

**Insurgencies**  
**Constituent Power and the Modern State**

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# **Constituent Power:**

## **The Concept of a Crisis**

### **On the Juridical Concept of Constituent Power**

TO SPEAK of constituent power is to speak of democracy. In the modern age the two concepts have often been related, and as part of a process that has intensified during the twentieth century, they have become more and more superimposed. In other words, constituent power has been considered not only as an all-powerful and expansive principle capable of producing the constitutional norms of any juridical system, but also as the subject of this production—an activity equally all-powerful and expansive. From this standpoint, constituent power tends to become identified with the very concept of politics as it concept is understood in a democratic society. To acknowledge constituent power as a constitutional and juridical principle, we must see it not simply as producing constitutional norms and structuring constituted powers but primarily as a subject that regulates democratic politics.

Yet this is not a simple matter. In fact, constituent power resists being constitutionalized: “Studying constituent power from the juridical perspective presents an exceptional difficulty given the hybrid nature of this power. . . . The strength hidden in constituent power refuses to be fully integrated in a hierarchical system of norms and competencies. . . . constituent power always remains alien to the law.”<sup>1</sup> The question becomes even more difficult because democracy, too, resists

being constitutionalized: democracy is in fact a theory of absolute government, while constitutionalism is a theory of limited government and therefore a practice that limits democracy.<sup>2</sup> Our aim then will be to find a definition of constituent power within the boundaries of this crisis that characterizes it. We will try to understand the radical character of the foundations of the concept of constituent power, and the extent of its effects, from democracy to sovereignty, from politics to the State, from power [*potere*] to strength [*potenza*].<sup>3</sup> In short, we will try to understand the concept of constituent power exactly insofar as it is the concept of a crisis.

Therefore let's first consider the articulations of the juridical definition of constituent power: they will allow us to get immediately to the core of the argument. Afterward, we will consider the problem of constituent power from the standpoint of constitutionalism.

What is constituent power from the perspective of juridical theory? It is the source of production of constitutional norms—that is, the power to make a constitution and therefore to dictate the fundamental norms that organize the powers of the State. In other words, it is the power to establish a new juridical arrangement, to regulate juridical relationships within a new community.<sup>4</sup> “Constituent power is an imperative act of nation, rising from nowhere and organizing the hierarchy of powers.”<sup>5</sup> This is an extremely paradoxical definition: a power rising from nowhere organizes law. This paradox is unsustainable precisely because it is so extreme. Indeed, never as clearly as in the case of constituent power has juridical theory been caught in the game of affirming and denying, absolutizing and limiting that is characteristic of its logic (as Marx continually affirms).

Even though constituent power is all-powerful, it nonetheless has to be limited temporally, defined, and deployed as an extraordinary power. The time of constituent power, a time characterized by a formidable capacity of acceleration—the time of the event and of the generalization of singularity—has to be closed, treated, reduced in juridical categories, and restrained in the administrative routine. Perhaps this imperative to transform constituent power into extraordinary power, to crush it against the event, to shut it in a factuality revealed only by the law, was never as anxiously felt as during the French Revolution. Constituent power as all-embracing power is in fact the revolution itself. “Citizens, the revolution is determined by the principles that began it. The constitution is founded on the sacred rights of property, equality, freedom [*liberté*]. The revolution is over,” proclaimed Napoleon with inimitable, ironic arrogance,<sup>6</sup> because to claim that constituent power is over is pure logical nonsense. It is clear, however, that that revolution and that constituent power could be made legal only in the form of the Thermidor.

The problem of French liberalism, throughout the first half of the nineteenth century, was that of bringing the revolution to a conclusion.<sup>7</sup> But constituent power is not only all-powerful; it is also expansive: its unlimited quality is not only temporal, but also spatial. However, this latter characteristic will also have to be reduced—spatially reduced and regulated. Constituent power must itself be reduced to the norm of the production of law; it must be incorporated into the established power. Its expansiveness is only shown as an interpretative norm, as a form of control of the State's constitutionality, as an activity of constitutional revision. Eventually, a pale reproduction of constituent power can be seen at work in referendums, regulatory activities, and so on, operating intermittently within well-defined limits and procedures.<sup>8</sup> All this from an objective perspective: an extremely strong set of juridical tools covers over and alters the nature of constituent power, defining the concept of constituent power as an insoluble essence.

If we regard the question from a subjective perspective, the crisis becomes even more evident. After being objectively perverted, constituent power becomes, so to speak, subjectively desiccated. First of all the singular characteristics of its originary and inalienable nature vanish, and the nexus that historically links constituent power to the right of resistance (and that defines, in a sense, the active character of the former) is erased.<sup>9</sup> What is left then undergoes every type of distortion. Certainly, once situated within the concept of the nation, constituent power seems to maintain some of its originary aspects, but it is well known that this is a sophism, and that the notion of constituent power is more suffocated than developed by the concept of nation.<sup>10</sup>

Not even this reduction suffices, however, and the beast seems not yet to be tamed. Thus the action of the scissors of logic is added to the ideological sophism, and juridical theory celebrates one of its masterpieces. The paradigm is split: to originary, commissioner constituent power is opposed constituent power proper, in its assembly form; finally, constituted power is opposed to both.<sup>11</sup> In this way, constituent power is absorbed into the mechanism of representation.<sup>12</sup> The boundlessness of constituent expression is limited in its genesis because it is subjected to the rules and relative extension of suffrage; in its functioning because it is subjected to the rules of assembly; and in the period during which it is in force (which is considered delimited in its functions, assuming more the form of classic "dictatorship" than referring to the idea and practices of democracy).<sup>13</sup> Finally, and on the whole, the idea of constituent power is juridically preformed, whereas it was claimed that it would generate the law; it is in fact absorbed in the notion of political representation, whereas it was supposed to legitimize this notion. Thus constituent power,

as an element connected to representation (and incapable of expressing itself except through representation), becomes part of the great design of the social division of labor.<sup>14</sup> This is how the juridical theory of constituent power solves the allegedly vicious circle of the reality of constituent power. But isn't closing constituent power within representation—where the latter is merely a cog in the social machinery of the division of labor—nothing but the negation of the reality of constituent power, its congealment in a static system, the restoration of traditional sovereignty against democratic innovation?<sup>15</sup>

This solution is too easy. In spite of everything, the problem cannot be abolished, erased, dismissed. It remains as a problem, and the interpreters of the law are left to their Sisyphean labor. How then can we avoid a theoretical path that eliminates, together with the vicious circle, the very reality of the contradiction between constituent power and juridical arrangement, between the all-powerful and expansive effectiveness of the source and the system of positive law, of constituted normativity? How can we keep open the source of the vitality of the system while controlling it? Constituent power must somehow be maintained in order to avoid the possibility that its elimination might nullify the very meaning of the juridical system and the democratic relation that must characterize its horizon. Constituent power and its effects exist: how and where should they operate? How might one understand constituent power in a juridical apparatus? This is the whole problem: to maintain the irreducibility of the constituent fact, its effects, and the values it expresses. Three solutions have then been proposed. According to some, constituent power is transcendent with respect to the system of constituted power: its dynamics are imposed on the system from outside. According to another group of jurists, that power is instead immanent, its presence is implicit, and it operates as a foundation. A third group of jurists, finally, considers the source—constituent power—as neither transcendent nor immanent but, rather, integrated into, coextensive, and synchronic with the positive constitutional system. Let's examine these positions one by one and emphasize their internal articulation. It seems that in each case the transcendence, immanence, or integration and coexistence can be present to a greater or lesser degree, thus determining singular and diverse juridical and constitutional effects.

This is the case for the first group of authors, those who consider constituent power as a transcendent source. Here constituent power is assumed to be a fact that first precedes the constitutional arrangement but then is opposed to it, in the sense that it remains historically external and can be defined only by constituted power. This is actually the traditional position, but it is revised insofar as

the contradiction is avoided through a dislocation of planes. Whereas the order of the constituted power is that of the *Sollen* (what ought to be), the order of constituent power is that of *Sein* (what is). The first belongs to juridical theory, the second to history or sociology. There is no intersection between norm and fact, validity and effectiveness, what ought be and the ontological horizon. The second is the foundation of the first but through a causal link that is immediately broken, so that the constituted juridical system is absolutely autonomous.

The great school of German public law, in the second half of the nineteenth century and at the beginning of the twentieth, has by and large identified itself with this position. According to Georg Jellinek, constituent power is exogenous with respect to the constitution and derives from the empirical-factual sphere as normative production.<sup>16</sup> This normative production is limited, or, better, it contains its own limitation because the empirical-factual is that historical and ethical reality that à la Kant—if the law allows it—limits the extension of the principle outside of the law. Constituent power, if the law and the constitution allow it, wants nothing but the regulation and therefore the self-limitation of its own force.<sup>17</sup> In this sense the transcendence of the factual with respect to the law can be considered a difference of minimal degree. It is interesting to notice how Jellinek's school (particularly when faced with the effects of the revolutionary council movement in post-First World War Germany) does not hesitate to reduce the gap that divides the source from the juridical arrangement, thus accepting the need to include within this space revolutionary productions and ensuing unforeseen institutional effects that certainly exceed the fundamental norm of the constitution of the *Reich*.<sup>18</sup>

This is what Hans Kelsen refuses. For him transcendence is utmost and absolute. The characteristic of the law is to regulate its own production. Only a norm can determine, and does determine, the procedure through which another norm is produced. The norm regulating the production of another norm and the norm produced according to this prescription (representable through the spatial image of superordination and subordination) have nothing to do with constituent power. Norms follow the rules of the juridical form, and constituent power has nothing to do with the formal process of the production of norms. Constituent power is itself, at the limit, defined by the system in its entirety. Its factual reality, omnipotence, and expansiveness are implied in that point of the system where the formal strength [*potenza*] of the law is itself omnipotent and expansive: the basic norm [*Grundnorm*].<sup>19</sup> And the fact that in Kelsen's final writings the entire factual, jurisprudential, and institutional life of the law appears to be absorbed in the normative process does not change the situation much. The new dynamic is never dialectical;

at most, it is a tracing of the real, and in any case the system never loses its absolute autonomy. As far as constituent power is concerned, we witness the paradox of being able to consider it as active for its whole constitutional life, but never capable of being a source of definition or principle of movement for any aspect of the system.<sup>20</sup> How can we comment on this scenario? Little or nothing remains of constituent power through and after this operation of the formal founding of the law, and therefore of the ethical (as in Jellinek) or sociological (as in Kelsen) reduction of its concept. Again, the point of view of sovereignty imposes itself against that of democracy; the transcendence of constituent power is its negation.

The result does not seem much different when constituent power is considered as immanent to the constitutional and juridical system. Here we are not confronted by the articulation of a set of positions pertaining to any one school, but by a variety of positions typical of various theoretical tendencies. In this case, the historical density of constituent power is not a priori excluded from theoretical investigation; but the way in which juridical theory relates to it is no less problematic. Indeed, even though constituent power becomes a real motor of constitutional dynamism (and juridical theory accepts its presence), at the same time several neutralizing operations are put into action. These are operations of transcendental abstraction or temporal concentration, so that, in the first case, the inherence of fact to law may be diluted in, we could say, a providential horizon; or, in the second case, it may solidify in a sudden and isolated action of innovation. The minimum and the maximum degrees of immanence are measured here with respect to the decreased reach of the effects, or to the irrational and immediate intensity of the cause. If the effectiveness of the constituent principle is given, it is with the aim of restraining it and regulating it. The position of minimum incidence of the constituent principle, as immanent principle of the juridical system, can be typically studied in John Rawls's work.<sup>21</sup> He considers constituent power as the second part of a sequence, following an originary stage during which the contractual agreement on the principles of justice has been made, and before third and fourth stages that center, respectively, on law-making mechanisms and hierarchies, and the execution of the law. Constituent power is reabsorbed into constituted law through a multistaged mechanism that, by making constituent power immanent to the system, deprives it of its creative originality. Furthermore, political justice or, really, the justice of the constitution (that produced by constituent power) always represents a case of imperfect procedural justice. In other words, in the calculus of probabilities the organization of political consensus is always relatively indeterminate. To the limit that constituent power encounters in the contractual mechanism must be added an overdetermined ethico-

political limit, which is the (Kantian) condition of the constitution of the transcendental. Immanence is weak, of minimal degree, even though effective.<sup>22</sup>

Let's now consider some theoretical positions in which the degree of immanence is greater. Once again we need to shift our attention, after this brief excursus into the Anglo-Saxon world, to the juridical theory and also the political theory of the German *Reich*. Ferdinand Lassalle claims that the normative validity of the juridical-formal constitution depends on the material and formal (that is, sociological and juridical) degree of adaptation of the orders of reality that has been posed by constituent power. This is an actual formative power. Its extraordinariness is preformative, and its intensity radiates as an implicit project onto the system as a whole. Keeping in mind the resistance of the real conditions and the reach shown by constituent power, the constitutional process can be imagined and studied as an intermediate determination between two orders of reality.<sup>23</sup> Hermann Heller, another critic gravitating in the orbit of those juridical tendencies close to the workers' movement, brings to completion Lassalle's vision. Here the process of constituent power becomes endogenous, internal to constitutional development. Initially, constituent power infuses its dynamism into the constitutional system and then is itself reformed by the constitution.<sup>24</sup> We are not far from the moment when Rudolf Smend can call the constitution "the dynamic principle of the State's becoming."<sup>25</sup> How can the origins of constituent power be, at the end of the analytical process, completely absorbed by the State? How is it possible that the mediation of different orders of reality ends with a dynamism centered, or better, made its own, as an intimate essence, by the State? Once again, what is going on here is a neutralization of constituent power. And although these authors deny it, claiming rather that the evolution of the State also implies the progressive realization of a set of constituent norms, the determination that these norms assume in the real movement becomes totally uncertain. The immanence of constituent power is shown by the State to be a form of natural evolution.

