated system, each in its respective constitutional sphere.”³⁵⁷ Neither private self-interest nor enlightened self-interest can sustain the federal system for Madison; only the impartial concern for the political realm itself, which distinguishes the “good citizen.” Thus, he stresses that “the people who are the authors of [the American system of government], must also

³⁵⁵ See: Douglas W. Jaenicke, "Madison V. Madison: The Party Essays V. 'The Federalist Papers'," in *Reflections on the Constitution: The American Constitution after Two Hundred Years*, ed. R. A. Maidment and John Zvesper (Manchester ; New York: Manchester University Press, 1989). Despite chronicling Madison’s conflicting positions in *The Federalist* and the *National Gazette*, he does not acknowledge the contradiction within “No. 51” that I emphasize.

³⁵⁶ James Madison, "Government, *National Gazette*, January 2, 1792," in *James Madison: Writings*, ed. Jack N. Rakove (New York: The Library of America, 1999), 502. Emphasis added.

³⁵⁷ "Consolidation, *National Gazette*, December 19, 1791," 500.

be its guardians. Their eyes must be ever ready to mark, their voice to pronounce, and their arm to repel or repair aggressions on the authority of their constitutions.”³⁵⁸ In the final instance, Madison believes that the structure of government is “neither the sole nor the chief palladium of constitutional liberty”; a federal republic is preserved by politically engaged citizens who identify their interests with the structure of government in which they act, and so place the public interest ahead of their own.³⁵⁹

Yet, when a government is delegated “to a small number of citizens elected by the rest,”³⁶⁰ as Madison defines a republic in *The Federalist*, the impartial concern required to grasp the common good will for Arendt, as we have seen, will be shockingly absent. No structure of government, including representative democracy, can distill the public interest from action taken on behalf of partial, private interests as, short of sheer luck, these terms are diametrically opposed. In other words, the conflict between partial interests and the common good mean that, more often than not, one’s action on behalf of partial interests is an action against the common good. When one acts on behalf of partial interests, *according to which her action is a means to their fulfillment*, she will be required to disregard her equality and distinction within the federal system to achieve her ends.

The Common Good vs. the Invisible Hand

Arendt sees the partial interests of private individuals not merely as insufficient to preserve a federal republic, but as the federal republic’s greatest threat in modern times, and believes this peril would be mitigated by the council state. Critically, she observes that under modern conditions of rapid economic growth, the corruption of government will arise through

³⁵⁸ "Government of the United States, *National Gazette*, February 6, 1792," 509.

³⁵⁹ *Ibid.*

³⁶⁰ Madison, "The Federalist No. 10," 44.

the invasion of the public realm by private interests as opposed to an expansion of public power which trespasses upon the private realm.³⁶¹ This growth corresponds to “a constantly increasing expansion of the private realm” that, under a form of government which has “granted [the people] a share in public power” will blur the dividing line between public and private until, finally, it overtakes the public realm.³⁶² Thus, although Arendt views negative liberties, such as those found in the United States Constitution’s Bill of Rights, as a “necessary supplement” to a constitution, a legal bulwark designed to protect “the private realm against public power” cannot forestall the corruption of government under modern conditions and prevent the tyranny to which it leads.³⁶³ Instead, writes Arendt, “the only remedies against the misuse of public power by private individuals lie in the public realm itself.”³⁶⁴ A participant in the council state who seeks to advance her private interests, through being forced to act with others and lacking any of the mechanisms found in representative democracy through which she could influence their activity, would reveal publicly who she is, what she has done, and what she plans to do in a manner impossible to know when hidden within a ballot box. To wit, in the public realm Arendt asserts she would be exposed, and could not hide her self-interest from “the light which exhibits each deed enacted within its boundaries.”³⁶⁵ Amongst peers who, through their participation, demonstrate “they care for more than their private happiness and are concerned about the state of the world,”³⁶⁶ she would learn to act *as* a citizen herself, or she would find herself unable to act as none would join her in concerns which are eminently partial and her own. Significantly, this means the council state would stand representative democracy on its head: here, all power would

³⁶¹ Arendt, *On Revolution*, 243-44.

³⁶² *Ibid.*, 244. By the same token, where this economic growth is not the case, it is the public realm from which this danger would arise, and which would overtake the private realm.

