

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

Andreas Kalyvas. New York: Cambridge University Press, 2008. 336p.

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— Miguel Vatter, *Universidad Diego Portales*

This book makes the argument that the founding moments of a democracy—what the author calls “the politics of the extraordinary”—matter because they are what grant democratic procedures their legitimacy. For Andreas Kalyvas, a democratic beginning is one that generates a constitution. Thus, democratic legitimacy and constitutionalism go hand in hand and are not to be opposed, as some thinkers ranging across different camps have recently argued. The author intends to develop what he calls a theory of democratic constitutionalism, by which is meant the claim that democratic politics must be about the constitution (this is what makes it “extraordinary”): how to make it, how to protect it from internal and external enemies, and how to renew it from outside of the formal channels of political representation (pp. 12, 297). To this end, the book offers an interpretation of Max Weber’s theory of charisma, Carl Schmitt’s notion of constituent power, and Hannah Arendt’s idea of beginning understood as “three distinct variations on a single theme: namely, the extraordinary dimension of the political as the originary, instituting moment of society” (p. 10).

The extraordinary in Weber is the charismatic. Kalyvas is aware that there seems to be little *prima facie* connection between charisma and democracy (pp. 65–78), but he believes to have found another notion of charisma in Weber’s “sociology of prophetic religions,” one that is no longer a function of a personal vocation, but something more collective and thus potentially democratic (pp. 20, 22). The idea is that the struggle of prophets (charisma) against the hierocracy (tradition) (pp. 53, 56) exemplifies a democratic and charismatic politics that institutes a new legitimate order. Yet the discussion does not clarify how a struggle around religious beliefs provides “the symbolic and axiological foundations of a new form of political authority” (p. 54). How does one move from a band of disciples to a political body of citizens? Kalyvas speaks as if it were internal to the meaning of “a charismatic movement” that it be vowed to “re-found the symbolic sources of political authority” (p. 62), but this is never proven, and may, indeed, be very difficult to argue given that all of the so-called Axial religions maintain an ambivalent relation to the fact of political authority.

The central and longest part of the book is dedicated to a study of Schmitt’s theory of the constitution. Kalyvas mounts a spirited critique against most Schmitt scholarship, which has seen in the German jurist a foe of democracy. To the contrary, for Kalyvas the value of Schmitt’s thought consists precisely in having given democratic theory

what it had been missing: its own theory of constitutionalism, unfettered by liberal constitutionalist assumptions. Kalyvas is a careful reader of Schmitt, and, irrespective of where one stands on this issue, his interpretation of the *Verfassungslehre* makes a novel contribution to the study of Schmitt. Schmitt is a thinker of sovereignty, and traditionally sovereignty has always been at odds with constitutionalism. Kalyvas believes that Schmitt dissolves this tension by giving a new meaning to the idea of sovereignty: A sovereign is not a dictator (pp. 88–91) but a synonym for the constituent power that establishes “a new political and legal order by drafting a new constitution” (p. 90). Where a dictator breaks a previous legal order, a sovereign institutes a new one (p. 91). Kalyvas maintains that Schmitt makes a key distinction between what is extraordinary and what is exceptional (p. 93), and his reading rests on this distinction: for the sovereign is an extraordinary legislator, not the one who decides on the state of exception to law. Given the importance of this point for the entire argument, it is curious that he dedicates only one footnote to the voluminous debate around the state of exception brought to prominence by Giorgio Agamben’s reading of Schmitt (p. 92).

When this constitutionally minded sovereign happens to be a people, then we get the normative idea of a democratic constituent power (p. 98). Kalyvas can now answer the initial question regarding the roots of democratic legitimacy: Schmitt’s idea of democratic constituent power offers “a normative criterion, the constituent popular will, with which one can test and assess the legitimacy of existing constitutions and of the basic structures of society to which it gave birth. . . . In a democratic regime, therefore, the legitimacy of the fundamental norms and values rests exclusively upon the actual manifestation of the will of the popular constituent subject and the participation of the citizens in the extraordinary process of genuine constitutional making” (p. 99). Kalyvas then contrasts this Schmittian criterion of legitimacy with the criterion of the basic norm found in Hans Kelsen’s constitutionalism. What upsets Kalyvas—as it had upset before him Eric Voegelin, Leo Strauss, and Friedrich Hayek—is that “when assessing the nature of a legal order, Kelsen declared that there is no difference between a democratic revolution and a reactionary coup d’etat” (p. 112 ff.) because anyone could have given the basic norm. And he concludes: “[A]ctually, it is not Schmitt’s political theory that suffers from a normative vacuum but rather Kelsen’s formal procedural approach” (p. 115). The gauntlet is thrown, and I am sure that more than one defender of procedural democracy will take it up (again). But Kalyvas is right about one thing: For Kelsen, as well as for Kant, whom Kelsen seems to follow on this point, it does not matter much who gives the law, who is the person of the sovereign, so long as the state is organized as a rule of law rather than of persons. By a rule of law, Kant means that in order to become a

subject of law, the legal order must recognize for this subject a right to have rights, his or her equality with all other subjects before the law, and enable him or her to achieve political independence (have the right to vote for the sovereign). Short of this, there is no rule of law for Kant, and so also no republic. Instead, if one assumes, with Kalyvas, that a constitution is legitimate only if its origins were “purely” democratic, then the legitimacy of the law would depend on who is the sovereign person. From a Kantian perspective, this constitutionalism would not qualify as a rule of law but as a rule of persons (collective or otherwise, depending on the type of regime).

