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**Power and Authority in Constitutional Theory:
Hidden Dialogue between Hannah Arendt and Carl Schmitt**

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Power and Authority in Constitutional Theory: Hidden Dialogue between Hannah Arendt and Carl Schmitt

Abstract

This paper provides a new interpretation of Hannah Arendt's theory on the separation between power and authority. I contend that there is a "hidden dialogue" between Arendt and Carl Schmitt, for Arendt's perspective that "power rests on the people, while authority resides in the constitution" is a response to Schmitt's monistic view of the constituent power of the nation. Schmitt defends the Hobbesian tradition which insists that in the modern state the *summa potestas* and *summa auctoritas* should coincide in the Sovereign's decision. By contrast, Arendt's theory of societal power and constitutional authority provides an alternative genealogy of modern politics based on republican pluralism. Arendt's "neo-Roman" idea of authority is in fact an attempt to deconstruct Schmitt's political theology. By demonstrating the illocutionary intention of Arendt's theory, we can achieve a more adequate understanding of her idea of political foundation, which is often claimed to be full of confusions.

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The sovereign decision is the absolute beginning, and the beginning (also in the sense of *Arche*) is nothing but sovereign decision. (Schmitt, 2004:62)

What save the act of beginning from its own arbitrariness is that it carries its own principle within itself, or to be more precise, that beginning and principle, *principium* and principle, are not only related to each other, but are coeval. (Arendt, 1990: 212)

1. Introduction: Bring Arendt back to the Weimar Context?

Two interrelated trends in the past two decades in history of ideas had immense impacts on interpreting Hannah Arendt's famous theories of human action and republican freedom. One is the political implication of Heidegger's philosophy; the other is the "rediscovery" of Carl Schmitt's political theory in the Anglo-American world. Indeed, as an émigré from Nazi Germany to France and ultimately to the United States, Arendt cannot possibly avoid confronting two of the most important thinkers of the Weimar Republic, who collaborated with the Nazis. This is the fate not only for Arendt, but also for Marxist theorists of the Frankfurt School.

Martin Jay's critical but perceptive term "political existentialism" brought forth these two trends into focus (Jay, 1986: 237-261). Not surprisingly, many Arendtian categories underwent reevaluation in view of these developments. Due to the personal relationship between Heidegger and Arendt, the affinities between their thoughts draw more attention and systematic analysis (Villa, 1996). However, an equally important branch of literature is fast developing to interpret Arendt's theory in

the context of Schmitt's provocative thought.¹ In addition to the works by Jay and Richard Wolin (2001), some new studies began to examine this intellectual affinity in more detail. Arendt's analysis of modern revolutions is perceptively compared with Schmitt's view (Scheuerman, 1998). Her theory of human action in the sense of the faculty to begin bears resonance with Schmitt's theory of "decision" (Kalyvas, 2004). Last but not the least, her relentless critique of "absolute" may well be a critique of political theology, which Schmitt cherished most (Kalyvas, 2005).

In a similar orientation, the objective of this paper is to focus on the issue of authority and power in Arendt's republicanism and Schmitt's decisionism. Arendt's idea of authority has been addressed by several excellent scholars, though not garnering as much literature as ideas like action, freedom, and judgment. Canovan (1994: 218-223) regards the idea of authority as an indispensable element of Arendt's "new republicanism", especially related to the "world-building" or stabilizing effect for the public realm. Honig (1993: 76-125) pursues a similar line of inquiry, which is one of the most virtuoso analyses in Arendt literature. As is well known, Arendt's political theory is based on the priority of action as performative in the world of human plurality. Honig points out that performatives must occur in an "authoritative discursive practice," yet Arendt "gives no account of the conditions of the practice" (p.87). Based on Austin and especially Derrida's interpretation of the *Declaration of Independence*, Honig demonstrates how Arendt "constructs a replacement for it (i.e., the Roman idea of authority): through fabulous rendering of the American Revolution and founding, she offers a powerful account of a practice of authority *for* modernity"

¹ As Scheuerman points out, it may seem like sacrilege to explore the intellectual affinity of the thought of a fierce critic of totalitarianism with that of the "crown jurist" of the Nazis. It is certainly not my intention to depreciate Arendt's thought in this way. The point is rather that, if we do demonstrate the critical way by which Arendt overcome Schmitt's political decisionism, her thought can be of even more theoretical relevance than its current status.

(p.96, original emphasis). Honig's skillful deployment of "strategy of intervention"² on Arendt's anti-foundationalism paves the way to relate Arendtian worldview with postmodern theories of "the political".³

Despite these re-evaluations of Arendt's idea of authority, there are still doubts about its relevance for contemporary democracy. Most relevant is the critical perspective of Scheuerman (1998). After comparing Arendt's theory of revolution as a reaction to Schmitt's theory of constituent power, Scheuerman arrives at an unflattering conclusion:

[H]er famous account of the founding of the American Republic suffers in part because the model of the French Revolution counterposed to it, like Schmitt's account, is too one-sided. Although Arendt suggests how we might begin to provide an answer to Schmitt's authoritarian constitutional theory, her own response to Schmitt ultimately remains incomplete. (Scheuerman, 1998: 253)

Scheuerman's critiques of Arendt's "incomplete response" boil down to two vital issues: Arendt's anti-majoritarian eulogy of the American Supreme Court as the defender of the Constitution, and her appeal to the old-fashioned idea of authority for justification. Scheuerman complaints are that,

Unfortunately, this view of the American Supreme Court raises as many questions as it purports to answer. It seems to conflict with Arendt's earlier conception of authority, as formulated in the crucial "What is Authority?" Whereas *On Revolution* implies that the ongoing "constitutional conversation" of the Supreme Court represents an augmentation of the "mutual deliberation" basic to the act of founding itself, the earlier essay bluntly asserts that "[a]uthority ... is incompatible with persuasion ..." It is difficult to imagine what status such a conception of authority can rightfully possess in a modern, disenchanted democratic polity: particularly in a democracy, only argumentation and discursive "persuasion" can legitimately justify the exercise of state power. (Scheuerman, 1998: 269)

Consequently, there are two interpretations diametrically opposed to each other on the relevance of Arendt's idea of authority. The objective of this paper is to provide a historical account and theoretical reconstruction of Arendt's theory of

² See Honig 1993:109 for her own exposition of this term.

