



## Counterrevolutionary Polemics: *Katechon* and Crisis in de Maistre, Donoso, and Schmitt

M. Blake Wilson

Department of Criminal Justice, California State University, Stanislaus, USA

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# Counterrevolutionary Polemics: *Katechon* and Crisis in de Maistre, Donoso, and Schmitt

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## Introduction

In the fourth of his “Four Chapters on Sovereignty” (from 1922’s *Political Theology*), Carl Schmitt describes the counterrevolutionary philosophies of Joseph de Maistre, Louis de Bonald, and Juan Donoso Cortés. For Schmitt, these Catholic theorists represent the philosophy of the decision as it relates to the exception, a political state of emergency that is “analogous to the miracle in theology,” and “only by being aware of this analogy can we appreciate the manner in which the philosophical ideas of the state developed in the last centuries.”<sup>1</sup> By situating himself as the most recent theorist inheriting the counterrevolutionary spirit, Schmitt found himself witnessing, in his own time, the same forms of revolutionary violence that de Maistre and Donoso witnessed in their own.

For these theorists of crisis, the revolutionary state comes into existence through violence, and due to its inability to provide an authoritative *katechon* (restrainer) against internal and external violence, it perpetuates violence until it necessarily self-destructs or morphs into variations and combinations of liberalism and socialism. Revolution itself is the product of crises brought about by a variety of factors, including the failure of liberal and socialist policies, war, or bourgeois romanticism. For the theorists, dictatorship is the counterrevolutionary solution to the disorder that results from crisis and revolution. Without crisis and revolution, there is no need for dictatorship and no need for counterrevolution.

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<sup>1</sup> Carl Schmitt, *Political Theology* (Chicago: Chicago University Press, 2005), 36.

For Schmitt, this narrative constitutes the historical fact of the termination of Wilhelmine Germany in the 1918 Revolution and the violent crises of Weimar that led to National Socialism; for de Maistre, it tells the story of the French Revolution and its subsequent Terror; and for Donoso, the Revolutions of 1848 and their consequences. Writing during extreme economic depression and escalating social and political violence, the crisis theorists each sought to blame the chaos of their time upon the Janus-faced post-revolutionary ideals of liberalism and socialism by urging a return to pre-revolutionary moral and religious values. They are united by the three counterrevolutionary principles discussed in this essay: first, the counterrevolutionary constitution and its role as *katechon* of revolutionary violence; second, the philosophy of the decision and the sovereign's identity as the *katechon* personified; and third, bourgeois romanticism's *katechonic* failure to engage in meaningful political action.

This essay is followed by the first complete English translation and publication of Donoso's *carta de 24 de octubre, 1851*, a diplomatic missive which encapsulates many of his views on revolution and decision. The letter is also of great importance to Donoso and Schmitt scholars because it contains the first and only time Donoso uses the complete term "*las clases discutidoras*," which, through Schmitt's injudicious and repeated misspellings as "*una clase discutidora*" has become famous for its characterization of the liberal bourgeois as the "discussing" or "disputing" class that is incapable of action at the precise historical moment when a decision is most direly needed to save the constitution from inner or outer existential threats. Because it prioritizes discussion over decision, the liberal bourgeois class is therefore not capable of protecting the constitution.

## I. Restraining Revolutions and Revolutionary Constitutions

The counterrevolutionary theorists deny that revolutionary constitutions can frame a people's values nor can they legitimize the states upon which they are founded because the rights and laws of a people are not, in de Maistre's words, *created by ink*; rather, these theorists share the idea that a people are united by tradition, language, and religion, and not by posited laws addressing claims of, for example, *liberté, égalité, fraternité*. As Donoso Cortés makes clear, the revolutionary dogmas of liberty, equality, and fraternity come not from "the Republic, but from Calvary."<sup>2</sup> This leads directly to Schmitt's famous dictum that "All significant concepts of the modern theory of the state are secularized theological concepts."<sup>3</sup> But in becoming both secularized and positive, religious foundations are abandoned and the result is revolutionary violence. For the theorists, the proof that sovereignty and the rights of the people cannot be created out the whole cloth of a written constitution lies not only in the bloody genesis of the revolutionary document itself, but in the decades of civil and imperialist wars that follow.

To varying degrees, the theorists of crisis recognized and advocated for ways to restrain violent revolution. In the 1940s,<sup>4</sup> Schmitt began to develop the idea of the *katechon* (Koine Gr. ὁ κατέχων) from his reading of verses 6 and 7 of the *deutero*-Pauline letter to the Thessalonians: "And you know what is now restraining him, so that he may be revealed when his time comes. For the mystery of lawlessness is already at work, but only until the one who now restrains it is removed."<sup>5</sup> According to Heinrich Meier, Schmitt's idea of the *katechon*

<sup>2</sup> Juan Donoso Cortés, "Speech on Dictatorship," in *Selected Works of Juan Donoso Cortés*, ed. Jeffrey P. Johnson (Westport: Greenwood Press, 2000), 49.

<sup>3</sup> Carl Schmitt, *Political Theology*, 36.

<sup>4</sup> See, e.g., Carl Schmitt, *Land and Sea* (Candor: Telos Publishing, 2015), 17; Carl Schmitt, *The Nomos of the Earth* (Candor: Telos Press Publishing, 2006); Carl Schmitt, *Glossarium: Aufzeichnungen aus den Jahren 1947 bis 1958* (German Kindle Edition / Berlin: Duncker & Humblot, 2015).

<sup>5</sup> 2 Thessalonians 2: 6-7 (New Revised Standard Version Catholic Edition)

“forges a link between eschatological faith and the consciousness of ‘historicity’”<sup>6</sup> by explaining that the theological idea of the *parousia* (second coming) of Christ, whose battle with the Antichrist is purported to begin the eschatological end of history, has been restrained and delayed by a ‘mysterious’ force, and as a result of this force the battle has failed to occur.<sup>7</sup> In Schmitt’s view, the *katechon*, while still retaining its theological/eschatological roots, becomes a secularized and historical concept whereby political entities (persons, empires, and institutions) can be understood as restrainers against revolution, chaos, and disorder, which are the political precursors of liberalism and socialism.<sup>8</sup>

Although only Schmitt explicitly uses the term, each of the counterrevolutionary theorists consider what kinds of theological or secular forces operate as a *katechonic* restrainer against revolutionary violence and against the possibility of a world without politics. Revolutionary violence leads either to liberalism or socialism (which is, for the theorists, a world ruled by solely social and economic interests) and the revolutionary individual, with their bonds and chains loosened from tradition and authority, finds themselves with newly established legal rights but a poverty of community and an empty sense of belonging—a nothingness. For de Maistre, who writes that he will “never believe in the fecundity of nothingness,”<sup>9</sup> a people’s respect for their nation’s unwritten constitution, and the power it gives the monarch, operates like the *katechon* by restraining the violence perpetuated against the constitution by revolutionary attempts to reduce it to writing. This respect comes from respect for the French religion and for “the Christian Hercules”<sup>10</sup> acting as a *katechonic* force against revolution. But his opposition to the revolutionary constitution is not wholly based on theology: as I will explain, de Maistre also adopts a Humean/conventionalist justification for the traditions protected by unwritten constitutions.

Donoso’s constitutional theory is derived from the model of the unwritten English constitution, which he admires for its provision of traditional dictatorial power to Parliament. In accord with de Maistre, Donoso argues that threats to the constitution come primarily in the form of revolutionary attempts to reduce an unwritten constitution to a written constitution, threats which are always accompanied by revolutionary violence. The *katechon*, for Donoso, is the decisional power of the dictator who steps into the crisis brought forth by revolution and brings peace back to the people.

Drawing deeply from Donoso, the Schmittian sovereign also stands as *katechon*, taking their power from the constitution (written or otherwise) but their legitimacy from the people: this authority is granted as a constitutional ‘right’ to make the decision and declare the exception.<sup>11</sup> The declaration of the exception is always made for the express purpose of protecting and rescuing the constitution from destruction by the enemy.

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<sup>6</sup> Heinrich Meier, *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy* (Chicago: University of Chicago Press, 1998), 162.

<sup>7</sup> See Heinrich Meier, *The Lesson of Carl Schmitt*, 160-168.

<sup>8</sup> For extended commentary on Schmitt’s concept of the *katechon*, see Tracy B. Strong, “Foreword: Carl Schmitt and Thomas Hobbes: Myth and Politics,” in Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, trans. George Schwab and Erna Hilfstein (Chicago: Univ. of Chicago Press, 2008), vii–xxviii, at xxv; Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (New York: Verso, 2000), 224–225; Matthias Lievens, “Carl Schmitt’s Concept of History,” in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (New York: Oxford University Press, 2016).

