ON THE CORE CONCEPTS OF POLITICAL THEORY:

Hannah Arendt, Carl Schmitt and the Ancients

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ABSTRACT

Hannah Arendt and Carl Schmitt are often thought to be diametrically opposed to one another. This thesis interrogates this view not only by focusing on the differences, but also the similarities between these two thinkers. It challenges previous studies that have overlooked the appropriation by Arendt and Schmitt of the ancient Greek and Roman traditions of political thought and practice, by arguing that looking through the lens of these traditions provides another way of the understanding Arendt's and Schmitt's political theories. Examining the work of Arendt and Schmitt, and their insights into the subjects of politics, sovereignty, law and war, my original contribution is twofold, in (1) comparatively elaborating the core aspects of the concepts of politics, sovereignty, law and war, with which then to (2) identify their rival appropriations of the Greek and Roman traditions underpinning political enquiry in respect of these four concepts.

This thesis finds that both Arendt and Schmitt provide a public space for politics as distinct from the private sphere. However, Arendt connects her conception of politics to the Greek *polis* and Augustine's idea of natality; politics for her embodies a freedom of acting and speaking, where the protection of politics by law has its root in the Greek concept of the *nomos* and the Roman concept of *lex*. The unspeaking activity of sovereignty, which Arendt finds in Augustine's relational account of God as an antidote to monological sovereignty thinking, should be eliminated from politics, and the concept of war that has its root in the Roman recounting of the Trojan War might function to show how politics can begin anew. Schmitt's conception of 'the political', on the other hand, is bound up with the distinction between friend and enemy in accordance with Greek conceptions of *πολέμιος* and *ἐχθρός*, and Roman conceptions of *hostis* and *inimicus*. This sheds light on the absolute power of sovereignty in Christian theology during the time of Constantine, the Greek *nomos* and Roman *ius* conceptions of law, and the real possibility of the experience of war from ancient Rome as opposed to the Greek *agon*.

Although Arendt and Schmitt do not give completely accurate accounts of these traditions in themselves, the findings of the thesis eventually bring modern political philosophy back to the contribution of classical political thought, adding another facet to understand these two political thinkers apart from the standard reading of Arendt and Schmitt that solely outline their political thought in light of the context of modernity.

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CHAPTER 1

INTRODUCTION

Hannah Arendt (1906–1975) and Carl Schmitt (1888–1985) are two of the most significant and influential continental European political theorists of the 20th Century. Their lives coincided with the end of classical liberalism in Continental politics and the rise of dictatorship as an apparently necessary feature of modernity. Their careers and experiences led to them being inevitably reduced to their relevance to the Third Reich. Consequently, Arendt is conventionally associated with the anti-dictatorial and anti-fascist trends of European politics, while Schmitt is notorious as the 'crown jurist' of the Nazis. While this thesis presents a much more detailed and less superficial analysis than this popular understanding, it is important to note from the outset that the views of Arendt and Schmitt on the role of the state and their conceptions of the political are permeated by the times in which they lived and their convergent cultural milieus, intellectual interests and political engagements, usually from opposing perspectives.

Their understandings of politics are often thought to be diametrically opposed and fundamentally divergent to one another, which is reflected in their subsequent political theories. Arendt elaborates her argument on the performance of speech and action located in a self-organised public sphere, and questions the instituted relations of inequality by rejecting the distinction between rulers and ruled. For Arendt, political power is reduced by force and violence and bears no relation to the dictatorial interference of a centralized nation-state (Arendt, 1958: 31; 1969: 36–42; 1976). Conversely, Schmitt's conception of 'the political' refers to 'the real possibility of physical killing' as an extreme consequence of war arising from the distinction between friend and enemy, showing his support of the idea of an abstract popular sovereign will and the aggregation of the extraordinary power of sovereignty (Schmitt, 2007a: 33).

Despite their essential differences, there are certain interesting similarities between Arendt and Schmitt. Both were secular Germans confronting the same decisive experience of the Weimar Republic, the rapid changes in European society, including the crisis of classical 19th-century liberalism, an increase in the influence of the labouring masses in politics, the solidification of the Soviet Union, a new form of welfare state, and the rise of the modern administrative, bureaucratic state. They developed a set of ideas and issues (e.g. Schmitt's conception of the partisan and Arendt's idea of the 'banality of evil') that profoundly addressed the central questions and dilemmas of modernity, such as totalitarianism, statelessness, globalisation, violence and war. Their conceptions of politics showed an effort in common to reject political ideologies, such as orthodox Marxism and liberalism, from the realm of human experience and their own positions (Kalyvas, 2008: 9). Moreover, both Arendt and Schmitt wrote about political lives under modern conditions, particularly in Arendt's *The Human Condition* (1958) and *Introduction into Politics* (1993/2005) and Schmitt's *The Concept of the Political* (1932/2007) and *Political Theology* (1922/2005). They perceived that modernity, which had fully brought to fruition the Enlightenment's advocacy of secular reason and science, had also brought the collapse of the foundation of politics from their standpoints. Through these experiences, they faced similar theoretical questions regarding the complex relationship between morality, ethics and reason, freedom and authority, continuity and the disruption of politics.

This thesis interrogates their divergent views of political theory by focusing on their similarities as well as their differences. In this thesis I undertake an examination of the dichotomous and harmonious relationship between Arendt and Schmitt, focused on their respective conceptions of politics, sovereignty, law and war. This chapter introduces the comparisons between Arendt and Schmitt in six sections. In the first section, I give a brief description of their biographies. Following that, in the second section I identify the importance of the comparison of these two political thinkers. Next, I indicate the main argument of the thesis, giving an account of their significance in subsequent political theory, and specifying the specific questions that steer my investigation and pointing to one of the thesis's main

contributions, which is to examine Arendt's and Schmitt's political thought in terms of their engagements with the classical Greek and Roman traditions of political enquiry in relation to the four main political concepts examined in section four: politics, sovereignty, law and war. In section five, a brief exposition of the methodological approach in this thesis is presented. The final section concludes with a brief outline of the content of the thesis.

1.1 Biographical Background of Hannah Arendt and Carl Schmitt

There are intriguing similarities and differences between the life stories of Arendt and Schmitt, both of whom were profoundly affected by the ascendancy of Fascism and Nazism prior to the Second World War. In this section, I briefly refer to some of the actual shared life events experienced and witnessed by Arendt and Schmitt that developed their political and social thoughts and shaped their respective scholarly political conceptions. Some contemporary political and philosophical thinkers of Arendt and Schmitt also will be taken into account in relation to their lives.

Arendt grew up in an urban bourgeois family in Königsberg, then a part of Germany and historically culturally Prussian. Königsberg had a large and well-established liberal Jewish community, many of whose members – including Arendt's family – were completely secular (Young-Bruehl, 1982: 5; Keedus, 2015: 12).

As a young adult, Arendt was not interested in politics and was engrossed in intellectual interests of a philosophical and metaphysical nature. In 1924–1925 she started her academic life as a student of philosophy at Marburg University with Martin Heidegger, the German mentor with whom she had a love affair. At Heidelberg University Arendt studied philosophy under Karl Jaspers and completed her doctorate in 1926. In her doctoral thesis, *The Concept of Love in Saint Augustine*, a form of Christianity was scrutinised as the prerequisite for the love of God (Canovan, 1995: 8). Later, when her interests moved from 'unpolitical' theology to the political engagement of reality, Arendt still kept on thinking about Saint Augustine (hereinafter

'Augustine') for the rest of her life (Arendt's conception of politics and war in light of Augustine's idea of a new beginning is elaborated in chapters 3 and 6, and her approach to sovereignty in relation to Augustine's idea of will is presented in chapter 4; see also Canovan, 1995: 8; Kampowski, 2008).

Schmitt, by contrast, was born into a lower-middle-class Catholic family in the small town of Plettenberg in the Rhineland and undertook his early stages of education at a Catholic school (Bendersky, 1983: 4; Balakrishnan, 2000: 11). He studied law at the Friedrich-Wilhelm University of Berlin, although his first intention was philology. He struggled with his experience in Berlin, where he described his feelings at that time as 'mistrust and antipathy' during the first two semesters, and subsequently moved to the less abrasive and more conservative environment of Munich, then moved again to Strasbourg to study jurisprudence after another semester (Balakrishnan, 2000: 13). In 1915 he completed his thesis on criminal law entitled *On Guilt and Degrees of Guilt*, and in 1916 – the same year that he volunteered for the army –undertook his habilitation with another thesis, *The Value of the State and the Significance of the Individual* (Balakrishnan, 2000: 13). Both of Schmitt's theses were preoccupied with criticisms of legal positivism.

From 1922 Schmitt wrote various influential screeds against liberalism, such as *Political Theology* (1922/2005) and *The Crisis of Parliamentary Democracy* (1923/1988). In 1927 the first edition of his most famous work *The Concept of the Political* was published, which systematically applied his conception of politics as the distinction between friend and enemy, followed by *Constitutional Theory* in 1928 and *Legality and Legitimacy* in 1932.

From the 1930s, many German intellectuals, including Schmitt and Heidegger,[1] endorsed and overtly supported Hitler; a generous analysis might view this as political irresponsibility. In common with many German intellectuals, Schmitt collaborated with the Nazi Party, playing a role in policy

[1] Heidegger, elected Rector at Freiburg University, implemented the dismissal of Jews from the university, and enthusiastically put his considerable intellectual prestige at the service of the Fűhrer (Maier-Katkin and Maier-Katkin, 2007: 34).

formulation and the legal transition to a totalitarian regime, and justifying Hitler's extra-judicial killings of opponents (Seitzer and Thornhill, 2008: 1; Bernstein, 2013: 2). In his academic life, he was a professor at various universities, such as Munich and Cologne, before obtaining the permanent position of professor in Berlin from 1933 to 1945 (Mehring, 2009/2014: 358–380).

In 1936, Schmitt was ousted from the position of Reich Professional Group Leader after he was accused of converting to Nazism to advance his career, but he still continued in his position at the University of Berlin, and subsequently turned his focus to international law (Scheuerman, 1999: 141–174; Mehring, 2009/2014: 358–380). He also published *The Nomos of the Earth*, a significant work that contributes the idea of *nomos* to the modern legal thought, in the early 1940s. During these times, Schmitt influenced the legal thought of exceptionalism, associated with Carl Friedrich, a 20th-century German–American professor and political theorist who worked on the subject of dictatorship (Guilhot, 2017: 226).

Before 1933 Arendt maintained close relationships with many Germans and was not a Jewish in the religious or cultural sense, being profoundly influenced by assimilation; similarly, Schmitt had close relationships with many Jews and never included German supremacy in his academic writings. The increasing influence of Nazism by the late 1920s made it difficult for Arendt and other Jewish scholars to ignore politics. Arendt was forced out of her exclusive interest with 'otherwordly' philosophical thought. During this time, she turned her focus to the study of political theory and questions of practical politics, especially 'the Jewish question' and Zionism, which she previously found 'boring' (Arendt and Jaspers, 1985: 234).