³ Further analyses of Arendt's idea of authority can be found in Curtis 1999:105-114 and Pirro, 2001: 51-73.

modern authority. I argue that the illocutionary intention of Arendt's idea of authority is exactly the issue that Scheuerman is dealing with – Arendt's challenge of Schmitt. Yet Scheuerman does not probe into the issue enough, and thus misjudges the effectiveness of Arendt's theory.

This paper is organized as follows. The second section provides a diachronic overview of Arendt's neo-Roman idea of authority from *Origins of Totalitarianism* up to the essay "What is authority?" The third section discusses the textual evidence for the possibility of Arendt's hidden dialogue with Schmitt. The fourth section moves to review Schmitt's monistic theory of power and authority and his view about two great revolutions. Based on this comparative analysis, I re-examine three themes of Arendt's theoretical insights in *On Revolution*: (1) Framing the constitution may not be an absolute and arbitrary beginning. (2) The beginning needs not resort to an absolute above the laws, be it sovereignty as *legibus solutes* or *pouvoir constituant*. (3) The constitution of the United States transforms the Romans maxim "*potestas in populo, auctoritas in senatu*" into the constitutional premises that political power rests in We the People while political authority resides in the constitution. These three elements are Arendt's rejoinders to Schmitt's decisionism.

2. Development of Arendt's View on Authority

Jan-Werner Müller (2003: 2) suggests, "Schmitt was present as an implied interlocutor in Hannah Arendt's work on revolutions." Although he does not develop this line of inquiry in his excellent study on Schmitt's influence on the post-war European thought, this is the clue for the following inquiry.

In *On Violence*, Arendt systematically restates her famous distinction between

power, violence, authority, and related terms. According to her,

Power corresponds to the human ability not just to act but to act in concert. Power is never a property of an individual; it belongs to a group and remains in existence only so long as the group keeps together. When we say of someone that he is “in power” we actually refer to his being empowered by a certain number of people to act in their name. The moment the group, from which the power originated to begin with (*potestas in populo*, without a people or group there is no power), disappears, “his power” also vanishes. (CR, 143)

Authority... can be vested in persons... or it can be vested in offices, as, for instance, in the Roman senate (*auctoritas in senatu*) or in the hierarchical offices of the church.... Its hallmark is unquestioning recognition by those who are asked to obey; neither coercion nor persuasion is needed.... To remain in authority requires respect for the person or the office... (CR, 144)

Unlike three other concepts explained in this context (strength, force, and violence), power and authority are explicated by its Roman origin – *potestas in populo*, *auctoritas in senatu* – a theme crucial for Arendt’s political theory. These brief formulations crystallize her effort toward conceptual redefinition for more than a decade. What, then, is the origin of this intellectual enterprise?

In *The Origins of Totalitarianism*, the issue of authority is targeted against the interpretation of Nazism advanced by T. W. Adorno:

[I]n spite of the numerous misunderstandings concerning the so-called “authoritarian personality,” the principle of authority is in all important respects diametrically opposed to that of totalitarian domination. Quite apart from its origin in Roman history, authority, no matter in what form, always is meant to restrict or limit freedom, but never to abolish it. Totalitarian domination, however, aims at abolishing freedom, even at eliminating human spontaneity in general. (OT, 404- 405)

Underlying the analysis of Nazism, the genuine issue concerns the then urgent need to define the nature of Stalinism and its relationship with the Marxist tradition. As Lincoln (1994: 120ff) has shown, Arendt’s persistence in the usage of “totalitarianism” concurred with the perspective of then dominant Sovietologists and gained upper hand over the “authoritarian personality” interpretation of Nazism.

For Arendt, the disappearance of authority and decline of stabilized political

structure in western society constituted the underlying causes for the rise of totalitarianism. In addition to the issue of totalitarian organization (OT, 364), Arendt began to reflect the theoretical relevance of her dispute with Adorno regarding the practice of authority. Two lines developed from her reflections after finishing OT. In “Ideology and Terror” (1953, incorporated into later editions of OT as a conclusion), Arendt constructs a binary conceptualization about authority: in the rapidly changing actions of humans, positive laws are relatively permanent, though still changeable according to circumstances. This permanence must be derived “from the eternal presence of their source of authority” (OT, 463). Action as performative and authority as stabilizing factor are presented in embryo. However, the attribute of “transcendence” of authority, which she would later severely criticize, is actually a positive attribute in the earliest formulation.

Another line can be found in “Authority in the Twentieth Century” (1956). Intentionally overlooking the Marxists, Arendt argues her case against liberals and neo-conservatives:

[L]iberalism, we saw, measures a process of receding freedom, and conservatism measures a process of receding authority; both call the expected end-result totalitarianism and see totalitarian trends wherever either one or the other is present. (Arendt, 1956: 414)

Arendt, by contrast, contends that “the truth is equally distributed between them and that we are in fact confronted with *a simultaneous recession of both freedom and authority in the modern world*” (*ibid*, my emphasis). This signifies a subtle but important change on Arendt’s part regarding the relationship between authority and freedom: In OT, Arendt states that authoritarian principle restricts but does not eliminate freedom; in the present context, her claim of a simultaneous decline of authority and freedom implies that authority may be *indispensable* for political freedom.

In Arendt's usual style, these two lines of theoretical thought have to be grounded on the history of ideas. Arendt began this enterprise in preparing a Harvard lecture entitled "Authority" (Arendt, 1953a). She makes a stronger claim that coercion and terror, not authority as legitimate power, are opposed to freedom (p.1). Moreover, human freedom needs the "space" provided by authority:

The outward reality of freedom, as distinguished from the human capacity itself, indicates the space in which we move freely and which must be limited and protected by boundaries like all space fit to be inhabited by men. Freedom is this space between men which binds them together and at the same time separate them from one another. A body politic is free to the extent that it guarantees this space in-between and compared to this special reality the question of how many liberties a given body politic permits is secondary, changing with circumstance. (p.5)

Consequently, "authority will come into being automatically wherever men...have established a common world and organized a body politic. It then is the body politic itself, with its laws and institutions, which confronts each of them in his individuality as the authority" (p.7).