³⁶³ *Ibid.*, 143, 244.

³⁶⁴ *Ibid.*, 245.

³⁶⁵ *Ibid.*

³⁶⁶ *Ibid.*, 271.

be given to the people in their capacity as citizens, while none would be reserved for them in their private capacities; indeed, by inculcating citizenship through participation, the council state would expose any who seek power in a private capacity to all, and offer them their opportunity to *become* citizens.

This remedy against the invasion of private interest is unavailable to representative democracy as it invites private interest directly into government. Though representatives within a representative democracy act within the public realm, we must stress that they, prior to their own elections, were mere voters whose experience of politics was no different than that of their constituents. That is, in the first instance, Arendt would see our expectation that representatives act for the common good and preserve their power within the federal system as tantamount to an expectation that they defy the political culture of the community in which they were raised and by which they were elected. Yet whereas the representative in the council state would be related to her delegating council through their trust in her personal qualities, the relationship between this elected representative and her constituents is not direct, but *mediated* through the vote, pressure groups, and her political party. In each instance, her relationship is mediated by mechanisms through which Arendt sees only partial interests are expressed, and it is upon that mediated relationship which her reelection depends. Her freedom to act in government is in fact contingent upon a relationship constituted by partial interests. Even if we grant that she is a rare institutionalist who has grasped the common good, by the same token Arendt reminds us that her freedom to act in the public interest depends upon her willingness to act in her constituents' or her party's interests as well, no matter that these may be inimical to the preservation of the public space in which she acts. In the case of a less virtuous representative, we can only expect him to actively prioritize the partial interests he represents over the equality and distinction of his unit

within the federal system. In either case, by virtue of their lone presence in the public space, Arendt implies these representatives remain close to the people *only through their private interests*. For this reason, Kateb observes that “public officials [in a representative democracy] are disposed to satisfy the claims of interest groups, even if conflicts of interest insure a never-ending supply of dilemmas for those who must painfully decide which interest they will favor and which they must ... turn away.”³⁶⁷ Consequentially, these elected representatives cannot expose private interest when it invades the public realm, as for Arendt, their elections constitute that invasion.

Plainly, under representative democracy, the equality and distinction of units within the federal system will wither from within. For Arendt “the *raison d'être* of politics is freedom and its field of experience is action,”³⁶⁸ yet no elected representative can act freely in the true sense of the word as their action is constrained by those interests whose demands they must fulfill. Representative democracy is corrupt by design for Arendt in the sense that one’s participation as an elected representative requires one corrupt oneself; she sees one’s election as identical to an agreement with one’s constituents that he will employ public power for private interests at the expense of the common good, meaning that he will *not* “act for the sake of preserving future possibilities of action.”³⁶⁹ Structurally, Arendt contends representative democracy urges elected representatives to place these partial interests above the interests of their unit within the federal system, interests which are constituent to the common good, and threatens reprisals when they do not through the mechanisms it places at the disposal of private persons. Whether corrupted from within or without, through choosing partial interests over the preservation of their own power,

³⁶⁷ Kateb, "Arendt and Representative Democracy," 24.

³⁶⁸ Arendt, "What Is Freedom?," 145.

³⁶⁹ Kateb, "Arendt and Representative Democracy," 25.

elected representatives for Arendt will dismantle the division of powers from the inside out. While this diminishes the power of the federal republic as a whole, it more importantly constitutes the precondition for the failure of the federal system's checks and balances and the consequent consolidation of power into one or several units within the federal system, amounting in the last instance to a centralized monopoly.

In contradistinction, the council state would agitate against this degeneration through its institutionalization of direct participation in government and its unique system of representation. The elementary councils, as units within the federal system in which any may participate, would form a bedrock of political action throughout the council state, in which citizens would actualize their citizenship through self-governance and preserve, at the most basic level, the principles which came to light at the council state's foundation. For Arendt, this would constitute a constant exercise of power by each elementary council, establishing the system of checks and balances first in the grassroots, at the federal system's base. Participants within elementary councils would be self-selecting, and through their initiative to self-govern act as citizens and demonstrate they care more for the common good than their private interests, while representatives must exemplify this initiative and not the interests or ideology of any group or party.³⁷⁰ Within the council state, this initiative would be the initiative to partake in public affairs through *action*, which Arendt believes would inspire the councils to be jealous of their own power. Yet, in contradistinction to representative democracy, the relationship between these participants on the elementary councils and the representatives they select would be *direct*, based upon the trust experienced in governing together, and that of equal actors who enjoy an equal claim to political activity. For Arendt, their politics would be one between persons in