Can constitutional history be a natural history? Two major twentieth-century scholars answer this question: Max Weber and Carl Schmitt. With an acute perception Weber understood that the naturalist criterion is insufficient to make constituent power immanent to constituted power. Instead, Weber insistently pushes constituent power to confront historicosocial reality.<sup>26</sup> Throughout the core of his political sociology where he defines the theory of the types of legitimacy, it is clear that for Weber constituent power is situated between charismatic and rational power. Constituent power derives from the first the violence of innovation, and from the second its constitutive instrumentality. It suddenly forms positive law according to an innovative project that grounds a paradigm of rationality.



Weber develops this German casuistry with his study of the Russian revolutions of 1905 and 1917, which were contemporary to his work.<sup>27</sup> He perfectly grasps the complexity of the relationships between irrationality and rationality, and between the collective and the individual, that run throughout the constituent phase. That said, his sociological formalism does not seem to lead to results any more valid than juridical formalism. Linking charismatic legitimation to rational legitimation is not enough to allow Weber to articulate an original phenomenology of constituent power. The attempt fails because Weber's methodology remains, despite every effort to the contrary, founded on a fixed typology, a typology not so much of the form of production as of the figures of consistency of law and the State. This is a unique case of myopia, as if in order to define constituent power, one had to discuss the projections of constituted power, or worse, the consequences, the perverse effects of constituent power. Constituent power, as much as charismatic power, must be judged as a category of its own. They do not have the same kind of historical consistency as other types of legitimacy. They are defined by changing practices (albeit extremely important ones) rather than concrete determinations. They are ideal types that pervade the entire juridical arrangement, immanent but in the end esoteric, strange, and extraordinary. Hence Carl Schmitt's position, which claims to grasp the concreteness of this limit: concretizing the formal means making it into the absolute principle of the constitution.<sup>28</sup>

The "decision" that Carl Schmitt sees as marking the very possibility of law, the identification and conflict of friend and enemy, and that he sees as running through the whole system, shaping it and overdetermining it—this act of war represents the maximum of factuality, cast as absolute immanence in the juridical system.<sup>29</sup> This immanence is so profound that at first sight the distinction between constituent and constituted power fades, so that constituent power appears according to its nature as originary power or counterpower, as historically determined strength, as a set of needs, desires, and singular determinations.<sup>30</sup> In fact, however, the existential matrix through which constituent power is defined is stripped away from the beginning, brought back to the abstract determinations of violence, of pure event as voluntary occurrence of power. The absolute tendency of the foundation of constituent power becomes a cynical claim; after coming very close to a material definition of constituent power, Schmitt gets entrapped in the irrational overdetermination of the conception of sovereignty, no longer of a pure concept of strength [*potenza*], but of power [*potere*].

We are now approaching the last of the positions that we set to examine: the one that considers constituent power as integrated, constitutive, coex-

tensive, and coexistent with constituted law. This is obviously the perspective supported by the great twentieth-century institutionalist schools.<sup>31</sup> Later, juridical dogmatics adopted this position in a generalized manner. What then is the theoretical thesis that, albeit with many variations, these authors have sustained? They all consider the historical institutional element as a vital principle; far from being purely factual, however, this element is prefigured, and recognized as originary, as implicitly constituted by legality (that is, the legality of positive law). The normative fact is torn away from its inessentiality and from the customary and organic characteristics that tradition had attributed to it, to be understood instead in terms that—in different degrees—depict it as an activity from whose development the system itself issues.<sup>32</sup> The minimum degree of this dynamic integration can be found in the work of Santi Romano,<sup>33</sup> and probably also Schmitt the theorizer of “dilatatory compromises.”<sup>34</sup>

In French institutionalist writing we find instead an extremely high degree of interpenetration of the different elements of institutional production. This interpenetration, however, seems to be on the one hand too limited by the positivity of public law and on the other often disturbed by the infiltration of impromptu ideologies.<sup>35</sup> It is in authors such as Rudolf Smend, Ernst Forsthoff, and Costantino Mortati that we can observe the formation of a thoughtful theoretical equilibrium within the institutionalist current. In Mortati the juridical constitution is grafted onto the social constitution, which is formed by a set of groups and forces: “Every society from which a particular State formation emerges and to which it is connected possesses its own intrinsic normativity, which is indeed produced by its own organization around political forces or political ends.”<sup>36</sup> The formal constitution will thus be interpreted, revised, and possibly changed on the basis of the “material constitution.” The limit of the formal constitution’s flexibility stretches among the forces that constitute society politically and that form the material constitution by the means of continual institutional compromises. What stands as the foundation of the constitution and determines its dynamic apparatus is not a basic norm but a ceaseless movement.<sup>37</sup>

Once we are confronted by this weighty figure of the play of political forces as the material basis of the constitution, where has the originary and liberatory quality of constituent power gone? Couldn’t this play of forces produce, as it has in fact produced, sinister figures of totalitarian power? Where has that intimate and continuous allusion of constituent power to democracy and to a politics that takes shape in the scenario of the multitude’s strength gone? Where is its creative and irresistible character? Certainly the jurists wanted to tame this wild beast, but

here we have before us an already domesticated animal—even worse, one reduced to mechanical behaviors and to the inert repetition of a preconstituted social base. Whether it is transcendent, immanent, or coextensive, the relationship that juridical theory (and through it the constituted arrangement) wants to impose on constituent power works in the direction of neutralization, mystification, or, really, the attribution of senselessness.

What if there were no other way? What if the very condition for maintaining and developing the juridical system were to eliminate constituent power? Given the impossibility of solving the problem of constituent power from the point of view of public law, we should examine this problem from the perspective of constitutionalism. Here things are easier. From the point of view of constitutionalist and liberal ideology, constituent power is in fact subjected to the fire of critique and to institutional limitation through an analysis that works to unmask (or so it claims) any sovereign demand of the community. Constitutionalism poses itself as the theory and practice of limited government: limited by the jurisdictional control of administrative acts and, above all, limited through the organization of constituent power by the law.<sup>38</sup>

*Even revolutions must bow to the supremacy of law. . . . Constituent power, as the ultimate power, must legitimize itself by finding expression through legal procedure; this originary historical fact is not justified by mere obedience, but by the juridical mode in which it is expressed, a mode that, with its formalization, guarantees the people's constituent power. Thus all of the constituent process is regulated by law; and there exist neither normative facts nor a constituent power that, based on the form, manages to command obedience; nor is there a material constitution realized through the praxis of the political class. This is because the constitution is not an act of government, but the act of the people.<sup>39</sup>*

This sophism, this Oedipal consequence of the parable of Menenius Agrippa itself eliminates, within the sphere of constitutionalist thought, the possibility of proceeding in the determination of constituent power. It is just as well, then, to use this opposition to recognize in constituent power (insofar as this power is the opposite of the constitutionalist idea of checks and balances) the mark of a radical expression of democratic will. In effect, the praxis of constituent power has been the door through which the multitude's democratic will (and consequently the social question) has entered the political system—destroying constitutionalism or in any case significantly weakening it. Constitutionalism defines the social and political order as the articulated set of either different social orders or different juridical and political powers.

The constitutionalist paradigm always refers to the “mixed constitution,” the mediation of inequality, and therefore it is a nondemocratic paradigm.

In contrast, the paradigm of constituent power is that of a force that bursts apart, breaks, interrupts, unhinges any preexisting equilibrium and any possible continuity. Constituent power is tied to the notion of democracy as absolute power. Thus, as a violent and expansive force, constituent power is a concept connected to the social preconstitution of the democratic totality. This preformative and imaginary dimension clashes with constitutionalism in a sharp, strong, and lasting manner. In this case, history does not dispense with the contradictions of the present; in fact, this mortal struggle between democracy and constitutionalism, between constituent power and the theory and praxis of the limits of democracy, becomes more and more prominent the further history advances.<sup>40</sup> In the concept of constituent power is thus implicit the idea that the past no longer explains the present, and that only the future will be able to do so. As Alexis de Tocqueville writes, “The past has ceased to throw its light upon the future, and the mind of man wanders in obscurity.”<sup>41</sup> Paradoxically, this negative idea, more than a thousand other motivations, explains the birth of “democracy in America.” This is why constituent power produces and reproduces itself everywhere and continually. Constitutionalism’s claim of regulating constituent power juridically is nonsense not only because it wants to divide this power but also because it seeks to block its constitutive temporality. Constitutionalism is a juridical doctrine that knows only the past: it is continually referring to time past, to consolidated strengths and to their inertia, to the tamed spirit. In contrast, constituent power always refers to the future.

Constituent power has always a singular relationship to time. Indeed, constituent power is on the one hand an absolute will determining its own temporality. In other words, it represents an essential moment in the secularization of power and politics. Power becomes an immanent dimension of history, an actual temporal horizon. The break with the theological tradition is complete.<sup>42</sup> But this is not enough: constituent power, on the other hand, also represents an extraordinary acceleration of time. History becomes concentrated in a present that develops impetuously, and its possibilities condense into a very strong nucleus of immediate production. From this perspective constituent power is closely connected to the concept of revolution.<sup>43</sup> And since it is already linked to the concept of democracy, now it positions itself as the motor or cardinal expression of democratic revolution. And we see it taking part in all the mechanisms—at times, extremely violent—that pulsate in the democratic revolution, vibrating between the one and the many, between power and multitude, in a very fast, often spasmodic rhythm. What could

cal thought does to no avail—we should, rather, accept it, in order to grasp better the nature of the concept. To accept this crisis means, first of all, to refuse the notion that the concept of constituent power may somehow be founded by something else—taken away, that is, from its own nature as foundation. This attempt surfaces, as we have seen, whenever constituent power is subordinated to representation or to the principle of sovereignty, but it already starts operating when the omnipotence and expansiveness of constituent power are limited or made subject to constitutionalist aims. Constituent power, they say and decree, can only be defined as extraordinary (in time) and it can only be fixed (in space) by a singular determination: it is considered either as a normative fact that is deemed preexistent or as a material constitution that develops in tandem with it! But all this is absurd: how can a normative fact validated by custom do justice to innovation? How can a preconstituted “political class” be the guarantor of a new constitution?<sup>48</sup> Already the effort of enclosing constituent power in a cage of spatiotemporal limitation was unsustainable, but any attempt to block it by giving it finality becomes downright inconceivable. One can try to minimize the impact of the event, but certainly it is not possible to define its innovative singularity in advance.<sup>49</sup> These logical skirmishes, carried on to the verge of nonsense, in fact constitute the mystification that juridical theory and practice take care to collect and rearticulate into the theories of sovereignty and representation. Constituent power, limited and finalized in such a way, is thus held back within the hierarchical routines of successive production and representation, and conceptually reconstructed not as the system’s cause but as its result. The foundation is inverted, and sovereignty as *suprema potestas* is reconstructed as the foundation itself. But it is a foundation contrary to constituent power; it is a summit, whereas constituent power is a basis. It is an accomplished finality, whereas constituent power is unfinalized; it implies a limited time and space, whereas constituent power implies a multidirectional plurality of times and spaces; it is a rigidified formal constitution, whereas constituent power is absolute process. Everything, in sum, sets constituent power and sovereignty in opposition, even the absolute character that both categories lay claim to: the absoluteness of sovereignty is a totalitarian concept, whereas that of constituent power is the absoluteness of democratic government.