<sup>9</sup> Joseph de Maistre, *Considerations on France*, ed. and trans. Richard A. Lebrun (Cambridge: Cambridge University Press, 1994), 42.

<sup>10</sup> *Ibid.*, 48.

<sup>11</sup> Ernst-Wolfgang Böckenförde, “The Concept of the Political: A Key to Understanding Carl Schmitt’s Constitutional Theory,” in *Law and Politics: Carl Schmitt’s Critique of Liberalism*, ed. David Dyzenhaus (Durham: Duke University Press, 1998), 42. According to Ulmen, Schmitt considered *himself* to be a

*A. The English Constitution as a Prototypically Katechonic Force*

The theorists share a deep affection for the English constitution, which is unwritten yet elaborated upon by a series of documents produced from the time of the Saxon and Norman kings (antiquity to 1135) up to and including documents drafted in the last several decades (one of which, in 1969, gave the franchise to both men and women at age eighteen).<sup>12</sup> Unlike constitutions produced in the wake of revolutionary violence, the English constitution was developed over the centuries in response to the ebb and flow of English politics. And unlike the revolutionary American constitution, which contains specific rules for its own amendment (rules designed, as it were, to *resist* amendment), the various documents and statutes that enlarge the English constitution were added to it through enactments by different political actors pursuing a variety of political objectives. These actors are primarily the sovereign Crown (pursuing its own power) and its subjects pursuing their own democratic rights. It is clear on one level why de Maistre and Donoso share their affection for this constitution: it is monarchical, religious, and conservative. But on another level, the reasons for their valorization are more opaque, involving deeper layers of analysis beyond the theorists' own predilections for authoritative political power.

Since its inception, the English constitution has addressed (at different eras and to greater and lesser degrees) representation and the question of parliament (democracy) on the one hand, and liberty—in the form of rights against the sovereign—in terms of the question of political power of the individual (liberalism) on the other. Over time, and withstanding challenges from radical/revolutionary movements, feudalism, and the Renaissance, representation and liberty have emerged as traditional English values, and its 750-year old parliament therefore stands as a traditionalist institution. The French and American constitutions draw heavily upon this tradition and its protection of individual rights and freedoms, such as those pertaining to speech, religion, and the press. These, of course, are 'traditional' liberal values, yet the counterrevolutionary theorists typically oppose these values in deference to an authoritarian sovereign who rules despite (or in spite of) them. Why, then, should the counterrevolutionary theorists turn to the English constitution with great admiration yet turn against its French and American progeny, with the understanding that the statutes generated by revolution merely formalize and codify traditional liberal values?

Specifically, de Maistre opposes the idea that a written constitution, drafted in accordance with a nation's rational self-assessment of its values and its sense of moral propriety, is capable of guiding human behavior towards the good, or that a written constitution can substitute its own moral authority for God's. With Donoso, the Savoyard stresses that revolutionary constitutions in the French and American mold are themselves the product of the same kind of rationalist atheism<sup>13</sup> that fueled their respective revolutions that made them possible both socially and politically, and reject them on that ground.

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*katechonic* restrainer of legal positivism through his work on the sovereign state. See Gary Ulmen, "Ostracizing Carl Schmitt," *Telos* 109 (1996): 94.

<sup>12</sup> The American constitution was amended in 1973 to provide this very same right. Unlike the procedure for adding the right to English constitution, the procedure for amending the American constitution is time-consuming and arcane, and therefore rarely used. In fact, after the initial amendment of the original document to include the American Bill of Rights in 1789, the document has only been amended seventeen times.

<sup>13</sup> For the theorists, the religions prevalent during the creation of the French and American nations in the late nineteenth century were atheist because they were not Catholic.

*B. Joseph de Maistre's Secularized Counterrevolutionary Constitutional Law*

In the final line of his *Considerations on France*, de Maistre writes “the restoration of the monarchy, what they call the counter-revolution, will not be a *contrary revolution*, but the *contrary of revolution*.”<sup>14</sup> As the contrary of revolution, the counter-revolution must be natural rather than violent.<sup>15</sup> For de Maistre, the French Revolution was unnaturally violent and the result of a series of errors. The primary error was its development of a written constitution and a written Declaration of the Rights of Man. It is erroneous, de Maistre writes, to believe that laws are pieces of paper and that “nations can be created by ink,”<sup>16</sup> or that “with a little black liquid and a pen”<sup>17</sup> a legislator proves their moral worth and capacity for leadership. Written constitutions, again constituted by “a little black liquid” supplied by “constitution-mongers,” promise miracles that are undeliverable.<sup>18</sup>

De Maistre’s critique of the French Revolution is not wholly concentrated on its irreligious or even satanic motivations, and herein lies the source of another error: the revolution lacks authority because it was not a democratic revolution.<sup>19</sup> The people were not its driving force. Rather, it was a tyranny of what Marx would later call a vanguard of one man: first Robespierre and Marat, and then Napoleon. It is “indubitably false” that the French majority supported the Republic; royalists, moreover, “are incapable of the excesses with which their enemies have besmirched themselves.”<sup>20</sup> The Maistrian counter-revolutionary, who “works to restore order(,) associates himself with the author of order,”<sup>21</sup> which is God. As a result of the Terror, “every Frenchman is happy enough so long as he is not being killed.”<sup>22</sup> Because this Terror did not exist under the *Ancien Régime*, where the monarchy preserved order and “sovereignty was tangible,”<sup>23</sup> de Maistre reasons (in accord with Burke and Chateaubriand) that the Bourbons had not, in fact, been tyrants.<sup>24</sup>

The core of de Maistre’s constitutional critique is found in Chapter VI of his *Considerations*, where he writes

No constitution is the result of deliberation. The rights of the people are never written, or at any rate, constitutive acts or fundamental written laws are never more than declaratory statements of anterior rights about which nothing can be said that they exist because they exist.<sup>25</sup>

For de Maistre, God—despite His power—chooses not to use supernatural means to impose ordered constitutions upon a people, but lends His hand in the creation of the circumstances from which constitutions emerge. The English constitution, for example, is approvingly cited as being primarily the product of circumstance but also the product of men.<sup>26</sup> This leads to another secular-historical justification for an unwritten constitution:

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<sup>14</sup> Joseph de Maistre, *Considerations on France*, 105 (emphasis in original).

<sup>15</sup> Christopher Olaf Blum, “Introduction,” in *Critics of the Enlightenment: Readings in the French Counter-revolutionary Tradition*, ed. Christopher Olaf Blum (Wilmington: ISI Books, 2003), xxxiv.

<sup>16</sup> *Ibid.*, 157

<sup>17</sup> *Ibid.*, 156.

<sup>18</sup> *Ibid.*, 160.

<sup>19</sup> Joseph de Maistre, *Considerations on France*, 105.

<sup>20</sup> Joseph de Maistre, *Considerations on France*, 83.

<sup>21</sup> *Ibid.*, 84.

<sup>22</sup> *Ibid.*, 86.

<sup>23</sup> *Ibid.*

<sup>24</sup> Christopher Olaf Blum, “Introduction,” xxiii.

<sup>25</sup> Joseph de Maistre, *Considerations on France*, 50

<sup>26</sup> *Ibid.*, 49-50; discussed in detail, *infra*.