During the same time that Schmitt was affiliated with Nazism, Arendt was known to the academic world not as an intellectual of German culture but simply as Jewish. She joined the practical activity of the Zionist movement, which included undertaking research on anti-Semitic propaganda in Germany in 1933. As a member of the Zionist organisation, Arendt was arrested by the Gestapo (Young-Bruehl, 1982: 105). After her release, she

fled to France as a refugee in late 1933, first to Geneva and then to Paris. She continued during this time to work in the Zionist movement. There she met her future husband, Heinrich Blücher, a revolutionary socialist, who (as she later told Karl Jaspers) taught her to think politically (Young-Bruehl, 1982: 124–128). She found inspiration in the writing of Bernard Lazare, who argued that the Jewish question was essentially a political issue to which the answer must be equally political, which meant the need to form an alliance with all of the progressive forces in Europe to fight for freedom (Canovan, 1995: 10). (As discussed in chapters 5 and 6, Arendt also linked the idea of alliance to other concepts of political thought).

When Nazi Germany invaded France in 1940, Arendt was separated from her husband and interned in Gurs camp, before escaping to America in 1941 where she quickly became a woman of letters, including contributions to the German Jewish émigré paper, *Aufbau*, from 1941–1945, which were direct interventions in Jewish politics. After the Second World War, Arendt taught at various universities and also participated in various expatriate intellectual circles in American academic society. From the 1950s she was thrown into the limelight following the release of her revival of classical republican themes in academia. She continued her commitment to Jewish studies; the publication of *The Origins of Totalitarianism* in 1951 was first acclaimed as a profound analysis of Nazism and Stalinism. Her reputation as a Zionist was irreparably damaged by her sophisticated analysis of bureaucratic anti-Semitism elucidated in *Eichmann in Jerusalem: A Report on the Banality of Evil* in 1963, after which she was ostracised by the mainstream Jewish community (Canovan, 1995: 1). Other profound writings such as *The Human Condition* (1958), *Between Past and Future* (1961/2006a),[2] *On Revolution* (1963/2006b) and *On Violence* (1969) were published afterwards, and she has been a well-known scholar of various studies, such as republicanism, democracy and peace studies ever since.

[2] The first essay in *Between Past and Future*, 'Tradition and the Modern Age', was from her lecture in 1953.

In the meantime, Schmitt was captured and sent to the Nuremberg Trials. After being released by virtue of a lack of evidence for any actual complicity with crimes against humanity, he returned to his birthplace at Pletterberg but was forced to step back from academic life due to his Nazi past. He continually worked on international law as an independent scholar nonetheless (Mehring, 2009/2014: 438–463). His major work on the foundation of international law during this time was the publication of his lecture on *Theory of the Partisan* in 1962.

Throughout their lives, Arendt and Schmitt were surrounded by famous contemporary thinkers, such as Paul Tillich, Hermann Broch, Kurt Blumenfeld, Martin Heidegger, Karl Jaspers, Walter Benjamin, Leo Strauss, Frantz Fanon and Jean–Paul Sartre. For example, Heidegger's lectures on Greek classical thinking provided for Arendt the influential distinction between theory (*theorein*) and practice (*praxis*), which later supported her idea of the difference between a contemplative life and an active life (see chapter 3). Moreover, Arendt elaborated on the idea of 'unsystematic system-building' which she discerned in Heidegger and other contemporary intellectuals (e.g. Jaspers) by referring to the process of thinking that constructs, undoes, and reconstructs itself (Canovan, 1995: 5).

Given their very different reactions to and experiences of Nazism, it is interesting that Arendt collected a total of nine works by Schmitt, which can be seen now in the Hannah Arendt Collection at Bard College (Berkowitz, Katz and Keenan, 2004: 63). In the German edition of her book, *The Origins of Totalitarianism* ('Elemente und Ursprünge totaler Herrschaft', 1951: 258n17), Arendt described Schmitt's *Political Romanticism* as "the best work on this subject, to which we will also revert more frequently in what is to come". Moreover, she reflected on Schmitt's ideas about law and international law in her works. For example, she mentioned Schmitt's *The Nomos of the Earth in the International Law of the Jus Publicum Europaeum* (1950/2003) in her journals (*Denktagebücher*) (see also Berkowitz, Katz and Keenan, 2004: 255–258).

After the death of Arendt in 1975 and Schmitt in 1985 the particular controversies of their biographies died down, but their standing as political theorists remained undeniable. Particularly, in this thesis, I argue that their rejection of ordinary democratic politics and their suggestions about political life drawing on models from ancient Greece and Rome offer rich seams of thought for future analysis and discussion (see section 1.3).

1.2 Why Does the Comparison Between Arendt and Schmitt Matter?

As stated in the previous section, both Arendt and Schmitt devoted their energies to purposeful academic activities under the Nazi regime. Given their contemporary historical context, each theorist's reflections on the anti-Semitism during the Third Reich are integral to their political perspectives, desired society, and political attitudes. They both attempted to reflect on the problem of modern politics in their time. While Arendt expressed enthusiasm about questioning the emergence of totalitarianism, showing the fragility in the ability of human to think under the totalitarian regime, and turned to support republicanism and non-violent politics, Schmitt paid attention to the systematic engagement of the repudiation of liberal ideology, and turned to enlarge the state-centred system of international law in relation to Hitler's policy, which he called the concept of *Großraum*.

These opposing perspectives on the unprecedented strains of the Third Reich implied their highly divergent understandings of political theory. For Arendt, politics is an area of speaking and action, which bears no relation to the dictatorial interference of a centralized nation-state (Arendt, 1958: 31; 1969: 36–42; 1976); and for Schmitt, 'the political' refers to 'the real possibility of physical killing' as an extreme consequence of war arising from the distinction between friend and enemy (Schmitt, 2007a: 33; more details on these features are presented in chapters 3 and 6). Accordingly, the study of the comparative political theory between Arendt and Schmitt should not be neglected. The importance of this comparative study can be subsumed under four broad categories.

First of all, the study of the comparative political theory between Arendt and Schmitt unveils the contestation of two antithetical views of politics, which teases out the similarities and differences in rival aspects of political theory. This offers a fundamental guide to wider understandings of other political issues, topics and concerns, especially in modern times (e.g. the state and power, political order, the legitimacy of political authority, identity politics, and political violence).

Secondly, the comparative study of these two political dimensions is pertinent to a wide range of other important distinctions in political issues. For example, both Arendt and Schmitt consider politics within the public sphere, but they have different ideas about the picture of a political sphere, and of the dichotomy and intersection between the public and private spheres. Each model also stands out as one side of the line of demarcation between the modern concepts of agonistic and antagonistic democracy (as elaborated upon in chapter 6).

Thirdly, both Arendt and Schmitt faced similar questions, regarding the complex relationship between morality, ethics and reason, freedom and authority, continuity and the disruption of politics. The study of these two contestable models of politics serves as a primary point of entry into many of the key issues of political debate, providing different perspectives in dealing with questions of politics, which eventually sheds light on their divergent understandings of the way out of the fundamental problems of politics, and also of the very nature of politics per se. For example, in terms of the relationship between state and society, Schmitt's dimension of politics questions the decline of the power of state and the enhancement of (civil) society, whereas this political circumstance is not a problem in Arendt's model of politics. Another example is about the debate in the (in)consistency between politics and violence, whereby Arendt's model of politics shows the critique of the overrunning of violence into the political sphere, and of the priority of violent means over ends in modern revolutions, whereas Schmitt's model of absolute, centralised political power addresses the permission of

violence in the political space and also the justification of war and political violence (more details on this are presented in chapter 3 and 6).

Fourthly, with regard to self-reflection of the study, studying the ideas of two political theorists who have a highly divergent understanding of the treatments of core political concepts allows us to gain a richer perspective in our own deployment of them, and ought to make us more reflective and self-conscious about the way that we employ political concepts. This reflection raises awareness of the usage of political terms in relation to the four core concepts of this thesis, and helps choose an appropriate word for a comprehensive analysis of politics. For example, we should be careful when using the concept of sovereignty in analysing political phenomena, since the study of Arendt's perspective of politics shows that sovereignty can kill off democracy, so it should be rejected from any political activities, whereas this perspective is not accurate for Schmitt.

1.3 Research Aims and Main Arguments

The comparison between the political theory of Arendt and Schmitt arises out of the evidence that Arendt and Schmitt, two of the most studied and cited authors in works of modern political theory, have contributed a great deal towards helping to articulate the political thought of various other theorists. Their key works (*The Human Condition* and *The Concept of the Political*, respectively) have become benchmarks by which many recent political thinkers (e.g. Chantal Mouffe, Giorgio Agamben, Slavoj Žižek, Judith Butler, Heinrich Meier, Bonnie Honig and Seyla Benhabib) have demarcated and differentiated their own positions.

One of the most influential thinkers to have provoked a renewed interest in Arendt's and Schmitt's thoughts in recent years is Chantal Mouffe, a living post-Marxist thinker who has contributed to the development of the so-called 'Essex School' of discourse analysis. Mouffe has sought to address aspects of Arendt and Schmitt on the concept of agonistic politics. In *On the Political* (2005), she firstly bases her conception of 'the political' on Schmitt's idea that politics begins from people who recognise themselves in opposition to

their opponents (Mouffe, 2005: 20). Mouffe has deployed Schmitt's conception of 'the political' by changing the distinction between a friend and an enemy to the distinction between us and them as the basis of her theory of radical social democracy. In this sense, reconciliation or consensus between opponents is not possible. However, rather than seeing the possibility of violent confrontation between multiple sides as Schmitt does, Mouffe suggests a 'we-they distinction' to explain her agonistic democracy in human relationships (Mouffe, 2005: 20). This idea is close to Arendt's conception of politics as the human activity of action and speech in the public sphere. However, Mouffe argues that Arendt ignores antagonistic conflicts as the origin of agonistic politics. "In my view", writes Mouffe, "the main problem with the Arendtian understanding of 'agonism', is, to put it in a nutshell, that it is an 'agonism without antagonism'" (Mouffe, 2007: 4). Mouffe argues that Arendt's perception of pluralism is the attempt to see things from a multiplicity of perspectives, which ends up with a consensus in the same way as liberalism, but final consensus and agreement in politics is impossible in Mouffe's viewpoint due to the essentiality of difference in constituting the political. Mouffe believes that all opposing sides can live together in a public sphere, even though the conflict between them still remains (Mouffe, 2007: 3).

Giorgio Agamben, a recent Italian legal philosopher, has written about the issue of refugees in a short commentary on Arendt's article *We Refugees* (1943/1994) and *The Origins of Totalitarianism* (1976) by using the same title as Arendt, namely *We Refugees* (1995). Agamben agrees with Arendt's view that the universal claim for human rights based on the model of the nation state is problematic. This is because, in the nation-state system, the protection of human rights is "the right of the citizens of a state", which is possible only *in* the state (Agamben, 1995: 116; Baum, Bygrave and Morton, 2011: 4).