In this way, thus, by insisting on the concept of constituent power as an absolute process—all-powerful and expansive, unlimited and unfinalized—we can begin to appreciate the originality of its structure. But we must immediately face an objection: what else can absoluteness given in this form be but the absoluteness of an absence, an infinite void of possibilities, or, really, the presence of negative possibilities? It seems to me that in this objection the misunderstanding of absence

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In this way, thus, by insisting on the concept of constituent power as an absolute process—all-powerful and expansive, unlimited and unfinalized—we can begin to appreciate the originality of its structure. But we must immediately face an objection: what else can absoluteness given in this form be but the absoluteness of an absence, an infinite void of possibilities, or, really, the presence of negative possibilities? It seems to me that in this objection the misunderstanding of absence

is exacerbated by the misapprehension of the concept of possibility. This objection can be refuted. If the concept of constituent power is the concept of an absence, why should this absence result in an absence of possibilities or the presence of negative possibilities? In fact, here we are touching a crucial point in the metaphysical debate, the debate centering on the question of strength [*potenza*] and its relation to power [*potere*]. The metaphysical alternative in the definition of strength that runs from Aristotle to the Renaissance and from Schelling to Nietzsche is precisely an alternative between absence and power, between desire and possession, between refusal and domination.<sup>50</sup> Sometimes this alternative is closed, as it is when power is considered from its origin as preexisting physical fact, as finalized order, or as dialectical result. In other cases the alternative is open. A great current of modern political thought, from Machiavelli to Spinoza to Marx, has developed around this open alternative, which is the ground of democratic thought.<sup>51</sup> In this tradition, the absence of preconstituted and finalized principles is combined with the subjective strength of the multitude, thus constituting the social in the aleatory materiality of a universal relationship, in the possibility of freedom.

The constitution of the social is a strength founded on absence—that is, on desire—and desire unceasingly feeds the movement of strength. Human strength produces a continual dislocation of desire and accentuates the absence on which the innovative event is produced. The expansiveness of strength and its productivity are grounded in the void of limitations, in the absence of positive determinations, in this fullness of absence. Constituent power is defined emerging from the vortex of the void, from the abyss of the absence of determinations, as a totally open need. This is why constitutive strength never ends up as power, nor does the multitude tend to become a totality but, rather, a set of singularities, an open multiplicity. Constituent power is this force that, on the absence of finalities, is projected out as an all-powerful and always more expansive tendency. Lack of preconstituted assumptions and fullness of strength: this is a truly positive concept of freedom. Omnipotence and expansiveness also characterize democracy, since they define constituent power. Democracy is both absolute process and absolute government. Thus, the effort to keep open what juridical thought wants to close, to get to know more deeply the crisis of its scientific lexicon, does not simply make available to us the concept of constituent power but makes it available to us as the matrix of democratic thought and praxis. Absence, void, and desire are the motor of the politicodemocratic dynamic as such. It is a disutopia—that is, the sense of an overflowing constitutive activity, as intense as a utopia but without its illusion, and fully material.<sup>52</sup>

Hannah Arendt well understood this truth about constituent power.<sup>53</sup> She arrives at it by an oblique path, by counterposing the American to the French Revolution, but it is no less effective a path, rather so much stronger for being paradoxical. The thesis about the two revolutions has a long history. It was elaborated by Friedrich von Gentz in his introduction to the German translation of Edmund Burke's *Reflections on the French Revolution*,<sup>54</sup> but it was above all popularized by John Adams's supporters against Jefferson during the presidential campaign of 1800.<sup>55</sup> The American Revolution and Constitution, founded on the respect and development of freedom, stands against the horrid Jacobins, against the revolution as an abstract and ideological force. Arendt takes up the same notion, shifting however its central axis, which is no longer the opposition between the concrete and the abstract but between political and social revolution. Political revolution transcends the social without annihilating it but, rather, by producing a higher level of understanding, equilibrium, and cooperation, a public space of freedom. Social revolution, instead, and the French Revolution in particular, nullifies the political by subordinating it to the social. The social, in turn, left to itself, spins emptily in a search for freedom that becomes increasingly blind and insane. Whenever the political does not allow society to understand itself, to articulate itself in understanding, folly and terror will triumph. Hence totalitarianism cannot but be established. Later and more than once we will have to go back to this thesis of the two revolutions to evaluate it from different points of view. For the time being let's leave aside the historical judgment and consider instead how the principle of freedom takes shape in Arendt's theory, because it is precisely through this concept, and by refusing tradition, that she deeply renews political theory. Certainly, revolution is a beginning, but modern history begins only when the constituent principle is removed from violence and war. Only then is the constituent principle freedom: "Crucial, then, to any understanding of revolutions in the modern age is that the idea of freedom and the experience of a new beginning should coincide."<sup>56</sup>

But what does this freedom become? It becomes public space, constituting a communicative relation, its own conditions of possibility, and therefore its own strength. It is the polis. Freedom is a beginning that poses its own conditions. The right of community predominates over all others, over the right to life, over the very specifications of the right to property, so that it is both a constituent and constituted principle. "Independent government and the foundation of a new body politic" — this is what it means "to be free." Freedom cannot be reduced; neither does it come after liberation: freedom means to "be already free"; it is political



constitution, an absolute process (Arendt, 26 ff). As far as we are concerned, then, following our argument, we want to stress how this new definition of the constituent principle is grounded on nothing more than its own beginning and takes place through nothing but its own expression. The radical quality of the constituent principle is absolute. It comes from a void and constitutes everything. It is not by chance that, at this point, Arendt takes stock and, through a very rich and fierce phenomenological exercise, begins demolishing any heteronomous (and in particular social) content of public space, both its constitutive process and the constituent actors. The problem lies in posing the social as a priori, as preceding the constitutive event, and in characterizing the social as a preconstituted political question (53 ff). This is the case not only for historical reasons: “Nothing . . . could be more obsolete than to attempt to liberate mankind from poverty by political means; nothing could be more futile and more dangerous” (110). Not only because this is a pure and catastrophic illusion:

*The masses of the poor, this enormous majority of all men, whom the French Revolution called les malheureux, whom it turned into les enragés, only to desert them and let them fall back into the state of les misérables, as the nineteenth century called them, carried with them necessity, to which they had been subject as long as memory reaches, together with the violence that had always been used to overcome necessity. Both together, necessity and violence, made them appear irresistible: la puissance de la terre. (110)*

The reason for this situation is theoretical and deeper. Only the political reconstruction of reality, the constitution of public space, allows for the revolutionary rebirth—that is, it makes the search for happiness a possibility: “The central idea of [the American] revolution . . . is the foundation of freedom, that is, the foundation of a body politic that guarantees the space where freedom can appear” (121). This idea is therefore an ontological institution, an actual fundamental determination of being. The concept of constituent power is the constituent event, the absolute character of what is presupposed, a radical question. And it is exactly on this point, the radical fundamentality of political being, that Arendt is strongest. Constituent power, insofar as it constitutes the political from nothingness, is an expansive principle: it allows no room for either resentment or resistance; it is not selfish but supremely generous; it is not need but desire. Arendt’s denunciation of “the social question”<sup>57</sup> proceeds as a parallel to an overflowing and expansive notion of the ontological institutionality of political democracy: in all its forms, from the Greek *polis* to the Renaissance city, from the American assemblies to the revolutionary workers’ councils of 1919 and 1956.<sup>58</sup>

Why do these strongly made points, so powerfully deployed in the discussion and definition of constituent power by Arendt, leave us in the end unsatisfied, even ill at ease? At the very moment when she illuminates the nature of constituent power, Arendt renders it indifferent in its ideality or equivocal in its historical exemplification. If one teases her writing a little, each of the characteristics attributed to constituent power loses its intensity, becomes pale, and reveals—eclipsed by the brilliance of the exposition—its opposite. Thus, for instance, the constitutive phenomenology of the principle reveals itself as perfectly conservative. The continuous celebration of the fact that freedom preexists liberation and that the revolution is realized in the formation of political space becomes the key to a historicist hermeneutics that systematically flattens down, or deforms, the novelty of the event and limits it to the American example.

The ambiguity of the beginning and the absolute taking root of constituent power (an ambiguity connected to the Heideggerian definition of being and the consequent constitutive alternative of freedom) are resolved by Arendt in formal terms, according to the demands of an idealism content to find a correspondence in institutions. Arendt attacks with fierce determination the categories of pity and compassion as devastating functions of the process that produces the ideology of the “social question.” She counterpoises desire to sympathy, truth to theatrics, the mind to the heart, patience to terror, foundation to liberation. Up to this point she upholds the ontological radicality of the constituent principle; but she does not sustain the trajectory that would lead to preserving political space as a terrain of freedom and a horizon of desire, thus denying it as a space dedicated to mediation and the production of power. She does not unmask Rousseau as the theoretician of sovereignty as much as she scorns him as the theoretician of compassion. Arendt wants political emancipation, and she considers it as the accomplishment of the American Revolution: in fact, she conceives this passage only as the realization of a determinate constituent apparatus and exalts it in its crude effectiveness as an ideal paradigm. Rather than being an ontological beginning, political emancipation becomes here a hermeneutic legacy.<sup>59</sup>

Arendt’s argument is even more clearly inadequate if we focus on her analysis of the dynamic of constituent power. The choice of taking the American Revolution as an exemplary model not only blocks the ontological process but also cheapens the analysis of the political apparatus. For Arendt the *Constitutio libertatis* is simply and merely identified with the historical events of the American constitution (139–79). All the theoretical problems that the definition of constituent power has raised are resolved by seeking rational alternatives and a political decision founded

not on them but on the basis of the solutions imposed on them by the American constitution.

Arendt thus gives us a series of banalities, more appropriate to a neophyte than to a Heideggerian philosopher. For example, she proposes the notion that constituent power is a continual historical process not limited by its immediate determinations but temporally open to interpretation and improvement; or that the constitutional absolute divides into and is justified by the dynamics that generate it, such that constituent power and constituted power do not compose a vicious circle but, rather, are progressively legitimated in a virtuous circle; or finally that constituent power may be creative, but at the same time it has the nature of a pact made by mutual consent: “The grammar of action: that action is the only human faculty that demands a plurality of men; and the syntax of power: that power is the only human attribute that applies solely to the worldly in-between space by which men are mutually related, combine in the act of foundation by virtue of the making and the keeping of promises” (175). To say this means nothing but going back to that Anglo-Saxon sociology that, between Talcott Parson and John Rawls, proposes a “positive sum” political exchange, polite and consensual, and has very little to do with Arendt’s intuition of the absolute foundation.<sup>60</sup> In fact, Arendt opens by refusing contractualism and ends by praising it; she begins by grounding her argument in the force of constituent power and concludes by forgetting its radical quality; she starts by foregrounding the reasons for democracy and ends by affirming those of liberalism.

It will not appear strange, then, that even Arendt’s definition of the expansiveness of constituent power is marred by contradictions and difficulties. Indeed, this is inevitable: the hermeneutics of the liberal constitutional model presents a linear and not an antagonistic schema for the development of constituent power. It is linear and idyllic if compared to the real problems that the American Revolution had to face since its beginning, problems of class struggle, slavery, and the frontier. It is linear and spontaneist as in the worst versions of sociological institutionalism.<sup>61</sup> The antagonistic event disappears. Thus Arendt’s philosophy comes close, without deserving it, to the “weak” versions of Heideggerianism, those versions that produce its most extreme results.<sup>62</sup> Even though sought after and acknowledged, the foundation is abandoned to the version that the real provides of it. This is not realism but, rather, a historicist cynicism: it eclipses the real effort that constituent reflection has developed in the hope of recognizing the fullness of strength in the absolute of the foundation, and the fullness of freedom in the void of the ontological basis.

At this point we can understand how Habermas, although taking his point of departure from a perspective that does not possess the strength and does

not accept the risk of Arendt's theory (which is what makes it great),<sup>63</sup> still develops a reasonable and acceptable critique of her positions. Habermas elaborated a theory that can be called "the reversal of the thesis of the two revolutions."<sup>64</sup> In other words, he claims that both the French and the American Revolutions derive from specific interpretations of natural right. The French Revolution takes natural right as an ideal to realize, whereas the American Revolution takes it as a real state that political intervention can only disfigure. The constitutive productivity of the political is thus all on the side of the French Revolution: it is the only modern revolution. The American Revolution is a conservative revolution, whose ideology is premodern and corporative, thus antimodern and antipolitical.

In fact, the revolutions in America and France were quite different. The interpretation of the revolutionary act was different because whereas in one case it was necessary to impose *ex novo* a conception of natural right against a despotic power, in the other what mattered was to liberate the spontaneous forces of self-regulation in order for them to agree with natural right. The relation to the State, too, was different: in America the revolutionaries had to resist a colonial power, whereas in France they had to build a new order. Finally, the political ideology was different, liberal in the first case and democratic in the second: in America the revolution had to set in motion the egoism of natural interests, whereas in France it needed to mobilize moral interests. Consequently, it is not true that in the French Revolution the social subordinated the political—rather, the social was constituted by the political, and herein lies the superiority of the French Revolution. Constitutive is the opposite of conservative. Thus the relationship between society and State, as it is posed in the two natural-right constitutions, is radically different, even divergent. In France and only in France was the constitutive principle affirmed and fully defined: in the *Declaration of the Rights of Man* it immediately became an act of the constitutional foundation of a new society. Should we say, then, that there are two constitutions? Certainly, but the French constitution was the constitution of the future, running throughout the history of the nineteenth century, grafted onto the history of the working class, and still constituting today the principal basis of the judicial arrangement of the welfare state.<sup>65</sup>

What should we say? This Habermasian reversal leaves a bad taste in our mouths because although correct it is ungenerous. Actually, Arendt has given us the clearest image of constituent power in its radicalness and strength. The abbot's frock in which she later dressed up the principle does not take away its lively figure; it simply masks it. The problem is that we demand that the constituent principle be ontologically grounded: it must be defined not by ordered space but open time; it

must be the temporal constitution of the existent; it must be crisis. How and where can all this be defined? It is clear that Habermas and his lukewarm philosophy, his slow transcendentalism prove fully inadequate: but how can we grasp, define, and portray the creative richness of the constitutive principle? How can we do so without getting trapped in the delicate nets of the philosophy of communication or without falling prey to a conservative syndrome — while remaining on the terrain of ontology?

