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Thinking the *Nomos Empsychos* Twice. Franz Rosenzweig's Response to the Concept of Extraordinary Sovereignty

By *Alexandra Aidler**

Abstract:

Against the backdrop of the First World War a concept finds its way into political theory which, according to Giorgio Agamben, originates in antiquity: the notion of the living law, the nomos empsychos. *Prominent especially in Carl Schmitt's early writings, this by now illustrious term designates the equally problematic link between legal authority and its implementation in the hic et nunc. Merely the figure of the sovereign may reconcile in Schmitt's thought the law's perennial nature with history's decidedly ephemeral course at each of its instances. Schmitt explicitly endorses in his work from the 1910s the idea that the sovereign's person constitutes the sole and, therefore, incontestable incarnation of all law. Seeking to break with Schmitt's quintessentially papal concept of law, this essay enquires into the possibility of thinking an absolute law in time, which is depleted from any singularly monadic framework by re-examining Franz Rosenzweig's much discussed philosophy of the "eternal people" (The Star of Redemption).*

Vor dem Hintergrund des Ersten Weltkrieges erfährt ein Begriff, der laut Giorgio Agamben auf die Antike zurückführt, eine wahrhaftige Renaissance: der Terminus des lebendigen Lebens, des nomos empsychos. *Insbesondere im Frühwerk Carl Schmitts gelangt dieser Begriff zu einer prominenten Stellung, die seine problematische Engführung zwischen rechtlicher Autorität und ihrer Realisierung im Hier und Jetzt zu überschatten droht. In seinen Schriften aus der ersten Dekade des vorigen Jahrhunderts entwirft Schmitt ein Souveränitätsmodell, das essenziell auf der Prämisse beruht, lediglich der Souverän in seiner Person könne das ewig bestehende Recht mit den Ansprüchen eines sich im ewigen Wandel befindenden historischen Prozesses in Einklang bringen. Wider diese dezidiert papistische Auffassung des Gesetzes möchte dieser Beitrag der Frage nachgehen, wie sich eine absolute Konzeption des Rechts fortwährend in der Gegenwart verwirklichen lässt, ohne dabei einem ausgesprochen monadischen Begriff des Gesetzes den Weg bahnen zu müssen. Dabei soll die bereits mehrmals untersuchte Philosophie des „ewigen Volkes" (Der Stern der Erlösung) Franz Rosenzweigs auf ihr eigentümliches Potenzial ausgelotet werden.*

I. In his little studied professorial dissertation from 1914,[1] entitled *The Value of the State and the Significance of the Individual* (*Der Wert des Staates und die Bedeutung des Einzelnen*), Carl Schmitt devotes himself to the "sequence 'law,

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1 More on the biographical and historical context of this treatise, which was composed at the eve of the First World War, in REINHARD MEHRING's detailed biography, *Carl Schmitt: Aufstieg und Fall. Eine Biographie*, München 2009, pp. 57-65.

state and individual'."[2] Complying with the specifications of a German *Habilitationsschrift* which is set within the framework of the Faculty of Law at the University of Strasburg, Schmitt contemplates the "link between the intellectual [juridical] sphere with world of real empirical appearances"[3] of the state from the perspective of a "juridical contemplation".[4] Sustaining "[t]he law, as a pure, classificatory norm, which cannot be vindicated by facts"[5] in the practical realm of politics comprises the focal point of Schmitt's study.

Schmitt allots in *The Value of the State and the Significance of the Individual* the state the role of upholding the "heteronomy of each judicial norm"[6] as a "subject of the juridical ethos".[7] To Schmitt solely the state can assume the responsibility of translating the juridical norm into practice because merely a political structure, that is a political "construction of a type",[8] which can adequately "designate the point in which theory and practicetouch because the theory devolves into practice and the practice into theory"[9] can legitimately claim of itself to be the custodian of the law in its most original constitution. The individual, the last unit in Schmitt's study, is, in contradistinction to the state, assigned to sustain the "harmony"[10] between itself, "the state, and the norm by executing his or her personal duty".[11]

Schmitt's early juridical thought derives its anthropological grounding from a dual notion of duty. Every individual is expected to align himself or herself "to the concept of the state as a task ("Aufgabe") [...] so that the meaning of the individual may equally be gauged within the state as a mere task.".[12] If the state is bound to the law, and the individual is subjected to the rule of the state, then the former necessarily must adhere to both, the reign of the state and the law.[13] Expected to compel to law and

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2 CARL SCHMITT, *Der Wert des Staates und die Bedeutung des Einzelnen*, Berlin 1914 [repr. 2004], p. 10. All translations are mine, unless otherwise mentioned.

3 SCHMITT, *Wert des Staates* (n. 2 above), p. 10.

4 SCHMITT, *Wert des Staates* (n. 2 above), p. 10.

5 SCHMITT, *Wert des Staates* (n. 2 above), p. 10.

6 SCHMITT, *Wert des Staates* (n. 2 above), p. 10.

7 SCHMITT, *Wert des Staates* (n. 2 above), p. 10.

8 SCHMITT, *Wert des Staates* (n. 2 above), p. 18.

9 SCHMITT, *Wert des Staates* (n. 2 above), pp. 16-17.

10 SCHMITT, *Wert des Staates* (n. 2 above), p. 17.

11 SCHMITT, *Wert des Staates* (n. 2 above), p. 17.

12 SCHMITT, *Wert des Staates* (n. 2 above), p. 87.

13 Clearly, Schmitt engages here in a debate with the Kantian understanding of the notion of duty („Pflicht"). Cf. SCHMITT, *Wert des Staates* (n. 2 above), pp. 60-63.