Agamben presents his conception of statelessness as similar to the political theory of Arendt, but by the same token he heavily draws on developing the understanding of exceptionalism received from Schmitt's work. For

Agamben, Schmitt's idea of sovereignty belongs to the vocabulary of biopolitics. However, rather than focusing on legal constitutionalist interpretations of the exceptional power as Schmitt did, Agamben questions the power of the 'sovereign exception' outside laws that act upon biological life (Agamben, 1998: 84; Huysmans, 2008; Pan, 2009: 51). The sovereign exception is the power to violate anybody within its control, deducing a human life to be a 'bare life' or a 'sacred life', in the sense of Roman law, that is 'destined to die'. In the case of refugees, the loss of the rights of citizen pushes them to be truly 'sacred', persons who deserve to be killed but not sacrificed (Agamben, 1995: 117).

Moreover, Arendt and Schmitt are often held up as being the two most diametrically opposed political theorists of the 20th Century. There is a tendency in the commentary to reinforce their opposition, whether by comparing them to other thinkers or by generating issues relating to them. In terms of the comparison with other thinkers, Kalyvas (2008) scrutinises the question of democracy from the perspective of ideas about an extraordinary power in an abnormal situation that is located in the ideas of Schmitt, Arendt and Weber in order to locate possible ways to revivify democratic politics. By following Arendt's lead in her critique of the conflation of politics with violence, Frazer and Hutchings (2007) compare Schmitt, Fanon, Weber, Sorel, Beauvoir and Merleau-Ponty on the justificatory strategies of violence. They find that, apart from Schmitt, all other thinkers justify the use of violence as instrumental in politics, and accept the unavoidable consequences of violent action in the political sphere. On the contrary, Schmitt dismissed the justificatory linkage between politics and violence in instrumental terms; nevertheless, Schmitt's concept of violence was similar to that of the other thinkers in respect of the rhetorical strategies he employed, which provides, according to Frazer and Hutchings (2007: 195), an alternative way to accept that the act of violence plays a justifiable role in politics.

Furthermore, regarding the relationship between politics and violence, Barder and Debrix (2011) assert that Arendt's language of political action and agonistic engagement is more useful for understanding the contemporary politics of terror, violence and war in the post-9/11 global condition than that of Schmitt. With regard to the issue of the Greek concept of *nomos* as it features in the ideas of Arendt and Schmitt, Lindahl (2006) suggests that Arendt's justification of the Greek *nomos* as a boundary of legal space within the space of political community is problematic, whereas the reinterpretation of the term *nomos* as a global community in Schmitt's writing challenges this terminological problem. Jurkevics (2015) raises another contribution of the term *nomos* using new evidence from marginalia in Arendt's personal copy of Schmitt's *The Nomos of the Earth*. The study links Arendt's comments on the issues of soil, conquest and contract to a critique of American imperialism in the post-9/11 period and to the reinterpretation of her own conception of contract and promise. Apart from the issues referred to above, there are other comparative studies of Arendt and Schmitt, such as the study of their vehement criticism of liberalism (i.e. Emden, 2008), their perspectives on pluralism (i.e. Sluga, 2008) or the relationship between revolutionary politics and constitutional government (i.e. Scheuerman, 1997).

This secondary literature has succeeded in showing that the comparison between Arendt and Schmitt should neither be overlooked nor conceptualised as a marginal study. However, as shown in the following section, comparative studies of Arendt and Schmitt have neglected their appropriation of the ancient Greek and Roman traditions of political thought and practice. In contrast to the studies above, the comparison between these two German thinkers in this research project reveals their contestations about the prevalent political theories of the time, and leads to a wider perspective on their notions regarding contemporary concepts of politics in relation to sovereignty, law and war.

This thesis demonstrates the importance of comparison between Arendt and Schmitt, exploring the substantial similarities and differences between their

ideas towards the subjects of political theory. It revisits the issue of the Greek and Roman traditions, showing that the dichotomy between Arendt's and Schmitt's political concepts can be seen in light of their rival appropriations from the Greek and Roman traditions of political enquiry. It furthermore investigates their implications for rethinking the political topics, i.e. politics, sovereignty, law and war, which are at the centre of debates in contemporary political theory.

Despite the fact that there is an ever–growing body of literature on Schmitt and Arendt, no studies have been found that substantively explore the influences of the Greek and Roman traditions of political theory in Schmitt's thought, while Arendt is often situated in debate solely with Greek intellectuals. For example, Benhabib (2003) suggests that Arendt as a political thinker was permeated by nostalgia for the Greeks, thus she was an anti-modernist. Elshtain, at the 1988 American Political Science Association Convention, quipped that Arendt suffered from a kind of 'polis envy', a tendency to view modern political life in terms of the glories of the ancients. A number of works connect her writings to the Greek tradition in order to understand the relationship between philosophy and politics, between the *vita contemplativa* and the *vita activa*, and the private and public spheres. For instance, the studies of Villa (1998), Hull (2002) and Swift (2008) accept that the historical background of the Greek tradition, especially the idea of Plato's cave, influenced Arendt's ideas about the distinction between philosophy and politics. Beatty (1976) studies Plato's argument concerning morality and happiness and Arendt's use of it. O'Sullivan (1975) claims that although Roman tradition is highly esteemed by Arendt, the life of the Greek *polis* constitutes the focal point of all of her thoughts. In addition, Morariu (2011) studies Arendt's ideas on the changing relationship between the public and private spheres from ancient Greece to Western modernity, demonstrating how she acknowledged the decline of the public sphere in tandem with the rise of totalitarianism in the 20th Century, which led, according to Arendt, to the loss of the meaning of politics itself in modernity. Moreover, Macauley (1996) expresses Arendt's idea about how the concept of the 'earth alienation' has changed over time. This explanation is

influenced by Greek cosmology based on the centrality of the Earth, accompanied by the thoughts of Heidegger on the natural world.

While the studies of Arendt on the perception of the Greek tradition have not only been revived, but also tend to recognise a strong graecophile tendency in her understanding of politics at the expense of the Roman side, I argue that this secondary literature has been reluctant to assign conceptual form to Roman thinking to explore the significance of its influence on Arendt's thought.

One might argue that it is not unusual among Arendtian scholars to suspect a certain Graecomania in her exclusively performative conception of politics and to suggest that her mediations on the constitutive features of the political realm are influenced by the Roman tradition (e.g. the studies of Tsao, 2002; Taminiaux, 2006; Birmingham, 2011a). In my view, these studies do not cover all of the core concepts of political theory that presented in this thesis. Moreover, they have not been sufficiently and persuasively theorised since they have overlooked the relationship between the Greek and Roman traditions, as interpreted by Arendt.

In terms of the original contribution of this thesis, it challenges the standard reading of Arendt and Schmitt which previous studies outline. I propose an alternative path to rethink the political thoughts of Arendt and Schmitt and their relationship to the relevant concepts. My argument is twofold.

Firstly, as explained in the previous section regarding the importance of comparative study of Arendt and Schmitt, I demonstrate that the comparison between their political theories have significance for understanding and conceptualising the individual political thought of each, particularly when considered in relation to the key concepts of the Western political lexicon (i.e. politics, sovereignty, law and war), however these connections remain largely unexplored. On this point, each of these political ideas can be better conceptualised by looking through the lens of others, and the idea of politics is central, analysed as a concept in itself and the foundation of the other relevant concepts. In this regard, I set the concept of politics as the starting

point and suggest that Arendt and Schmitt share a common understanding of politics/ 'the political' by associating it with the public life. However, their different perspectives of politics result in different perceptions in relation to the subsequent concepts.

Secondly, I suggest that a comparison of Arendt and Schmitt involving the ancient traditions will offer a new understanding of their political theories. I argue that considering only the Greek or Roman tradition is not enough for a comprehensive understanding of the political theory of Arendt and Schmitt. The intellectual inheritances of both Greek and Roman political theories and the recovery and appropriation by Arendt and Schmitt of rival aspects of these are an apt way of understanding their four political concepts. For example, Arendt was influenced by the Greek *polis* and the conception of natality which she found in the work of a Roman-African, Christian theologian, Augustine, concerning the implied boundary between politics and action in the public sphere, as distinct from the unspeaking private and philosophical sphere (see chapter 3). Although attention to the Greek and Roman concepts does not much alter the picture of Schmitt's political theory, some of the relevant concepts, such as the Greek concepts of *nomos*, *hostis* and *inimicus* and the Roman conception of friendship, still elaborate the understanding of Schmitt's theory of politics as the distinction between public friend and enemy. These two arguments are expanded in the following chapters.

1.4 The Core Concepts of Political Theory

This section explains and justifies why I chose the concepts of politics, sovereignty, law, and war as the core concepts in the political theories of Arendt and Schmitt. Although there are many core concepts relating to political theory, this study does not purport to offer a comprehensive explanation of the whole discipline. For expediency, this thesis selects four core, relevant concepts used to discuss most dimensions of politics, based on the view that Arendt and Schmitt are invariably preoccupied with these concepts in their writings, including in their last books (*The Life of the Mind* for Arendt and *The Theory of the Partisan* for Schmitt). This implies that the

study of these four concepts can give a significant contribution to the comparative study of Arendt and Schmitt. Each of them also relates to the others in various way. While aware of many regrettable omissions, this thesis attempts to include a broad range of main political concepts employed in the comparative study of the four main concepts of Arendt and Schmitt. The selection of four political concepts does not mean that other political ideas, such as state, authority and justice, are not important in political theory, but it implies that they are integral to the core concepts that this thesis provides.

This thesis takes into account that there is a big difference between a 'core concept' of political theory and a concept 'used' in political theory. In other words, while a core concept of political theory makes a contribution to political arguments in itself, a concept used in politics might be a core concept of any other relevant fields that relate to political analysis. By this point, some concepts might be conceived of as core concepts of other subjects; for example, the concept of 'law' can also be counted as a main concept of legal theory. Nevertheless, the four political concepts of the thesis (i.e. politics, law, sovereignty, and war and violence) are situated as the core concepts *of* politics rather than as concept used *in* politics. It also neither attempts to discuss the need for rectification in the pure knowledge of political theory nor its interdisciplinary or intra-field pluralism (Dryzek, Honig and Phillips, 2011). This is because this thesis assumes that all of these four political concepts are essential parts of politics; they are invoked mainly in the realm of the political analysis and located within a wide range of political perspectives, sharing a concern with the presuppositions, meanings and promises of ways of life, identity, and the consideration of desired community.

According to this view, many commentators of political theory suggest that political concepts are 'essentially contestable' since they have never ended from a process of disputation and disagreement over divergent normative and theoretical assumptions, and they are subject to more than one meaning or interpretation (Gallie, 1956; Bellamy and Mason, 2003: 2; Birch, 2003: 1). This thesis also agrees that the four political concepts reveal the contingent

and contestable (and also the resistant) characteristics between their political thinking, showing the impossibility of constructing neutral or natural boundaries of these concepts. The nature of these concepts does not contradict the aims of this thesis that attempts to discover how the recovery and appropriation of the rival aspects of the Greek and Roman traditions can be ways of understanding the political theory of Arendt and Schmitt, because it eventually reveals the contestation of political thoughts between them toward these four main concepts. Despite the contestation about how each political concept might be defined, each competing concept in this thesis represents alternative 'conceptions' of the same 'concept'. Consequently, it still makes sense to compare and contrast different views of these four political concepts. However, this thesis does not aim to judge whose idea is more coherent, theoretically and empirically plausible, or attractive than the other (between Arendt and Schmitt).