³⁷⁰ Arendt, "The Hungarian Revolution and Totalitarian Imperialism," 137.

which all are participants, and none passive spectators; within councils, and between councils, they would be brought “together not as masses, but as individuals.”³⁷¹

Thus, Sitton is correct to infer “that the councils would be related through a mutual respect,” though he ascribes the capacity for respect to institutions, whereas for Arendt respect is only possible between individuals.³⁷² To Arendt, respect “is a regard for the person from the distance which the space of the world puts between us ... independent of qualities which we may admire or of achievements which we may highly esteem.”³⁷³ Mutual respect constitutes the corollary to the principle of personal trust upon which representatives in the council state would be chosen. Critically, a representative within the council state would, by virtue of her election, have to leave the council by which she was elected, and in which she won her peers’ trust. Whereas the world once brought she and her peers together through this public space, the space of the world would insert itself between them as she makes her entrance into the public space of a “higher” council which would correspond to a larger geographic division. The respect which would relate them consists in the delegating council’s respect for the representative’s freedom to act, rooted in their trust in her personal qualities; and the representative’s respect for the delegating council’s power, rooted in her empowerment through their confidence. This mutual respect is the respect of each other as equal actors who make their appearance as human beings, and, vitally, for Arendt this respect will be sufficient in itself “to prompt forgiving what a person did, for the sake of the person.”³⁷⁴ Mutual respect between a representative and her delegating council would constitute for each an acknowledgement of the other’s freedom through which

³⁷¹ Lederman, "Hannah Arendt, the Council System and Contemporary Political Theory," 153.

³⁷² Sitton, "Hannah Arendt's Argument for Council Democracy," 88.

³⁷³ Arendt, *The Human Condition*, 243.

³⁷⁴ *Ibid.*

each would hold on to their own, according to which the error of either, or the disagreement between each, could be met with forgiveness rather than immediate reprisal.³⁷⁵

As a result, while the “higher” councils would be unconstrained by their delegating councils, the latter would not lose their power when they select a representative, but as organs of action and order would be equal in their freedom to the “higher” councils within the sphere they govern.³⁷⁶ Incentivized, on the one hand, to jealously guard their power, and through mutual respect, on the other hand, regarded for that power by its representative, the council state would inspire each council to actively preserve its equality and distinction within the federal system, at the same time that it would free them from the forms of control and pressure which corrupt representative democracy. Their freedom would be unconstrained except by those with whom they act. Whereas in representative democracy, an elected representative’s experience of freedom depends upon satisfying partial interests to win reelection, freedom would be instituted in the council state through participation in the elementary councils. The freedom of these participants and their representatives would depend instead upon their action to preserve their equality and distinction within the federal system, through which they would preserve the government that equalizes them, and the common world in which the public space they appear has a home.

³⁷⁵ Totschnig describes Arendt’s council state as one wherein representatives routinely return to their delegating councils and, though “allowed” to change their opinions, must justify any change and are “subject to immediate recall.” While some mechanism must arise for rotation in office and further coordination between councils, Totschnig attributes ideas to Arendt which, though present in the historical worker’s councils – are not only nowhere to be found in her work – but are ideas of representation which she explicitly critiques. See: Totschnig, "Arendt's Argument for the Council System: A Defense," 273; Arendt, *On Revolution*, 228-29.

³⁷⁶ Lederman, *Hannah Arendt and Participatory Democracy: A People's Utopia*, 188.

Conclusion

By arguing that Arendt sees a necessary and constitutive relationship between the federal system and the council state, I have argued as well that Arendt believes that, absent the council state's participatory institutions and structure, a federal system will degenerate. If one is, as I am, a citizen of the United States, one may thus be drawn, as I am, to contemplate our country's fate. For one, while the United States technically remains a federal republic, our system of representation is that of a representative democracy. If my argument has any purchase, and if the insight we draw from Arendt is sound, the United States may be a republic we cannot keep. All governments degenerate; ours is no exception. My point is not theoretical. Once this republic exists only in remembrance, beyond our time, perhaps the United States of this era will be seen against a previous United States as the Roman Empire is against the Roman Republic. None alive today will know, as the story of this country cannot be written until its end. Whether the United States remains a federal republic or not is a question which will be resolved only by the power exercised on the political stage, and the course this action will set us upon – like all action – is contingent upon the response it receives.