Perhaps, in a not unusual coincidence of opposites, the only image that corresponds to Arendt's definition of constituent power is the one articulated by Carl Schmitt. We have already talked about it, but it is worth returning to it, to clarify and explain further. How does Arendt interpret Schmitt's work? Certainly, she does not adopt his reduction of law to the brutality of the originary fact, nor does she consider constituent power as fully and coextensively inherent in the constituted order.<sup>66</sup> Rather, Arendt's interpretation of Schmitt can be seen in the perception of an unexhausted expressive radicalness (which can simultaneously be a subject) that issues from the constitutive source and that is located in the need for the decision and in the identification of friend and enemy. The sovereign is the one who can "suspend" the law,<sup>67</sup> who can thus suspend the law that itself establishes sovereignty, who can make constituent power consist in the principle of its negation.

In an entirely Nietzschean manner, we need to stress that the act of suspending, far from being defined in negative terms, founds and inheres to the possibility of the positive. The more the first decision shows itself to be negative, the more radically it opens a number of grounding, innovative, linguistic, and constitutional possibilities. With this the constitutive act opens positively: the *ursprüngliche Wort oder Sprache* is set free,<sup>68</sup> and it is on such creative depth that the sense of community is articulated, both in the extensiveness of the *Gemeinschaft*, so important for Arendt, and in the barbaric manner that Schmitt proposes to his "friends."<sup>69</sup> Here we are neither confusing the two communities nor reproaching Arendt's liberalism for wearing a suit that, albeit vaguely, resembles the equivocal sense of Schmitt's decisional community. In fact, we are merely recognizing in the ontological intensity of Arendt's definition of constituent power a direction that, while distancing her from any transcendental horizon of a formal type (à la Habermas), leads her toward an ontologically pregnant and socially relevant constitutive foundation — a Commonwealth of friends, a counterpower, a powerful social instance.<sup>70</sup>

This distant relationship, which however shows a strong resemblance between Carl Schmitt and Hannah Arendt, can also be verified in different and more indirect ways. When their thought on constituent power is compared to that

of another author, perhaps a theoretical precursor and in any case a problematic catalyst of their theories, John Caldwell Calhoun, these resemblances become evident.<sup>71</sup> In Calhoun's thought, too, constituent power is defined as a negative power and opens a singular and extremely radical dialectic. He developed this problematic within the parameters of the constitutional discussion of the American Confederate States before the Civil War. Calhoun's declarations that the government (as constituent agent and expression of community) ontologically precedes the constitution and that the constituent act is defined as the capacity to prescribe the choice between war and peace, to impose possible compromises, and thus to organize confederate public law as a truce are so intense that they can be linked back, as Arendt makes clear,<sup>72</sup> purely and simply to the right of resistance and organized in constitutional procedure. The right of resistance provides us with a basic and fascinating reference point. It is the negative power par excellence, whose prefigurative force can hardly be eliminated from the history of modern constitutionalism. The right of resistance, together with the negative, emerges as the radically founding expression of community. Exactly at this point, whereas Schmitt capitulates to the force of an attraction that is by now devoid of principles, Arendt's thought runs into a sort of insurmountable roadblock when she discovers that "nothing resembles virtue so much as a great crime": nothing resembles constituent power so much as the most radical and deep, most desperate and fierce negation.<sup>73</sup>

Whereas Schmitt can play with this negation and Habermas can make it disappear in the flattest of transcendental horizons, Arendt instead remains both fascinated and repulsed by it. Here probably lie the origins of her (so contradictory!) conversion to classical and conservative constitutionalism. We see how she cannot stand the deeply radical and very powerful principle she discovered. Arendt's march gets bemired. Constitutionalist thought in general and American constitutionalism in particular come to her rescue in her attempt to free herself from the vortex of the crisis, from the definition of constituent power as crisis. The procedure is well-known: one voluntarily makes oneself prisoner of the sophism of sovereignty, subjects oneself to the traditional routine of its definition, and thus creates a situation in which only constituted power can justify constituent power.

But isn't there any other line of thought capable of appreciating the radicalness of constituent power without drowning it in the philistinism of traditional juridical theory? In attempting an answer, we start from a particular conviction (which we will try to confirm historically and construct theoretically throughout this work) that the truth of constituent power is not what can be attributed to it, in any way whatsoever, by the concept of sovereignty. It cannot be so, because con-

stituent power is not only, obviously, an emanation of constituted power, but it is not even the institution of constituted power. It is, rather, an act of choice, the precise determination that opens a horizon, the radical apparatus of something that does not yet exist, and whose conditions of existence imply that the creative act does not lose its characteristics in the act of creating. When constituent power sets in motion the constituent process, every determination is free and remains free. On the contrary, sovereignty presents itself as a fixing of constituent power, and therefore as its termination, as the exhaustion of the freedom that constituent power carries: *oboedientia facit auctoritatem*. No, the phrase “expression of strength” can never mean “institution of power.”

But at the very moment when strength gets instituted it ceases being strength and thus declares itself as never having been such. There is only one correct (and paradoxical) condition for a definition of sovereignty linked to that of constituent power: that it exists as the praxis of a constitutive act, renewed in freedom, organized in the continuity of a free praxis. But this contradicts the entire tradition of the concept of sovereignty and all its possible meanings. Consequently, the concept of sovereignty and that of constitutive power stand in absolute opposition. We can thus conclude that if an independent way of developing the concept of constituent power exists, it has excluded any reference to the concept of sovereignty. It relies, rather, on the basis of constituent power itself and tries to unravel from this and nothing else every constitutional consequence.

Let's try once again to measure the density of the concept by comparing it to other theoretical positions. We can begin with a crucial and irreducible claim: when strength is institutionalized, it is necessarily negated. By this claim we open a polemic with institutionalism, and in particular with the most sophisticated forms it has assumed in recent times.<sup>74</sup> Breaking with Arendt's Heideggerian ambiguities, the institutionalism of the contemporary supporters of the “invention of the social” or of the “model of the polis” does not come closer but, rather, grows more distant from the radicalness of the concept. Indeed, the organic continuity of the institutional process in this case relies on a purely ideological basis — as if the most sacred principles and fundamental rights could lay claim to historical causality and ontological effectiveness and were not instead made real by the same crisis that, by embodying them, makes them great and important. This, however, is not the point. We must instead make clear that constituent power, from the perspective of its original radicalness, cannot be conceived satisfactorily as a formal process of the constitution of freedom. It is not an *élan vital* that realizes itself in institutionality;<sup>75</sup> it is not an act that, by determining itself, becomes more and more actual;<sup>76</sup> neither is

it a fusion of wills that like a superheated metal congeals in a constitutional figure.<sup>77</sup> In other words, beyond the apologetic banalities of contemporary institutionalism, any philosophy that even heroically has an institutionalist outcome must be refused if we want to grasp the strength of the constituent principle. This is because in the constitutive act there is never any vertical and totalitarian dimension. The active elements are, rather, resistance and desire, an ethical impulse and a constructive passion, an articulation of the sense of the insufficiency of existence and a deeply vigorous reaction to an unbearable absence of being.

In these elements strength takes shape as constituent power: not to seek institutionality but to construct more being—ethical being, social being, community.<sup>78</sup> Once again we discover the extremely close and profound link between constituent power and democracy. The desire for community is the spirit and soul of constituent power—the desire for a community that is as thoroughly real as it is absent, the trajectory and motor of a movement whose essential determination is the demand of being, repeated, pressing on an absence.<sup>79</sup> “What is potent can be and not be.”<sup>80</sup>

Here we have rediscovered the relation between constituent power and absolute procedure. Rediscovering this relationship, after considering how many substantial offenses and mystifications have been imposed on it, allows us to reflect with new eyes on the originary radicalness of the concept. What does constituent power mean if its essence cannot be reduced to constituted power but must, rather, be grasped in its originary productivity? It means, first of all, the establishment of a continuous relationship between constituent power and revolution, an intimate and circular relation such that where there is constituent power there is also revolution. Neither constituent power nor revolution has ever come to an end when they have been internally connected. This notion takes us back to the historical origins of the concept of constituent power. The term was probably introduced for the first time during the American Revolution,<sup>81</sup> but it belongs to the development of Renaissance political thought from the fifteenth to the eighteenth centuries as an ontological notion of the formative capacity of historical movement.<sup>82</sup> Even when the idea of revolution appears to be subjected to the power of the stars or to the necessity of the Polybian cycle of political regimes—“I have seen in the revolution a circular motion”<sup>83</sup>—even then it constitutes “le fond mobile de la science humaine,” the foundation of the new science that constitutes history.<sup>84</sup>

After 1789, revolution and constituent power step on to the great stage of history and modern thought as indissoluble characteristics of transformative human activity. When we speak of revolution, we speak of constituent power.



Figures of rebellion, resistance, transformation, creation, the construction of time (accelerated, programmed, extended time), and the invention of law are bound together in this synthesis. Revolution is necessary, as necessary as the human need to be moral, to constitute oneself ethically, to free body and mind from slavery, and constituent power is the means toward this end.<sup>85</sup>

From this point of view the relation between revolution and law, between revolution and constitution becomes a continuum on which what exceeds the rational is represented by revolution. The law and the constitution follow constituent power: constituent power gives rationality and substance to the law.<sup>86</sup> Constituent power stands as a revolutionary extension of the human capacity to construct history, as a fundamental act of innovation, and therefore as absolute procedure. The process started by constituent power never stops. The question is not to limit constituent power, but to make it unlimited. The only possible concept of constitution is that of revolution: precisely, constituent power as absolute and unlimited procedure. Condorcet comes near this concept when, in 1793, he defines the “loi révolutionnaire” as “that law that starts, accelerates, and rules the course of the revolution,” thus understanding that the law gives shape to the temporal flux of the revolution and actively designs itself on its modality.<sup>87</sup> The *Declaration of the Rights of Man of 1793* repeats this concept when it regards citizens’ rights as active in the constitutional schema and recognizes in this activity the motor of social democracy.<sup>88</sup> The Marquis de Sade is in perfect agreement when, with far-sighted cruelty, he incites his readers to that “necessary insurrection in which the republican constantly holds the government of which he is member.”<sup>89</sup> In this context it is not surprising that in 1789, in the midst of the counterrevolutionary campaign, Immanuel Kant proposed considering the revolution as an educational process and as a cultural action with extensive and profound effects on the whole human environment, a process that constitutes the “commonality of ends.”<sup>90</sup>

A web of a thousand threads defines the originary radicalness of constituent power. The coherence of the weave, however, is always in danger. Perverse institutional or formal determinations are superimposed on the concept and, as in Arendt’s case, deprive it of that radical ontological opening that gives it shape. How can this radicalness be conceived? How can it be recognized in history and law, avoiding any false path? Carl Schmitt, who, notwithstanding the folly of the results, has posed this question with extraordinary intensity, refers us to Spinoza.<sup>91</sup> I, too, am convinced that Spinoza’s philosophy allows us to construct a first schema of the concept of constituent power and to guard it from misunderstandings and mystifications. The effort to theorize “a causality that accounts for the effectiveness of

the All upon its parts and the action of the parts upon the All” makes Spinoza “the only or almost the only witness” of a theory of a totality without closure,<sup>92</sup> a constituent power without limitations.

### **From Structure to the Subject**

Up to this point we have accumulated a series of problems. We have before us a productive source of rights and juridical arrangement that refuses to close and stubbornly repeats its claims in the face of juridical theory’s and political philosophy’s attempts to fix it in a final form. It seems that the issues on the table cannot be addressed except through the intervention of a force capable of mediating the radicalness of constituent power. This force must be able to interpret the structure when this structure is presented as absolute procedure, as continually reactualized strength, but nonetheless positively grounded in reality. An adequate answer to the question that motivates my investigation will be found by identifying a strength adequate to structure, and a subject adequate to absolute procedure. The problem of constituent power thus becomes a question about the construction of a constitutional model capable of keeping the formative capacity of constituent power itself in motion: it is a question of identifying a subjective strength adequate to this task.