Of these, it is by a relatively simple process that the concept of **politics** came to be focused upon in this study. This is because political theory is obviously an issue about politics. Politics is the core of the relevant concepts; the understanding of politics is inevitable related to the understanding of other concepts of political theory. For example, given politics is about ruling and being ruled, which is contested by Arendt and heightened by Schmitt, this will lead neatly into the discussion of sovereignty and law, which is about the seat of rule and the right to rule, and war, which is the violent result of the rule.

The systematic exposition of the concept of **sovereignty** exists in modernity in accordance with the development of the modern nation-state. The development of the modern concept of sovereignty was heavily influenced by Jean Bodin's *Six Livres de la République* (1577), which bound sovereignty with the existence of a state in terms of a *summa potestas* (the absolute power within a state). The concept of sovereignty connects to widespread discussions on the right to rule of sovereignty and the sovereign authority – who should rule in a political sphere – both in the realm of domestic politics (e.g. the divine right of kings, and the belief in the supreme power of the

people who submitted to the authority of the rule; Skinner, 2009), and that of international relations (e.g. the right of state to protect itself from the intervention of other states or international institutions).

This implies the principle of supreme authority without an equal power or superiors, and the idea of a final decision that is made by a person or group of persons, which creates an obligation or duty to obey and which all concerned then accepts as binding upon them (however, this thesis does not focus on domestic and international states, because both Arendt and Schmitt referred to politics beyond the definition of states). In chapter 2, this thesis suggests that for early modern writers trying to analyse and develop the idea of 'sovereignty', it is necessary to place it within a constellation of terms stretching back into the ancient past. In this regard, it is interesting how Arendt and Schmitt place their positions on the concept of sovereignty developed in the modern times in relation to Greek and Roman political thought.

The concept of **law** is also important in the study of the political theory of Arendt and Schmitt. Law generally functions as a repression of anti-social behaviour, allocating access to resources for groups and individuals according to a system of universal rights within a community (Harrison, Little and Lock, 2015: 98). Politics and law are deeply intertwined, and the studies of political science and law have become more integrated in recent years (Martin and Hazelton, 2012: 511). As stated previously in this section, it might be sensible to argue that law is the concept of legal theory used in politics, which can also be perceived as an issue distinct from political study. While aware of this point, this thesis places the concept of law within the realm of political concept rather than a concept of legal theory, since it is discussed from and connected to a wide range of political perspectives. Law is much more related to politics when considering the state and sovereignty. According to this point, the supreme power of states as the sovereign power of the collective body of the people is always embedded in the power of making laws and of the lawful state. The state is also connected to the idea of public law when looking through the lens of state as a distinct moral

person, especially in the 18th Century (Skinner, 2009: 354). According to this point, law relates to right, justice, legitimacy, constitutionalism and international politics, rather than the more narrow context of a legal framework and jurisprudence. In sum, law shapes how politics is conducted both during normal situations and political struggles.

Another important contribution discussed in this article is the concept of **war**. This thesis only focuses on the appearance of war on physical violence instead of physiological violence such as trauma, chronic depression or stress disorders. The declaration of a state of war can be of formal and/ or quasi-legal character, and might not always be accompanied by the outbreak of hostilities. The occurrence and consequences of war on a global scale changing alongside new normative discourses and hegemonies, including terrorism in the contemporary world, are not only associated with a global dynamic in economics, financial markets, developments in technology and social transformations, but also with politics and political matters such as political stability and legitimacy. In some cases, war is one of the consequences of political conflict, of the implementation of rule in politics, but in other cases, it can also be an instrument or a means of a rule in organising the 'living together' of people in politics.

To sum up this section, this thesis questions how the conceptions of politics, sovereignty, law and war given by Arendt and Schmitt can be understood from the perspective of their recoveries of different aspects of the ancient traditions of political theory, and how these two thinkers reconstruct these traditions in their particular contexts. The first question addresses the comparison of Schmitt and Arendt with respect to their rival conceptions of politics, sovereignty, law and war, while the second compares their ways of understanding the Greek and Roman traditions, to investigate how these traditions are reconstructed from their standpoints, in light of which we can better understand comprehensively these two political thinkers. In the next section, the methodological approach of the thesis is outlined and justified.

1.5 A Hermeneutical Approach to Appropriations of Texts: The Methodology

The focus of this thesis is the study of comparative political theory and its history. I approach the history of political thought as the field of study, which is done by using the Greek and Roman historical contexts as a framework by which to understand the four themes of political theory in the writings of Arendt and Schmitt. The methodology I use in this research is hermeneutic, which concerns the approach Burns (2011b) called an 'appropriation' of a text. Given the political theory of Arendt and Schmitt as the objects of study, by using this approach, the selective reading of the texts of Arendt and Schmitt and the history of ancient Greece and Rome has been applied thought out the thesis, not for investigating the intentions of Arendt and Schmitt in engaging with the texts, nor for understanding the meaning they give to them, but for offering appropriations of the meanings of politics, sovereignty, law, and war of these two political philosophers put forward by my own voice.

Hermeneutic as a methodology is usually traced back to the work of Friedrich Schleiermacher (1768–1834), a German theologian who established a system of interpretation to understand texts in general. Schleiermacher believed that authors express their 'inner thoughts' through their texts using language, so to achieve an authentic understanding, the interpreters of texts must consider both the inner thoughts of the authors and the language they used in writing their texts (Schleiermacher, 1998: 229).

This idea was supported and amplified the German historian Wilhelm Dilthey (1833–1911) and the English historian R. G. Collingwood (1889–1943), both of whom stated that the purpose of historical studies is understanding, not explanation, which adheres to the observation studies of natural science and attempts to interrelate to general rules or laws (Apel, 1984: 6; Collingwood, 1994: 169). For Dilthey, meaning or intention is something that people have in their minds. Dilthey's point is that interpreting action requires methods to get 'inside' the head of the actor, where the intentions of the actor are to be found. In *The Idea of History* (1946/1994), Collingwood suggests the

principle of re-enactment for understanding experiences of people in history. This principle refers to the ability of historians to re-enact the thoughts of others (historical actors), since thoughts are not private items like physiological processes, but publicly re-thinkable propositional contents. He suggests that meaning is a property of language, and therefore fundamentally public. In *The New Leviathan* (1942/2013), Collingwood reaffirmed that all language, including any form of bodily movement and sounds, is designed to mean or signify something; the use of language has meaning because it is manifest in the act of naming things (Boucher, 1989: 138; Collingwood, 2013: 6.58). Both Dilthey and Collingwood require quite different methods.

Hans-Georg Gadamer (1900–2002), a German philosopher, argues that we cannot grasp the intention of the author from the text, but what we understand from the text is the meaning of language in the human process of interpretation. Gadamer's fundamental point about interpretation is that it requires the 'fusion of horizons' between interpreter and the author being interpreted who are embedded in the particular experience, history, culture and prejudice that shaped them (Gadamer, 1975: 301, 1986: 261; Bernstein, 1983: 126; Todres, 2007: 17).

Poststructuralists follow Gadamer's viewpoint by conceiving that there is more than one legitimate way to understand texts (Burns, 2011b: 320). They agree that the meaning of a text is created by and given to a text, not by its author, but by its reader/interpreter (Burns, 2011b: 314). However, while Gadamer argues that interpretations are always oriented toward truth, or in other words, truth is always brought out from interpretation (Grondin, 2007: 209), it might be a mistake for poststructuralists to seek truth in relation to the meaning of texts because there is only the meaning that the reader gives to the text.

The methodological approach elaborated in the previous paragraph is not associated with the concept of textual interpretation; rather, it gives importance to the concept of appropriation. Burns (2011b: 317) points out that this kind of reading is a selective reading of text, reflecting the authority

of the appropriator, not the intentions of the author, in the sense that “the ideas of the author of a text are taken up by appropriators and used by them for purposes of their own” (Burns, 2011b: 317). The appropriators select the ideas that they find useful from the text without a justification of right or wrong and present them to the world both in their own name and in the name of the author, which sometimes inescapably distorts the original meaning of the ideas given by the latter, and eventually inevitable to be biased, partial, selective, unbalanced, and one-sided (Burns, 2011b: 317).

This thesis is based on my reading of Arendt and Schmitt in light of their appropriations of aspects of the Greek and Roman traditions – both with respect to philosophy and social life – as formative for the intellectual histories, and examines how the authors as the special authorities reconstructed these intellectual traditions in their particular contexts from my own point of view. The presentation of ancient Greece and Rome in this thesis comprises of the selective reading of the writings of Arendt and Schmitt that address their indebtedness to the ancients used in their texts, and the selective reading of historical books and secondary texts of Arendt and Schmitt, which I find useful for understanding their core concepts of politics. This raises two concerns with regard to the appropriation approach.

Firstly, I, as the appropriator, understand and evaluate the works of Arendt and Schmitt in terms of their appropriations of differing aspects of the Greek and Roman traditions, and their selection of certain narratives instead of others, and by so doing raise questions about the modernity that we share with both of them. In this respect, I select and also deselect which parts of Greek and Roman traditions addressed in the writings of Arendt and Schmitt should be analysed in this thesis. I create my own authoritative voice to show how Arendt and Schmitt explicitly and implicitly repeat the ancients’ understandings of political thoughts, and transform them in their own writings in order to make sense of modernity. For example, I present that Arendt substantiates her characterisation of politics as a speaking activity, with particular features of the Greek polis, and she draws on Augustine’s conception of natality in developing her understanding of politics as being

about new beginnings. Schmitt, on the other hand, makes use of the ancient concepts of *hostis* and *inimicus* in developing the idea of the 'public enemy'.

The second aspect of the appropriation approach confirms my own autonomy and authority as the writer of this thesis to select other historical and philosophical texts outside the works of Arendt and Schmitt, contributing to the political theory of Arendt and Schmitt in order to understand how the modern concepts of politics, sovereignty, law, and war work on their writings in the appropriations of Greek and Roman traditions. By bringing Arendt and Schmitt into a long overdue conversation with the Greeks and Romans, we gain insight into of what I find useful to the understanding of their core concepts of politics as this thesis aims to looking at. For example, I link the *History of the Peloponnesian War* to Arendt's argument of the distinction between *nomos* and *physis* (see chapter 5). Moreover, the conversion of Constantine is selected and brought into the discussion of Schmitt's conception of sovereignty (see chapter 4). To this point, what this thesis sees is not only the distinctive contributions of the Greeks and Romans to how political thinking of Arendt and Schmitt can participate in the task of building a common world, but also how we might, in turn, read the Greeks and Romans as political thinkers.