Although written laws are merely the declarations of anterior rights, it is far from true that everything can be written down; in fact there are always some things in every constitution that cannot be written and that must be allowed to remain in dark and reverent obscurity on pain of upsetting the state.<sup>27</sup>

On first blush, this sounds obsequious, disingenuous, and embarrassingly deferential to the state and its religious foundation. However, de Maistre's inspiration for this claim is found not in Scripture and religious obedience, but in David Hume. In a footnote, de Maistre cites Hume as the source for a genealogical explanation and justification of the traditional, conventional, and unwritten constitution, as opposed to one that is revolutionary, posited, and written.<sup>28</sup> Unlike the rights that are posited by constitutions and their creators, this method suggests that certain conventions give rise to corresponding rights, and that written constitutions merely memorialize these rights. This method is wholly secular and features in many contemporary attempts to derive rights from convention and not from positive law. For example, the right to property can be explained through this genealogical method. According to economist Robert Sugden,

there is an established convention that each person retains possession of those things he has possessed in the past. The corresponding norm against over-aggression is the Old Testament one: "Thou shalt not steal." Clearly, this convention favors some people much more than others. Those who start out in life possessing relatively little would much prefer many other conventions—for example, a convention of equal division—to the one that has become established. Nevertheless, it is in each individual's interest to follow the established convention, given that almost everyone else does... Provided I own *something*, thieves are a threat to me. So even if the conventions of property tend to favor others relative to me, I am not inclined to applaud theft.<sup>29</sup>

For Sugden, property rights, as well as conventions such as promises and mutual aid or cooperation, arise spontaneously in discrete cultures that otherwise have substantially different social and material histories. These conventions are ones that "most human beings act on, and have acted on, in almost all places and times."<sup>30</sup> Conventions which establish duties such as "respect existing rights" are potentially arbitrary from a moral standpoint, but, Sugden notes, they "work" because they resolve disputes, provide security, and encourage confidence.<sup>31</sup> For example, in terms of the property convention of initial acquisition, the people who do something to unowned property have superior claims to it than those who do nothing to it. These and other property conventions, Sugden writes, do not arise from reason alone.<sup>32</sup> For Sugden and for Hume, who provides much inspiration for Sugden's property theory,<sup>33</sup> these conventions have a "natural prominence" in law itself.<sup>34</sup> Moreover, many animals have a sense of possession and territory, and "it would be surprising if it were not true for our species." "We may be born with some innate capacity," Sugden writes, to think

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<sup>27</sup> Ibid., 50.

<sup>28</sup> Ibid., 50 n2.

<sup>29</sup> Robert Sugden, *The Economics of Rights, Co-operation, and Welfare*, 2<sup>nd</sup> ed. (New York: Palgrave Macmillan 1986, 2004), 163-164.

<sup>30</sup> Ibid., 17.

<sup>31</sup> Ibid., 99.

<sup>32</sup> Ibid., 100.

<sup>33</sup> See Robert Sugden, *The Economics of Rights, passim*.

<sup>34</sup> Ibid., 102.

in terms of individual ownership, that possession sets the stage for ownership, and that “ownership ought to be defended.”<sup>35</sup>

What therefore might appear as de Maistre’s hidebound defense of traditional authoritarianism can alternatively be viewed as a precursor to certain modern economic understandings of rights and duties. Of course, this kind of understanding can be undermined as a simplistic *ex post* conservative rationalization for the status quo, particularly in regards to property rights. But de Maistre’s political opposition to the revolutionary constitution goes deeper:

There has never been a free nation that did not have in its natural constitution seeds of liberty as old as itself, nor has any nation, by writing constitutional laws, ever succeeded in developing rights other than those in its natural constitution.<sup>36</sup>

Consequently, “No nation can give itself liberty if it is not already free,”<sup>37</sup> and by succumbing to a written constitution, de Maistre argues, the constitutional institution is weakened. When the designers of the revolutionary constitutions attempt to ‘give themselves liberty’ through the document itself, they commit what de Maistre calls a “theoretical error.” “What is a constitution?” he asks. “Is it not merely the solution of the following problem? *Given the population, the mores, the religion, the geographic situation, the political circumstances, the wealth, the good and the bad qualities of a particular nation, to find the laws that suit it.*”<sup>38</sup> Surely, he reasons, a people’s constitution is the product of their historical situation, and the laws produced by the constitution are those produced by the unique configuration of these events. Conversely, a universal or universalizable constitution “that is made for all nations is made for none; it is a pure abstraction, an academic exercise made according to some hypothetical ideal, which should be addressed to man in his imaginary dwelling place.” Such a constitution, he writes, is “only a *school composition.*”<sup>39</sup>

Like Donoso in the following century, de Maistre fawns over the English constitution as the constitution *par excellence*.

The English Constitution is an example nearer to us, and consequently more striking. If it is examined closely, it can be seen that *it works only by not working* (if this play on words is excused.) It maintains itself only by exceptions. *Habeas corpus*, for example, has been suspended so often and for such long periods that it could argued that the exception has become the rule. Suppose for a moment that the authors of this famous act had attempted to lay down the cases when it could be suspended, they would by that deed destroyed it...<sup>40</sup>

The real English constitution is therefore “the public spirit, admirable, unique, infallible, and above praise, which leads, conserves, and protects all—what is written is nothing.”<sup>41</sup>

Through war, conflict, revolution, history, and science, “acting together and forming by their intermixture and interaction endlessly multiplying combinations,” the English have finally produced after many centuries “the most complex unity and the most delicate equilibrium of political forces the world has ever known.”<sup>42</sup> The English, of course, had their

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<sup>35</sup> Ibid., 107.

<sup>36</sup> Joseph de Maistre, *Considerations on France*, 51.

<sup>37</sup> Ibid., 50

<sup>38</sup> Ibid., 53

<sup>39</sup> Ibid., 53 (emphasis in original).

<sup>40</sup> Joseph de Maistre, “The Generative Principle of Political Constitutions,” 149.

<sup>41</sup> Ibid., 150.

<sup>42</sup> Ibid., 152.



revolution in 1688. However, they did not “suppress the kingship or the House of Lords in order to achieve liberty”; rather, “they activated their old constitution and their declaration of rights from it.”<sup>43</sup> The English had legitimate grievances with Charles I, de Maistre reasons, but even his execution took place in a legitimist environment. Still, as Chateaubriand was to observe (with de Maistre’s tacit agreement), the French were better off under the *Ancien Régime* than under the Revolutionary government.<sup>44</sup>

In the final two chapters of his *Considerations*, de Maistre prophesizes the fate of the Republic and the ascendancy of the restoration through counterrevolution. He attempts to mollify the opponents of counterrevolution on the grounds that counterrevolution cannot possibly bring any more chaos than what was wrought from revolution. Writing in clearly anti-Romantic terms, he recognizes that “Enthusiasm and fanaticism are not lasting phenomena. Human nature soon tires of this kind of ecstasy.”<sup>45</sup> The passion for revolution and novelty is followed by “despondency, apathy, and indifference,”<sup>46</sup> which, in turn, lead to counterrevolution. Like Donoso Cortés, who is said to have prophesized the rise of the Soviet Union in his “Speech on Dictatorship,” de Maistre prophesized, in these writings, the Restoration of the Bourbons only seventeen years later. The Jacobins, he concludes, are evidence of mankind’s bloodthirstiness and their ephemeral triumph proves that a world without order (imposed from above by crown but also below by constitution and convention, all of which provide *katechonic* restraint against revolution) will repeatedly attempt to exterminate itself.

### *C. Donoso’s Appraisal of The English Common Law*

In the case of Donoso Cortés, his valorization of the English constitution depends entirely upon his theory of dictatorship: “The English constitution is the only in the world (so wise are the English) in which dictatorship is not an exception in the law. It is in the common law. This matter is clear. The Parliament has dictatorial power on all occasions and at all times whenever it decides to exercise it.”<sup>47</sup> The importance of this in regards to the understanding of counterrevolutionary/decisionist theory cannot be understated. Predicated on the common law, the English constitution is the product of judge-made law and a traditional jurisprudence that develops over centuries. Common law in the form of judicial opinions consistently add to or subtract from the accretions that comprise the English constitution. Common law nations, of course, do not lack statutes and civil codes, but unlike the jurisprudence of Latin or Romance civil code nations such as France and Spain, the courts of common law nations are not required to turn to the codes in order to determine the legality of their decisions. For Donoso, this sovereign right inheres in the English Parliament but, like Schmitt’s sovereign, they are both formed by the law (here, the tradition of the unwritten or tradition constitution) yet exist (like Agamben’s *homo sacer*) outside of it. Donoso is almost jubilant in his enthusiasm for what he perceives to be the omnipotent dictatorial power of the English Parliament, who can “change the Constitution” and even the religion of the state. Yet, this very same Parliament governs an electorate widely recognized to enjoy the most freedom of anyone in Europe, and therefore, he argues, dictatorship, a free electorate, and substantial individual freedom are not incompatible with one another. “Gentlemen,” he

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<sup>43</sup> Joseph de Maistre, *Considerations on France*, 67.

<sup>44</sup> Christopher Olaf Blum, “Introduction,” xxiii.

<sup>45</sup> Joseph de Maistre, *Considerations on France*, 78.

<sup>46</sup> Ibid.