Regarding the different concepts of authority in the Western tradition of political thought, Arendt analyzes three. The first is the biblical concept: the word of God as commandment, which is the genuinely transcendent and otherworldly source of authority (p.14). The second is the Platonic "ideas" as "absolute units of measurement" of the human world (pp.14-16). The last and the most important concept is the Roman triad, religion-authority-tradition (pp.16-17). These terms are inseparable for Romans because they "expressing the sacred binding force of an authoritarian beginning to which one could remain bound only through tradition" (p.16).

These three concepts of authority were the precursors of Arendt's later analysis in "What is Authority?" However, one subtle difference must be noted. In an earlier manuscript, Arendt upheld the normative and transcendent nature of all these

three concepts of authority:

The three sources of authority which we enumerated ... have in common that they are not directly derived from the realm of political affairs themselves, but are transcendent, transcend the sphere of strictly human affairs which go on between men. The origin of authority, of the legitimacy of political power is non-political in the double sense that it actually lies beyond politics and that politics is essentially seen from a non-political point of view. When we say today that authority has broken down in the modern world, we actually mean to say that we have lost this political-transcending standpoint and with it the capacity to establish and preserve the body politic from without. This is sometimes called modern immanentism and totalitarian domination in something considered to be the result of it in the sense that neither Nazi nor Bolshevik dictatorship recognized any transcendent authority but pretended to be able to act politically by following inherent laws of nature of history which are given and which can be discovered. (p.18)

This appraisal of the transcendent nature of authority is in line with her arguments in “Ideology and Terror” regarding the need to distinguish a lawful government from a lawless one (OT, 426-427). This can be further confirmed by Arendt’s emphasis on the authority of the law, which distinguishes a republic from other forms of government (Arendt, 1953a: 6).

3. What is Authority?

In 1956, a conference organized by the *American Society of Political and Legal Philosophy* on the theme of “Authority” provided the occasion for Arendt to weave these lines of thought into a grand synthesis.⁴ Originally entitled “What was Authority?”, this conference paper later incorporated selected paragraphs from “Authority in the Twentieth Century” and “Religion and Politics” into the now famous article “What is Authority?” collected in *Between Past and Future*.⁵

⁴ See Lincoln, 1994:120-125, 210-214 for an illuminating analysis in the mode of sociology of knowledge, especially his reconstruction of the intention and underlying network in organizing the this conference, the proceedings of which initiated the famous *Nomo* Series. The theme, together with a previous conference on “Totalitarianism,” signals the most urgent task for Americans to understand the nature of the Soviet regime, America’s emerging arch-enemy in the Cold War.

⁵ It is tempting to speculate that, after OT, when Arendt engaged in her project “totalitarian elements of

As there have already been many excellent studies, we shall focus on the differences between it and the formulations in previous manuscripts. By now, Arendt has delivered the Walgreen Foundation Lecture in April 1956, which constitutes the basis of *Human Condition*; that is to say, she has fully developed another triad, the famous distinction between labor, work, and action. This Hellenistic triad makes revising the Roman triad necessary. The reason is obvious: by now through dialogues with Marx, Arendt had re-discovered the Greek politics of *arête*. Action becomes an end-in-itself. However, the crucial issue is how to explain the formation of a public realm in which actions take place. The Greek regarded legislation as something pre-political;⁶ the Roman foundation-tradition could ground its idea of *auctoritas*; in other words, for Greeks and Romans, the public realm was somehow “given” – by *physis* or tradition. The situation of modernity is entirely different. After the breakdown of authority and tradition, we moderns have to be self-reliant in establishing the public realm as the space of our own action. The question is what is the mode of *vita activa* that forms this public realm topologically? Obviously, its formation cannot occur by the mode of labor or work/fabrication, because this transgression would result in bringing violence into politics (HC, 228). Modern political agencies are thus faced with twofold tasks: to establish public realm via action only, *and* acting in that realm.

This is the “apparent paradox” in Arendt’s theory highlighted by Honig:

[I]f promising is to be a source of reassuring and stability, the operation of the practice and the meaning of particular promises must be relatively unproblematic. If this is the case, then action as promising cannot occur *ex nihilo* and will not be as risky, as contingent and unpredictable, as Arendt says it is. On the other hand, if action is that contingent, then promising will not by itself be able provide the satiability Arendt expects it to: the source of satiability is coming

Marxism,” the Roman spirit leads to her three lines of inquiries: authority (the manuscripts quoted above), tradition (*Tradition and the Modern Age*), and religion (*Religion and Politics*).

⁶ It is the “Socratic school, particularly Plato, who was skeptical about the frailty of action and turns to fabrication of the craftsmen to establish the idea of political rule (HC, 230).

from somewhere else, possibly from something external to action's purely performative speech act. (Honig, 1993: 88)

From this perspective, one can appraise Arendt's changing attitude in "What is Authority?" The three concepts of authority are still regarded as the paradigmatic cases, but Arendt now has a new concern: *Is there any adequate mode of forming authority in the modern world wherein authority was supposed to have been lost?* With this new concern, Arendt revised her depiction of Roman authority. The triad structure is still intact. However, Arendt focuses on the dimension of "augmenting" the foundation. Most importantly, *Roman authority is no longer characterized as "transcendent" but evolved from political practice.* Relation of authority still signifies inequality and hierarchy; however, "to visualize this hierarchy in the familiar image of the pyramid, it is 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" (BPF, 124, italic is mine).