If this subject is the subject of an absolute procedure, then it is not enough to pose the question of the subject raised by constituent power. In juridical theory this question arises whenever the voluntary nature of law is affirmed and the subject of this will must be discovered.<sup>93</sup> Posed in these terms the search is too generic because it does not insist on the logically adequate relationship between subject and structure. The history of juridical thought, however, does provide a series of examples that come close to this objective. We should examine them more closely.

The first hypothesis: the subject in question is the nation.<sup>94</sup> This concept seems to be, at first sight, particularly appropriate to that of absolute procedure, except that, on the one hand, it is a generic concept, real only in the imaginary (and therefore indefinitely manipulable); on the other, it is a concept that is historically determined at different times, often with the function of breaking and limiting the constituent process. The generic conception of the nation (resulting from an intricate play of ethnic determinism, historical judgments, political necessities, juridical demands, but above all a strong naturalistic overdetermination) produces a polysemy that allows for sophistic interpretations of the concept and instrumental uses of it in practice.<sup>95</sup> The latter conception, which refers to historical determinations, sets in motion a constitutional dynamic that, far from procedurally reopening

the relationship between the subject and the constitutional structure, hypostatizes and blocks it.<sup>96</sup>

A second hypothesis aimed at posing an adequate relationship between subject and structure (in the dynamic sense) sees the subject as the people.<sup>97</sup> The concept of “people,” however, is no less generic than that of “nation.” This definition also soon falls prey to the juridical mechanism of qualification. The generic essence of the concept is reread in a constitutional key: if the “people” is the subject of constituent power, it can be so only insofar as it first undergoes an organizational process capable of expressing its essence. Indeed, to imagine and above all to assume as scientific subject “an ordering force that can be ordered by a multitude without order” would represent a contradiction in terms.<sup>98</sup> This conception does go beyond the limitations and the naturalistic and organicist mystifications of the idea of constituent power as an attribute of the nation. The theoretical desire to clear away the ambiguity of the nation is clear. Equally clear, however, is the will to break the expansive force of the concept of constituent power.<sup>99</sup> The fact that any definition of the constituent subject in terms of the people boils down to a normativist conception and a celebration of the constituted law is not an accident but a necessity.<sup>100</sup> This normative conception confuses constituent power with one of the internal sources of law and with the dynamics of its revision, its constitutional self-renovation. Briefly stated, constituent power is the people only in the context of representation.

A third hypothesis: constituent power as subject is already materially defined by juridical mechanisms inherent in its composition, and constituent power is itself a multiplicity of juridical powers set in a singular relationship—such that elements of juridical mediation are always necessarily presupposed.<sup>101</sup> From this point of view, which is eclectic but still effective, the possibility that constituent power is represented as absolute procedure is taken away or transfigured from the beginning. The point here is not to insist on the singularity of the historical definition of every emergence of constituent power, but to pose this determination as an unsurpassable limit, as materially determined self-limitation. Juridical theory has become clever. It does not deny constituent strength but affirms its singularity. It does not, however, consider constituent power a process and a precarious ontological insistence but, rather, a limit. Limitation is posed à la Hegel as determination.<sup>102</sup> Mediation and compromise are assumed within constituent power as the subject that founds the material constitution—not outside but within it: this is the effectiveness of mystification. This is in fact a matter of mystification because the problem of constituent power cannot be solved by making singularity the limit of its absolute

character—a temporal, spatial, and procedural limit. The fact that the absolute character of constituent power lies in its singularity is perfectly evident, but this, and not something else, is the problem.

At this point we could examine other theories that try to connect constituent power to absolute procedure in order to domesticate the former, but they would really tell us nothing new. It is more interesting to notice that the negation in absolute terms of the adequate relationship between subject and procedure is the figure of a metaphysical negation—that is, a negation of the fact that multiplicity can be represented as a collective singularity, that the multitude can become a unitary and ordering force, that this relationship (open and impossible to bring to a conclusion) between subject and procedure can be real and effectively constitute a real temporality. On the contrary, any formation of power must be constituted outside this human context—by the divinity or some other ideal overdetermination, in transcendence or transcendentalism. The negation of an adequate relationship between subject and structure is thus always embedded in an external and hypostatic figure for the justification of power. The radicalness of constituent power cannot be negated in reality, but here it is simply denied in principle.

It is not enough, however, to expose and denounce the metaphysical partiality of the positions that relativize constituent power in a transcendental manner in order to resolve our problem, the problem of its absolute character. Denunciation cannot take the place of a constructive argument. Thus we must pose once again the problem of the adequate relationship between subject and absolute procedure.

Michel Foucault is undoubtedly the one who has made the most substantial progress in defining a concept of power that, in its relationship to the subject, allows for constructive dimensions and absolute openings. In Foucault, humanity appears as a set of resistances that release (outside any finalism that is not an expression of life itself and its reproduction) an absolute capacity for liberation. Life is liberated in humanity and opposes anything that encloses it and imprisons it.<sup>103</sup> What we need to stress here is that the relationship between subject and procedure is free. In other words, after demonstrating how power can subjugate humanity to the point of making it function as a cog of a totalitarian machine (we could accept this specific use of the term *totalitarianism*), Foucault shows instead how the constitutive process running through life, biopolitics and biopower, has an absolute (and not totalitarian) movement. This movement is absolute because it is absolutely free from determinations not internal to the action of liberation, to the vital assemblage [agencement].<sup>104</sup>

Starting from this viewpoint, which permits us to ground the question of the constituent subject, Foucault allows us to go still further. Indeed, he shows us that the subject is, first, strength, production. Certainly, the subject can be reduced to a pure phantom, a residue of the totality of the system of repression. But how productive it remains, even in this reductive horizon and imprisoned within these mechanisms! It is productive because on this limit the subject goes back into itself and rediscovers there the vital principle. Second, besides being strength, the subject is also action, a time of action and freedom, an assemblage—open because no teleology conditions or prefigures it. Foucault critically performs a process of disarticulation of the real and then, constructively, reopens a process that assumes the disarticulation as a positive condition. What was a path through necessity opens the way for a process of freedom.<sup>105</sup> This is essentially the same process we find in Spinoza.<sup>106</sup> Third, Foucault develops the paradigm of subjectivity as the place of the recomposition of resistance and public space.<sup>107</sup> Here we are confronted by a figure of the subject that formally and methodologically has characteristics adequate to absolute procedure. In effect this subject is strength, time, and constitution: it is the strength of producing constitutive trajectories; it is time that is in no way predetermined; and it is thus a singular constitution. When this critique has destroyed the prisons of constituted power, it identifies itself as ontological strength, constituent power capable of producing absolute events. The political is here production, production *par excellence*, collective and non-teleological. Innovation constitutes the political; constitution cannot but be constant innovation. What Arendt tried to articulate in terms of the inessentiality of liberal politics as alternative to a Heideggerian void of being Foucault constructs in the fullness of being, as an apparatus of positive freedom. The social, negated by Arendt as the suffocation of the political, reveals itself as the space of biopolitics—of that human radicalness of the political that constituent power reveals in its absoluteness.<sup>108</sup>

Absoluteness is under no circumstance totalitarianism. The latter is not a necessary corollary of the former, but this accusation springs up whenever the sacred principles of liberalism are not glorified and thus demands our attention.<sup>109</sup> If our “adequate subject” is in no way tied to liberal principles, or, rather, if in some ways it contradicts them, it need not for this reason be totalitarian. The equation “refusal of liberal principles equals totalitarianism” is reductive and mystifying. It is founded on a tradition of modern thought that presumes to found human rights on contractualism. Contractualism, however, cannot be the ground for human rights, cannot give them that material and immanent basis, that worldly absoluteness that is the only guarantee of the rights themselves. The perspective of constituent

power puts the contractualist position under attack and recognizes in it the inevitable deferral to transcendence, to constituted power and its apology. This is indeed the outcome of contractualism, the logical demand that it claims it cannot resist, whether expressed by Hobbes as a God that transforms the association of individuals into sovereignty and the *contractum unionis* into *contractum subjectionis*, or by Rousseau as the “will of all” that is sublimated in a “general will,” or by idealist transcendentalism as the process of the economic and the ethical that leads the contingent and the singular to the totality of the spirit and its State configurations.<sup>110</sup>

On the other hand, another tradition of modern metaphysics, from Machiavelli and Spinoza to Marx, sees the development of the dynamic of constituent power as absolute, but here that absoluteness never becomes totalitarian. In Machiavelli and Spinoza strength is expressed and nourished by discord and struggle; in both authors the process extends between singularity and multitude, and the construction of the political is the product of permanent innovation. What in Machiavelli is involved in the analysis of popular movements and the conflictuality of republics, in Spinoza develops in a high metaphysics. And it is precisely when we compare it to Spinoza’s metaphysical absolute that the claim of pushing constituent power, its procedure, and its subject toward totalitarianism (even as a hypothesis) becomes ridiculous. There does indeed exist a totalitarianism in which the enigma of constituent power is not revealed, where its powerful effectiveness is denied or mystified in constituted power, and where the radicalness of its metaphysical strength and collective desire [*cupiditas*] is refused. In the lack of desire, the political becomes disciplinary totality, totalitarianism. Neither in Machiavelli nor in Spinoza, however, does the revolutionary process that embodies and establishes the constitution present itself as closure; rather, it is always open, both temporally and spatially. It flows as potently as freedom. It is at the same time resistance to oppression and construction of community; it is political discussion and tolerance; it is popular armament and the affirmation of principles through democratic invention. The constituent absolute and the democratic absolute have nothing to do with the totalitarian conception of life and politics. This absolute that builds the social and the political together has nothing to do with totalitarianism. Once again, then, political philosophy finds its dignity and its primary distinctions in metaphysics—on the one hand, the idealist metaphysics that, from Hobbes to Hegel, produces a transcendental concept of sovereignty; on the other, the historical materialism that develops a radical concept of democracy from Machiavelli to Spinoza to Marx. In this framework it is evident that the opposite of democracy is not totalitarianism but the concept of sovereignty itself, and it is now clear that the concept of democracy is not a subspecies

of liberalism or subcategory of constitutionalism but a “form of governability”<sup>111</sup> that tends to destroy constituted power, a process of transition that frees constituent power, a process of rationalization that provides “the solution to the *riddle* of every constitution.”<sup>112</sup>

We thus reach a turning point where we can verify what we have been arguing until now—that is, where we can verify our claim of having identified, at least formally, an image of the subject that allows us to sustain adequately the concept of constitution as absolute procedure. It seems to me that this formal figure must now be confronted with reality, with the history of subjects and constitutions, with life and politics. This is an open subject, projected into a totality without closure. To begin, let’s again consider a characteristic, between the formal and the material, already attributed to our subject: that of temporality. Our subject is, and cannot but be, a temporal subject, a temporal constitutive strength. That said, once again two paths open in front of us. On the one hand, temporality is brought back to and confused in being, emptied of the elements that constitute it and therefore reduced to mysticism—in short, necessarily rooted in a firm principle that is the relation of being with itself.<sup>113</sup> On the other hand, temporality can be grounded in human productive capacity, in the ontology of its becoming—an open, absolutely constitutive temporality that does not disclose Being but instead produces beings.

A rereading of Marx’s thought in this context can allow us to make progress in the definition of a materially adequate relationship between the constituent subject and absolute procedure. Marx’s metaphysics of time is much more radical than Heidegger’s.<sup>114</sup> Time is for both a matter of beings. Social time is the apparatus through which the world is quantified and qualified. But here we are once again, always at the same point: Marx frees what Heidegger imprisons. Marx illuminates with praxis what Heidegger reduces to mysticism. Heideggerian time is the form of being, the indistinctness of an absolute foundation. Marxian time is the production of being and thus the form of an absolute procedure. Marxian temporality represents the means by which a subject formally predisposed to being adequate to an absolute procedure becomes a subject materially capable of becoming part of this process, of being defined as constituent power.<sup>115</sup> Clearly, it is not only by comparison with the Heideggerian conception of time that this characteristic of Marxian temporality becomes clear, and from now on we will go along Marx’s independent path. It is useful, however, to keep in mind this clash of perspectives because some crucial showdowns over it take place in contemporary philosophy: between Benjamin and Arendt, between Sartre and Foucault and Deleuze. Through the same clash, one might say, the whole political-constitutional debate of our times takes place as well.

Let's thus focus on Marx, on the crucial point where the critique of power and the critique of labor intersect, because this is what we are talking about, and it is on this crux that the contradictions of the history of constituent power develop. The definition of constituent power, when we move from the concept to the real, is decided on this problem. Naturally, Marx's path is a long one. From the critique of ideology to the critique of power to the critique of labor, an extraordinary accumulation of theoretical initiatives unravels.