The last part of the book is dedicated to a reading of Arendt's *On Revolution*, which Kalyvas, following Antonio Negri, interprets as a treatise on constituent power. Kalyvas discusses at length Arendt's implicit critique of Schmitt, which he takes to be a matter of her advocating the relative, as opposed to absolute, nature of constitutional beginnings (p. 224 ff.). On his reading, Arendt's power of the people, unlike Schmitt's popular sovereign, is a limited power, but nonetheless it remains constituent. The treatment of Arendt is less original than that of Schmitt, and I think that Kalyvas downplays another crucial difference between the two thinkers. Whereas Schmitt says that the constituent power of the people manifests itself as the power to make constitutions, as “higher lawmaking,” Arendt instead distinguishes in principle the power of the people from the authority of the legal constitution. Law and power do not have a common origin for her; the point being that for Arendt, a legal constitution is a framework for political action, not its proper subject matter as it is for Schmitt. In my opinion, the treatment of Arendt would have been more complete if Kalyvas had discussed her theory of legal authority. On the other hand, he offers an elegant discussion of the republic of councils as Arendt's last word on the power of the people.

As discussed in this book, constituent power is an extraordinary attempt at reordering society from a standpoint that transcends its given political constitution. Therefore, it is not entirely surprising that the three ideas of the extraordinary discussed by Kalyvas appear to have clear theological roots: the “gift” of charisma in Weber's conception of leadership; constituent power as a secularized version of the medieval distinction between God's absolute and ordained power in Schmitt; and Arendt's understanding of freedom as a “miracle” that interrupts the natural chains of causation. Unfortunately, the book does not address these theological motifs at the basis of such “politics of the extraordinary.” Yet I think the significance of political theology for the comprehension of these authors should not be underestimated, if only because what seems to motivate Schmitt's response to Weber is the desire to reject a fundamental assumption of modern sociological thought since Hegel and Feuerbach, namely, the belief that God is but the alienated figure of society's power to

(re)order itself. Through its sociology of religion, modern social science could be seen as usurping the function that theology used to exercise with respect to the science of legislation. Any defense of Schmitt's contribution to radical democratic politics, and in the name of society's right to institute itself, should be aware of this background, for it would be ironic, after all, were radical democratic politics to become God's last hiding place on earth.

Five Chapters on Rhetoric: Character, Action, Things, Nothing, and Art. By Michael S. Kochin. University Park: Pennsylvania State University Press, 2009. 184p. \$65.00.

Socrates on Friendship and Community: Reflections on Plato's *Symposium*, *Phaedrus*, and *Lysis*. By Mary P. Nichols. New York: Cambridge University Press, 2008. 238p. \$80.00.
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— Alexandra Elizabeth Hoerl, *Wabash College*

While these two books have different purposes, they both ask readers to consider the relationship between friendship and rhetoric and the limitations placed upon rhetoric and deliberation in a polity where there is not friendship. This makes them interesting not only to scholars of rhetoric and Plato but also to readers interested in deliberation or democratic theory.

Michael Kochin suggests that rhetoric has the important function of “protect[ing] human relationships from ever changing facts and circumstances” (p. 3). Because Kochin sees rhetoric as a tool for preserving relationships so that communication will be possible, he is critical of those scholars who believe that argumentation is the most important quality of rhetoric. He doubts argument's efficacy, for “[a]rguments make the things argued for unclear or dubitable, where assertion or illustration makes things manifest, or, even better, self-evident” (p. 14). This is a provocative claim that brings him into contact with the substantial literature on democratic deliberation. Perhaps the greatest flaw in *Five Chapters on Rhetoric* is that it does not seriously engage the literature on deliberative democracy, as Kochin makes an interesting case for his position that rhetoric is less about articulating reasons through argument and more about preserving relationships that allow channels of communication to remain open.

Given his preference for “men, not measures,” it is not surprising that Kochin focuses on the role of character in rhetoric. He discusses the interplay between character as moral uprightness and character as expertise and asserts that successful orators demonstrate their superior expertise while simultaneously showing that they are possessed of a moral character acceptable to the political community at large. The latter is clearly more difficult, but Kochin rejects the notion that it is best achieved through the use of a persona and suggests that “[w]hat is to be concealed here is not one's true character, but one's art in making one's own character and that of one's opponent appear to