Platonic precursory meditation on the rule of philosopher-king did "reach into the height of a sky above," the world of ideas. Arendt, deploying Heidegger's critique of Plato's doctrine of truth as abandoning *aletheia*, points out that Plato transformed the idea from "true essence to be contemplated" to "measures to be applied." Arendt credits Plato with utopian violence (111), as the "transcendent" nature of Plato's "tyranny of reason" would need to coerce the multitude into obedience (p.107-108). Christianity followed suit in this transcendent enterprise, transforming Platonic fabulous myths into religious sanction of hell for the law as commandment (128-135).

Beside Platonic, Roman, and Christian concepts of authority, Arendt now addresses the paramount modern thinker of political foundation – Machiavelli, who

was absent in previous accounts.⁷ Arendt acknowledges Machiavelli's originality:

The greatness of his rediscovery lies in that he could not simply revive or resort to an articulate conceptual tradition, but had himself to articulate those experiences which the Romans had not conceptualized but rather expressed in terms of Greek philosophy vulgarized for this purpose. (BPF, 138)

This "rediscovery" turns out to be deceiving and inadequate, as Machiavelli actually attempted to "introduce new orders" under the modern predicament of loss of authority. Machiavelli's novel solutions, be it founding by "*uno solo*" with extraordinary *virtù* (*Discourse*, I:10) or "drawing back toward beginning" (*Discourse*, III:1), signifies the emergence of the modern idea of revolution. Machiavelli's solution, paradoxically, is a Platonic derogation of the Roman foundation.

In one of Arendt's manuscripts, she writes, "ROBESPIERRE: The perfect Machiavellian."⁸ She cites the dictatorship of the Committee of Public Safety as the paradigmatic case of the priority of political necessity over every other ethical consideration, and thus relates Machiavellism to what she regard as a failed path of revolution, the French Revolution. For Arendt,

Like the Romans, Machiavelli and Robespierre felt founding was the central political action, the one great deed that established the public-political realm and made politics possible; but unlike the Romans, to whom this was an event of the past, they felt that for this supreme "end" all "means," and chiefly the means of violence, were justified. *They understood the act of founding entirely in the image of making*; the question to them was literally how to "make" a unified Italy or a French republic, and their justification of violence was guided by and received its inherent plausibility from the underlying argument: you cannot make a table without killing trees, you cannot make an omelet without breaking eggs, you cannot make a republic without killing people. In this respect, which was to become so fateful for the history of revolutions, Machiavelli and Robespierre

⁷ In HC (228-229), when Arendt analyzes how modern deployment of "fabrication" in politics resulted in violence and a series of revolutions, Arendt does not criticize Machiavelli in this context. Canovan (1992:163-169, esp. p.166) has already noticed this very change. She attributes Arendt's change of formulation to the fact that, unlike Nazism, which is the result of erosion of authority, the root of Stalinism – Marxism – is rather the culmination of the tradition. Thus, Arendt's later critique of the transcendent nature of the Western concept of authority still relates to the totalitarian project. I shall argue that Arendt's changing attitude signifies a changing concern for a broad theme: constructing a political theory of beginning that can overcome the pitfalls of the modern ideas of sovereignty and revolution. Totalitarianism thus recedes to the background and she focuses on the political theories of the nation state.

⁸ See *The Hannah Arendt Papers at the Library of Congress*, Subject File, 1949-1971, 024243.

were not Romans, and *the authority to which they could have appealed would have been rather Plato*, who also recommended tyranny as the government where “change is likely to be easiest and most rapid”. (BPF:139, my emphases)

After the demise of authority, modern political thinkers developed reified theories of revolution, which claimed to solve the predicament of beginning, but were themselves entangled in the political impasse of arbitrary beginning in reality.

Are there any viable solutions? As an avid proponent of the view that human natality signifies the possibility of new beginning, Arendt has no right to be pessimistic. Fortunately, the American Revolution – at least via the right kind of hermeneutic reconstruction – embodies a new way to practice authority under the modern condition. At the end of “What is Authority?” Arendt announces the imperative to analyze the American “act of foundation,” (pp.140-141) which she is to explore in detail in *On Revolution*.

The practice of modern authority necessarily involves an analysis of revolution and constitution making:

Machiavelli’s insistence on violence... was the direct consequence of the twofold perplexity in which he found himself theoretically, and which later became the very perplexity besetting the men of revolution. The perplexity consists in *the task of foundation*, the setting of a new beginning, which as such seemed to demand violence and violation, the repetition, as it were, of the old legendary crime (Romulus slew Remus, Cain slew Abel) at the beginning of history. This task of foundation, moreover, was coupled with *the task of lawgiving*, of devising and imposing upon men a new authority, which, however, had to be designed in such a way that it would fit and step into the shoes of the old absolute that derives from a God-given authority, thus superseding an earthly order whose ultimate sanction had been the commands of an omnipotent God and whose final source of legitimacy had been the notion of an incarnation of God on earth. (OR, 38-39)

This Machiavellian “perplexity” later has various embodiments in modern constitutional theory. One of the most important cases is Sieyès’s famous distinction of the constituent power (*pouvoir constituant*) and constituted power (*pouvoir constitué*). The theory of constituent power is further developed in the direction of

decisionism by Schmitt in his *Verfassungslehre* to counter normative thinking in jurisprudence. The beginning of a constitutional order is conditioned neither by any norms nor by any procedures, but is constituted by a willful self-determination of a nation.

Arendt is certainly familiar with this tradition, as she states that “The word ‘constitution’ obviously is equivocal in that it means the act of constituting as well as the law or rules of government that are ‘constituted’, to be embodied in written documents or, as in the case of the British constitution, implied in institutions, customs, and precedents.” (OR, 145) Her important critiques of Sieyès (OR, 161-164) demonstrate that the ideas of *pouvoir constituant* and sovereignty are the archenemies in her republican narrative of the modern revolution. Our problem is as follows: Is it possible that Arendt, in criticizing Sieyès’s idea of *pouvoir constituant*, is in reality esoterically criticizing Carl Schmitt, the “crown jurist” of the Nazi regime, and even conducting a “hidden dialogue” with this eminent enemy of liberalism and parliamentary democracy?