We begin with *The Holy Family* and "On the Jewish Question" of 1844. Marx's demystification of the concept of equality here leads to a critique of labor, or, better, the proclamation of human rights leads to the discovery of the universality of exploitation and private appropriation, to the denunciation of individualism and the exaltation of the community of workers.<sup>116</sup> Political emancipation is nothing but the attempt to displace the meaning of the impulse to revolt, the juridical hypostasis of the social status quo. Human rights and all the constituent propositions of the bourgeoisie represent neither productive forces nor utopia. They are nothing but mystifications and celebrations of the status quo. So-called political emancipation celebrates the force of the constituted while pretending to exalt the constituent.<sup>117</sup>

In *The German Ideology* of 1845–46 constituent power is defined twice. In its bourgeois formulation it is immediately class consciousness, a universal that through its affirmation adjusts the State constitution to the demands of bourgeois rule and the productive necessities of the division of labor. Constituent power is also expressed as communism: "Communism is for us not a *state of affairs* that is to be established, an *ideal* to which reality [will] have to adjust itself. We call communism the *real* movement that abolishes the present state of things. The conditions of this movement result from the premises now in existence."<sup>118</sup> This defining process results in a further development: "Thus things have now come to such a pass that the individuals must appropriate the existing totality of productive forces, not only to achieve self-activity, but, also, merely to safeguard their very existence. This appropriation is first determined by the object to be appropriated, the productive forces, which have been developed to a totality and which only exist within a universal intercourse"; and "the appropriation of these forces is itself nothing more than the development of the individual capacities corresponding to the material instruments of production. The appropriation of a totality of instruments of production is, for this very reason, the development of a totality of capacities in the individuals." Further: "Only the proletarians of the present day, who are completely shut off from all self-activity, are in a position to achieve a complete and no longer restricted self-activity, which consists in the appropriation of a totality of produc-



tive forces and in the thus postulated development of a totality of capacities.” Finally, “All earlier revolutionary appropriations were restricted. . . . In all expropriations up to now, a mass of individuals remained subservient to a single instrument of production; in the appropriation by the proletarians, a mass of instruments of production must be made subject to each individual, and property to all. Modern universal intercourse can be controlled by individuals, therefore, only when controlled by all.”<sup>119</sup>

The idealist residues that so heavily resound in these pages have to be dispelled, and they are defused in Marx’s later historical writings. In his writings of 1851–52 on revolution and counterrevolution in Germany the opposition between “universal class” and “real movement” is brought back to the model of constituent power—an open constituent power that takes the form of a permanent revolution, in other words, a process in which the subject’s independence is affirmed at the moment when it continually rolls back the enemy’s oppression and simultaneously expresses, accumulates, and organizes its own power.<sup>120</sup> Here, therefore, constitutive temporality is foregrounded and defined as the continuity of the process and a dimension of ontological accumulation.

In Marx’s writings on the Paris Commune of 1871, constituent power emerges finally as a perfect synthesis of a historical subject, the Parisian proletariat in arms, and an absolute process. The proletarian Commune itself is “essentially a working class government, the product of the struggle of the producing against the appropriating class, the political form at last discovered under which to work out the economical emancipation of labor.” Further: “The working class did not expect miracles from the Commune. They have no ready-made utopias to introduce *par decret du peuple*. . . . They have no ideals to realize, but to set free the elements of the new society with which old collapsing bourgeois society itself is pregnant.” Finally: “The great social measure of the Commune was its own working existence. Its special measures could but betoken the tendency of a government of the people by the people.”<sup>121</sup> This is where the concept of constituent power reaches its highest poignancy in Marx, when the project of the abolition of the State is not subordinated to anarchist spontaneity but focused on the nexus (dynamic and expansive, and yet precise) between political movement and political power.<sup>122</sup> If there were in English the terminological distinction that many languages mark between two kinds of power—*potestas* and *potentia* in Latin, *pouvoir* and *puissance* in French, *potere* and *potenza* in Italian, *Macht* and *Vermögen* in German (which we have been marking as *power* and *strength* in this translation)—it would reside in this distinction between political movement and political power. Indeed, Marx translates strength [*potenza*]

as “political movement,” that constituent force of a radical democracy in which the critique of power is combined with the emancipation of labor, the “real movement.”

But this is not enough. As long as we follow the political Marx, political revolution and social emancipation are two historical matrices that intersect on the same terrain—the constitutional terrain—but still in an external manner, without a metaphysical logic of this intersection being given. There must be something deeper and more urgent that demonstrates that this encounter is in no way accidental and makes necessary the materialist rule according to which political liberation and economic emancipation are one and the same thing. This necessity resides at the core of Marx’s theory of capital, where living labor appears as the foundation and the motor of all production, development, and innovation. This essential source also animates the center of our investigation. Living labor against dead labor, constituent power against constituted power: this single polarity runs through the whole schema of Marxist analysis and resolves it in an entirely original theoretical-practical totality.<sup>123</sup> The basis of Marxian discourse in the passage from the critique of power to the critique of labor and vice versa therefore consists in the deployment of the concept of living labor as an instrument that, while destroying the equivocal quality of the bourgeois theory of labor (consolidated, accumulated, dead labor set against the creativity of living labor), shows the bourgeois theory of power itself to be an overdetermination of living labor by dead labor.

Living labor, instead, embodies constituent power and offers it general social conditions through which it can be expressed: constituent power is established politically on that social cooperation that is congenial in living labor, thus interpreting its productivity or, better, its creativity. In the immediacy, the creative spontaneity of living labor, constituent power finds its own capacity for innovation; in the cooperative immediacy of living labor, constituent power finds its creative massification.<sup>124</sup> One must look carefully at this nucleus of living labor, this creative tension that is at the same time political and economic, productive of civil, social, and political structures—in a word, constituent. Cooperative living labor produces a social ontology that is constitutive and innovative, a weaving of forms that touch the economic and the political; living labor produces an indistinct mixture of the political and economic that has a creative figure.<sup>125</sup>

More than a century has passed since Marx elaborated this theory of constituent power, identifying the proletariat as its historical carrier. Doubtless, this theory has had wide effect, even though, like other theories, it has by now reached its historical limit.<sup>126</sup> What remains of it is not so much the effort to identify the proletariat as the agent of a permanent revolution and thus the adequate subject of

an absolute constitutional procedure, as much as the terrific metaphysical effort to propose constituent power as the general genealogical apparatus of the sociopolitical determinations that form the horizon of human history. This problematic is more contemporary than ever; and in the conclusion of this book we will certainly have to take into account the answer to the Marxian question about what the nexus between constituent power and that word *communism* might be—the nexus on which Marx synthesized the entire historical process. In any case, here we must keep in mind for the next stage of our inquiry some relations that Marx, above all, in concluding the materialist tradition of the definition of democracy as expression of strength, has helped to identify. In particular I am thinking of the relation that attaches the constitutive temporality of constituent power to an adequate subject and the one that poses the absoluteness of the nexus of subject and structure at the center of the creative process of the political.

One last reflection. Our argument will trace the conceptual formation of constituent power from a historical point of view, but it will not follow a continuous process: rather, it will move among various hypotheses. In each of the next five chapters we will analyze a particular figure of the formulation of the concept of constituent power and its singular destiny. In Machiavelli constituent power opens toward a strong dialectic between virtue and fortune—a dialectic that sets in play the revolutionary adventure of the Renaissance. In the English Revolution we will focus on Harrington's thought and his reading of the concept of constitution, but also the blockage of the constitution or, better, that "reversed" revolution that after 1688 fixed the constitutional conditions of the affirmation of the gentry and capitalist accumulation. The American Revolution and the clash of constituent positions among Adams, Jefferson, and the authors of *The Federalist* will illustrate how the ideology of freedom was made the constituent principle of a dynamic constitution of space, where democracy and imperialism confront each other.

The French Revolution poses for the first time the constituent principle as the principle of an absolute procedure, which is recognized in the movement of the popular classes against the bourgeois demand to restore the principle of sovereignty. In the Russian Revolution, finally, constituent power concretely measures itself with a utopian conception of time and tries to embody an absolute procedure. The tragedy of the Russian Revolution, in its greatness and misery, relates directly to the core of our investigation. Therefore, we are not proposing a genealogy of the concept: concepts have no history except in the materiality of the history of humans and societies. Rather, we will try to define through the alternatives of constituent power the differentiated set of its possibilities: not a set of different expressions united by

the custom of linguistic usage, but an expressive potential (of desires, wills, constructive experiences) accumulated inside our fundamental being from past experiences.

We are not interested in the archaeology of constituent power; we are interested in a hermeneutics that, beyond words and through them, can grasp the life, the alternatives, the crisis and the recomposition, the construction and the creation of a faculty of humankind: a faculty to construct a political arrangement. Therefore, what does the virtue [virtus] of Machiavelli's people in arms and the discovery of the material determinations of the relations of power in Harrington have in common? And how does the American renovation of classical constitutionalism overlap with the French ideology of social emancipation? How does the egalitarian impulse of communism dramatically coexist with the enterprising spirit of the Bolsheviks? It is clear that each of these enterprises will discover its meaning within the set of events that shapes them individually. But it is also true that the meaning of these events is inscribed in the consciousness of us all and etched in our being because it has somehow determined it. These events have for us a meaning worth investigating because they have constructed new horizons of reason and have proposed new dimensions of historical being. The journey we propose will be neither concluded by ideological syntheses nor contented with tracing the evolution of the concept; instead, it will try to lead us to the analysis of the strength of contemporary humanity. To understand our desire through the thousand stratifications that underlie it is the only path if we want to understand the concept.<sup>127</sup>

The concept of constituent power is the core of political ontology. Thus, it is evident that the conclusion of the journey that we are now beginning will involve confronting the contemporary crisis of constitutionalism and asking ourselves what subject today is adequate to sustain an absolute constitutional procedure capable of opposing the concept of sovereignty. At the same time we will attempt to determine where the living labor of strength resides, how it is represented, how it operates today.

# Notes

## 1. Constituent Power

1. Georges Burdeau, *Traité de sciences politiques*, vol. 4 (Paris: Librairie générale de droit et de jurisprudence, 1983), 171. On the terrible character of “constituent power,” see Donoso Cortes, *Lecciones de Derecho político* (1896), now in *Obras Completas*, vol. 1 (Madrid: Editorial Católica, 1970), 390 ff.

2. On democracy as “absolute government” see Antonio Negri, *The Savage Anomaly: The Power of Spinoza’s Metaphysics and Politics*, trans. Michael Hardt (Minneapolis: University of Minnesota Press, 1991). On constitutionalism as “limited democracy” in the tradition of Anglo-Saxon political science, see Nicola Matteucci, “La costituzione americana e il costituzionalismo moderno,” in *Il Mulino*, 314, year 36, 6 (1987):882–901.

3. [I have translated the two Italian words *potere* and *potenza* as *power* and *strength*. Both Italian words would commonly be translated into English as *power*, but Negri’s discussion rests heavily on the distinction between them. *Power*, for Negri, is always constituted power, and it often refers to the power shaped by and into existing State and political institutions. *Strength*, instead, is a radically democratic force that resides in the desire of the multitude and is aimed at revolutionizing the status quo through social and political change. *Strength* is at the core of the concept of constituent power itself as the force that produces (but cannot be

contained within) power and its institutions; constituent power is fueled by strength. Negri stresses more than once here that strength, as well as constituent power, enables but is not realized in constitutionality. Trans.]

4. C. Mortati, “Appunti sul problema delle fonti del potere costituente,” in *Rassegna di diritto pubblico* (1946), 1:26 ff; C. Mortati, “Costituzione,” in *Enciclopedia del diritto*, vol. 11:139–231; F. Pierandrei, “La costituzione e il diritto costituente” (1946), in *Scritti di diritto costituzionale*, vol. 1 (Turin, 1965); P. Barile, “Potere costituente,” in *Nuovissimo digesto italiano* (1966).

5. Emile Boutmy, *Studies in Constitutional Law: France, England, United States*, trans. E. M. Pacey (London and New York: Macmillan, 1891), 250.

6. For a detailed commentary on this Napoleonic affirmation made on December 15, 1798, see Roman Schnur, *Revolution und Weibbürgerkrieg* (Berlin, 1989).

7. See chap. 5 of this book. Furthermore, besides Schnur’s volume, see Reinhart Koselleck, *Critique and Crisis: Enlightenment and the Pathogenesis of Modern Society* (Cambridge: MIT Press, 1988); and *Futures Past: On the Semantics of Historical Time*, trans. Keith Tribe (Cambridge: MIT Press, 1985).

8. Once again, see Mortati. But see also P. G. Grasso, “Potere costituente,” in *Enciclopedia del diritto*, vol. 34:642–70; and particularly H. Sauerwein, “Die

Omnipotenz des 'pouvoir constituant,'” in *Ein Beitrag zur Staats- und Verfassungstheorie* (Frankfurt, 1960).