<sup>47</sup> Juan Donoso Cortés, “Speech on Dictatorship,” 47.

sarcastically asks his fellow members of the Spanish legislature in regards to England, “who has ever seen a more monstrous dictatorship?”<sup>48</sup>

Finally, as Schmitt observes, English common law subjected the king to parliamentary limits on his power while governing on English soil, but his power was absolute abroad, on the sea, and in the colonies. For Schmitt, this aspect of the unwritten English constitution has “preserved a better sense for the particularities of different territorial statuses than has continental legal thinking, which, even in the 19<sup>th</sup> century, obtained only in a single territorial status: the state.”<sup>49</sup> Drawing yet again upon Donoso, and echoing his claim in *Political Theology* that “All law is ‘situational law’,”<sup>50</sup> Schmitt admires how English constitutionalism recognizes that “all law is law only in a particular location”<sup>51</sup> and that English constitutional history provides for the existence of a state of exception not as the result of a formal legal institutional arrangement (as was developed in France in the nineteenth century), but as an unwritten power where martial law is limited in its “suspension of all law for a certain time and a certain space. In terms of time,” Schmitt writes, “it began with the declaration of martial law and ended with an act of indemnity; in terms of space, the precise area in which the normal legal order was suspended was specified. Within this context, everything required by the situation was permitted.”<sup>52</sup>

## II. The Philosophy of the Decision and the Role of the *Katechon* in Liberal Democratic Theory

For the theorists, the most important question asked by political philosophy is not *how* a people are ruled, but *who* rules them. Contrary to contemporary interpretations of dictatorship, the sovereign does not rule as an individual seeking to implement individual prejudice or class preference: rather, the sovereign always acts on behalf of the people. The sovereign is never guided by personal vanity, greed, or self-aggrandizement, and their decision must also have the support of the people.<sup>53</sup> The sovereign’s decision is guided by the best interests of the nation and the desire to fulfill the nation’s constitution. After the declaration is made and the law is suspended due to a crisis, the sovereign guides the nation out of the state of exception and back to a juridical state governed by the law. Writing in response to their own divided nation—revolution is, after all, civil war—the theorists are united in their advocacy of the decision as a way to stop the disorder and chaos of war, revolution, or civil strife.

The philosophy of the decision is intended to govern the declaration of the existence of the exception, a political state of emergency that is, for Schmitt, “analogous to the miracle in theology,” and it is “only by being aware of this analogy can appreciate the manner in which the philosophical ideas of the state developed in the last centuries.”<sup>54</sup> Like other theological concepts, the Christian concept of *katechon* (the “historical power to restrain the appearance of the Antichrist and the end of the present eon,” framed by Christians in the Middle Ages as an empire girded against Islamic encroachment<sup>55</sup>) is perhaps one of the most recent

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<sup>48</sup> Ibid.

<sup>49</sup> Carl Schmitt, *The Nomos of the Earth* (Candor: Telos Press Publishing, 2006), 98.

<sup>50</sup> Carl Schmitt, *Political Theology*, 13.

<sup>51</sup> Ibid.

<sup>52</sup> Carl Schmitt, *The Nomos of the Earth*, 99 (footnote omitted).

<sup>53</sup> Donoso makes this point throughout his letter of October 24, 1851. See *infra*.

<sup>54</sup> Carl Schmitt, *Political Theology*, 36.

<sup>55</sup> Carl Schmitt, *The Nomos of the Earth*, 60, 87. Schmitt notes that England was the sea power protecting trade in parts of the Mediterranean and for the passage to India, but only a *katechon manqué* because “the

theological concepts to be secularized into the theory of the modern state. The decision to declare the state of exception and the martial law that ensues operates as an explicit *katechonic* restrainer of the evils and violence presented by both the threat of enemy occupation as well as a state of siege by domestic revolutionaries, in which case the *katechonic* purpose of the decision is clearly aligned with counterrevolutionary intentions. In cases of enemy occupation as well as domestic civil war threatened by internal enemies, “a situation that demands extraordinary measures and, thus, breaches the constitution should obtain, yet with the goal of maintaining the validity of this same constitution.”<sup>56</sup> Although it develops from a religious source and appears intransigently conservative, Schmitt’s idea of the *katechon* is historical, and, as Matthias Lievens observes, the concept of the *katechon* is a “presupposition for worldly commitment and is not a conservative or reactionary force as such.”<sup>57</sup>

Because, as Schmitt argues, no collection of posited laws can foreshadow the vicissitudes of political engagement, liberals must reconcile themselves with the necessity of dictatorship intended to save the constitution from its enemies, including revolutionaries who seek to violently overthrow it or, in the case of the Nazis, revolutionaries who use liberalism’s denial of the sovereign’s right to exercise the power of the decision in order to dismantle the constitution itself. Accordingly, Schmitt claims, a liberal political theory which fails to acknowledge the necessity of the exception and the possibility of dictatorship fatally ignores political reality, which demands that liberal values must be set aside during the exception in order to preserve the constitution. Questioning the validity of this claim, this section investigates a liberal democratic response to decisionism’s descriptive and normative claims, leaving open the resolution of whether it is decisionism or liberalism that *katechonically* restrains threats to peace, order, and stability.

#### *A. Liberal Challenges to the Katechonic Decision*

Probing the question of the role of the exception in liberal democratic political theory, Naomi Clare Lazar asks:

How can liberal democratic values accommodate powers or institutions that seem inherently illiberal? And, given that emergencies are common and often unpredictable, how can a liberal democratic state survive without them? On the one hand, in resorting to such powers the state ceases to be liberal, while on the other, in not resorting to them, the state might well cease to be.<sup>58</sup>

According to Schmitt’s well-known maxims, the power to declare that a situation constitutes a state of emergency (*Ausnahmezustand*) justifying the exceptional suspension of constitutional law is reserved for the sovereign, and the identity of the sovereign is determined by the person holding this power. For Giorgio Agamben, the state of exception is exemplified

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small European island was still too weak for this great, global exercise of power.” Carl Schmitt, *The Nomos of the Earth*, 238.

<sup>56</sup> Carl Schmitt, *The Nomos of the Earth*, 209.

<sup>57</sup> Matthias Lievens, “Carl Schmitt’s Concept of History,” 418. See also Jens Meierhenrich and Oliver Simons, “A Fanatic of Order in an Epoch of Confusing Turmoil,” in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (New York: Oxford University Press, 2016): “Schmitt’s *katechon* is a functional term, a figure that is defined by its role and political potential rather than by its identity,” and that “Schmitt’s reading of the *katechon* was not a theological interpretation, but rather an attempt to endow the notion with political meaning,” 47-48.

<sup>58</sup> Nomi Clare Lazar, *States of Emergency in Liberal Democracies* (Cambridge: Cambridge University Press, 2009), 2. See also Ronald Dworkin, “Terror and the Attack on Civil Liberties,” *New York Review of Books*, vol. 50, no. 17, November 6, 2003.

by the suspension or denial of rights which have become the norm in the modern liberal state, where nation and citizenry co-exist in a perpetual *general* exception, an ongoing state of emergency where political life has been reduced to rights-less ‘bare life.’ Here, persons without rights—including citizens of contemporary Western democracies—are *homo sacer*: free to be killed but not sacrificed.<sup>59</sup>

Like Hegel, Schmitt is unable or unwilling to conceive of a state that is limited by public law. Schmitt and Hegel envision a society with remarkable freedoms in the private law between subjects in terms of property and contract, but this freedom has no correlative in a public law, which is the law between citizens and the state.<sup>60</sup> Liberal democracies, on the other hand, have entrenched institutions that establish and regulate public law. These institutions provide for rights claims to be made against the state, but they do not exist in the kinds of states described by Schmitt and Hegel due to the strict division in those states between civil society and the state itself, a division exemplified by Schmitt’s notion of the sovereign. However, Schmitt’s sovereign is never free from the constitution: in fact, the constitution grants the sovereign power by indicating *who* can act to declare the exception (the prince, or monarch or president or, as may be the case, a constitutional high court) but not *how* they can act.

Schmitt’s critique of liberalism and its putative emphasis on rights and liberties is well known and controversial. In a nutshell, Schmitt argues that liberalism fails as a political doctrine because of its inability to countenance a leader who faces the possibility of having to make necessary yet anti-liberal decisions when the very existence of the nation requires it to act decisively. These decisions, manifested during the state of exception, must necessarily take the leader beyond the supervision of liberal democratic control mechanisms such as courts and legislatures, and beyond the normative considerations required of democratic governance.

These conditions usually arise in military crises, and the rules governing the declaration of martial law in—for example—the American political system, are complex. There is no direct Constitutional authority granted to the president to suspend the privilege of the writ of *habeas corpus*, although the Suspension Clause permits the Congress to do so “when in Cases of Rebellion or Invasion the public Safety may require it.”<sup>61</sup> The remaining authorities—including those relied upon by President Obama when he declared a national emergency regarding the property of “certain persons contributing to the situation in the Ukraine” and President Trump’s recent declaration of a national emergency at the southern border—are all the result of Congressional legislation.<sup>62</sup> These are examples of the Schmittian “logic of sovereignty in a constitutional democracy” which “exposes law’s limit”<sup>63</sup> not by curtailing the

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<sup>59</sup> Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford: Stanford University Press, 1998).