state simultaneously, the individual must support the law's political implementation through an act of self-restriction. "No individual", Schmitt explains, "has in the state autonomy. It would be unconceivable that a foreign entity could leap into the world of the law and invoke only himself, in his virtues and dignities, reposing entirely on his purely empirical singleness, whose tacit assertion would imply the most inexplicable abiogenesis (*generationes aequivocae*)".[14]

Quite palpably, Carl Schmitt demonstrates in *The Value of the State and the Significance of the Individual* his opposition to a state, resting almost exclusively on the material presence of each and every individual which is to be found within the state's boundaries. The practical implementation of the law cannot result from a "concrete bodily individual",[15] as, according to Schmitt, it comprises nothing more than "a completely arbitrary unit"[16] tantamount to a mere "pile of atoms blown together by the wind".[17] The law as a wholly abstract norm resists being incorporated by each and every individual, as it does not physically belong to each human being. Schmitt claims that "[t]he value of the law and of the law's mediator, the state" [18] should instead be "measured according to the norms of the law, and not according to things which are endogenous to the individual".[19] To Schmitt the articulation of the law is possible only within the frontiers of the state and vice versa, the state has no other function but to reflect outwardly the law in its most normative content. Schmitt deliberately seeks to combine law and state into a cohesive unit in order to be able to point at their mutual "assignation".[20]

In *The Value of the State and the Significance of the Individual* Schmitt circumscribes the consistent interplay between state and law with the term "*realizing*" (*verwirklichen*),[21] thereby clearly alluding to the philosophical language of Georg Wilhelm Friedrich Hegel. While an extensive discussion of Schmitt's on-going and complex relationship with Hegel's philosophy of right certainly exceeds the current framework,[22] it is nevertheless

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14 SCHMITT, *Wert des Staates* (n. 2 above), p. 101.
15 SCHMITT, *Wert des Staates* (n. 2 above), p. 101.
16 SCHMITT, *Wert des Staates* (n. 2 above), p. 101.
17 SCHMITT, *Wert des Staates* (n. 2 above), p. 101.
18 SCHMITT, *Wert des Staates* (n. 2 above), p. 101.
19 SCHMITT, *Wert des Staates* (n. 2 above), p. 101.
20 SCHMITT, *Wert des Staates* (n. 2 above), p. 53.
21 SCHMITT, *Wert des Staates* (n. 2 above), p. 56. Emphasis by author.
22 Instead, I refer to: JEAN-FRANÇOIS KERVÉGAN, *Hegel, Carl Schmitt. Le politique entre spéculation et positivité*, Paris 1992, especially p. 25.

worthwhile iterating that Schmitt's critique of Hegel is formulated against the passage from "subjective spirit"[23] to the "objective concept"[24] of right. Schmitt does not approve of a notion of law that claims to be "universally valid" (*zeitlosen Richtigkeit*)[25] because it cannot properly relate to existence. A law, which is framed only in relationship to itself, cannot have any bearing on reality. Rather than understanding the law as a hermetic unit, Schmitt seeks in *The Value of the State and the Significance of the Individual* to create a nexus between "state legislation"[26] and "life".[27] He henceforth defines any legal theory as an inquiry into the actual overlap between the theoretical and practical dimension of the law. The concrete point of intersection between right and "visibility" (*Sichtbarmachung*)[28] must, according to Schmitt, comprise the nucleus of any legal theory. Schmitt postulates an "analogical position"[29] between normative law and its empirical actualization. Commensurably adapting the law to the demands of reality suggests that the law must be encompassed in a body that can comply with life's changeability. To Schmitt the law must be encapsulated in a dynamic, moving, variable construct.

Adopting a term from the Spanish kings' founding era of political absolutism in 1523, Carl Schmitt engages in *The Value of the State and the Significance of the Individual* in a debate on the "living, incarnate law".[30,] This he defines in the last pages of his *Habilitationsschrift* via a paradoxical formula:

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23 GEORG WILHELM FRIEDRICH HEGEL, *Elements of the Philosophy of Right*, ed. ALLEN W. WOOD, Cambridge, UK 1991 [repr. 2003], p. 87.

24 HEGEL, *Elements of the Philosophy* (n. 23 above) p. 87.

25 SCHMITT, *Wert des Staates* (n. 2 above), p. 81.

26 SCHMITT, *Wert des Staates* (n. 2 above), p. 81.

27 SCHMITT, *Wert des Staates* (n. 2 above), p. 81.

28 SCHMITT, *Wert des Staates* (n. 2 above), p. 81.

29 SCHMITT, *Wert des Staates* (n. 2 above), p. 58.

30 SCHMITT, *Wert des Staates* (n. 2 above), p. 94. ("lebendige, fleischgewordene Gesetz, *ley viba e animanda en las tierras*".). – Cf. "The new absolutism was embodied in the self-effacing declaration of the Córtes of Valladolid, in 1523, to Charles V, that the laws and customs were subject to the king, who could make and revoke them at his pleasure, for he was the living law. [...] *E las leyes e costunbres son sujetas alos Reys, que las pueden hazer e quitar a su voluntad, e vuestra Alteza es ley viba e animada enlas tierras*, in: *Córtes de los antiguos Reinos*, vol. IV, Madrid 1882, p. 356. See HENRY CHARLES LEA, *A History of the Inquisition of Spain*, vol. I, quoted after the unabridged online version of the *Library of Iberian Resources Online* (http://libro.uca.edu/lea1/1lea1.pdf). Thus Carl Schmitt probably also formulates an attack on American Republican interpretations of Catholic state theory, published towards the end of the 19th century.