Yet, if I am to prognosticate, the situation appears dire. If I am to reflect upon political events within the United States, both those particular to the moment and those which have only revealed their meaning through the passage of time, I am returned to my argument. The division of powers within the United States, it appears, is on its last legs after more than a century of decline. "States' Rights" conjures a racist image inextricably linked to the defense of chattel slavery within the United States preceding the Civil War, an argument made in bad faith whose purpose was to obscure the blatant invasion of the public realm by the interests of private individuals whose hegemony – economic and otherwise – depended upon the racist subservience

of another peoples. In the pursuit of their own interests, elected representatives within these States trampled upon the common good and failed to preserve their own power, which for want of, they turned to violence. Their corruption created an urgent need for Federal supremacy, which was duly established by the Civil War's outcome. In the years following the War, the power of the Federal government increased, while that of the States diminished, and though at first this development proceeded in fits and spurts, in the twentieth century the Federal government achieved a near-monopoly on power, aided in part by the Supreme Court's expansive interpretation of the Commerce Clause, which centralized control of economic matters within the Federal government at the expense of local legislatures and executives, as well as the Court's increased exercise of strong judicial review. Today, political decisions which emerge from the power at the grassroots are the exception to the rule: while, at present, State after State legalizes marijuana in spite of Congress's prohibition, it is perhaps telling that this – likely the most significant legislative exercise of power by the States acting in concert against the Federal government – concerns the legality of a substance which nearly every college student in the country has encountered once, if not numerous times. While the unyielding efforts of States Attorneys General across the United States to act as a check on Presidential agendas might seem a bright spot amidst a dark horizon, this obstruction through litigation indicates the States themselves no longer wield the *power* to check and balance the Federal government and must instead turn to the law. In so doing, they force the judiciary to check and balance the Federal government in their stead, establishing for the powerless judiciary a role which it is eminently incapable of performing whilst maintaining its authority.

We witness, as well, the destruction of the separation of powers within the Federal government; that is, the failure of a mechanism inherent conceptually within the division of

powers designed to prevent a legislative tyranny, a judicial bureaucracy, or an imperial Presidency. It is no secret that the impeachment of President Donald J. Trump by the House of Representatives was a partisan exercise, while even prior to his trial in the Senate, the public statements of his Senator-jurors made it clear the outcome was a foregone conclusion. Overwhelming evidence would not command the day. Whereas the preservation of the legislative branch of the Federal government demands of representatives impartiality to act in its interests, the majority of Senator-jurors acted in the partial interests of their political party instead, and by voting for President Trump's acquittal, sanctioned an extraordinary and extra-Constitutional exercise of executive power at the expense of their own distinction as a co-equal branch of government. In so doing, Congress ceded its power to the executive branch and surrendered future opportunities for action. Yet, this can hardly be surprising; it is but the latest in a long train of abuses in which Congress has also relinquished its war, commerce, and oversight powers.

The months which intervened between the original composition of this thesis and the present in which I make this addition have only made our subject more urgent. In the United States, the response to – *not the existence of* – the COVID-19 pandemic simultaneously demonstrated why federalism is necessary *as well as* brought to light the particular form of federalism which, though equally alien to Madison and Arendt, is today dominant. That is, in light of the Trump Administration's failure to adequately respond to the pandemic, numerous States acted – on their own and with each other – to implement public health measures which would have been inconceivable had they been administrative divisions of a unitary state and not equal and distinct units within a federal system. As a New Yorker, it frightens me to imagine the terror which would have taken hold if my city and State had not been able to take action, and