4. A Hidden Dialogue?

Arendt is certainly aware of the basic line of Schmitt’s thought. In *Origins of Totalitarianism*, she writes that Schmitt’s “very ingenious theories about the end of democracy and legal government still make arresting reading” (OT, 339). On the memorial piece on Waldemar Gurian, a former student of Schmitt, she describes Schmitt as “the famous professor of constitutional and international law who later became a Nazi” (MDT, 252).⁹

One central clue, I believe, can be found in comparing Arendt’s analysis of the

⁹ Scheurman (1998: 272) speculates about the possibility of Arendt discussing Schmitt’s legal theory with Gurian.

conceptual distinction between authority and power in Roman and Christian thought (BPF, 121-128) with Schmitt's famous discussion on *pouvoir constituant* (V, 75-76). Schmitt defines *pouvoir constituant* as "a political will, *by its power or authority*, [which] determines the type and form of its political existence through a concrete total decision" (V: 75, italics is mine). For this important definition, Schmitt adds a long footnote with regard to the different meanings "power" and "authority":

To the further discourse of this constitutional theory, it is not necessary to distinguish power (*Macht*) and authority (*Autorität*). Nevertheless, due to the importance this distinction bears to the theory of the state, we may roughly make the following remarks: power relates to always-realistic sovereignty and majesty; on the contrary, authority relates to reputation which is essentially based on continuity involving tradition and duration. *In every state, these two – power and authority – always combine to be effectual.* (V:75; italics is mine).

Schmitt went on to discuss the distinction between *auctoritas* and *potestas/imperium* in the Roman tradition and its continuation in medieval political thought, that Pope owns *auctoritas* while the Roman Emperor has *potestas*.

If we compare this paragraph with Arendt's exposition of Roman idea of authority (BPF, 122-125), the resonances suddenly come to light. First, both Schmitt and Arendt emphasize continuity of tradition as the indispensable condition of authority. Both refer to the discussions by Theodor Mommsen in the third volume of *Römische Staatsrecht*. The only difference is the pagination referred to, as Schmitt refers to p.1033, while Arendt cites 1034 and 1038-1039 together with vol. 1, pp.73, 87. Authority and power were separated in the Roman tradition: *auctoritas* belongs to the Senate while *potestas* and *imperium* come from the people. Secondly, both highlight the fact that the medieval church upheld this dualism: the Pope in a sense can claim to have *auctoritas*, while the Roman emperor has *potestas*. Both Schmitt and Arendt refer to the famous line of Pope Gelasius I "There are two by which this world is principally governed: the authority of the sacred Pontiff, and the royal

power” from Migne’s *Patrologia Latina*, vol.59, p.42a, though with slight difference in quoting Latin. Third, in his footnote Schmitt goes on to discuss the *auctoritas* of the League of Nations and International Court at Hague. Rejecting the notion that these two international organizations have *potestas* and reducing their judicial *auctoritas* to “non-political” roles, Schmitt quotes Montesquieu’s depiction of the judiciary “power” as “*en quelque façon nul*” (“nil in a sense”). However, for Arendt, Montesquieu is the only modern thinker who is genuinely Roman and not tainted by the sovereignty thinking, and who develops a new theory of “power”.

Are these resonances mere contingent or there is indeed a hidden dialogue? One clue is Arendt’s acknowledgement: “Professor Carl J. Friedrich drew my attention to the important discussion of authority in Mommsen’s *Römische Staatsrecht*.” (BPF, 292, n.33) Compared with Friedrich’s own discussion of authority, Mommsen’s work is indeed the source on Roman usage (Friedrich, 1972: 47-48), though Friedrich quotes the same page number as Schmitt (vol.3, pp.1033 ff) and refers to R. Heinze’s article. This is an article used by Schmitt but not mentioned by Arendt. Thus, it might be Friedrich’s reminder that made Arendt consult Mommsen’s work. However, Friedrich (1972: 93) did not pay attention to the medieval development of the Roman dualism as did Schmitt and Arendt. Thus, Arendt’s reference to Gelasius might be from Schmitt.

My tentative suggestion is that both Friedrich and Arendt were using Schmitt’s discussion on the relationship between power and authority in *Verfassungslehre* without mentioning their source. This argument may be repudiated as relying merely on an endnote, and thus not being solid enough. However, Arendt’s own justification of her reliance on a footnote of the *Social Contract* to interpret the pivotal issue of the relationship between general will and particular interests is worthy of

quote:

This sentence contains the key to Rousseau's concept of the general will.¹⁰ The fact that it appears merely in a footnote (*Social Contract* II, 3) shows *only that the concrete experience from which Rousseau derived his theory had become so natural to him that he hardly thought it worth mentioning.* (OR, 291, n.24; italic is mine)

Thus, important remarks in a footnote might well unveil the presumptions of an author.

However, more direct textual evidences would be necessary for the stronger claim that Arendt has Schmitt's constitutional theory in mind in *On Revolution*. According to Scheuerman (1998: 253), Arendt seems to have familiarity with the basic outlines of Schmitt's political and legal thought. However, Scheuerman continues, "[a]lthough I have found no specific reference to the 1928 *Verfassungslehre*, where Schmitt offers the most lucid account of his constitutional theory, she may well have been aware of its core claims." (1998: 272, n.2)

Textually, there is indeed one crucial direct reference to *Verfassungslehre* in an endnote of *Between Past and Future*, which Scheuerman fails to notice:

See the first four chapters of the second book of *The Social Contract*. Among modern political theorists, Carl Schmitt is the most able defender of the notion of sovereignty. He recognizes clearly that the root of sovereignty is the will: Sovereign is he who wills and commands. See especially his *Verfassungslehre*, München, 1928, pp.7ff, 146. (BPF, 296, n.21).

The context of this endnote is Arendt insistence that the idea of political freedom is incompatible with any theories of sovereignty and will. Rousseau is singled out as "the most consistent representative of the theory of sovereignty" in this endnote, with further discussions on Schmitt's notion of sovereignty.