"[t]he fictive juridical person is the antetype of all personality in the law."[31] According to Schmitt, the actualization of the law in empirical reality rests on a fictitious prototype. For any law to be adequately implemented, it must, in the first place, embody its normative content in an ideal person. Having shaped itself in this ideal sphere, it can subsequently proceed to lend the law form in reality. Only through the perpetual transition from abstract norm through to an ideal empirical mode to the domain of actual existence can the law fully incarnate itself in life. Becoming a 'living law' suggests personifying the abstract dimension of the law as an ideal norm in its ideality empirically. In other words, the person realizing the living law must ascertain the law's ideal normativity.

It seems as if Schmitt would seek to articulate his thoughts about the living law in deliberately obscure terms. By pleading for a decidedly fictitious interference between image and reality, Schmitt strives to illustrate the unusual quality underlying the concept of the living law. The living law neither truly belongs to the empirical realm, nor can it be fully considered to be a wholly scientific intellectual construction. As it merges the abstract with the empirical, the ideal with the real world, the fictitious person of the living law hovers between the norm and its actualization. In *The Value of the State and the Significance of the Individual* Schmitt posits a being that resides in, both, the abstract intellectual and the concrete empirical domain of the law.

This synthesis between the mundane and the unworldly, paradoxically, removes Schmitt from the political sphere of the state. Schmitt upholds that the political philosophical tradition has continuously sought to grasp the state as a "concrete structure – for instance Germany, Russia and Portugal".[32] However, Schmitt explains, those are essentially different objects, generating a multitude of other different objects.[33] Thinking a vivid concord between the law and its representation cannot be, therefore, the result of a philosophy of right or a delineation of a state theory concentrated on fabricating random political unities. The immediate knot between the ideal conception of the law and its realization must derive from the theological sphere.

Prior to his elaborations on the church in *Political Theology* (*Politische Theologie*) from 1922 and *Roman Catholicism and Political Form* (*Römischer Katholizismus und politische Form*) published in 1923, Schmitt reverts to the Roman-Catholic doctrine already in *The Value of the State and the Significance*

31 SCHMITT, *Wert des Staates* (n. 2 above), p. 104.

32 SCHMITT, *Wert des Staates* (n. 2 above), p. 45.

33 Cf. SCHMITT, *Wert des Staates* (n. 2 above), pp. 45-46.

of the Individual in order to demonstrate that the exceptional position of the church allows for it to unite "ideal and reality"[34] in one singular edifice. The church is itself an indivisible unity, a "single edifice" (*Eine Kirche*);[35] hereby, the incorporation of the law into its own ranks cannot result in an act of the law's self-dispersion. In contradistinction to the political quest for national multiplicity and ethnical plurality, the Catholic Church is, according to Schmitt, primarily concerned with increasing the cohesion of its religious structures. The transposition of the church's self-approximating character onto the legal sphere is paradigmatic.

In *The Value of the State and the Significance of the Individual* Schmitt strives to augment the law's identity with itself through a reflection with the church, most especially with its chief authority. "The pope, as the unerring interpreter of the natural moral law and the content of the revelation" has the license to declare any "state law" "not to be conscientiously binding" when conflicting with the "moral law or the jus divino-naturale".[36] Being the "custodian of statues" (*Hüter der Gesetze*)[37] implies for Schmitt a resolution of consciousness. Any adaptation of the judicial set of laws requires the legal content to conform to its interpreter. Hence, the law must be regarded as a singular human body. Schmitt describes this homonomity between law and person in his study with an array of terms derived from the history of Christian theology.[38] Concepts, such as "potestas indirecta",[39] "vis coactiva",[40] "the infallible pope",[41] or "charisma veritatis",[42] all come to indicate the law's physical self-appropriation.

It has become commonplace in scholarship to relate to the legal-theological constellation in Schmitt's early study as a decisive endeavour to clothe his "new etatism and antiliberalism"[43] in the "wide cloak of faith".[44] Indeed, there can be no doubt that *The Value of the State and the Significance of*

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34 SCHMITT, *Wert des Staates* (n. 2 above), p. 41.
35 SCHMITT, *Wert des Staates* (n. 2 above), p. 41.
36 SCHMITT, *Wert des Staates* (n. 2 above), p. 83.
37 SCHMITT, *Wert des Staates* (n. 2 above), p. 83.
38 Schmitt hence negates categories from Roman jurisprudence, such as the „bonus pater familias". Cf. SCHMITT, *Wert des Staates* (n. 2 above), p. 18.
39 SCHMITT, *Wert des Staates* (n. 2 above), p. 83.
40 SCHMITT, *Wert des Staates* (n. 2 above), p. 83.
41 SCHMITT, *Wert des Staates* (n. 2 above), p. 95.
42 SCHMITT, *Wert des Staates* (n. 2 above), p. 102.
43 MEHRING, *Carl Schmitt* (n. 1 above), p. 14.
44 MEHRING, *Carl Schmitt* (n. 1 above), p. 14.

the Individual paves the way for Schmitt's theologically permeated future contention[45] with his "archenemies – liberalism, pluralism, individualism, legal positivism", and a certain brand of "the rule of law".[46] Nevertheless, I do not endeavour to reassert, at this point, the problematic extent of Schmitt's nuanced polemics with modern political philosophy. Drawing upon Giorgio Agamben's historical and ontological genealogy of the '"living law"',[47] in its evolution from the neo-Pythagorean *basileus nomos empsukhos*[48] to its present day development in Carl Schmitt's juridical theory, this presentation seeks to concentrate instead on the problematic "identification between sovereign and law"[49] by espousing a more immanent approach.