were instead subject to the caprice of our White House’s current occupant. Indirectly, my neighbors’ lives were saved by what remains of our division of powers. Nonetheless, the response which New York – and numerous States like it – took during the COVID-19 pandemic should strike us as a culmination of the developments I glossed over in the preceding two paragraphs. Federalism in the United States is the federalism of Governors, of executive powers, and of police powers reserved by the States under the Tenth Amendment which they may exercise with little or no restriction. This Federalism, though its relationship to the law and its proclivity for litigation remains – from a certain perspective – undisturbed, has extricated to the greatest extent possible any role for legislatures, and with it, its need *for* laws. To the degree that the equality and distinction of units within a federal system is absurd outside the equality established *through* the laws and the distinction available through the *mutual formation* of the laws, upon a Governor’s Declaration of a State of Emergency and subsequent exercise of powers which far exceed any available to the President of the United States, the bedrock of federalism erodes within that State itself. Perhaps we must pay for history with our own comeuppance, but it indeed appears that, while the United States is not sovereign, the States which form its units are. The resounding cry is *necessitas non habet legem*. Necessity knows no law. Public business, by and large – and certainly the urgent sort – is a matter of *personal decision*, and legislatures – from New York to California to Congress – are, figuratively speaking, nowhere to be found. Though many executives, without doubt, have noble ends, it should alarm us that Andrew Cuomo is not merely the Governor of New York, but the Sovereign of New York. It is in our best interest to recall that “Sovereign is he who decides on the exception,”³⁷⁷ and in true

³⁷⁷ Carl Schmitt, "The Definition of Sovereignty," in *Political Theology* (Chicago and London: The University of Chicago Press, 2005).

fashion, Cuomo – and others – not only determine this exception to legal norms, but act extra-constitutionally and extra-legally to restore the normal situation as they conceive it.

Why dredge up the dead? Hannah Arendt died on December 4, 1974, not far from where I write this conclusion, yet keenly attuned to the United States of today. *Why perform seances through text, in which we look to figures from past generations for answers to questions which we have barely yet formed?* We commune with Arendt because we recognize something is amiss, and that perhaps the chief virtue of political actors *and* political theorists is prescience. In plain terms, we witness the continuing breakdown of our federal system, and through Arendt we learn to grasp that phenomenon and not merely expect it. Amidst a crisis in the federal republic, the tonic which Arendt offers is a call to action. For Arendt, the council state would succeed as a federal republic where others do not because, within the council state, any who is willing to sacrifice her own interests for the common good will find her place within government to act as a citizen. Against the republic's degeneration, Arendt proposes, through the council state, the rudiments of a political system which cannot be built, but must emerge from power's source, and so invites us to simply begin by acting together with a common purpose. As Markell beautifully describes, through recognizing the events which define our era, we can acknowledge as well their contingency, and find in them a "point of departure" for our own action, and thus "do more than *merely* suffer [them]."³⁷⁸

This duality, in which we as human subjects are subject in the sense that we are actors as well as sufferers, in no way implies that we must suffer the republic's eclipse, as what we suffer are in fact the action processes we unleash and which we possess the capacity to disrupt. In *The Human Condition*, Arendt writes:

³⁷⁸ Markell, "The Rule of the People: Arendt, Archê, and Democracy," 10.

The life span of man running toward death would inevitably carry everything human to ruin and destruction if it were not for the faculty of interrupting it and beginning something new, a faculty which is inherent in action like an ever-present reminder that men, though they must die, are not born in order to die but in order to begin. Yet, just as, from the standpoint of nature, the rectilinear movement of man's life-span between birth and death looks like a peculiar deviation from the common natural rule of cyclical movement, thus action, seen from the viewpoint of automatic processes which seem to determine the course of the world, looks like a miracle. In the words of natural science, it is the "infinite improbability which occurs regularly."³⁷⁹

For Arendt, there is no fate we suffer politically except the one which arises from our own complicity. The miracle we await to deliver us from the banal evils of autocracy and nationalism is no miracle at all, and it comes not from without, but from within. We need not suffer fate when the space of appearance in which we act is always potentially there so long as we are with others. If at first there is no space to act as citizens, Arendt tells us we can establish it ourselves. Need she remind us, that "measured against the freedom of the Hungarian revolutionaries and freedom fighters, even the 'free world' was not free."³⁸⁰

³⁷⁹ Arendt, *The Human Condition*, 246.

³⁸⁰ "The Hungarian Revolution and Totalitarian Imperialism," 150.

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