It would be interesting to check out the contents of two particular references in Arendt's endnote. On Page 7 of *Verfassungslehre*, Schmitt discusses that only

¹⁰ The Rousseau text that Arendt refers to is about Marquis d'Argenson's remarks about the manipulation of opposition between particular interests to engender common interest. In this context, Arendt discusses particular interest as "enemy" -- an issue central to Schmitt's concept of the political.

“concrete existence” (not any norms) can have sovereignty. Immediately after this paragraph, beginning from Page 9, one encounters Schmitt’s very first discussion on *verfassungsgebende Gewalt* (constituent power) in *Verfassungslehre*. Similar to his formal definition quoted above, in this context Schmitt remarks that, “In truth, the validity of a constitution is from a kind of constituent power (that is, power or authority), and legislated through its will. Contrary to mere norm, the word ‘will’ relates to something existential as the origin of ought.”

Another reference by Arendt, Page 146 of *Verfassungslehre*, discusses “the political concept of law” (as opposed to the concept of law in the *Rechtsstaat* tradition). In this context, Schmitt claims, “from the perspective of the political concept of law, a law is a concrete *will* and *command*” (emphases original).

Consequently, textual evidence demonstrates that Arendt has Schmitt’s theory of sovereignty in mind, as sovereign decision as the absolute beginning of political order and law as command are two theoretical objectives that Arendt attempts to refute in *On Revolution*. To elaborate the theoretical implication of this “hidden dialogue”, our next task is understand Schmitt’s view on the relation between power and authority.

5. Schmitt’s Monistic View on Power and Authority in the Modern State

The crucial issue is in Schmitt’s remark in his footnote to the definition of *pouvoir constituant*: “In every state, these two – power and authority – always combine to be effectual.” This clause shows that, for Schmitt, even though he accepts the distinction and separation of *auctoritas* from *potestas* in Roman and medieval constitutional theory, he insists that in the modern state these two are interrelated and can no longer be distinguished, not to mention be separated. In fact,

they must be combined to provide the required political-existential momentum for the constituent power of a nation. It is this “*monism of authority and power*” in Schmitt’s theory of constituent power that Arendt attempts to overcome in *On Revolution*; and it is in this context one can decipher the illocutionary intention of Arendt’s persistence in upholding the Roman tradition.

As is now well known, the theoretical core of Arendt’s constitutional politics is the separation of authority from power: “the framers of the American constitutions, although they knew they had to establish a new source of law and to devise a new system of power, were never even tempted to derive law and power from the same origin. The seat of power to them was the people, but the source of law was to be the Constitution.” (OR, 157) This American innovation in constitutionalism is contrasted with the French model:

The great and fateful misfortune of the French Revolution was that none of the constituent assemblies could command enough authority to lay down the law of the land; the reproach rightly leveled against them was always the same: they lacked the power to constitute by definition; they themselves were unconstitutional. Theoretically, the fateful blunder of the men of the French Revolution consisted in their almost automatic, uncritical belief that power and law spring from the selfsame source. (OR, 165)

In contrast, Schmitt upholds opposite values expounded by Arendt in *On Revolution*. More adequately, *On Revolution* is an “inversion” of *Verfassungslehre*.

We shall begin by the issue of authority. Schmitt is extremely concerned with this issue, and fond of quoting the Latin version of Hobbes’s idea of the law:

Auctoritas, non veritas facit legum (Not truth but authority makes the law).¹¹ The clearest exposition can be found in *The Leviathan in the State Theory of Thomas Hobbes* (1938):

What significant in the statement is Hobbes’ conclusion that it is no longer valid to distinguish between *auctoritas* and *potestas*, making *summa potestas* into

¹¹ See, for example, Schmitt 1983:140; 1985:33; 2004: 61, 105. Except in *Verfassungslehre*, where he refers to chapter 19 of *Leviathan*, all other references are to chapter 26 of *Leviathan*.

summa auctoritas. (p.45)

This view is the culmination of Schmitt's efforts to conceptualize a monistic power structure of the sovereign state through decisionism.

The beginning of Schmitt's concern on authority seems to be *Political Theology*, where he contrasts "decisionism" with neo-Kantian normative jurisprudence. Tracing the line of debate to John Locke, Schmitt insists that Locke's attempt to deploy "law" as opposed to *commissio* or the personal command of the monarch is futile, for "he did not recognize that the law does not designate to whom it gives authority... The legal prescription, as the norm of decision, only designates how decisions should be made, not who should decide" (Schmitt, 1985: 32). The pivotal issue of authority thus cannot be determined via legal norm of competence. It is in this context that Schmitt designate Hobbes as the representative of the opposite thinking – decisionism:

The classical representative of the decisionist type... is Thomas Hobbes. The peculiar nature of this type explains why it, and not the other type, discovered the classic formulation of the antithesis: *auctoritas, non veritas facit legum*.... Hobbes also advanced a decisive argument that connects this type of decisionism with personalism and rejected all attempts to substitute an abstractly valid order for a concrete sovereignty of the state. (Schmitt, 1985: 33)

Since Hobbes's conceptualization, the sovereign of the modern state has combined the hitherto separated power and authority into a monistic structure.

George Schwab (1989: 45-47) brought out implications of Schmitt's deployment of Hobbes most clearly:

Authority is here combined with *potestas directa* and not indirect power. Those in possession of *potestas directa* demand the obedience of individuals in exchange for protection.... [T]he starting point is the individual. He obeys only those who can protect him. This is always *potestas directa*. The source which possesses *potestas directa* also possesses authority... By possessing both – *potestas* and *auctoritas* – this source is in the position to interpret... anything else is, in concrete, "veritas". (Schwab 1989: 46-47)

Thus, power combined with authority in the sovereign decision is the core of

Schmitt's political theory. Even though his position may have undergone some change from the idea of sovereignty in *Political Theology* to the *pouvoir constituant* in *Verfassungslehre*;¹² the underlying thinking remains the same. Hence, in his definition of constituent power, the terms "power" and "authority" are deemed interrelated and combined.¹³

The constituent power as the political will of a nation that initiates the beginning of a constitutional order is purely an "existence" unbounded by any norm, yet gives validity and legitimacy to all constitutional norms. For Schmitt, the French Revolution and Sieyès's doctrine of *pouvoir constituant* are the greatest achievements of modern politics. They crystallized into a vision of "national democracy" with the primacy of will of political determination of the nation (V: 49-51; 231-234). The French nation became a self-conscious subject of the constituent power; it "constructed itself" by giving itself a constitution to become a concrete, historical agency. This political dimension of the French Revolution, Schmitt emphasizes, inherits the "absoluteness" from the monarchy, and even leads to a more rigid unity and indivisibility of the state. Thus, all constituent assemblies, even if their task is to create liberal or democratic constitutional order, are still in the mode of "sovereign dictatorship" as they are not limited by any norms or procedures, and for the end to create a constitutional order, what they need is to create a unitary national will.