Throughout the course of these pages, I will contend that it is necessary to think of any law as a living entity because the law's conversion to the sphere of empirical reality allows for a dynamic continuation of a common tradition in history. If Schmitt's philosophy of right is not conducive towards such a project, it is for reasons, which contradict the "total anomie",[50] resulting, according to Giorgio Agamben, from the concomitance between the law and its authoritative personification. Schmitt legalizes theology and bans any legal content from the theological sphere so as to deduce the legal norm from a wholly monadic corporeal concept. By radicalizing the personalized[51] monarchical political tradition from Thomas Hobbes, Jean Bodin and above all the counter-revolutionaries such as Joseph De Maistre, and Donoso Cortés, law and body become in Schmitt's early thought one.

Several years before Schmitt will focus almost exclusively on the strictly decisionist aspects of the correspondence between law and sovereign, culminating in the famous distinction between "friend and enemy"[52] in his

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45 Cf. DUNCAN KELLY, *The State of the Political. Conceptions of Politics and the State in Thought of Max Weber, Carl Schmitt and Franz Neumann*, Oxford [et al.] 2003 (²2008), p. 165.

46 ANDREAS KALYVAS, *Democracy and the Politics of the Extraordinary. Max Weber, Carl Schmitt, and Hannah Arendt*, New York [et al.] 2008, p. 82. Kalyvas delineates these categories from Stephen Holmes's article, *Schmitt: The Debility of Liberalism*.

47 GIORGIO AGAMBEN, *State of Exception*, trans. Kevin Attell, Chicago 2005, p. 69.

48 AGAMBEN, *State of Exception* (n. 47 above), p. 69.

49 AGAMBEN, *State of Exception* (n. 47 above), p. 69.

50 AGAMBEN, *State of Exception* (n. 47 above), p. 69.

51 Cf. for the term "personal" in: *Political Theology. Four Chapters on the Concept of Sovereignty*, trans. GEORGE SCHWAB, Chicago 1985 (²2005), p. 29.

52 CARL SCHMITT, *The Concept of the Political*, trans. George Schwab, Chicago 1996 (²2007), p. 26.

study on *The Concept of the Political, The Value of the State and the Significance of the Individual* uniquely demonstrates that the translation of the law into the sovereign sphere essentially comprises a history of physical condensation. Merely one human body is designated to represent the law in reality which, in turn, renders it impossible to ensure the law's continuity in time, in its absolute measure. The sovereign's transient body represents the normative point of reference.

The question that will be directed here against Carl Schmitt's early concept of the "living law" is how to think of the law as a perpetual empirical presence without sacrificing its perennial theological constituent to a monadic physical entity. Can a law, which is inherently absolute, reveal itself positively in reality without becoming contingent upon its own movement? Is it possible to preserve the law in its original manifestation in the here and now through a concrete personalized collective body? More precisely even, can the law, as an eternal exterior command, survive the incessant peripeties of history in a material form, that is, can the command expose its infinitude through proximity with its worldly subject? The renunciation of Schmitt's early politico-theological materiality leads to Franz Rosenzweig's thought.

II. Particularly recent interpretations of Franz Rosenzweig's philosophy have made it a point to engage Rosenzweig in a "'secret conversation'"[53] with Carl Schmitt.[54] Especially Rosenzweig's and Schmitt's mutual "reconstruction or rehabilitation of 'miracle'"[55] provides a case for Rosenzweig's implicit critique of Schmittian sovereign theory of the "'state of exception'"[56] that has of late "captured the imagination of contemporary

53 BONNIE HONIG, *Emergency Politics. Paradox, Law, Democracy*, Princeton / Oxford 2009, p. 89. I thank Larisa Reznik for directing my attention to this study.

54 Particularly Christoph Schmidt's work compellingly illustrates the links between Carl Schmitt's theory of political decisionism and Jewish political philosophy in the first half of the 20th century. See: CHRISTOPH SCHMIDT, *Der häretische Imperativ. Überlegungen zur theologischen Dialektik der Kulturwissenschaft in Deutschland*, Tübingen 2000; CHRISTOPH SCHMIDT, *Die theopolitische Stunde. Zwölf Perspektiven auf das eschatologische Problem der Moderne*, Paderborn 2009. From an exclusively aesthetic perspective also: BERNHARD GREINER, *Der 'Fall' der Tragödie als Gegenstand deutsch-jüdischen Dialogs (Walter Benjamin, Franz Rosenzweig, Carl Schmitt)*, in: VOLKER C. DÖRR / HELMUT J. SCHNEIDER (eds.), *Die deutsche Tragödie. Neue Lektüren einer Gattung im europäischen Kontext*, Bielefeld 2006, pp. 195-212.

55 HONIG, *Emergency Politics* (n. 53 above), p. 90.

56 HONIG, *Emergency Politics* (n. 53 above), p. 87.

political theory".[57] Both, Schmitt and Rosenzweig, recognize as contemporaries that the luminary, deist, rational, and liberal[58] tradition have severed their ties with the notion of exception. Yet, while Schmitt seeks to restore the wonder in order to support the sovereign extraordinary decision, Rosenzweig employs the miracle as a "sign".[59] Consequently, he encourages a "popular receptivity and interpretation upon which signs depend."[60] In contrast to Schmitt, Rosenzweig's contemplations on the miracle are to be decisively democratic.[61] Bonnie Honig's analyses on the concept of the miracle lay the foundations for understanding Rosenzweig's opposition to any type of sovereign decisionism. Nevertheless, I think that, in its specific focus on the hermeneutics of the miracle, Bonnie Honig does not go far enough in considering Rosenzweig's "carnal"[62] response to Schmitt's political-theology of the sovereign: the empirical "presence of the [one] *people*" (*Dasein des* Volks)[63] as a commensurable counterpart to Schmitt's monadic living law.