<sup>60</sup> For a discussion of Hegel’s distinction between public and private law, see M. Blake Wilson, “Personhood and Property in Hegel’s Conception of Freedom,” *Polémos* XI (1) (2018), 67-91.

<sup>61</sup> Note also that Article 1, §8 permits the Congress, and (again) *not* the president, the power to call forth “the Militia to execute the Law of the Union, suppress insurrections, and repel Invasions.” Schmitt would point out that it is the Congress, and not the president, who is sovereign in terms of these constitutional prerogatives.

<sup>62</sup> The statutes include the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 et seq.) (NEA), section 212(f) of the Immigration and Nationality Act of 1952 (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code.

<sup>63</sup> See Austin Sarat and Connor Clarke, “Political Philosophy and Prosecutorial Power,” in *On Philosophy in American Law*, ed. J. Francis Mootz (Cambridge: Cambridge University Press, 2009), 107.

extent of sovereign power itself, but merely by indicating *who* can act, but not *how* they can act, when emergencies arise.<sup>64</sup>

States of exception also arise when political officials such as judges, police, and legislators are forced to use their discretion in crises and emergencies that are “irresolvable through normal democratic procedure or consensus.”<sup>65</sup> These states are exceptional because they temporarily suspend normal democratic procedure: during crises, politicians and law enforcement personnel stop representing the people when they are forced, by virtue of their power and authority, to make the decision. For Schmitt, politicians experience true sovereignty as leaders in these situations because the state of exception brackets off the constitutional and civil law that restricts decisionism.<sup>66</sup> By nature of their express or implied sovereignty, judges, police, and politicians improvise and experiment in the daily management of society and its members based on the changing circumstances that demand the decision. This occurs in the extreme censorship of literature as well, and may account for Schmitt’s influence on the work of writers such as Walter Benjamin and William Spanos.<sup>67</sup> Violent repression and violation of civil rights are possible features of the state of emergency, but they are not necessarily so: in fact, the state of emergency may be administrative, orderly, and superficially benign. To be sure, this is Agamben’s point when he claims that the state of exception is perpetual and ongoing in administrative, orderly, and superficially benign liberal democracies.

Although they may be otherwise administrative, executive powers move from the ordinary and the everyday to the political with remarkable facility. They are political because they appear fundamentally illiberal and antidemocratic despite their derivation from purportedly legal and democratic norms. For Lazar, the question is whether liberal democratic values can accommodate these apparently illiberal institutions, and whether the liberal democratic state can survive without them. A paradox arises because by “resorting to such powers the state ceases to be liberal, [whereas] in not resorting to them, the state might well cease to be.”<sup>68</sup> For Lazar, Schmitt’s resolution of the dichotomy—one that centers on the assimilation of emergency to the exception and “suspension of rules and norms”<sup>69</sup>—is inadequate and self-defeating. Emergency powers, she argues, are not exceptional; rather, they are part of the principles that already function under everyday circumstances, alongside the liberal values contained in, for example, the criminal justice system, where “[r]ights are derogated for the sake of order every day.”<sup>70</sup> If Lazar is correct, Congressional protocols, such as those used recently by Trump, are intended to deal with emergencies, yet they are *not* exceptional: therefore, the Schmittian problem of “the exception” can be avoided “by removing emergency from its purview.”<sup>71</sup> This understanding denies the very existence of the Schmittian decision due to Lazar’s claim that because there is substantial accountability in the political sphere, there is no exceptionalism—one branch of government is always under the watchful eye of the others—and states are never subjected entirely to the sovereign will of an

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<sup>64</sup> Carl Schmitt, *Political Theology*, 6.

<sup>65</sup> Sacha Bru, *Democracy, Law, and the Modernist Avant-Garde* (Edinburgh: Edinburgh University Press, 2009), 4.

<sup>66</sup> *Ibid.*, 5.

<sup>67</sup> *Ibid.*; See Walter Benjamin, *The Origin of German Tragic Drama* (New York: Verso, 1998); Walter Benjamin, “Critique of Violence”, in *Reflections* (New York: Schocken Books, 1978); William Spanos, *The Exceptionalist State and the State of Exception* (Baltimore: The Johns Hopkins University Press, 2011).

<sup>68</sup> Lazar, *States of Emergency in Liberal Democracies*, 2.

<sup>69</sup> *Ibid.*, 3.

<sup>70</sup> *Ibid.*, 5.

<sup>71</sup> *Ibid.*

individual such as the President.<sup>72</sup> So, a state of emergency might arise, and with it extraordinary powers which did not exist prior to the emergency, but this state is far from Schmitt's absolutist/decisionist theory partly because the powers of the sovereign are fiduciary and not absolute—in other words, they are not exceptional.<sup>73</sup> Schmitt would reply that by creating state offices and a system of checks and balances, liberalism denies the possibility of a self-contradiction: a liberal state that illiberally denies basic rights so that the state itself can survive. No collection of laws can foreshadow the vicissitudes of political engagement, Schmitt argues, and the liberal must reconcile themselves with the necessity of a dictatorship intended to save the constitution from its enemies—be they internal or external. Revolution and civil war prove the existence of the internal enemy, and war between nations proves the existence of the external enemy.

To show Schmitt where he is wrong, Lazar argues for a Lockean/liberal conception of the exception. This conception classifies the suspension of rights during the state of emergency into either republican or decisionist categories. The republican approach is exemplified by Machiavelli and Rousseau and focuses on the identity of the statesman and the fact that she is constantly exempt from daily or quotidian ethics.<sup>74</sup> Decisionist exceptionalism, found in Schmitt and Hobbes, is a kind of political ethics where the natural and political world is not governed by strict norms because, Lazaar writes, “only decisive and absolute sovereignty, entirely unrestricted by earthly norms, can govern here.”<sup>75</sup> Both republican and decisionist exceptionalism are illiberal: therefore, the challenge for the liberal constitutional theorist consists in determining whether it—the exception—can exist within the liberal framework. According to Lazar, this challenge can be met by using a Lockean “liberalism of experience” which treats the institutions that respond to the emergencies as merely instrumentally valuable, where the very existence of the institutions is flexible and subject to modification.<sup>76</sup> This understanding denies the very existence of the Schmittian dictator through Lazar's assertion that because there is substantial accountability in the political sphere—after all, the executive is supposedly *always* subservient to the legislature—there is no exceptionalism and states are never subject entirely to the sovereign will of the individual.<sup>77</sup> Locke—and presumably the liberal democratic Constitutional theorists who, like Lazar, are influenced by him—is therefore ‘open’ to the exceptional state, but only because the powers of the sovereign are non-exceptional, limited, and merely fiduciary due to the design of the constitution itself.<sup>78</sup>

Whereas Schmitt's exception originally only applied in times of emergency and peril—indeed, Schmitt says that sovereignty must “be associated with a borderline case and not with routine”<sup>79</sup>—Agamben argues that everyday administrative legal procedures lack the exigencies of Schmitt's decisional power but still manifest exercises of sovereign power by infringing upon human rights. For Agamben, the exception becomes routine in its most horrifying example of the internment camp as “the biopolitical paradigm of the modern.”<sup>80</sup> The

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<sup>72</sup> Ibid., 17.

<sup>73</sup> Ibid., 73.

<sup>74</sup> Ibid., 12.

<sup>75</sup> Ibid., 13.

<sup>76</sup> Ibid., 14.

<sup>77</sup> Ibid., 17.

<sup>78</sup> Ibid., 73.

<sup>79</sup> Carl Schmitt, *Political Theology*, 5.

<sup>80</sup> Giorgio Agamben, *Homo Sacer*, 43.

exception truly becomes the norm “the more exceptional we become, [as] we slide away from democracy and toward authoritarian modes of governance.”<sup>81</sup>

What would such a state look like if the power to declare the exception were restricted to the extent that it disappeared entirely from the political landscape? The most radical conclusion, suggested first by Hobbes and developed in detail by Schmitt, holds that if there were no prerogative to declare the exception, then there can be no sovereign and consequently no state. In such a case, the exceptional powers are not simply constitutive of the state, but necessary and sufficient for its existence.