According to the appropriation approach in this thesis, what I mean by the term 'ancient Greece and Rome' is a broad sense of histories, social-lives, intellectuals, and political thoughts from Classical and the Hellenistic Greece to the periods of the Roman Republic, the Roman Empire, and Late Antiquity (from the 5th Century BCE to the 6th Century CE). The selections of what particular periods, situations or thoughts of the ancient Greece and Rome should be filled in this study is based on my own decision and judgment of what these traditions may provide to a way of thinking that addresses deeper conceptual issues on politics, sovereignty, law, and war to enable understanding of the political thought of Arendt and Schmitt. To this end, the selective of traditions is the appropriations that I, as the appropriator, gave to the writings of Arendt and Schmitt.

With the focus on the appropriation of texts, this thesis does not attempt to appraise elements of the Greek and Roman traditions *per se*, to equate them wholly with what Arendt and/ or Schmitt say about them, nor to reduce the latter to their Graeco-Roman influences that formed some of the multiple strata in their thoughts; rather, it suggests that the spirit of the Greek and Roman traditions is a useful and instructive way to understand the political theories of Arendt and Schmitt, particularly where they reiterate and develop ancient debates on agonistism/antagonism, free-will/freedom, and natural/artificial law. This thesis suggests that Arendt and Schmitt see the concepts of the Greeks and Romans as emerging through the twisting and intertwining of the particulars of political life. When they look to the Greeks and Romans, traditions that are in themselves quite diverse, it is not as a form of nostalgia by which Arendt and Schmitt wish to resurrect or reform traditions that are already broken, but as the models of how we might discover the past for ourselves from the fragments that remain in the writings of these two political thinkers. In this respect, I attempt to supply accurate accounts of the traditions in order to elaborate on four political themes in the work of these two thinkers.

1.6 Structure of the Thesis

This thesis is divided into six chapters, of which this is the introductory chapter.

Chapter 2: The Greek and Roman Traditions outlines some of the main themes in Greek and Roman political theory, elaborated upon in later more substantive chapters on the engagements of Arendt and Schmitt with these traditions. It shows the general understanding of the Greek and Roman traditions, summarising some of the key concepts, narratives and distinctions within and between ancient Greek and Roman political theory in respect of the core ideas of political theory. This chapter is the basis for analysis in the subsequent chapters dealing explicitly with the engagement of Arendt and Schmitt with those traditions.

Chapter 3: The Concept of Politics in the Thought of Arendt and Schmitt clarifies what Arendt and Schmitt meant by politics, and explores contemporary debates about their understandings. I show how these two political thinkers distinguished politics (public) from the private sphere, but in different aspects. Arendt refers to the Greek intellectual distinction of *bios politikos* ('political man') from biological and working life, while Schmitt refers to the Greek concepts of *πόλεμος* and *ἐχθρός*, and the Roman concepts of *hostis* and *inimicus* that separate the public enemy from the private one; I also examine Schmitt's conception of friendship in relation to Greek and Roman legacies. Moreover, Arendt supports plurality in politics, for politics is, by her account, about creating and maintaining a space of speech and action (the Greek polis and Augustine's concept of natality), whereas Schmitt's conception of the political is fundamentally about a decision over friendship and enmity, and perceives plurality as anathema to politics, since it neglects the distinction between friend and enemy and dilutes the power of sovereignty.

Arendt's idea of politics as the human condition of action, particularly the plurality of speech and action, helps unpack her main arguments by showing the idea of politics in the sense of the practical activity in opposition to the concept of war, detached from the concept of sovereignty. On the other hand, Schmitt elaborates on the possibility for the concept of war for as long as the concept of 'the political' remains valid: war is the most extreme consequence of politics, where the dichotomy between friend and enemy has already been made.

Chapter 4: On Sovereignty presents the political lexicon of sovereignty relating to politics, comparing and contrasting the ideas of Arendt and Schmitt. Arendt shares a common meaning of sovereignty with Schmitt based on the essence of sovereignty as a faculty of 'the will', with the sovereign as the one 'who wills and commands'. This chapter also shows how the theological understandings of these two political thinkers shape their concepts of sovereignty. Sovereignty, by this general account, is a political-

theological concept, for the association between will and command can ultimately be traced to strands of Judaeo-Christian theology.

I suggest that Arendt's understanding of God is framed in reference to the Trinity, primarily as promulgated by Augustine, which removes the integration between freedom and sovereignty and backed up her idea about the rejection of sovereignty in the political realm. Indeed, Arendt's engagement with Augustine is most engaging and complex, and she sees him primarily as a late manifestation of Greek thought within the late Roman *imperium* (e.g. in terms of a deist, Neo-Platonist cosmology rather than theist literalism). Arendt states that Augustine, whom she claims was "the only philosopher the Romans ever had", made Christian philosophy equal to that of Aristotle, who nevertheless remained 'the philosopher' for the Middle Ages (Arendt, 1971: 84, 86). This reaffirms that the philosophy of Augustine in Arendt's eyes is more reminiscent of Greek than Roman metaphysics. Arendt finds in Augustine's relational account of God an antidote to monological sovereignty thinking, which she uses to express her criticism of the character of sovereignty. She puts a concept of sovereign individual will and command in the area of human *contemplativa*, purifying politics as a space of freedom of plurality from the command of individual will, which allows the activity of speaking between people in the political-public sphere.

Conversely, Schmitt accepts the idea of theism as the genuine heritage of the Romans (i.e. from Constantine the Great), and rejects all sense of belief in the Trinity. According to Schmitt, sovereignty is the highest power, not a derived power, and stands over valid legalities. The idea of sovereignty is analogous to political theology in that it aims to transfer the transcendence of God to the power of the sovereign, which is similar to Roman religion. The free will involved in sovereignty is identical to the freedom of politics, which is beyond existing laws and constitutions (i.e. extra-legal rather than illegal). In *Political Theology II* (1970/2012), Schmitt criticises the Trinitarian concept of political theology, as "the doctrine of the divine monarchy had to fail on account of the Trinitarian dogma, and the interpretation of the *pax Augusta* had to fail on account of Christian eschatology" (Schmitt, 2012: 103). To this

end, politics needs an absolute power of sovereignty in order to account for the possibility of a decision between friend and enemy, especially during an exceptional case which comes before any normal law, and the transcendence of God represents this kind of powerful sovereignty.

Chapter 5: On Law compares and contrasts the conceptualisations of law in the works of Arendt and Schmitt, investigating the classical concepts of law (i.e. *nomos*, *lex* and *ius*) as the foundation of these concepts. The Greek and Roman traditions obviously have different ideas about law, reflecting their different conceptualisations of the state, which link to the divergent or convergent ideas about the two thinkers' concepts. The central arguments of this chapter concern both Arendt and Schmitt identifying with different types of Greek and Roman law in order to buttress their own paradigms. According to Arendt, law is the activity of human beings, and law is therefore a man-made artefact, which serves to protect politics (conformity within the state in the case of domestic law, and between states in the case of international law).

The implications of the differences between Schmitt on *ius* and Arendt on *lex* manifest in their respective conceptions of politics. Arendt conceives of law as the protector of politics, preventing the activities of all political life from any danger, which refers to the notion of artificial, conventional law and distinct from command in the sense of sovereignty. Conversely, Schmitt's notion of law relates it to the idea of natural law; the use of extra-legal power during a calamity is understandable in the way of extraordinary circumstances of divine law, providing for the legitimacy of war in the political sphere.

Chapter 6: On War investigates where the idea about war is placed in the two thinkers' thoughts and how Greek and Roman traditions influence these particular thoughts, and conversely how these two thinkers reconstruct their ideas from the Greek and Roman traditions. It illustrates the notions of war in the thinkers' thoughts from their individual different intellectual histories, showing where Arendt and Schmitt place the concepts of war in their consideration of politics and how the concept of war sheds light on the

concept of politics. For Arendt, war is not a matter of politics; it is 'non-political', but it can function as a condition for the beginning of politics. The Roman interpretation of the Trojan War shows the invention of the new outcome of war's conflagration that provides a way to impede an occurrence of war in the future: alliance and treaty.

For Schmitt, the concepts of war and politics are compatible. War is political since it is the most extreme combat following the friend and enemy distinction and the battle between those entities with the real possibility of physical killing. The use of violence on a war cannot be justified or moral on any grounds, but it is legitimate due to the real possibility of physical killing implicit in the friend and enemy distinction. The concept of the Greek *agon* shows the idea of competition as distinguished from political conflict elaborated in Roman experiences of war and the idea of *imperium*.

My thesis ends with a brief set of concluding remarks summarising the findings and demonstrating key concepts pertaining to the concept of politics for Arendt and Schmitt, which reconfirms my argument of the dichotomy between the political theories of Arendt and Schmitt, and the significance of the Greek and Roman traditions to the study of Arendt's and Schmitt's political thoughts. It also presents my reflections on the two political thinkers, concluding that Schmitt's identification of politics involves engagement in sovereignty, law and war, while Arendt's concept of politics is close to law and opposes sovereignty and war, with the caveat that war can later lead to the genesis of a new political arena.

CHAPTER 2

THE ANCIENT TRADITIONS

2.1 Introduction

The intellectual life of the ancient Greek and Roman worlds has been incredibly influential in the history of human civilization and continues to frame modern history. Classical Antiquity devised the political concepts, terms and debates that foster modern ideas, giving birth and aspiring to vocabularies that still figure profoundly in modern analyses. Most critiques of modern political concepts and forms can also ultimately be traced back to the ancients (e.g. the idea of democracy that has evolved through long struggle of the theoretical paradoxes and practical dilemmas). This chapter aims to explore the narratives of the four principal political themes that dominated Graeco-Roman political theory: politics, sovereignty, law and war. It elaborates the ancient concepts of political theory as the general framework of the more substantive chapters on the engagements of Arendt and Schmitt with these traditions, summarising the key concepts in and distinguishing between ancient Greek and Roman thoughts. It looks at the historical practices as well as the philosophical contributions of ancient Greece and Rome on the grounds that they comprise remarkable intellectual, political and legal traditions. This thesis considers the ancients from the Greek *polis* to the late Roman Empire as understood from normative European political philosophy. It takes the Socratic period (c. the 5th Century BCE) as the absolute starting point of the Greek *polis*, after the "proto-urban nucleation" of earlier periods (Hall, 2008: 85).

2.2 Politics

2.2.1 Ancient Greece

This section presents the Greek narrative of politics as the background for the study of Arendt and Schmitt. The term 'politics' in ancient Greece referred to 'the common' or 'the public'. Greek communities were concretely

construed as strongly inclusive political corporations of actively participating and competing citizens, and the locus of politics was a public matter centred as a contested activity (Cartledge, 2007: 11-12). The Greeks believed that living in a *polis* gave them an advantage over others because they could develop their ***aretē*** (competence in public affairs, characterised by attributes such as courage and understanding) only within the *polis* (plural: *poleis*). The aim of politics was for citizens to achieve glory, bliss and a good reputation while still alive, and fame amongst their descendants when dead, which was linked to the pursuit of the good life.