This article claims that Franz Rosenzweig's first and foremost political concern centres around the idea of creating a "*visible*"[64] political structure in the "here and now"[65] which is unequivocally committed to fulfilling the "sensation of the law above oneself".[66] I will argue that Rosenzweig writes against any tradition of political philosophy which has, to resort to the

57 HONIG, *Emergency Politics* (n. 53 above), p. 87.

58 Cf. HONIG, *Emergency Politics* (n. 53 above), p. 94.

59 HONIG, *Emergency Politics* (n. 53 above), p. 69.

60 HONIG, *Emergency Politics* (n. 53 above), p. 90.

61 HONIG, *Emergency Politics* (n. 53 above), p. 90.

62 To borrow a term from LEORA BATNITZKY, *Idolatry and Representation. The Philosophy of Franz Rosenzweig Reconsidered*, Princeton / Oxford 2000, p. 73.

63 FRANZ ROSENZWEIG, *Der Mensch und sein Werk. Gesammelte Schriften*, vol. I, ed. RACHEL ROSENZWEIG / EDITH ROSENZWEIG-SCHEINMANN / BERNHARD CASPER, Den Haag 1979, p. 162 [emphasis by the author].

64 FRANZ ROSENZWEIG, *Der Mensch und sein Werk. Gesammelte Schriften*, vol. II, ed. RACHEL ROSENZWEIG / EDITH ROSENZWEIG-SCHEINMANN / BERNHARD CASPER, Den Haag 1976, p. 737 (letter from 05.01.1922) [emphasis by the author].

65 FRANZ ROSENZWEIG, *Der Mensch und sein Werk. Gesammelte Schriften*, vol. III, ed. REINHOLD AND ANNERMARIE MAYER, Dordrecht / Boston / Lancaster 1984, p. 707 (*Die Bauleute. Über das Gesetz.*) [emphasis by the author].

66 FRANZ ROSENZWEIG, *Die „Gritli"-Briefe. Briefe an Margit Rosenstock-Huessy*, ed. INKEN RÜHLE UND REINHOLD MAYER, Tübingen 2002, p. 787 (letter from 31.12.1921)

most famous turn of phrase from the *Star of Redemption*, "from Ionia to Jena",[67] willingly espoused the notion of "hero worship.[68] Above all, the political reality of the First World War indicates to Rosenzweig that all of occidental political philosophy is contemplated in terms of a "personified interposition".[69] Rosenzweig's thought seeks to provoke a rupture with the idea of physical mediation between individual and state *in toto* because the latter prevents the former from establishing an "(autochton) relationship"[70] between law and peoples. An immediacy between people and politics results to Rosenzweig from each and every people's steady attempt to revitalize the content of the given law independently by its "actuality" (*Tatsächlichkeit*) [71] in reality. This "concrete application"[72] of the law in life, that is the living law, Rosenzweig esteems to be adequately represented by the societal constructs of Judaism. The familial ties of the home provide a model for the proximity between law and people.

Particularly the surreptitious dialogue between the third part of the *Star of Redemption* – Rosenzweig's self-proclaimed "properly miniscule state theory"[73] – with the theoretical contemplation on the nature of modern politics in his war writings marks the transition from a politics based entirely on the temporal personification of the law to a politics reposing wholly on a collective visualization of the absolute law in time. *Vox Dei? The Case of Conscience of Democracy* (*Vox Dei? Die Gewissensfrage der Demokratie*), written in 1917 in Macedonia and only to be fully published in the third volume of Rosenzweig's collected works,[74] is deliberately introduced by Franz Rosenzweig with an exclamation imputed to emperor Wilhelm II: "*More people!*".[75] Indeed, in *Vox Dei?* Rosenzweig seeks to articulate, in the first place, the question of the "reality of the state's will".[76] Here, Rosenzweig ventures to enquire into the possibility of attaining a "complete unity of the [people's]

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67 FRANZ ROSENZWEIG, *Star of Redemption*, trans. Barbara E. Galli, Madison, WI 2005, p. 18.

68 ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), p. 157 (fragment 223).

69 ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), p. 453 (letter from 30.09.1917).

70 ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), p. 453.

71 ROSENZWEIG, *„Gritli"-Briefe* (n. 66 above), p. 187 (letter from 13.11.1918).

72 ROSENZWEIG, *Gesammelte Schriften*, vol. II (n. 64 above), p. 784 (fragment 749).

73 ROSENZWEIG, *„Gritli"-Briefe* (n. 66 above), p. 216 (letter from 08.01.1918).

74 The more general section of this essay was first published in 1937. Cf. ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 849.

75 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 267.