### *B. Schmitt’s Katechonic Response to the Liberal Challenge*

The question remains whether liberalism can maintain its institutions—those which regulate property relationships, deviant/criminal behavior, and national security—without the prerogatives enabled by, for example, martial law. There are two ways to approach this problem. The first way is to assume that for a state to exist at all, certain powers are necessary. For example, it may be the case that the modern state *qua* state must possess relatively facile methods for enforcing its laws (civil, criminal, and administrative), for expropriating property for public use, and for protecting its citizens during national emergencies. If this is the story of the modern liberal state, then it is a story where individual rights are necessarily subjugated to state interest and where forensic-juridico interests in law enforcement routinely derogate certain rights, such as the right to privacy. This leads to several conclusions about the modern state, none of which comport with conceptions about liberal theory or liberalism:

1. States must either own or have the right to own, occupy, or possess all of the territory, property, and land within its jurisdiction. All liberal democracies have provisions for expropriating private property, and public use will always trump private possession.
2. *Ausnahmezustand* or state of emergency; without this, no political power exists. In order to be a liberal democracy, the liberal democratic nation must have a provision for the suspension of its freedoms *in order to preserve the nation itself*. In other words, the power to *suspend* the democracy is the *essence* of a democracy.
3. States must have a provision for the invasion of persons, houses, papers, and effects for even minor criminal prosecution because the privacy rights of citizens are always secondary to the state’s right to investigate and prosecute crime. A government that prosecutes crime simply *regulates* this invasion of privacy through its procedural criminal law. The right to privacy is therefore always contingent upon the government’s superior right to gather evidence.

If these stipulations—generated from a close reading of Schmitt—constitute necessary truths about the modern state, then Agamben’s interpretation of Schmitt is correct and all rights are therefore consistently suspended in the ongoing state of exception whether in terms of martial law, national emergency, or other emergency situations. The alternative to these stipulations is the ultraliberal but toothless state that cannot, for example, authorize its law enforcement officers to enter citizens’ homes to search for and seize evidence or expropriate property to build hospitals, freeways, or military bases. Because of its commitment to

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<sup>81</sup> Austin Sarat and Connor Clarke, “Political Philosophy and Prosecutorial Power,” 111.

individual rights, this liberal state cannot suspend those rights in times of crisis, and due to the fact that there is no power to declare martial law, foreign invasion or internal insurrection cannot be repelled, and the result is that the state's role as *katechon* is abandoned in favor of individual rights. This is certainly not Schmitt's position, and it is unlikely to be that of the liberal democrat either.

### III. Romantic Irrationalism's *Katechonic* Failure: *Credo ut intelligam*.<sup>82</sup>

The crisis theorists frequently admit to the kinds of anti-rationalist forces that permeate Roman Catholicism, which hold that human reason is not capable of explaining a divinely created universe which is unknowable and must remain unknown. Religion dogmatically explains the universe, and without dogmatism all values are reduced to the same value, which is itself valueless and the essence of liberalism's tolerance and socialism's rigid egalitarianism. By encouraging the romantic image of the "natural goodness of human beings"<sup>83</sup> who self-creates instead of the 'evil' human who recognizes that he is not the creator but the created, the revolutionary state emerges as a posited corollary to Hobbes' naturally "brutish and poor" state of *bellum omnium contra omnes*, where violence, nature, and evil predominate because they are not restrained by the twin *katechons* of religion and state. The theorists fear that a revolutionary crack in the state's façade will let in the Antichrist and its dark chaos. Liberalism's weak state, as well as socialism's strong state but weak society, also lets in the darkness. Together, the theories argue, the strong state and its religion restrain the Antichrist and return order: religion asserts internal control through guilt, hell, and perdition, while political organizations exert external control through constitutional law (at its most benign) and tyranny (at its most repressive).

#### A. *The Political Theology of Donoso Cortés*

As Donoso makes clear, the dogmas of liberty, equality, and fraternity come not from "the Republic, but from Calvary."<sup>84</sup> These begin, as Schmitt famously claims, as religious concepts which then become secularized. For Donoso, equality is only possible before God, and liberalism is incoherent in its attempt to value both equality and the value of the individual. When concepts such as equality are secularized, they lose their religious foundation and violence ensues. During the French Revolution, Donoso observes that religious fraternity devolved into secularized violence, with "brothers devouring one another in the streets of Paris." Both Donoso and de Maistre viewed the Revolution as "satanic,"<sup>85</sup> and there was certainly something demonic afoot when Chateaubriand witnessed the heads of the mayor of Paris and his assistant paraded around the city on the wrong end of the revolutionaries' pikes.<sup>86</sup>

For Donoso, sin and evil are the result of disorder, and it is heresy to subordinate the religious to the political and the political to the economic.<sup>87</sup> Politics, rather, must be subordinated to theology. However, as Jeffrey Johnson notes, political domination in the form of terror and brute force is expensive and requires enormous physical and economic resources. Moreover, it is not effective in the pursuit of order. Because man's dark nature

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<sup>82</sup> "I believe in order that I might understand". – St. Augustine.

<sup>83</sup> Carl Schmitt, *Political Romanticism* (New Brunswick: Transaction Publishers, 2011), 2.

<sup>84</sup> Juan Donoso Cortés, "Speech on Dictatorship", 49.

<sup>85</sup> Robert A. Herrera, *Donoso Cortés: Cassandra of the Age* (Grand Rapids: William B. Eerdmans, 1995), 2.

<sup>86</sup> Christopher Olaf Blum, "Introduction," xix.

<sup>87</sup> Robert A. Herrera, *Donoso Cortés*, 83.



justifies his domination,<sup>88</sup> myth, religion, and political compromise are better methods to relocate and secure order.<sup>89</sup> The church as *katechon* saves the world from chaos whereas philosophy's endless discussion cannot.<sup>90</sup>

Although humans are incapable of reason, it is passion (churned up through sloganeering and the encouragement of *ressentiment*) and not reason that causes revolution, and revolution causes chaos and disorder. Chaos and disorder, Donoso claims, always precede dictatorship. Therefore, if the goal is the avoidance of dictatorship, then Donoso advises that political agents quit talking and start remedying chaos. Dictatorship is acceptable, and even desirable, solely for this purpose. For Donoso, dictatorship is the apogee of politics, and the fall of religion is directly proportional to the rise of politics, which he characterizes as repression and tyranny.<sup>91</sup> Government is only necessary for those who reject religion, and in Donoso's logic, more religion equals less state: "When the religious thermometer rises, the thermometer of political repression falls. When the religious thermometer falls, the political thermometer—political repression, tyranny—rises."<sup>92</sup>

In a series of gestures that adumbrate Foucault's genealogical method, Donoso's "Speech on Dictatorship" engages in a remarkable analysis, beginning with the Protestant Reformation, of the forms of political repression that arise when the religious thermometer falls. Absolute monarchies arose when feudal monarchies fell, and with the rise of absolute monarchies comes the creation of the first institution in Donoso's institutional genealogy: the permanent standing army, which gave rise to the "million arms" of absolute monarchy. As the religious thermometer falls, the state says, "We have a million arms. But that is not enough. We need something else. We need a million eyes." Thus arises the institution of the police, which furthers the rise of the political thermometer. "Then, gentlemen, it was not enough for governments to have a million arms and a million eyes. They wanted to have a million ears. So they devised administrative centralization. Through this form of administration, all claims and complaints reached the government." But a million arms, eyes, and ears were not enough, and the government realized it needed to have the privilege to be "everywhere at the same time." The result was the telegraph, which is how the "first outburst of the last revolution" was announced to the world and caused it to rapidly spread due to the fact that with the telegraph there are no "physical distances" between persons and therefore no "physical resistance."<sup>93</sup>

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<sup>88</sup> Jeffrey P. Johnson, "Introduction," *Selected Works of Juan Donoso Cortés*, ed. Jeffrey P. Johnson (Westport: Greenwood Press, 2000), 5.

<sup>89</sup> See Donoso's letter of October 24, 1851, *infra*, for clear examples of this strategy.

<sup>90</sup> To reiterate, Donoso does not utilize the language of 2 Thessalonians. In fact, Schmitt is critical of this failure on Donoso's part as part of Schmitt's larger dismissal of what Schmitt characterizes as Donoso's "failed" theology. For Schmitt, Donoso failed theologically because the concept of the *katechon* remained unknown to him: "Donoso Cortés ist theologisch daran gescheitert, daß ihm dieser Begriff unbekannt geblieben ist." See Carl Schmitt, *Glossarium: Aufzeichnungen aus den Jahren 1947 bis 1958*, 47. Although Schmitt's comments raise many questions about Donoso's theology and why he considers it a failure, Schmitt did not believe that Donoso failed polemically or politically. For an extended discussion of Donoso's theology—which includes the suggestion that it 'fails' because of Donoso's inability to isolate the political and historical from the theological—and its relationship to the concept of the *katechon*, see Alberto Caturelli, "Despotismo universal y Katéchon Paulino en Donoso Cortés (I)," *Sapientia* 13/47 (1958): 37-42, and Alberto Caturelli, "Despotismo universal y Katéchon Paulino en Donoso Cortés (II)," *Sapientia* 13/48 (1958), 109-127.