¹² See Cristi, 1998 for a detailed discussion on Schmitt's change.

¹³ There is one significant aberration in Schmitt's *Der Hüter der Verfassung* (1931). According to the Weimar constitution, the Reich President has no "power" other than the emergent power contained in Article 48. Under this specific situation, when Schmitt attempts to bestow more power to the President, Schmitt resorts to the classical separation between *auctoritas* and *potestas*, which he has rejected and replaced with the monistic "combined" version. In this context, he argues that as the President has the plebiscitarian support from the whole nation, he should have "authority" to coordinate other constitutional powers. Benjamin Constant's *pouvoir neutre* is also resorted to by Schmitt (pp.135-140). The conclusion Schmitt attempts to draw is that the Reich President, not the Legislature nor the Judiciary, should be the "defender of the Constitution." In this case, we can clearly see the underlying opportunistic tendency in Schmitt's overtly meticulous deployment of constitutional terms. For this particular purpose, he is willing to sacrifice the "combined vision of authority and power".

Schmitt quotes a famous phrase of Sieyès: “It is enough that a nation wills” (V: 79), because a unitary will would create political unity, especially if this will is related to a decision of enemy.

Contrary to his eulogy of the French Revolution, Schmitt slights the contributions of the American Revolution: “At that time, people have not distinguished the “covenant”, which establishes the foundations of community and society, from another act of constituting a new political entity and based on this act the free determination of particular form of existence” (V:78-79). In other words, for Schmitt, the American Revolution is not a genuine political “beginning,” as the constituent power of the nation did not operate during the framing of the constitution. The Federalists were merely concerned with “practical, organizational questions” (V: 78).

Schmitt’s repudiation of the American contribution is not limited to these quibbles. The underlying reason is that, based on Montesquieu’s political theory, the United States established the first written constitution based on separation of powers and federalism. Separation of powers, for Schmitt, embodies the idea of *Rechtsstaat* or rule of law, which advocates the formal concept of the law (V: 143). This ideal is opposed to Schmitt’s idea of the “political concept of the law” in the tradition of decisionism (V: 143-146). Their opposition is very stark:

From the perspective of *Rechtsstaat*, the essence of the law is norm, and norm with determinate qualities: it is a *right* rule of *general* character. The law for political concept of the law is concrete *will* and *command* and an act of sovereignty. (V.:116; original emphasis)

Not incidentally, page 116 of *Verfassungslehre* is exactly Arendt’s reference mentioned above (BPF, p.292, n21). Thus, my suggestion that Arendt may have conducted hidden dialogue with Schmitt on the issues of constituent power and sovereignty may no longer seem to be unfounded at first glance.

6. Arendt's Analysis of the American Revolution in a New Light

Opposed to Schmitt's verdict, Arendt insists that, among the numerous modern revolutions only the American Revolution escapes the Machiavellian curse of the dialectical escalation of violence. The American Founding Fathers established an enduring *constitutio libertatis* without appeal to violence (Arendt 1977, 140; 1990, 165-178). In Arendt's interpretation, the Founding Fathers carried out this Roman spirit (the idea of authority as augmentation of a foundation) under the condition of modernity.

Scheuerman has meticulously demonstrated that Arendt's account of two revolutions is almost an "inversion" of Schmitt's depiction. Our task is to elaborate the theoretical implications of this hidden dialogue. The original contributions of Arendt's interpretation consist of three arguments.

First, the American Revolution was able to overcome the pitfalls of the French Revolution because it did not strive for an absolute new beginning. Colonial experience in self-government had paved the "foundation" for republican self-rule. What the revolution and constitution making achieved were exactly "augmentation" in the Roman tradition, which Arendt believes to be the essence of political authority. Put in the language of social contract, the Founding Fathers did not attempt to create a new political order out of a "state of nature", but assembled the societal covenants into the political form of a free constitution (Arendt 1990, 165-171), or constituted a new power center in a confederate republic (p.154). The arbitrariness of beginning could be overcome because the Americans did not conceive of their revolutionary actions as beginning.

Second, the Founding Fathers did not resort to a *potestas legibus soluta*, an absolute sovereignty unconditioned by the laws but laying the ground of legitimacy

for the laws. The problem of the absolute, the obsession in the French tradition, had never been a major concern for the Founders. The French obsession would result in an endless pursuit of “ever-present transcendental source of authority,” be it absolute sovereignty of the monarch or general will of the people (p.185).

Third, Arendt (1991, 182) suggests that American constitutionalism best embodies the Roman uncoupling of power (origin of power) and authority (source of law). Americans transformed the Romans maxim “*potestas in populo, auctoritas in senatu*” into the constitutional premises that political power rests in We the People while political authority resides in the constitution. Moreover, the innovation of judiciary power to embody the constitutional authority is the quintessence of American constitutionalism:

Institutionally, it is lack of power, combined with permanence of office, which signals that the true seat of authority in the American Republic is the Supreme Court. And this authority is exerted in a kind of continuous constitution-making, for the Supreme Court is indeed, in Woodrow Wilson’s phrase, ‘a kind of constitutional Assembly in continuous session’. (Arendt 1990, 200)

This crucial paragraph shows that, for Arendt, the *pouvoir constituant* consists in the Supreme Court, which is a particular institution within a constitution, thus transforming the Supreme Court from the function of *pouvoir constitué* to that of *pouvoir constituant*. All these three issues bear important relations with Schmitt’s constitutional theory. (To be completed.)