76 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 269.

will with the "reality of the state" (*Staatswirklichkeit*)".[77] Rosenzweig claims that for a people to truly become a sensible political unit necessitates "the full, indivisible, but also non-composite realization"[78] of its will. Rosenzweig pleads for the state to become a function of the people's "consciousness"[79] with itself because merely an identity of the will with its self-apprehension can help it come to an awareness of its existence. In *Vox Dei?* Rosenzweig reverts to the notion of consciousness as a means to think of the people as a performative entity. To be a people signifies to Rosenzweig to be in "action".[80]

The passage from political lethargy to the "kingdom of deed",[81] from passivity to activity, from ignorance to awareness, in short, the act of consciousness itself, displays Rosenzweig's preoccupation with formulating a political theory which will be able to define the people exclusively by way of personal apperception. The people must derive its political sovereignty by assessing independently its relationship to the world. It cannot rely on any mediator to interpret its intentions. Being a people is, thereby, antonymic to the notion of political interpolation. Advocating in *Vox Dei?* the totality of the people, on the one hand, while refusing, on the other hand, to sustain any form of popular representation, Rosenzweig's reflections on politics comprise a rupture with occidental political philosophy. To be sure, Rosenzweig engages in the opening pages of his essay in polemics with democratic and reactionary politics, as much as with their middle ground.

Rosenzweig assumes a critical stance towards democracy in *Vox Dei?* since it relates to the people in an exceedingly utopian lexicography. Democratic politics aspires to address the people as an ideal construction in which "'everything' could happen".[82] As a consequence, its political vision bears resemblance to a "dream".[83] The democratic programme orientates itself, according to Franz Rosenzweig, towards the future. Hence, it can convey a sensation of hope.[84] However, by storing its infinite trust in an incontestable futurity, democratic politics renounces its claim to be immersed in "'experi-

77 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 269.
78 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 269.
79 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.
80 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.
81 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.
82 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 267.
83 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 267.
84 "daß er den Augenblick auf eine grenzenlose Zukunft eröffnet und einen unerschöpflichen Born von Hoffnung erschließt" (ROSENZWEIG, *Gesammelte Schriften*, vol. III [n. 65 above], p. 267).

ence"' (*Erfahrung*).[85] Nevertheless, Rosenzweig does not seek to bridge the gap between experience and imaginary in the political sphere by relinquishing either side. This has been, Rosenzweig argues, the flaw of both the reactionary and the middle version of politics. The former seeks to support the people without its participation,[86] whereas the latter strives to uphold the people's will through its involvement – "everything for the people, everything with the people's collaboration"[87] – without seeking to define the term. Whereas the people's contribution to its consolidation remains unidentified, Rosenzweig breaks with classical democracy, liberalism, and reactionism in the name of the people's unity.

Vox Dei? attempts to reassess the problematic democratic "equation people = representation of the people"[88] by confronting it from its other end: the people need to comprehend that they are not yet a people. In order to arrive at a people's fully developed consciousness, a momentary rupture must be introduced into its collective perception. Primarily, the war's "tragic paradox"[89] indicates to Rosenzweig the impossibility of attaining a people's indivisibility by reverting to the notion of intervention. A people cannot entirely comprehend its being when the impending menace of the "today"[90] is superimposed on it from without. The "statesman['s]"[91] "word"[92] promulgates the people's inescapable "alarm of consciousness".[93] Autonomously, the leader declares war so as to encourage the imperilled people to perceive itself as a united front. As a "people" (*Volk*), it must seek to fight for wife and child,[94] as a "nation" (*Volkheit*), the people must crusade for a higher cause.[95] At war the people acquires, according to Rosenzweig, its political telos through a contradiction. Propelled towards the goal of peace[96] by incessantly surmounting the situation of combat should be the people's quintessential will.

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85 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 268.

86 "Alles für das Volk, nichts durch das Volk" (ROSENZWEIG, *Gesammelte Schriften*, vol. III [n. 65 above], p. 267).

87 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 268.

88 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 269.

89 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 270.

90 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 269.

91 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

92 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

93 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

94 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

95 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

96 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 273.

Rosenzweig uncovers in *Vox Dei?* the war to be the sacrificial motor[97] of the people's "presence" (*Dasein*).[98] Placed in the hands of the political leadership, the historical imperative transforms into a constant source of animosity. Solely, an act of self-preservation which neither allows for the people to confront its past, nor to anticipate its future enables the people to "repatriate its being".[99] The First World War originates from this political logic of negation. Any identity of the people with itself needs to rely on a twofold demarcation. The people must distance itself from its former "happy implicitness"[100] through a "defence"[101] against the people. For the people to truly converge with its own potentiality, it must actively split itself from its passive being[102] and fully embrace itself in its active presence.[103] *Vox Dei?* ends on an ambiguous note. While Rosenzweig unequivocally condemns the people's political martyrdom in the First World War, he adheres, nonetheless, to the confluence of the "imperious, self-assertive will"[104] as the "servile self-sacrificial instrument"[105] with the "revelation of the soul's secret".[106] The people's historical subsistence depends on its perpetual consecration to itself. Dwelling in a political state of peace connotes the people's submission to its will. Formulated from a positive angle, the people must permanently toil to elevate itself to coincide with its ideal.

Evidently, Rosenzweig seeks to play in *Vox Dei?* "Nietzsche (and Kant)"[107] against any form of Hegelian philosophy of history.[108] A certain

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97 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

98 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 274.

99 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 279.

100 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 272.

101 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 278.

102 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 282. ("gegen das Volk".)

103 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 282. ("durch das Volk".)

104 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 282.

105 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 282.

106 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 282.

107 "Nur Nietzsche (und Kant) lasse ich am Leben! [...]," Rosenzweig writes in regard to the *Star of Redemption* (ROSENZWEIG, *Gesammelte Schriften*, vol. I [n. 63 above], p. 599 [letter from 27.08.1918]).