<sup>91</sup> Juan Donoso Cortés, "Speech on Dictatorship," 53.

<sup>92</sup> *Ibid.*, 53.

<sup>93</sup> *Ibid.*, 54.

By now, the religious thermometer has almost fallen to nothingness and “the way is prepared for an enormous, colossal, universal, and immense tyranny.”<sup>94</sup> The issue, however, is not the choice between freedom or dictatorship. Why would anyone, Donoso asks, choose dictatorship over freedom? Were there a choice, he answers, “I would vote for freedom, like every single one of us seated here. But, I conclude, this is the problem. One must deal with choosing between a dictatorship of insurrection and a dictatorship of the Government. Placed in this situation, I choose the dictatorship of the Government as the least wearisome as well as the least outrageous.”<sup>95</sup> True to his deeply polemic and agonistic nature, he also chooses the ‘noble’ dictatorship of the saber over the insurrectionary dictatorship of the dagger.<sup>96</sup>

Because, Donoso claims, man is evil by nature, evil naturally triumphs over good. But religion is a *supernatural* triumph over evil as an “act of his sovereign will.”<sup>97</sup> It is not so much a question of a fair fight between good and evil: as shown by history, evil wins consistently. Evil therefore triumphs in the physical/historical world, but God triumphs in the spiritual world: as Johnson writes, evil for Donoso “is naturally victorious while good is supernaturally victorious.”<sup>98</sup>

Written and delivered during the upheavals of revolution, Donoso’s speech on dictatorship is, Alexander Herzen writes, “remarkable in many respects”:

Donoso Cortes has diagnosed with unusual accuracy the present terrible condition of the European states; he has seen that they are on the edge of an abyss, on the eve of an unavoidable, fatal cataclysm. The picture he draws is terrifying in its truth. He depicts a Europe which has lost its way, impotent, drawn rapidly towards disaster, dying of lack of order, and over against it, the Slav world ready to overwhelm the Germano-Roman world.<sup>99</sup>

Donoso Cortés’ *katechonic* solution to Europe’s destruction was obvious to Herzen immediately upon the widespread publication of the speech: according to Herzen, Donoso Cortés “thinks that if England returned to Catholicism, the whole of Europe could be saved by the Pope, the power of the monarchy and the army. He wants to avert the terrifying future by withdrawing into the impossible past.”<sup>100</sup> “There is something suspect about the pathology of the Marquès de Valdegamas,” Herzen continues with remarkable perspicacity. “Either the danger is not so great or the remedy is ineffectual.”<sup>101</sup> Writing after the revolutions and with the benefit of hindsight, Herzen realizes that Donoso Cortés got his wish when the revolutions sputtered out and failed, but that counterrevolution has fared no better in addressing the suffering:

The principle of monarchy has been everywhere restored, the army is everywhere dominant, the church, in Donoso-Cortes’ own words and in those of his friend Montalembert, is triumphant. Thiers has become a Catholic. In short, it would be hard to wish for more oppression, more persecution, more reaction, and yet still salvation does not come. Can it really be because England persists in her sinful apostasy? Every day socialists are blamed for

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<sup>94</sup> Ibid., 55.

<sup>95</sup> Ibid., 57; see also his letter of October 24, 1851, *infra*.

<sup>96</sup> Ibid., 57.

<sup>97</sup> Ibid., 70.

<sup>98</sup> Jeffrey P. Johnson, “Introduction”, 22.

<sup>99</sup> Alexander Herzen, *From the Other Shore and The Russian People and Socialism: An Open Letter to Jules Michelet* (New York: George Braziller, 1956), 154.

<sup>100</sup> Ibid., 154-155.

<sup>101</sup> Ibid., 155.

being good only at criticism, at the denunciation of evil, at denial. What would you say now about our anti-social enemies?<sup>102</sup>

Finally, like de Maistre, Donoso engages in a secular/sociological account of revolution in which revolutions are fomented by wealthy aristocrats and not the victims of slavery or misery. Aristocrats play upon the irrational and “overexcited desires of the mob” and encourage their *ressentiment*:

*You will be like the rich*—this is the formula of socialist revolutions against the middle classes. *You will be like the nobility*—this is the formula of the revolutions of the middle classes against the noble classes. *You will be like kings*—this is the formula of the revolutions of the noble classes against kings. Finally, gentlemen, *you shall be like gods*—this is the formula of the first rebellion of the first man against God. From Adam, the first rebel, to Proudhon, the latest impious one, this is the formula for all revolutions.<sup>103</sup>

The desires of the masses are exploited, as it were, by demagogues.<sup>104</sup>

### B. Romanticism's katechonic failure

De Maistre and Donoso are frequently characterized as romantic theorists. Schmitt directly addresses this characterization in his *Political Romanticism*, written and published in the throes of the German Revolution of 1918-1919. His thrust is that because romanticism has no political content, it is wrong to attribute *any* political perspective to so-called or *soi disant* romantics, much less a perspective that is revolutionary *or* conservative. According to Guy Oakes, Schmitt tasks himself with disposing the “conventional interpretations of Burke, Bonald, and de Maistre as advocates of political romanticism.”<sup>105</sup> Charles M. Lombard, for example, makes repeated claims of de Maistre’s “close connection with French Romanticism”; because de Maistre holds “the viewpoint of a Romantic writer composing a historical novel, Maistre reduces complicated political movements to a simple formula.”<sup>106</sup> Similarly, John Graham calls Donoso a “romantic idealist” who writes, in the form of his *Ensayos*, a “liberal-romantic manifesto.”<sup>107</sup> It is true, Schmitt writes, that counterrevolutionary writers—and de Maistre in particular—attempt to link romanticism to a “great historical structure” that “begins with the Reformation, leads to the French Revolution in the eighteenth century, and is consummated in romanticism and anarchy in the nineteenth century.” This is, Schmitt writes, “the origin of the “monster with three heads”: reformation, revolution, and romanticism.”<sup>108</sup> De Maistre, Schmitt concludes, is not romantic himself, but he was influential on German romantics such as Schlegel and Müller.<sup>109</sup> For Donoso, Schmitt writes, romanticism was self-evidently a romantic revolution against contemporary social and political authority that was concurrently a literary/artistic movement, and that “art cannot

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<sup>102</sup> *Ibid.*, 155.

<sup>103</sup> Juan Donoso Cortés, “Speech on Dictatorship,” 49-50.

<sup>104</sup> Robert A. Herrera, *Donoso Cortés*, xviii.

<sup>105</sup> Guy Oakes, “Translator’s Introduction,” in Carl Schmitt, *Political Romanticism* (New Brunswick: Transaction Publishers, 2011), xxviii.

<sup>106</sup> Charles M. Lombard, *Joseph de Maistre*, 27-29

<sup>107</sup> John T. Graham, *Donoso Cortés: Utopian Romanticist and Political Realist* (Columbia: University of Missouri Press, 1974) 2, 28.

<sup>108</sup> Carl Schmitt, *Political Romanticism*, 8.

<sup>109</sup> *Ibid.*, 32.

remain the same when social institutions and sentiments change and are eliminated by a revolution.”<sup>110</sup>

For Schmitt, 1796 was a key year for both romanticism and counterrevolutionary theory. Burke’s critique of the French Revolution had already been translated into German and circulated inside France, but the key publication of the year were Bonald’s *Théorie du Pouvoir* and de Maistre’s *Considerations on France*. These laid out the “counterrevolutionary argument principle,” which is “the rejection of the idea that law and the state could result from the methodical activity of human beings.” For the counterrevolutionaries, “All important state institutions, including the constitutions that were altered so frequently during the French Revolution, are said to result automatically and in the course of time from prevailing circumstances and the nature of things. These institutions are the rational expression of circumstances, not their creator.”<sup>111</sup>

However, for Schmitt, “romanticism is incompatible with politics” because “poeticization of politics nullifies the conditions under which choices between alternative conceptions of right and wrong, of justice and injustice, can be made.”<sup>112</sup> Schmitt objects to the romanticist material transformation of emotions into ‘romantic objects’ (mountains, streams, moonlit nights) or eras (the Middle Ages). Despite their attempts, romantic revolutionaries cannot derive “the nature of the romantic” from material things due to the fact that the world does not contain romantic things.<sup>113</sup> Developing this further, romanticism is *subjectified occasionalism* where “the romantic subject treats the world as an occasion and an opportunity for his romantic productivity.”<sup>114</sup> According to the principle of subjectified occasionalism, God acts through persons occasionally with no assistance or resistance from their own free will: in art, God’s great work (nature) is replaced by simulations (paintings or novels depicting and describing nature), the great narratives of God’s people are interpreted in dramas or operas, and the artist becomes a ‘cultic’ priest. In accord with Schmitt’s *Political Theology*, where modern political concepts are secularized religious *concepts*, modern romantic art secularizes religious *things*.