Except for times of tyranny, Greek citizens (*politai*, singular: *polities*) were entitled and expected to play a role in the running of the state (Rhodes, 2009: 57). Political participation was a social obligation for Greek citizens. In the history of classical Athens, basic rights and duties were given to Athenian males who were 18 years or over, which might have accounted for 10-20% of the whole *polis* population, without consideration of their economic status (Liddel, 2009: 133; Rhodes, 2009: 60; Lane, 2014: 104). These men were eligible for full citizenship and legal status to vote and speak in the assembly (normally by showing hands) and the holding of office. Ideally, the assembly expected to make a decision based on the synthesis of arguments and counter-arguments (Black, 2009: 133). This implies that politics in ancient Athens gave special importance to the activity of speaking (*logos*) rather than the form of institutions. However, in practice few responded to the invitation to speak in the assembly, since a speaker was expected to speak only regarding his own area of expertise, and doing so made one eligible for future prosecution, despite speaking in the assembly being open to any male citizen who decided to attend on any day he chose (Lane, 2014: 104). Other segments of the population (i.e. women, children, immigrants and slaves) were not counted as full citizens, but served their own sacralised roles within the framework of Greek society, such as responsibility for household tasks or economic life.

The Athenians' political life also spilled over into the *agora* (market-place and assembly), colonnade, gymnasium, symposia, dinner parties, theatre and

religious celebrations, where people aspired to make elevated conversation (*logos*) (Black, 2009: 133). Each *polis* was also small enough to be face-to-face for all citizens to meet in the *agora*, both as a civic assembly and a commercial marketplace (Black, 2009: 130).

Two of the most important figures of the ancient Greek world and the entire history of Western political thought, Aristotle and Plato, considered politics as the highest function of life, which could not be attained by men concerned only with their own private business, but by living in the community'. However, these seminal thinkers diverged in their view of how politics should be conducted.

Plato, a man who was born to an influential Athenian family, spent his formative years fascinated by Socrates, the sacerdotal ascetic known for his ugliness (equated to evil in Greek cultural tropes), who was from a trading family rather than the wealthy patrician caste. According to Plato, individuals are distinctively differentiated in three classes by nature, so it would be unjust if this natural difference was not expressed on an institutional level (Straumann, 2016: 192). The dialogue between Socrates and Glaucon, known as the Allegory of the Cave in Plato's *Republic*, showed the distinction between ordinary people who could not differentiate between the reality and the shadow projected inside the cave's wall and the philosopher who could recognise the truth of the world. Politics did not concern a body of knowledge or activities that limited the political life only to planning and action (Strauss, 1959: 91); rather, a philosopher-king intrinsically loves truth, and receives full knowledge of the *Forms* from his intelligence. By drawing a model of a philosopher–king as the highest form of political life, Plato connected full virtue to the knowledge about understanding ourselves in connection to the world around and beyond ourselves. Plato's *Laws* is a supplement to the *Republic*, in which the life of the city can be continued without the direct rule of philosopher king (Lane, 2014: 177).

Plato's theory of Forms is the essence and nature of the reality of all things, presenting themselves in abstract forms and patterns that all kinds of thing are produced from these Forms (Rogers, 1936: 61–78; Kraut, 2006a: 8, 14–

20). Plato presented different understandings of the concept of Forms in each of his writings; for example, in *The Republic* (596a) he explained that a Form is posited in corresponding to various things that we give the same name, but in *Phaedo* he stated that there are Forms of Equality, Beauty, Goodness, Justice and Piety (Kraut, 2006a: 8). Nevertheless, the Form of Good is supreme, and anyone who understands that things are the manifestation of the Forms is ready to be a philosopher-king (Rogers, 1936: 62; Kraut, 2006a: 8; Denyer, 2007: 286). Plato's ideas of Forms and Good have had an impact to the Western political theory, including metaphysical (particularly ontological) idealism and the Christian conception of the monotheism of God, considering the physical appearance of the empirical realm to be an esoteric iteration of an ideal transcendent world that is perfect and abstract (Stead, 1994: 14; Kraut, 2006b: 330).

This section also presents the political thought of Aristotle who was born in Stagira and moved to Athens when he was seventeen, becoming a key figure in Plato's Academy, where he was particularly interested in Plato's views of politics, with which he differed in many respects when he later founded his own school, the Lyceum (Lane, 2014: 184). Unlike Socrates and Plato, Aristotle was a foreigner (a non-Athenian and thus not a citizen of the Athenian *polis*), and he became a tutor of Alexander the Great, at the critical moment when Macedonian power overwhelmed Greece, Asia Minor, Egypt, Persia and Northern India. Aristotle refused Plato's theory of Forms and suggested philosophy on the ground of observation, combining practical experience with normative theory. He collected 158 constitutions in order to discover the best constitutional practice (Schofield, 2000: 313; Balot, 2006: 228).

Aristotle's conception of politics was in essence a 'cooperative relationship' (Schofield, 2000: 312). Aristotle praised the highest goal in the political life of virtuous citizens who were able to share together in a community. In his famous description of man as a political animal, Aristotle placed great importance on the value of political activity (Aristotle, *Politics*: 1253a; Black, 2009). Politics for Aristotle is a practical science concerned conduct and

goodness in action not just to allow citizens to simply live, but to live well. The city-state is a political community, where man can use speech and reason (*logos*) to distinguish advantage and harm, right and wrong, and other moral qualifications, provides opportunities to achieve the end (or *telos*) of human beings as reasonable creatures, as distinct from the end of other animals (Aristotle, *Politics*: 1253a; Vlassopoulos, 2010: 118; Lane, 2014: 39).

According to this point, *logos* as the human capacity of speech and reason plays an important role in answering of why human beings have to be citizens of a political community. It is common to animals to live together by using voices, but human beings are different from other animals because they possessed the ability of speech or *logos* which brings human beings together to live *well* (see chapter 3.2.1). By using *logos*, humans can differentiate the advantageous from the harmful, right from wrong, good from bad, and other moral qualities, which is distinct from other animals (Aristotle, *Politics*: 1253a). When humans with special moral judgments by *logos* live together in a household, and then in a city-state, they not only have a good life, but the highest good of all: they can pursue to the end/goal (*telos*) of their being only by living in the political community (Aristotle, *Politics*: 1332a; see also book II, chapter 3 of *Physics* and book I, chapter 3 of *Metaphysics*) (this suggestion links to Arendt's conception of politics in chapter 3).

The following chapter shows that the Greek notion of *polis* plays a significant role for Arendt's conception of action because it manifests the space wherein communication between people is provided, concerning the implied boundary between politics and action in the public sphere as distinct from the unspeaking private and philosophical sphere. However, I present Arendt as a critic of the political theory of Plato and Aristotle, since Plato did not separate the philosophical life from the political life, while Aristotle's notion of politics reflected a means to an end process rather than an end in 'itself'. Schmitt, on the other hand, creates the existence of 'the political' by the impossibility of the speaking activity which is different from Greek politics. Regarding the

difference in the traditional background, the discussion around the critique of 'neutrality' from each own traditions is also reoriented in chapter 3.

2.2.2 Ancient Rome

Having described the philosophical outline of Greek politics, this section presents the Roman understanding. The beginning of the Roman people is often ascribed to the legendary Trojan hero Aenes, who fled the collapse of Troy to settle in the land near the mouth of the Tiber (Craig, 2009: 2). His adventure was recounted by the Roman poet Virgil in the *Aeneid*. The foundation Rome itself is traditionally attributed to the victory of the Romulus over his twin Remus in 753 BCE, from which time the Roman calendar was dated (Black, 2009: 175; Craig, 2009: 3; Hammer, 2014: 180–182). Following the overthrow of the seven kings in 509 BCE, the Romans established the foundation to protect the *res publica*, replacing the king with two consuls who exercised executive and military power alongside a deliberative and advisory Senate, and a set of popular assemblies that variously elected officials, passed laws and carried out other functions as instituted by their convening magistrates (Hammer, 2014: 53; Lane, 2014: 245).

Rome emerged from an urban centre and a rural hinterland, but its geography expanded into very different places by conquest and treaty. A Roman citizen (*civis*) meant a person who was free from being slave, and who was protected and free to pursue his own private affairs, enjoying important powers that related to *res publica* (lit. 'thing of the public'). *Res publica* in the Roman sense referred to the common fatherland (*patria communis*) that provided a public space for all humanity, relating to a social partnership *for* the common interest or the public good, in which the *civies* (citizens) of the *civitas* (civic community) were expected to take part (Black, 2009: 176; Hammer, 2015:3; Hodgson, 2017: 4, 8–9). The theoretical reflections on the classical idea of the *res publica* can also be found in modern republican thought, such as Pocock's (1975) historical study of the notions of neo-Roman republicanism in relation to a complex cultural history of Italian Renaissance and early modern period; in political science, Skinner

(1990) and Pettit (1997) offered an understanding of republicanism by relating to the non-domination concept of liberty.

One of the distinguishing features of the Roman community was that it bound its citizens and other peoples into cultural and political *conformity* and thus cultural and political *unity*, whereas genuinely multi-cultural states such as the Carthaginians and Greeks could not create an equivalent to the homogenous *Pax Romana* (Lane, 2014: 14). The principle was the belief that the Roman people possessed sovereign power, and all authority was derived from them. There were also two interesting terms that described the *auctoritas* (authority) of Roman magistrates: *potestas* and *imperium*. *Potestas* was a domestic, regular power of magistrates, whereas *imperium* was used to refer to the personal right of military commanders to administer the lands they invaded in the sense of an extra power apart from *potestas*, which included the ultimate degree of both economic and political exploitation (Drogula, 2007: 426; Hammer, 2014: 53).

As can be seen in the thought of Cicero (106-43 BCE), a major Roman political philosopher who was influenced by Greek philosophers, the supreme end of the Roman life was the *vita activa* of participation in politics and serving the community. Unlike ancient Greece, for which political participation in the *polis* was the highest priority as an expedient and pragmatic way to dispose of common affairs affecting all members of the community, Romans conceived their state itself to be holy, thus they devoted their supreme energies to it and were and for which they were prepared to die, forming the ideological premise for the maxim *dulce et decorum est pro patria mori*; the Romans believed that public enterprises brought greater personal renown due to their communal social benefit, which was more sacred than philosophical contemplation (as per the Greek model) in its own right (Black, 2009: 176; Kapust, 2011: 12), although Roman praxis must be understood within the context of a pervasive ontology of the sacrality of public affairs.

The Romans developed a sequential ordering of public offices governing their political activities, comprising both military and political administrative

posts, called *cursus honorum* (Vlassopoulos, 2010: 90). The performing of great deeds in counsel and war, the service in the community, and office-holding for the flourishing and wellbeing of a political community were conceived to be the political activities, serving the community by other means, leading to the achievement of *virtus* (virtue, character) and *gloria* (glory) as the supreme aims of every man. Roman citizenship – and by extension, civic participation – conferred freedom from arbitrary flogging or illegal imprisonment, and the general barbarity of life outside the *imperium*, as well as protection of property etc. (Kapust, 2011: 12; Lane, 2014: 15). Roman stoicism also taught that active participation is the norm, and "everyone has a duty to promote the public good by carrying out whatever their specific duties are, whether as father, son, worker, or manager" (Black, 2009: 197).