108 More on Rosenzweig's critique of Hegel's national perception of telelogical history in: EPHRAIM MEIR, כוכב מיעקב: חייו ויצירתו של פראנץ רוזנצווייג, Jerusalem 1994, p. 13.

interpretation of Immanuel Kant's "dualism"[109] and Friedrich Nietzsche's "will to power" are to provide an answer to Hegel's concept of terminable history. For obvious reasons, an extensive discussion of Rosenzweig's complex relationship to either philosopher would largely exceed the present scope. Suffice it, in this context, to indicate that Rosenzweig elaborates in *Vox Dei?* a philosophy of futurity, permanent transition, and historical empowerment in order to counter a tradition of political philosophy which contemplates the people's being in utterly spiritual categories. Merely the actualization of the historical imperative in the present can reveal to the people the "content of its existence" (*Inhalt des Daseins*). In other terms, the people cannot grasp its being without permanently interacting with its concrete historical manifestation. Past and future must cohabit in the people's being.

Rosenzweig's philosophy of struggle, to which one might possibly also refer as a political philosophy of 1914,[110] corresponds to his Jewish "miniscule theory of state" on three accounts: 1/ The continuous rejuvenation of the extraordinary historical moment. 2/ The political concretization of this moment. 3/ The constitution of a closed cohesive social unity.[111] Rosenzweig circumscribes these instances in connection to Judaism with the categories of: (1) "The law, living condition of the people";[112] (2) "Concentration";[113] (3) "Redintegration".[114] In analogy to the warring people, the Jewish "chosen people"[115] lives in direct relationship with this to it exterior eternal instance. The Jewish people derive their realization through a convergence with an eternal entity in time. To the Jewish people "the Law was given and [it] was created through the Law. All that is most narrow is widened into the whole, or rather is redeemed into the

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109 ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), p. 218 and ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 69. In October 1916 Rosenzweig writes to Eugen Rosenstock that he is reading *Religion Within the Limits of Pure Reason*, Cf. ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), p. 255.

110 Rosenzweig documents his interest in the great wars of Europe in a letter from 04.10.1916 to his parents. Cf. ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), p. 238.

111 Cf. ROSENZWEIG, *Gesammelte Schriften*, vol. I (n. 63 above), pp. 278-279.

112 ROSENZWEIG, *Gesammelte Schriften*, vol. II (n. 64 above), p. 786 (fragment 753).

113 ROSENZWEIG, *Gesammelte Schriften*, vol. II (n. 64 above), p. 786.

114 ROSENZWEIG, *Gesammelte Schriften*, vol. II (n. 64 above), p. 777 (fragment 738.)

115 ROSENZWEIG, *Gesammelte Schriften*, vol. III (n. 65 above), p. 690 (*Apologetisches Denken. Bemerkungen zu Brod und Beck*).

oneness of the One."[116] The idea of election is coupled in Rosenzweig's Jewish thought with the notion of an "immediate nearness"[117] to a perpetually expanding eternal law in the here and now.

What motivates Rosenzweig to reply to the concept of a people's proximity, based on the foundations of the will's combat for itself, with a people's concord, reposing on the fundaments of a divine order, from a political philosophical point of view? It should not come as a surprise that Franz Rosenzweig chooses to write a general, but not specifically Pagan or Christian repudiation of state politics in the first part of the third book of *The Star of Redemption*. Amidst a lengthy discussion about the nature of the "eternal people",[118] he intermittently introduces, a critique of the relationship, between "state",[119] "law"[120] (*Recht*),[121] and "time".[122] Now, Rosenzweig accuses the state of constantly reinventing the law. While it promises to uphold the "old law",[123] it nevertheless continuously tries to exert its power by becoming the source of a "new law".[124] The state transforms itself into a legislator. Rosenzweig illustrates that the connection between state and decision results in an endless interplay between "war and revolution".[125] Constantly seeking to augment its strength, the state posits permanently new laws. Accordingly, neither the people nor history itself can assume a role in the legislative process. The law merely represents the extension of the state.

Rosenzweig's opposition to the revolutionary state in the *Star of Redemption* appears, at first view, to fully overthrow his line of argumentation in *Vox Dei?*. However, on closer inspection, it should become more apparent that Rosenzweig ventures to think the knot between historical eventness and the people's self-consciousness more radically through its reversal. The people cannot reach a veritable internal unity in pursuit of peace because any form of combat essentially is an artificial product of

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116 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 434.
117 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 343.
118 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 443.
119 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 353.
120 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 353.
121 FRANZ ROSENZWEIG, *Der Stern der Erlösung*, Frankfurt am Main 1988 [repr. 2006], p. 370.
122 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 353.
123 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 353.
124 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 353.
125 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 353.

human power struggles.[126] For a people to be able to repose in itself,[127] the law needs to be defined by its continuity, to preserve its timelessness. In the *Star of Redemption* Rosenzweig pleads for an absolute law that can render the revolutionary mode of politics obsolete. As eternity is inherent to Judaism,[128] the Jewish people are located at a distance from the reign of political upheaval. Judaism experiences the world of politics from afar whereby it succeeds in determining itself, precisely, through a disjunction with the doings of state politics.