The bearer of the romantic movement is the liberal bourgeoisie, who triumphed over the monarch, the church, and the nobility in 1789, and then defended itself against the revolutionary proletariat in 1848.<sup>115</sup> However, Schmitt wryly notes, “The liberal bourgeoisie was never a revolutionary for long.”<sup>116</sup> Schlegel’s romanticism in particular rendered him politically insignificant: “As a politician he was not taken seriously at all.”<sup>117</sup> This observation leads to the polemically devastating charge that “The deeds of the romantics were journals.”<sup>118</sup>

Regardless of the many romantics who became its converts, Catholicism is not, Schmitt claims, romantic: “Regardless of how often the Catholic church was the object of romantic interest, and regardless of how often it also knew how to make use of romantic tendencies, the Church itself was never the subject and bearer of a romanticism, no more than this was the case for any other world power.”<sup>119</sup> Schmitt echoes the Catholic de Maistre when he writes that “law, constitutions, and language are products of human society.” Society produces the

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<sup>110</sup> Ibid., 8.

<sup>111</sup> Ibid., 109-10.

<sup>112</sup> Guy Oakes, “Translator’s Introduction,” xlv – xlv.

<sup>113</sup> Ibid., 2-3.

<sup>114</sup> Ibid., 17.

<sup>115</sup> Ibid., 12.

<sup>116</sup> Ibid., 17.

<sup>117</sup> Ibid., 39.

<sup>118</sup> Ibid., 36.

<sup>119</sup> Ibid., 50.

nation, but nations have boundaries. The epitome of universalist romantic politics is the antithesis of this idea: without boundaries, “the unlimited community is essentially a revolutionary god that eliminates all social and political barriers and proclaims the general brotherhood of humanity as a whole.”<sup>120</sup> Accordingly, Schmitt writes, “Any relationship to a legal or moral judgment would be incongruous here, and every norm would seem to be an antiromantic tyranny. A legal or a moral decision would be senseless and it would inevitably destroy romanticism. This is why the romantic is not in a position to deliberately take sides and make a decision.”<sup>121</sup>

For Schmitt, the core of all political romanticism is the idea that the state is a work of art, “produced by the creative achievement of the romantic subject.”<sup>122</sup> The state appears as the beloved, but the king, the state, and the beloved itself are not experienced as real things but as indistinguishable objects of poeticization. As a result, the romantic theory of the state is nothing but a “matter of aesthetics and style.”<sup>123</sup> This romantic *quasi*-argument, Schmitt concludes, “can justify every state of affairs. Today the centralized police state can be the lifeless, artificial machine to which the vital energies of *estapist* privileges should not be sacrificed. Tomorrow these privileges are proud flesh that must be restored to the vast living body as a whole.”<sup>124</sup> Because of its political impotency and, because of its inability to act, its support for the status quo and whomever happens to be in power,<sup>125</sup> romanticism provides no *katechon* against evil or tyranny.

### *B. Revolutionary Irrationalism and The Law of 22 Prairial*

For the theorists, political romanticism reduces the political to the aesthetic, and nowhere was this clearer than in the deeply Romantic aspirations of the French Revolution. When the Bicentennial of the French Revolution was celebrated in the country where it occurred, France was unable to settle upon what aspects of the event ought to receive official sanction. Despite the bloody terror that followed it, 1789’s Declaration of the Rights of Man and of the Citizen became the primary focus of the 200-year celebration. This permitted the French to link the Revolution to, in Dan Edelstein’s words, “the liberalism and reforms of the Enlightenment, hence ‘taming’ the violence of the revolutionary process”<sup>126</sup> with the resulting “cosmetic repair” of the revolution’s horrors.<sup>127</sup>

Inspired by the natural rights precept to kill the enemies of humanity (*hostis humani generis*), there is no clearer indication of the irrational terror of the French Revolution than the Law of 22 Prairial, a bill proposed by Couthon in the name of the Committee of Public Safety. The Law declared that “A revolution like ours is nothing more than a quick succession of conspiracies, because this revolution is the war of tyranny against liberty, of crime against virtue. Instead of wasting time with examples, it is either a matter of exterminating the

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<sup>120</sup> *Ibid.*, 61.

<sup>121</sup> *Ibid.*, 124.

<sup>122</sup> *Ibid.*, 125.

<sup>123</sup> *Ibid.*, 141.

<sup>124</sup> *Ibid.*, 145.

<sup>125</sup> Guy Oakes, “Translator’s Introduction,” xlv; “As long as the Revolution is present, political romanticism is revolutionary. With the termination of the Revolution, it becomes conservative, and in a markedly reactionary restoration it also knows how to extract the romantic aspect from such circumstances.” Carl Schmitt, *Political Romanticism*, 115.

<sup>126</sup> Dan Edelstein, “Hostis Humani Generis: Devils, Natural Right, and Terror in the French Revolution,” *Telos* 141(2007): 57-81; 57.

<sup>127</sup> Robert A. Herrera, *Donoso Cortés*, 120.

implacable satellites of tyranny or of perishing with the republic. Indulgence towards (counterrevolutionaries) is an atrocity, clemency is parricide.”<sup>128</sup>

The Law was preceded by the March 19, 1793 decree outlawing all counterrevolutionary rebels in the Vendée rebellion, which brought the idea of the *hors la loi* (outlaw) to French law.<sup>129</sup> Like Agamben’s *homo sacer*, the King and all counterrevolutionaries were outside the law in a ‘state of nature’ and declared *hostis humani generis*. For the law-giving Jacobins, France was “in the process of returning to the natural state (understood less as the ‘state of nature,’ than as the natural republican form of government), (and) anyone who prevented this ‘regeneration’ was indeed both a traitor to France and an enemy of humanity at once.”<sup>130</sup> “If found with arms in hand,” counterrevolutionaries were to be “led before a judge who would record their identity, before sending them to their deaths within twenty-four hours.”<sup>131</sup>

Under the bill presented on 22 Prairial (June 10, 1794), the penalty of death was not limited to armed counterrevolutionaries: rather, it defined as “enemies of the people” those “who have labored for the restoration of the monarchy, or sought to slander or dissolve the National Convention and the revolutionary and republic government, of which it is the center,” as well as those who have engaged in counterrevolutionary writing.<sup>132</sup> Procedurally, “the laws governing the organization of ordinary courts do not apply to counterrevolutionary crimes and to the proceedings of the revolutionary tribunal,”<sup>133</sup> there is no right to jury, and the burden of proof required for the establishment of guilt are “any sort of material, moral, verbal, or written document, which can naturally persuade a fair and reasonable mind.”<sup>134</sup> As stated in section VII of the bill, “The penalty for all the crimes over which the revolutionary tribunal has jurisdiction is death.”<sup>135</sup>

For de Maistre, Burke, and others, their counterrevolutionary opinions and writing made them eligible for execution under the law. *Katechonically*, the restrainer of this evil would not emerge until the Restoration of the Bourbons in 1814, only to return to its hiding place with the initiation of the July 1830 revolution.

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<sup>128</sup> “The Law of 22 Prairial” trans. Dan Edelstein and Christy Wampole, *Telos* 141 (2007): 82-100, as published in the *Gazette Nationale ou Le Moniteur Universel* 264 (24 prairial an II [June 12, 1794]), and reproduced in the *Réimpression de l’ancien Moniteur...* (Paris: Plon, 1861), 20: 694-97; 94-95.

<sup>129</sup> Dan Edelstein, “Hostis Humani Generis,” 76.

<sup>130</sup> *Ibid.*, 75.

<sup>131</sup> *Ibid.*, 77.

<sup>132</sup> *Ibid.*, 98.

<sup>133</sup> *Ibid.*, 100.

<sup>134</sup> *Ibid.*, 99.

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