The growth of the Roman Empire from the age of Augustus (63 BCE – 14 CE), the first emperor in all but name, resulted in changes in its power structure in the quest for order and public welfare. From the time of Augustus governance drifted inexorably toward an absolute monarchy, with the Senate reduced to symbolic status. Although the Senate and People had lost the power to make decisions in the assemblies, Roman citizens still had *de jure* liberties enshrined in law, and the power of the emperors was wielded in the name of the Roman people; indeed, the vision of popular sovereignty remained a normative part of political discourse, and the Emperor Septimius Severus (145–211 CE) announced that he 'restored the *res publica*, and extended the *imperium* of the Roman people' (Black, 2009: 191).

In chapter 3 I show that the foundation of Rome as described in Virgil's *Aeneid* is one of the core contributions to Arendt's understanding of the beginning of politics, particularly in the affirmation that the foundation of politics does not arise from out of nothing, but from the learning of Greek society, resulting in a new political community within the realm of human affairs instead of outside history. Also, in chapter 6 I elaborate Arendt's notion of war on another aspect of the story of *Aeneid*, showing the beginning of Roman politics from the *Trojan War*. In chapters 5 and 6, I put

forward the Roman notion of *res publica* as a key to understand Arendt's idea of the rule of law. The *res publica* as a prototype of the political image in Arendt's viewpoint formed a Roman law (*lex*) whereby enemies were converted into allies without the interference and the recurrence of war. Conversely, the Roman concept of *res publica* does not have the same significance for Schmitt because (as I explain in chapter 3) he draws upon the Roman concept of *imperium* that provides an extra power of military command which confirms the distinction between friend and enemy.

The next section explores ancient concepts of sovereignty in more detail, connected to the political supremacy of the body politic in the Greek and Roman models.

2.3 Sovereignty

The word 'sovereignty' is derived from the Latin *superanus* through the old French term *souveraineté* and Spanish term *soberano* (Maritain, 1950: 348; Weintraub, 1997: 14; Jayapalan, 1999: 56; Bourke, 2016: 1). Given that the concept of sovereignty has been much developed in the modern times, I suggest that Greek and Roman ideas of rule can be said to fall under the concept. The argument is twofold. Firstly, I argue that key figures of the idea of sovereignty, such as Bodin and Gierke, received their ideas from Greek and Roman traditions, especially from ancient Rome. In this regard, the identity of modern sovereign states shares affinity with primordial political configurations.

Early modern writers such as Bodin usually set out to develop their own ideas they became interested in the range of classical usage (Bourke, 2016: 2). As a consequence, the concept of sovereignty was placed within a constellation of terms stretching back into the Graeco-Roman past. For example, in Chapter 8 of Book I of the 1583 French edition of *Les six livres de la R´epublique*, Bodin received the word *souveraineté* from the Latin word *maiestas*. This Latin word appeared in Livy, Sallust and Cicero's accounts of the history of Rome connoting a notion of greatness (grandeur or *amplitudo*),

dignity (*dignitas*) and authority (*potestas*) along with the terms right (*ius*) and control (*imperium*) (Bourke, 2016: 1–2).

Moreover, the 19th-century German jurist and philosopher Otto Von Gierke attributed the idea of sovereignty to the quintessentially 'ancient-modern' concept. The mediaeval concept of sovereignty, for Gierke, is characteristically Roman, which he called 'the resuscitation and further development of the classical idea of Sovereignty', and appeared as an attempt to construct constitutions which complies with natural law (Weintraub, 1997: 14).

The second argument is that the conception of sovereignty in pre-modern state is possible since there have been many conceptions of sovereignty, some of which do not belong to the pattern of the modern nation-state. This argument claims that sovereignty was a feature of all political communities, although they had failed to grasp the implications of its meaning with perfect consistency. For example, Bodin's *Les six livres de la Ré*publique employed the Greek usages of the phrases *akra exousia* (supreme power) and *kurion archē* (authoritative rule) in relation to the concept of sovereignty (Bourke, 2016: 2). Bodin also indicated that Aristotle's *Politics* referred to the word *summum imperium* as a name for sovereignty, although it was not defined anywhere in his writing (Bourke, 2016: 2). In addition, the old political form of the Roman *imperium* originally signified a military commander, but took on the meaning of supreme rule of sovereignty, which recognised no superior or higher power than this supreme authority (Prokhovnik, 2008: 27).[3]

[3] Moreover, Aristotle's implication to the election of magistrates as one of the three parts of the constitution was counted as a function of sovereignty in the thought of Bodin. That is to say, a magistrate in the Greek constitution had to be accountable to the people; this implies that sovereignty remained in the people.

There are further writings that suggest the influence of Greco-Roman past to sovereignty, such as Melissa Lane's *The Birth of Politics: Eight Greek and Roman Political Ideas and Why They Matter* (Princeton University Press, 2014), pp. 285-312; The passage from Xenophon's *Memorabilia* by C. H. McIlwain, *The Growth of Political Thought in the West: From the Greeks to the End of the Middle Ages* (New York: Macmillan, 1932), fn. 2, p. 15, which is also referred to by Paul Cartledge, *The Greeks: A Portrait of Self and Others* (Oxford University Press, 1993), pp. 147-48; and by G. E. M. de Ste. Croix, *The Class Struggle in the Ancient Greek World: From the Archaic Age to the Arab Conquests* (London: Duckworth, 1983), pp. 414-15.

2.3.1 Ancient Greece

This section presents the ideas of sovereignty in ancient Greece from the rule by one to rule by many, and then turns to consider the divine concept of sovereignty, given the importance of the variety of gods (and their associated ideals) in ancient Greece and Plato's idea of Good. The Greeks faced the debate of who should handle the sovereign power in respect of the citizen-states, which can be divided into three categories: the rule by one, few and many.

The first category of sovereignty is the rule of one. The sovereign of the rule by one stressed the practice of absolute monarchy (the *mon* in 'monarchy' means 'one') with an absolute sovereign wielding total authority over a polity, whether a human (e.g. the human kings of Sparta and Macedon) or a divine or semi–divine demi-god, as in mythical stories of the Age of Kronos.

Conversely, the rule by some or a few usually implied the sovereign power of a few over the many, namely oligarchy (*oligo* means 'few'). The 'many' in this case was not referred to in the character of *isonomia* or *democracy*, but it was called the 'multitude' in the sense of a body of poor, native–born citizens excluded from offices and civic honours. Within the sovereign power of a few, the offices were assigned on an equal footing to the selective few who shared in governing the oligarchy, while the citizens were not placed in those offices, with political participation being generally limited and restrained. The most important office-holders (*megistas*) had authority by election among groups of other oligarchic office-holders (Lane, 2014: 83, 138).

Opposite to the rule by one, *isonomia* refers to every form of political regime where power was not restricted only to a single individual. As referred to above, mass participation of some kind was a hallmark of Greek politics. The traditional ruling classes usually believed that power should be shared equally between every citizen, which was the slogan of *isonomia*, 'the equal share of power' (Vlassopoulos, 2010: 1). The concept of *isonomia* goes together with the emergence of democracy in the 5th Century BCE (Vlassopoulos, 2010: 2). Democracy is the political form of rule by the many in such a way that sovereign power (*kratos*) belongs to the people (*demos*).

It could be described both in good and perverted versions: the good version was called *politeia* or polity and the bad one was named *ochlokratia* or mob rule. Ancient Greece was not a 'model' democracy, but the occurrence of any form of democracy was remarkable in the wider context of the ancient world, where assembly participation was not restricted by wealth or status, but amongst citizens who enjoyed participating in such a way that subjugated the primordial liberty of individuals to strengthen collective power, which diverged from the modern concept of liberty, even though in practice only a few wealthy citizens participated in the assembly (Liddel, 2009: 138).

This discussion is closely engaged with the political thought of Aristotle, which concerned the best constitution and the possible achievement and practical utility shared by all states (Aristotle, Politics: 1288b). According to this, Aristotle distinguished the three right forms of constitution from the deviant three (Aristotle, *Politics*: 1289a). The right constitutions are kingship, aristocracy and constitutional government (polity); and the deviation forms of constitution are the deviation of tyranny from kingship, oligarchy from aristocracy, and democracy from constitutional government. What makes the difference between these forms are wealth, the difference of birth, virtue and any other similar distinctions (Aristotle, *Politics*: 1289b). Amongst these, tyranny is the worst form that must be definitely removed from constitutional government (Aristotle, *Politics*: 1289b). Given rule by majority, according to Aristotle, polity is the second best form of constitution of the rich, whereas democracy is the rule by the poor, and the best amongst the other two bad constitutions.

Classical Greece had to confront the struggle between partisans of oligarchy and democracy. Ancient thinkers such as Plato and Aristotle, found a new idea to avoid this problem: the mixed constitution. For example, Aristotle suggested balancing between the 'democrats poor' and the 'oligarchs rich' by mixing the political principles of democracy and aristocracy (Aristotle, Politics: 1296a.1; Vlassopoulos, 2010: 88). This kind of constitution, according to Aristotle, is the best attainable under most circumstances.

In chapter 4 I elaborate Arendt's understanding of politics in light of the Greek concept of *isonomy* as a form of political sphere in which people lived together without ruling/ ruled, which is different from Schmitt's conception of sovereignty that provides an extraordinary power to sovereignty in order to deal with an emergency situation.

2.3.2 Ancient Rome

This section explores the Roman narratives of sovereignty as distinguished from the Greek. Rather than promoting the concept of democracy that was ultimately celebrated by the Greeks, the Romans admired the idea of *res publica* wherein sovereign power was invested in the Roman people (Coleman, 2000: 235–237; Black, 2009: 185). Polybius, a Roman intellectual, integrated the classical schema of one/ few/ many with his own dramatization of politics as a natural cycle change, and suggested a solution of this vicious cycle by balancing competition of all kinds of rule as a model of *res publica* which is called 'the senate and the people of Rome'. In this type of governance, the sovereign power remained in hand of the people who could pass or repeal laws (including the power to make peace and war, to ratify treaties and alliances), but under the recommendation of the Senate (Coleman, 2000: 235–237; Hammer, 2014: 48). While Polybius referred to a balance of all forms, Scipio, a character represented by Cicero, set up a form of *societas* in which each part of the body of politics functions through the differential expression of power, which he called the best condition for the mix and measurement of the original three forms (Hammer, 2014: 48).

In a restricted sense, the end of the *res publica* was the result of the accrual of absolute power by the emperors. The history of the late Roman Republic made a great contribution to the concept of sovereignty as the rule by emperors, called 'Imperial Rome' in contrast to the rule by the Roman people during the 1st-century of the Republic (Hammer, 2008: 148; Lane, 2014: 289). The historian Tacitus pointed out that the Republic was effectively extinct after the construction of the *Principate* by Augustus, and he even stated that no one who was born after the battle of Actium had ever seen it. With the title of Caesar, the first Roman emperor Octavian (Augustus)

confirmed that he was unequal to the senate, and he ultimately derived *imperium* to rule over the Romans in unaccountable ways due to his ancestry and sacralisation as *Augustus* ('Worshipful'), *Imperator* ('Victorious General'), *Pater Patriae* ('Father of the Fatherland'), and *Pontifex Maximus* ('High Priest') (Black, 2009: 195). Tacitus looked back to a wide range of imperial rulers, differentiating between good and bad emperors, and gave details of the condition of the *imperium* upon their death. For instance, he noted that Augustus had reduced trenchant political critics to slavery, with the senators living the full extent of political life only in so far as the *Principate* allowed.