In contrast to a political philosophy founded on the principle of permanent innovation and variability, Judaism derives its merit from the incessant revitalization of the law's perpetuity in the present. Judaism strives for the law's contemporaneity by traversing eternity and for the perennial by living the law in its immediacy. "But because it places trust in the eternity that it creates itself and in nothing else in the world, the people really does believe in its eternity, whereas all the peoples of the world must, in spite of all, like every individual reckon on their own death at some moment in time, however far off."[129] Unlike the state, Judaism does not seek to supplant an old law with a new law, or to fully renew the old law. Instead, Judaism distinguishes itself from other peoples and nations in its constant adherence to an immovable point. Judaism is committed to sustaining the law in its originality. It is elected, so as to let the past perforate the present. "And again the eternal people purchases its eternity at the price of temporal life. For it, the moment is *solidified* and *remains fixed* between an augmentable past and motionless future, so the moment ceases to fly away. Custom and law, past and future, become two unchangeable measures; and in so becoming they cease to be past and future, and thus *solidified*, become likewise an unchangeable present."[130]

Rosenzweig's depiction of the eternal law goes beyond an observation on the nature of temporality in Judaism. He contemplates the union between origin and futurity, past and present, as much as past and eternity,

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126 This is not to say, as Jörg Köhr does, that "[d]as Politische ist für Rosenzweig im Kern menschlich gestiftete Ordnung von Raum und Zeit". Rather, I wish to indicate that Rosenzweig strives towards a different type of politics. Cf. JÖRG KÖHR, *"Gott selbst muss das letzte Wort sprechen..." Religion und Politik im Denken Franz Rosenzweigs*, Freiburg / München 2008, p. 268.

127 Cf. KÖHR, *Religion und Politik* (n. 126 above), p. 127 ("rest").

128 Cf. KÖHR, *Religion und Politik* (n. 126 above), p. 154.

129 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 324.

130 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 322 (my emphasis).

so as to expose Judaism's worldly fixation. If Judaism can reveal the law's eternity *hic et nunc* perpetually, it is undoubtedly so because the incontrovertible character of the law is concretely arrested in the present. Judaism anchors and solidifies the law's timeless nature by turning into a people. Becoming the law in time allows for the Jewish people to function as the law's worldly receptacle. In the moment, in the here and now, Judaism alone renders the law in its eternity visible.

It is well known that in *The Star of Redemption* Rosenzweig illustrates primarily the law's continuity in the here and now through the Jewish rite.[131] As the Jewish people go from the experience of one Shabbat after another, from one holiday to the next, it lives through a "cycle"[132] which allows for it to acknowledge that is has reached its "goal"[133] of residing in eternity. Obeying to the law and living by the law allows for the Jewish people to "cancel the conflict between Creation and Revelation".[134] To the Jewish people the law becomes manifest in its re-enactment.[135] This perpetuation of the law is, moreover, compounded by a blood relationship.[136] To Rosenzweig the prerequisite of the ritual is the physical affiliation. Only when the people are united by the ties of blood are they allowed to actively partake in the ritual of Judaism. Thus, any ritual, which can genuinely contribute towards a revitalization of the law, remains quintessentially Jewish. The "We"[137] of the Jewish people relies entirely on the notion of "rooting in ourselves".[138]

III. This concluding portion wishes to enquire into the possibility of contemplating Rosenzweig's theory of the people's conjunction with the law, which does not run the risk of purporting a religious type of communitarian enclosure. Can Rosenzweig's thought lend itself to a universal idea of radical "rootedness"? Can the law reach its fulfilment through a general identity of the people with itself? The intertwinement between the notion

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131 Cf. ROBERT GIBBS, *Correlations in Rosenzweig and Levinas*, Princeton 1992, pp. 136-150.

132 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 308.

133 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 348.

134 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 348.

135 Of course, this does not suggest that Rosenzweig advocates a theory which is solely based on the principle of נעשה ונשמע (Cf. Meir, כוכב מיעקב [n. 108 above], p. 44).

136 BATNITZKY, *Idolatry and Representation* (n. 62 above), p. 73.

137 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 317.

138 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 324.

of the "house"[139] and the "love for the neighbor"[140] invites Rosenzweig's political philosophy to extend beyond its own consequences, to surpass its frontiers.

Rosenzweig's interest in the house is documented predominantly in a short phrase in the first book of the third part of *The Star Redemption*. "The chamber of the Jewish heart is the home."[141] Via a simile between the house and the heart, Rosenzweig indicates its central position to his thought. Within the confines of the heart, a small room contains the house. The vessel of life itself has interiorized it. The house, therefore, pulsates in every single human being, inversely, permitting the heart to inhabit the house. The home becomes the seat of emotion, sustaining the neighbourly love. Rosenzweig's description of the home contains a geographical, organic, and emotional component that reflects its cardinal role in the constitution of an eternal law in time. The inalienability of heart and home consistently draws back to the formation of a real edifice in time that can bind the Jewish people into a community of love.

To Rosenzweig the empirical manifestation of the immediate congruency between affect and housing is represented in the ceremony of the "meal".[142] Rosenzweig depicts the construction of familiarity as the movement from unknown guest to acquaintance culminates in a "greeting".[143] The initial exchange establishes a proximity that renders the word superfluous. "Face to face"[144] the acquainted guests meet in the silence of their association. *The Star of Redemption* elevates the meal to be emblematic of the ideal community. In silence the guest becomes the neighbour, the near entity, the close being.[145] Woven into each other through their acquaintance, the guests become a consolidated community, confronted with their divine common ground in their mutual physiognomy. "Face to face" the community mirrors itself in the guest. If to Rosenzweig this propinquity cannot be thought entirely outside of the framework of Judaism, then the implicit lesson of his philosophy consists in a universal extension of his politics of intimacy.

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139 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 380.
140 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 349.
141 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 346.
142 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 335.
143 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 341.
144 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 343.
145 ROSENZWEIG, *Star of Redemption* (n. 67 above), p. 317.