9. Maurice Hauriou, *Precis de droit constitutionnel* (Paris, 1923), 10, 282.

10. Raymond Carré de Malberg, *Contribution a la theorie générale de l'Etat* (Paris: Tenin, 1922), 2:167 ff; Guillaume Bacot, *Carré de Malberg et l'origine de la distinction entre souveraineté du peuple et souveraineté nationale* (Paris: Editions CNRS, 1985); E. Fehrenbach, “Nation,” in *Handbuch politisch-sozialer Grundbegriffe in Frankreich 1680–1820*, ed. Rolf Reichardt and Eberhard Schmitt, vol. 7 (Mnlich: Oldenbourg, 1986), 75–107.

11. See my study of Sieyès's positions (and related bibliography) in chap. 5.

12. Giovanni Sartori, *Democratic Theory* (New York: Praeger, 1965).

13. Carl J. Friedrich, *Constitutional Government and Democracy* (Waltham, Mass.: Blaisdell, 1968).

14. P. Pasquino, “Sieyès, Constant e il 'governo dei moderni.’ Contributo alla storia di rappresentanza politica,” *Filosofia Politica* 1, no. 1 (1987):78–98.

15. Hans Kelsen, *Vom Wesen und Wert der Demokratie* (Tübingen: J. C. B. Mohr, 1929), 47–68.

16. Georg Jellinek, *Allgemeine Staatslehre* (Berlin: Springer, 1914), 342 ff; Sauerwein, “Die Omnipotenz,” 45–47.

17. Georg Jellinek, *Allgemeine Staatslehre*, 332 ff.

18. Walter Jellinek, “Revolution and Reichsverfassung,” in *Jahrbuch für öffentlichen Recht* (1920), 31 ff.

19. Hans Kelsen, *Der soziologische und der juristische Staatsbegriff* (Tübingen, 1928), 83 ff, 98, 187; Kelsen, *Pure Theory of Law*, trans. Max Knight (Berkeley and Los Angeles: University of California Press, 1967), 193 ff.

20. Hans Kelsen, *General Theory of Norms*, trans. Michael Hartney (Oxford: Clarendon Press, 1991). In the Italian translation see the excellent introduction by Mario A. Losano. On Kelsen's interpretation of the principle of effectiveness, see G. Piovan, *Il significato del principio di effettività* (Milan, 1953). See also L. G. Guerrero Perez, *Poder constituyente y Control jurisdiccional* (Bogotá, 1985).

21. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard/Belknap, 1971), 152 ff.

22. See the end of chap. 3 of this book. But see also Philip Pettit, *Judging Justice* (London: RKP, 1980), 143 ff; and Antonio Negri, “Rawls: Un formalisme fort dans la pensée molle,” in *Futur Antérieur* suppl. 1 (1991).

23. Ferdinand Lassalle, *Über Verfassungsweisen* (Berlin, 1862); see also E. Beling, *Revolution und Recht* (Augsburg, 1923).

24. Hermann Heller, *Staatslehre* (Leiden: Sijthoff, 1934); “Die Krisis de Staatslehre,” *Archiv für soziale Wissenschaft und Sozialpolitik* (1926).

25. Rudolf Smend, “Verfassung und Verfassungsrecht” (1928), in *Staatrechtliche Abhandlungen* (Berlin: 1955), 119–276.

26. Max Weber, “Parliament and Government in Germany under a New Political Order,” in *Weber: Political Writings*, ed. Peter Lassman and Ronald Speirs (Cambridge: Cambridge University Press, 1994), 209–33. See also *Economy and Society*, ed. Guenther Roth and Claus Wittich (Berkeley and Los Angeles: University of California Press, 1978).

27. Max Weber, *The Russian Revolutions*, trans. and ed. Gordon G. Wells and Peter Baehr (Ithaca, N.Y.: Cornell University Press, 1995); *Socialism*, trans. H. F. Dickie-Clark (Durban: South Africa Institute for Social Research, University of Natal, 1967).

28. Carl Schmitt, *Verfassungslehre* (Munich and Leipzig, 1928).

29. P. Pasquino, “Die Lehre vom 'pouvoir constituant' bei Emmanuel Sieyès und Carl Schmitt,” in *Complexio oppositorum: Über Carl Schmitt* (Berlin, 1988). Above all, note in that work the opposition to Udo Steiner, *Verfassungsgebung und verfassunggebende Gewalt des Volkes* (Berlin: Duncker & Humblot, 1966), which purports to counterpose the French tradition to the German one in the juridical conception of constituent power, and in particular Sieyès's concept of “nation” and Schmitt's notion of “decision.”

30. Sauerwein, “Die Omnipotenz,” 57–77.

31. C. Mortati, “Costituzione”; see in particular 158–61, where the perspectives of French, Italian, and German constitutionalism are each followed in order to define *constitution* and *constituent power*.

32. C. Mortati, *La costituzione in senso materiale* (Milan, 1940); F. Pierandrei, “La costituzione.”

33. S. Romano, *Principi di diritto costituzionale generale* (Milan, 1954), and “L'istaurazione di fatto di un ordinamento costituzionale e sua legittimazione,” in *Scritti Minori*.

34. C. Schmitt, *Verfassungslehre*.

35. Maurice Hauriou, *La théorie de l'institution et de la fondation* (Paris: 1925); Leou Duguit, *Traité de droit constitutionnel* (Paris: Editions du Boccard, 1927). It is well known how prominent the motifs of Christian personality in Hanriou are, and in Duguit those of Proudhonian solidarity.

36. Mortati, "Costituzione," 145. Besides the other cited works by Mortati, see also on this question S. Romano, *L'ordinamento giuridico* (Milan, 1945).

37. Ernst Forsthooff, *Rechtsstaat im Wandel* (Stuttgart, 1964).

38. Besides the book by Carl Friedrich already mentioned, see Charles Howard McIlwain, *Constitutionalism, Ancient and Modern* (Ithaca, N.Y.: Great Seal, 1958); Harold J. Laski, *Reflections on Constitution* (Manchester: Manchester University Press, 1962); J. Agnoli, *Trasformazioni della democrazia* (Milan, 1969).

39. Nicola Matteucci, "La costituzione americana," 892.

40. Here it is not inappropriate to point out that the notion of "the limits of democracy" received a great deal of attention during the decade from 1975 to 1985, at the beginning of the neoliberal phase of modern ideology, which we are now perhaps coming out of. We should situate at the root of the reprise of that antidemocratic theme the 1975 Trilateral Commission Report.

41. A. de Tocqueville, *Democracy in America*, trans. Henry Reeve, F. Bowen, and P. Bradley (New York: Knopf, 1945), vol. 2, bk. 4, chap. 8:331.

42. E. W. Böckenförde, *Die Verfassungsgebende Gewalt des Volkes: Eine Grenzbeziehung der Verfassungsrechts* (Frankfurt, 1986).

43. For a bibliography on the relationship of "constituent power to revolution" see Mortati, "Costituzione," 232. See also the works cited by Reinhart Koselleck. I will discuss these themes often in the rest of this work.

44. Elise Marienstras, *Nous, le peuple: Les origines du nationalisme américain* (Paris: Gallimard, 1988), particularly 424, on the multiple clashes between constitutionalism and constituent power in the American Revolution.

45. This problematic is developed in the work of Carl Schmitt, most broadly in his *Verfassungslehre*. See Genaro Carrió's linguistic-juridical analyses, *Sobre los límites del lenguaje normativo* (Buenos Aires, 1973), 34 ff; and also Mario Cattaneo, *Il concetto di rivoluzione nella scienza del diritto* (Milan: Istituto editoriale cisalpino, 1960).

46. On this question see Carl Friedrich's position in *Constitutional Government*. Against this position see Wilhelm Henke, *Straatsrecht, Politik und verfassungsgebende Gewalt*, in *Der Staat* (1980):207 ff. Also on this topic see Egon Zweig, *Die Lehre vom Pouvoir Constituant: Ein Beitrag zum Staatsrecht der französischen Revolution* (Tübingen: J. C. B. Mohr, 1909).

47. Karl Loewenstein, *Volk und Parlament nach der Staatslehre der französischen Nationalversammlung von 1789* (Munich: Drei Masken Verlag, 1922).

48. It is on this point that notions of the "material constitution" swerve dangerously toward the continuist historical conception of the State and fail in their attempt to renew the theory. I discuss the contemporary state of constitutional theory in my book *La forma Stato* (Milan: Feltrinelli, 1977).

49. I consider Michel Foucault's historiographic methodology from this point of view, exemplary. See Gilles Deleuze, *Foucault*, trans. and ed. Sean Hand (Minneapolis: University of Minnesota Press, 1988).

50. A large current of contemporary philosophy is being redefined on this terrain. See N. Terullian, "De Schelling à Marx: Le dernier Schelling et sa postérité," *Archives de Philosophie* 50 (1987):621-41. See also my book *Fabbriche del soggetto* (Livorno, 1987). In general, see Giorgio Agamben's work.

51. Antonio Negri, *The Savage Anomaly*.

52. See Louis Althusser, "Machiavelli's Solitude," *Economy and Society* 17, no. 4 (1988):468-79.

53. Hannah Arendt, *On Revolution* (New York: Viking Press, 1963).

54. Friedrich von Gentz, *Betrachtungen über die französische Revolution, nach dem Englischen des Herrn Burke neu bearbeitet mit einer Einleitung* (Hohenzollern, 1793). On von Gentz see Antonio Negri, *Alle origini del formalismo giuridico* (Padua: CEDAM, 1962), 341 ff.

55. John Quincy Adams translated von Gentz's essay during the presidential campaign of 1800, which his father, John Adams, lost to Jefferson. On this translation, and in general on the American view of the French Revolution, see Richard Buel, *Securing the Revolution: Ideology in American Politics 1789-1815* (Ithaca, N.Y.: Cornell University Press, 1972).

56. Hannah Arendt, *On Revolution*, 21-22.

57. *Ibid.*, 66-110. These are the famous passages in which Arendt establishes a direct connection between compassion, equality, and terror.

58. In her work Arendt generally shows a sort of democratic Luxemburgism, strongly valorizing spontaneity and councils as political structures. The discussions of the coherence of this attitude and of her judgment on the French Revolution (not to mention the construction of the categories of "totalitarianism") are certainly not closed.

59. Here I am following some of the theses proposed by Jürgen Habermas, "Die Geschichte von den zwei Revolutionen," *Merkur* 218 (1966):479 ff and "Natural Law and Revolution," in *Theory and Practice*, trans. John Viertel (Boston: Beacon Press, 1973), 82-120. I will return to the polemic between Arendt and Habermas, particularly in chaps. 4 and 5.

60. This is not the place to propose an analysis of the relationship between "Atlantic political sociology" and Arendt's thought; it is enough to stress once again how contradictory and equivocal this thought is.

61. This is particularly true of contemporary institutionalism, which, during the years of the neoliberal reaction in France, has been represented above all by the work of Claude Lefort and Cornelius Castoriadis.

62. The relationship between Arendt and Heidegger is well known. Arendt's thought has been dealt with on the terrain of "weak" Heideggerian interpretation, above all, by its postmodern critics.

63. Myriam Revault d'Allones, "Lectures de la modernité: Heidegger, C. Schmitt, H. Arendt," *Les Temps Modernes* 45, no. 523 (1990):89–108.

64. Here we are referring to the essays by Habermas cited in n. 59.

65. In this perspective Habermas refers to the theses proposed by E. Topisch, *Sozialphilosophie zwischen Ideologie und Wissenschaft* (Neuwild: 1967).

66. See the first section of this chapter for a discussion of constitutional thought in Max Weber and Carl Schmitt.

67. Carl Schmitt, *Die Diktatur* (Munich and Leipzig: Duncker & Humblot, 1928); *The Concept of the Political*, trans. George Schwab (Chicago: University of Chicago Press, 1996).

68. This is true, too, of Schelling's late work. See Terullian, "De Schelling à Marx."

69. Schmitt, *The Concept of the Political*.

70. Arendt's position on this has been taken up by the followers of that current of thought that, in France, had most effectively represented critical Marxism in the 1960s, *Socialisme ou Barbarie*. My impression is that, when critical materialism became diluted, and because of the infiltration of a generic psychoanalytical discourse into this type of critique, here the strength of Arendt's intuition has become completely dispersed in favor of ideological options that are politically superficial.

71. See chap. 4 of this book.

72. H. Arendt, "Ziviler Ungehorsam," in *Zur Zeit, Politische Essays* (Berlin, 1987), 137–38. On the relationship between Schmitt and Calhoun, see M. Surdi, "Introduzione" to J. C. Calhoun, *Disquisizione sul governo* (Rome, 1986), 44 ff.

73. Hannah Arendt, citing Saint-Just, in *On Revolution*, 87.

74. Claude Lefort, *L'invention démocratique* (Paris: Fayard, 1981); Richard Rorty, "The Priority of Democracy to Philosophy," in *Philosophical Papers*, vol. 1:

*Objectivity, relativism and truth* (Cambridge: Cambridge University Press, 1991); Gianni Vattimo, *La secularisation de la philosophie* (Paris, 1988).