7. Arendt’s Constitutional Politics

Based on the above analysis, this paper would further argue that the relevance of Arendt’s theory of constitution is better capitulated in her dialogue with Schmitt than Honig’s post-modernist intervention. Bruce Ackerman’s theory of dualist democracy,

which Scheuerman (1998: 272) regarded as a more adequate version of democratic constitutionalism than Arendt's theory, will also be examined. (To be completed.)

BIBLIOGRAPHY

- Agamben, Giorgio. 2005 *State of Exception*, tran., Kelvin Attell, Chicago: Chicago University Press.
- Arendt, Hannah. 1953a “Authority,” in *The Hannah Arendt Papers at the Library of Congress*, Box 53.
- Arendt, Hannah. 1953b “Breakdown of Authority,” in *The Hannah Arendt Papers at the Library of Congress*, Box 68.
- Arendt, Hannah. 1956 “Authority in the Twentieth Century,” *Review of Politics*, 18:4 (Winter 1956), pp.403-417.
- Arendt, Hannah. 1958 *The Human Condition*, Chicago: University of Chicago Press.
- Arendt, Hannah. 1972 *Crises of the Republic*, New York: Harcourt Brace Jovanovich.
- Arendt, Hannah. 1973 (1951) *The Origins of Totalitarianism*, New York: Harcourt Brace Jovanovich.
- Arendt, Hannah. 1977 (1961) *Between Past and Future: Eight Exercises in Political Thought*, Harmondsworth: Penguin Books.
- Arendt, Hannah. 1990 (1963) *On Revolution*, Harmondsworth: Penguin Books.
- Arendt, Hannah. 2005. *The Promise of Politics*, New York: Schocken Books.
- Beiner, Ronald. 1990 “Hannah Arendt and Leo Strauss: The Uncommenced Dialogue,” *Political Theory* 18:2 (May 1990), pp.238-254.
- Burns, Robert. 1987 “Hannah Arendt’s Constitutional Thought,” in James W. Bernauer ed., *Amour Mundi: Explorations in the Faith and Thought of Hannah Arendt*, Boston: Martinus Nijhoff.
- Canovan, Margaret. 1993 *Hannah Arendt: A Reinterpretation of Her Political Thought*, Cambridge: Cambridge University Press.
- Cristi, Renato. 1998 “Carl Schmitt on Sovereignty and Constituent Power,” in David Dyzenhaus ed., *Law as Politics*, Durham: Duke University Press, pp.179-195.
- Curtis, Kimberly. 1999 *Our Sense of the Real: Aesthetic Experience and Arendtian Politics*, Cornell: Cornell University Press.
- Ely, John. 1996 “The Polis and the Political: Civic and Territorial Views of Association,” *Thesis Eleven*, No.46, pp.33-65.
- Friedrich, Carl. 1972. *Tradition and Authority*, New York: Macmillan.
- Honig, Bonnie. 1993. *Political Theory and the Displacement of Politics*, Ithaca: Cornell University Press.
- Jay, Martin. 1986. *The Permanent Exiles*, New York: Columbia University Press.
- Kennedy, Ellen. 2004 *Constitutional Failure Carl Schmitt in Weimar*, Durham: Duke University Press.
- Kalyvas, Andreas. 2004 “From the Act to the Decision: Hannah Arendt and the Question of Decisionism,” *Political Theory* 32 (3), 320-346.

- Kalyvas, Andreas. 2005 "Popular Sovereignty, Democracy, and the Constituent Power," *Constellations* 12 (2), 223-243.
- Lincoln, Bruce. 1994. *Authority: Construction and Corrosion*, Chicago: University of Chicago Press.
- Meier, Heinrich. 1995 *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, tran., J. Harvey Lomax, Chicago: The University of Chicago Press.
- Müller, Jan-Werner. 2003 *A Dangerous Mind: Carl Schmitt in post-War European Thought*, New Haven: Yale University Press.
- Pirro, Robert C. 2001 *Hannah Arendt and the Politics of Tragedy*, DeKalb: Northern Illinois University Press.
- Schmitt, Carl. 1976 *The Concept of the Political*, tran., George Schwab, Rutgers University Press.
- Schmitt, Carl. 1931 *Der Hüter der Verfassung*, Berlin: Duncker & Humblot.
- Schmitt, Carl. 1983 (1928) *Verfassungslehre*, Berlin: Duncker & Humblot.
- Schmitt, Carl. 1985 *Political Theology: Four Chapters on the Concept of Sovereignty*, tran., George Schwab, Cambridge, Mass.: The MIT Press.
- Schmitt, Carl. 1996 *The Leviathan in State Theory of Thomas Hobbes*, tran George Schwab Erna Hilfstein, Westport: Greenwood Press.
- Schmitt, Carl. 2004 *On the Three of Juristic Thought*, tran, Joseph W. Bendersky, Westport: Praeger.
- Scheuerman, William. 1998 "Revolutions and Constitutions: Hannah Arendt's Challenge to Carl Schmitt," in David Dyzenhaus ed., *Law as Politics*, Durham: Duke University Press, pp.252-280.
- Schwab, George. 1989. *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936*, New York: Greenwood Press.
- Shklar, Judith N. 1977 "Rethinking the Past," *Social Research* 44 (1977), pp.80-90.
- Waldron, Jeremy. 2000 "Arendt's Constitutional Politics," in Danna Villa ed., *The Cambridge Companion to Hannah Arendt*, Cambridge: Cambridge University Press, pp.201-219.
- Villa, Danna. 1996 *Arendt and Heidegger: the fate of the political*, Princeton: Princeton University Press.
- Wolin, Richard. 2001 *Heidegger's children: Hannah Arendt, Karl Löwith, Hans Jonas, and Herbert Marcuse*, Princeton: Princeton University Press.