75. A certain Bergsonism is present, in latent or self-conscious form, in the tradition of French institutionalism. See for instance M. Leroy, *La loi: Essai sur la théorie de l'autorité dans la démocratie* (Paris, 1908); or, at the end of an era, Georges Burdeau, "Essai sur l'évolution de la notion de loi en droit français," *Archives de Philosophie du droit et de la Sociologie juridique* 9 (1939):7 ff.

76. The influence of Giovanni Gentile's neoidealist philosophy is very strong in the field of Italian constitutional law. See W. Cesarini Sforza, "Il potere costituente nella Repubblica Italiana," in *Studi sulla costituzione* (Milan, 1958), 121 ff.

77. Jean-Paul Sartre, *Critique of Dialectical Reason*, vol. 2, *The Intelligibility of History*, trans. Quintin Hoare (London: Verso, 1991).

78. Here our reference is clearly to Georges Bataille and his mysterious and extremely powerful essay "On Sovereignty," in his *Visions of Excess: Selected Writings 1927–1939*, ed. Allan Stoekl, trans. Allan Stoekl, Carl Lovitt, and Donald M. Leslie (Minneapolis: University of Minnesota Press, 1985).

79. Maurice Blanchot, *The Unavowable Community*, trans. Pierre Joris (Barrytown, N.Y.: Station Hill Press, 1988); Jean-Luc Nancy, *The Inoperative Community*, ed. Peter Connor, trans. Peter Connor, Lisa Garbus, Michael Holland, and Simone Sawhney (Minneapolis: University of Minnesota Press, 1991).

80. Aristotle, *Metaphysics*, in *Basic Works of Aristotle*, ed. Richard McKeon (New York: Random House, 1941), bk. 9:820 ff.

81. Elise Marienstras, *Nous, le peuple*, 299–301.

82. Reinhart Koselleck, *Futures Past*, 39–54. Koselleck makes a crucial reference to Immanuel Kant, *The Conflict of the Faculties*, trans. Mary J. Gregor (New York: Abaris Books, 1979), where the right to revolution is interpreted as historical and revolutionary *Bildung*, as capacity of historical transformation.

83. Hobbes, *Behemoth*, quoted in Koselleck, *Futures Past*. On this theme see Antonio Negri, *Macchina Tempo* (Milan: Feltrinelli, 1982).

84. The French citation is from an obscure social critic of the eighteenth century, quoted in Koselleck, *Futures Past*, 46. On the new notion of "constituted" history, see again Reinhart Koselleck, *Critique and Crisis*, 49–50, 127–30, 181–83.

85. Reinhart Koselleck, *Critique and Crisis*, 187–89; see also E. Rosenstock, "Revolution als politischer Begriff der Neuzeit," in *Festschrift für Heilborn* (Breslau, 1931);



K. Griewank, *Der neuzeitliche Revolutionsbegriff* (Frankfurt: Europaische Verlaganst, 1955).

86. S. Rohatyn, "Die juristische Theorie der revolution," *Internationale Zeitschrift für Theorie des Rechts* 4 (1929–1930):193–227. On this topic C. Cesa's introduction to the Italian translation of Griewank's book is key.

87. Condorcet, "Sur le sens du mot révolutionnaire," in *Oeuvres complètes* (Brunswick, 1801), 18:3 ff.

88. Christine Fauré, "Presentation," in *Les déclarations des droits de l'homme de 1793*, ed. Christine Fauré (Paris: Payot, 1988), 15–36. This book provides an exhaustive bibliography on the singular and unique historical experience of revolution of 1793.

89. D. A. F. Sade, *Françaises, encore un effort, si vous voulez être républicains* (Paris, 1989).

90. Kant, *Conflict of the Faculties*.

91. Carl Schmitt, *Die Diktatur; Verfassungslehre; The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge: MIT Press, 1986); *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge: MIT Press, 1985). Everywhere in these texts we are referred to Spinoza for a fundamental definition of *constituent power*. For an analysis of these texts, see Manfred Walther, "Schmitt und B. Spinoza, oder Irritationen im Begriff des Politischen," presented at a conference at the Sorbonne, Paris, 1990. Carriò agrees in *Sobra los limites*, 44 ff; Hermann Heller disagrees in *Staatslehre*, 279 ff.

92. Louis Althusser, *Elements d'autocritique* (Paris, 1974), 81.

93. H. Sauerwein, "Die Omnipotenz," chap. 5. The limitations of this author's discourse lie in his referring the thematic of subjectivity to the currents of neonatural law in the 1950s.

94. On the continuity of the "national" tradition as foundation of constituent power, see also Tosch, *Die Bindung des verfassungsändernden Gesetzgebers an den Willen des historischen Verfassungsgebers* (Berlin: Duncker & Humblot, 1979). In general, on Sieyès and the tradition connected to him, see chap. 5 of this book.

95. Etienne Balibar and Immanuel Wallerstein, *Race, Nation, Class: Ambiguous Identities*, trans. Chris Turner (London and New York: Verso, 1991).

96. Hans Kohn, *The Idea of Nationalism: A Study in Its Origins and Background* (New York: Macmillan, 1967); Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt Brace, 1951).

97. It is Carl Schmitt in *Verfassungslehre* who, outside of the ambiguous Anglo-Saxon constitutionalist tradition, offers the most accomplished conceptual construction of "the people" as constitutional foundation.

But see also D. Schindler, *Verfassungsrecht und soziale Struktur* (Zurich: Schulthess, 1950).

98. L. Taparelli d'Azeglio, *Saggio teoretico di diritto naturale appoggiato sul fatto* (Rome: 1949), 2:28.

99. See S. Romano, "Mitologia giuridica," in *Frammenti di un dizionario giuridico* (Milan, 1953), 131 ff, 126 ff; G. Sartori, *Democratic Theory*.

100. See the first section of this chapter.

101. S. Romano, *Frammenti*, 223 ff; C. Mortati, *La costituzione in senso materiale*. Ernst Forsthoff, "Zur heutigen Situation einer Verfassungslehre," in *Festschrift für C. Schmitt* (Berlin: Duncker & Humblot, 1968), 1:185 ff.

102. Michael Theunissen, *Hegels Lehre vom absolutem Geist als theologischen-politischer Traktat* (Berlin: de Gruyter, 1970); *Sein und Schein: Die kritische Funktion der Hegelschen Logik* (Frankfurt: Suhrkamp, 1980).

103. The reference is obviously to the "second" Foucault, the author of *History of Sexuality*, vol. 1, of *The Uses of Pleasure, of The Care of the Self*, trans. Robert Hurley (New York: Random House, 1978–1986). On the "first" Foucault, see my "Sul metodo della critica della politica," in *Macchina tempo*, 70–84.

104. Gilles Deleuze, *Foucault*.

105. Foucault developed these positions in the lectures he gave in the 1970s.

106. Gilles Deleuze, *Expressionism in Philosophy: Spinoza*, trans. Martin Joughin (New York: Zone, 1990).

107. From this perspective Foucault's position is opposed, on metaphysical and sociological terrain, to Habermas's theory of the "public sphere." In my view, however, Foucault interprets the lessons of the Frankfurt School more faithfully than do its direct descendants.

108. On the impossibility of considering the social in purely political terms, and thus of redirecting it toward "totalitarianism" (as Arendt does), as well as on the abstract emptiness and purely polemical use (in the worst ideological sense) of the concept of "totalitarianism," see Karl Polyani, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957). See also Richard Bernstein, *The Restructuring of Social and Political Theory* (Oxford: Oxford University Press, 1976).

109. Arendt's *The Origins of Totalitarianism* (New York: Harcourt Brace, 1966), in which she explores the theme of totalitarianism in its full range, is certainly her worst book. The categories of the so-called Cold War are deeply imbricated in her argument at all turns. The great social movements that brought about the destruction of the system of "real socialism" have demonstrated how false and heuristically dangerous these categories were.

110. On the tradition of contractualism as the ground for the definition of the transcendence of power, see my book *The Savage Anomaly*.

111. Foucault introduced the analysis of the concept of democracy onto the terrain of the “forms of governability” or “government.”

112. Karl Marx, *Critique of Hegel's Doctrine of the State*, in Marx, *Early Writings*, trans. Rodney Livingstone (Harmondsworth: Penguin, 1975), 87.

113. Heidegger maintains this position in the 1927 Marburg seminar and also in section 3 of Part 1 of *Being and Time*, which he never saw published and which has appeared in print only recently.

114. On Marx's theorization of time, we should keep in mind in addition to the famous passages from the *Grundrisse*, about which see my book *Marx beyond Marx: Lessons on the Grundrisse*, trans. Harry Cleaver, Michael Ryan, and Maurizio Viano, ed. Ian Fleming (South Hadley, Mass.: Burgin and Savey, 1984); *The Poverty of Philosophy* (New York: International Publishers, n.d.); and *Letter to Annenkov*, English translation in Karl Marx and Friedrich Engels, *Selected Correspondence* (Moscow: Progress Publishers, 1975), 29–39. We will return to this topic later in the course of this book. On the prehistory of the category of time in Marx, see Eric Alliez, *Capital Times: Tales from the Conquest of Time*, trans. Georges Van Den Abbeele (Minneapolis: University of Minnesota Press, 1996).

115. See Jean-Marie Vincent, *Abstract Labor: A Critique*, trans. Jim Cohen (New York: St. Martin's Press, 1991).

116. Karl Marx, *The Holy Family*, trans. R. Dixon (Moscow: Foreign Languages Publishing House, 1956), chap. 4.

117. Karl Marx, “On The Jewish Question,” in *Early Writings* (New York: Penguin, 1975), 211–41. As we will see later, in the polemic that divides them concerning the problem of the “two revolutions,” Jürgen Habermas rightly reproaches Arendt for treating the Marxian theme of the emancipation of the political in purely formal terms, or, better, for having exalted as positive what Marx criticized from the point of view of social liberation. If she maintained this style of argumentation but changed its sense and referents, Arendt would produce, according to Habermas, a classical sophism.

118. Karl Marx, *The German Ideology*, pt. 1, ed. C. J. Arthur (New York: International Publishers, 1991), A4:56–57.

119. *Ibid.*, D2:92–93.

120. Karl Marx, *Revolution and Counter-Revolution*, ed. Eleanor Aveling Marx (London: Unwin, 1971), chap. 18.

121. Karl Marx, *The Civil War in France*, in *The First International and After*, ed. David Sternbach (New York: Penguin, 1974), 213, 217.

122. Karl Marx, *Letter to Bolte*, in Marx and Engels, *Selected Correspondence*, 253–55.

123. Once again allow me to refer the reader to my *Marx beyond Marx*. For the passages from Marx quoted up to this point, see chaps. 5 and 6 of this book, where they are discussed in detail.

124. E. P. Thompson, *The Making of English Working Class* (London: Gollancz, 1968).

125. On this question, permit me to refer the reader once again to my *Fabbriche del soggetto*.

126. Antonio Negri, *The Politics of Subversion* (Cambridge: Polity Press, 1989), part 1.

127. Gilles Deleuze and Félix Guattari, *A Thousand Plateaus: Capitalism and Schizophrenia*, trans. Brian Massumi (Minneapolis: University of Minnesota Press, 1987).

## 2. Virtue and Fortune

1. *Decennale Primo*, in *Opere*, 1:790. All the quotations from Machiavelli come from Antonio Panella's edition, *Niccolò Machiavelli: Opere*, 2 vols. (Milan: Rizzoli Editore, 1939). English translation, *First Decennale, Machiavelli: The Chief Works and Others*, 3 vols., trans. Allan Gilbert (Durham, N.C.: Duke University Press, 1965), 3:1445. On 1484 and the descent of Charles VIII, see A. Denis, *Charles VIII et les italiens: Histoire et mythe* (Geneva, 1979).

2. *Opere*, 1:803; *Chief Works*, 1455.

3. *Opere*, 2:768; English translation “Letter to Giovanni Ridolfi 1/6/1504,” in *Machiavelli and His Friends: Their Personal Correspondence* (DeKalb: Northern Illinois University Press, 1966), 102–103.

4. *Opere*, 2:769, 773; English translation, “Letter to Giovanni Ridolfi, 12/6/1506,” in *ibid.*, 124–27.

5. *Opere*, 2:766–68.

6. Written in 1503, before August (*Opere*, 2:679–84); *Chief Works*, 2:1439–44.

7. *Opere*, 1:608; *Chief Works*, vol. 3, *Decennale Primo*, 1457.

8. On Renaissance naturalism see N. Badaloni, *Storia della filosofia*, ed. Mario Dal Pra' (Milan: Vallardi, 1975–76), 7:173–274.

9. From January 17 to June 14, 1508. See *Opere*, 2:1020–27.

10. See *Opere*, 734–49; *Chief Works*, 1:101–16.