By the 4th Century CE the Emperor was purportedly the representative of the gods on earth (Black, 2009: 155). This concept was translated into Christianity by Constantine (c. 285–337 CE), who upon his accession began conventionally as the last among gods and first among men in the divine cosmological order (Drake, 2006: 115; Edwards, 2006: 141); while initially identifying with Apollo, he became identified with Christ after his conversion to Christianity in 312 CE.

History shows that after he committed to Christianity, Constantine clearly marked out the belief in a monotheistic Divine Providence in order to ensure the well-being of the Empire (Drake, 2006: 124-125). Under Constantine, the origin of the sovereign power of the Emperor moved from nature to the absolute, powerful monotheistic God. He also envisioned his personal character as 'one united judgment in reference to God', without concern for matters of the nature of Christ and Trinity (Drake, 2006: 124). The account of Constantine's conversion to Christianity that survived in works of Christian contemporaries privileged the concept of God's sovereignty as the perfect sovereign power over the human intellect, which appeared as the central claim for the legitimacy of the governed by the Church in the Middle Ages and the divine right of kings in the following period.

For Augustine, God does not stand alone, but predicates the relational experiences of the persons of the Trinity (i.e. the Father, the Son/ *Logos* and the Holy Spirit) in relation to the apogee of reason, love and free-will. In

terms of the relationship between God, the Son and the Spirit, Augustine confirmed that they all work together, sharing a harmonious cooperation of unity and fellowship. God is both Father and Son; God the Father is not a pale shadow of the Son, rather they are the same in the three-in-one God (one God with three characters) (Elshtain, 2008: 3). God the Father does not work alone from Heaven nor does the Son autonomously incarnate works in the Earth separate from the Father. By arguing against the idea of Arians who claim that the Father 'Unbegotten' differs in substance from the Son 'Begotten', Augustine suggests that Unbegotten and Begotten predicates the relationship of the first and the second divine persons, not that of the divine Substance (Clark, 2001: 95)

Augustine continually bound the relational and pluralistic characteristics of the persons of God to the complexities and various faculties of human persons as images of God, which can be described in two parts. Firstly, human beings have a capacity of love from God, who is perfect in loving and bound to/ by His loving creation (Clark, 2001: 97; Elshtain, 2008: 58, 165). Since we can both give and receive love, we are the creatures that have been known to ourselves in part through our relation to each other in terms of a plurality of persons. In terms of love, the Son and the Spirit are the fullness of God; the Father is the speaker of *logos* from eternity and gives to the Son, and also the sharer of the Spirit imparted to the Son who works with His Spirit in the Earth (the Christian concept of deism) (Ayres, 2014: 76). The Trinity is possible because the characteristics of God are about the invisible reality of the divine, which is beyond number, and unfamiliar to the character of human beings (Ayres, 2014: 69). Secondly, human beings are dependent on the grace or the determination of God, not in the sense of destroying the human will or constructing the absolute will of humans, since human beings can either will or not, but in the sense of transferring an evil will to a good will (Elshtain, 1995: 55; Elshtain, 2008: 161–162). Augustine also developed the concept of free will in many texts, such as *De dono perseverantiae*, *De libero arbitrio* and *De praedestinatione sanctorum*. Augustine refused the libertarian idea of free will as freedom, whereby "an agent acts with free will",

because humans are unable to will, not to sin; what humans have in their free will is the moral responsibility for their own sins (Stump, 2014: 169, 171).

In chapter 4 I link Arendt's and Schmitt's concept of sovereignty to their different perceptions of monotheism, with the former drawing from Augustine's conception of the trinity, since her political thought pertaining to monotheism is far removed from that of her ancestral religion, and the latter drawing from the divine power of Constantine because it illustrates the legitimacy of the extra-power of sovereign decision.

The next section gives details of the ancient narratives of law, particularly the Greek *nomos* and Roman *lex*, and the argument between the natural and conventional law rooted in modern legal systems.

2.4 Law

2.4.1 Ancient Greece

The history of law in ancient Greece spans more than 3,000 years of debates and cases (Yiannopoulos, 1987: 1). This section explores the legal procedures of the Greeks and their debates on the concepts of natural/divine and artificial law. Strauss maintained that there was no concept of law *per se* in ancient Greece, because the concept of superior authority to issue laws binding upon the citizenry was unknown. He rather connects law to the term *lex* when refering to the command of a superior. This idea is compatible with the view that the Greek *nomos* has translated into the Latin *ius* in the sense of *right* rather than *law* (Vlassopoulos, 2010 58). However, I agree with Burns that binding law as command, as Strauss suggested, might not be enough to constitute law in its entirety, since the concept of ancient law was also associated with moral rules or directive principles by the creation of will (Burns, 2011a: 1).

Ancient Greece usually used the term *nomos* when referring to law, which was always prescriptive and normative, involving "the idea of being sanctioned, required and entailing retributive or harmful consequences if it is ignored" (Long, 2005: 412). The etymology of the word *nomos* (*νόμος*) is

derived from the word *némō* (*νέμω*), referring to the verb 'to distribute'. The basic concept of distribution was related to the geographical concepts of *nomé* (*νομή*), which means pasture, grazing, abode, district, and the musical concepts of melody and turn (Ostwald, 1969: 10). One of the practical applications of law in the idea of distribution can be found in Demeter, the Greek goddess of agriculture and harvest, who stated that a number of newly settled lands were not only subject to agriculture, but also legislation (Jones, 1956: 21).

Greek did not express the lexical distinction between 'the law' in the sense of a series of individual rules or enactments, and in the sense of the sum of these rules; both were called *nomos*, or *nomoi* in the plural (e.g. *hoi nomoi*) (Todd, 1993: 18). It could mean from 'custom', 'norm' and 'order' to 'way of life' in terms of 'what is agreed to be the right thing to do', and from the 4th Century BCE it was bound to the word 'statute' as a law published in writing and validated by political process (Ostwald, 1969: 1; MacDowell, 1979: 44).[4] Up to and during the time of Solon, the word *nomos* preserved the old sense of meaning as a way of life, implying goodness or value of community members, not limited only to groups but including the whole universe (i.e. gods, humans, animals, and inanimate things that were moved by some force analogous to life) (Jones, 1956: 34). The consequence of this point is that the idea of good and virtue in the way of life was developed to norms and law (the modern understanding of the ancient word *nomos*). It later became a topic of debate whether it should be held to be absolute truth or merely a matter of convention (*νόμω*); a relative and subjective issue as opposed to an objective truth of natural law.

The usage of the term *nomos* as law varied from the period of Hesiod to Plato. There are at least two theoretical debates in the framework of the concept of *nomos*: natural law (including the divine law and the law of nature that referred to the idea of physical regularities or forces and deprived of the belief in gods), and the artificial law. Natural law is unwritten and universal

[4] Athenians, however, used the word *psephisma* ('decree'), referring to the law passed by votes at the assembly (MacDowell, 1979: 44).

law, referring to a kind of ethical and political 'given' inherent whether in gods or by nature (*phusis*, *physis*); by contrast, the supporters of artificial law referred to the opposition between *nomos* to *phusis* and believed that law could be created by the hand of humans who made a particular decision, and thus that it could vary from one *polis* to another. These two distinct domains were reflected by Aristotle's *Rhetoric*, which distinguished between laws 'in accordance with nature' that were common to all people, and laws that were determined by each people for themselves (Lane, 2014: 136).

With regard to the idea of natural law, many Greeks referred to law as natural law of divine origin. Hesiod (750–650 BCE), the first poet known to have used the term 'law', explained the essence of laws and the concept of justice by binding them together and connecting their origins to the gods. Justice was sponsored by first the pre-Olympian head of the gods, Kronos, and then the usurper Zeus (Lane, 2014: 41). Zeus gave justice only to humans, including strangers as well as citizens (Lane, 2014: 135). In the *Iliad* and the *Odyssey*, Homer wrote of one deity, Themis, who was described as being "of good counsel", the goddess of justice, and the symbol of the divine law, which is the origin of all communal affairs of humans, especially assemblies. In Greek mythology, Themis always consulted with Zeus when an affair needed to be decided, and later her decisions became the divine laws of Olympus. Dike, the first daughter of Themis and Zeus, carried these divine laws to the earth that would become the origin of laws and customs of humans (see Burnett, 1987). *Phoinissai* ('The Phoenician Woman'), a dramatic play by Euripides (c. 480-406 BCE), and *Antigone* (c 441 BCE), written by Sophocles (c. 497-406), also repeated a view of justice as rooted in natural law, even though some literatures suggested that this kind of interpretation is problematic, since the unwritten divine laws suggested by Antigone were antithetical to natural law conceptualisations (Brown, 2009: 335-337).

Moreover, Heraclitus (c 535–475 BCE), a pre-Socratic Greek philosopher, expressed the relations between the divine law of nature and human laws. He spoke of the analogy between law and the city-wall in terms of a divine

common *logos* of natural law. Natural law, according to Heraclitus, is a unified cosmos that shares a reason (*logos*) with god, a supreme lawgiver and holds a universal reason. Any man who wants to speak with intelligence and comprehensiveness had to base their account on *logos*, as a city that develops on the grounds of law (Brown, 2009: 338; Lane, 2014: 134). Since law is connected to *logos* (reason), and *logos* existed only in the city (*polis*), law parallels a city-wall where *logos* can be found inside. The protector of law is therefore the protector of the city wall of the *polis* (Brown, 2009: 338–339). Related to this, the Greeks agreed on the fundamental point that non-citizens, such as slaves and foreigners, were conceptually alien to public justice and law, as they were under the aegis another kind of law, the law of the relationship between private lives.

Changes within Greek societies from the 8th to 5th Centuries BCE raised the question of whether humans should have faith in divine laws if the gods were unjust. This led to the development of the concept of natural law, which placed justice on a broader and more secure canvas in more abstract terms. Law was then not solely a gift of the gods to humans, but an inscription of the cosmos itself, reflecting the governance of the world by natural principles of equilibrium and balance, namely *phusis.* For instance, Anaximander referred to the symmetry of the universe that forced individuals to "pay penalty and retribution to each other for their injustice", in accordance to the assessment of time, and the natural law of the Stoics is connected to love and harmony, binding oneself with the unity of citizens and the rational order of the universe in terms of *oikeiosis* (self-preservation or self-consciousness) (Lane, 2014: 43; Hammer, 2015: 7).

In the late 5th Century the Greek concept of *nomos* was widely contrasted with *phusis* to oppose the real and necessary states of affairs to customary law. The difference between natural and conventional law was first made by the Ionia Archelaus, who inspired Plato's young Socrates to develop it in the *Republic*, and it became a subject of discussion among the sophists of Plato's time (Lamb, 1967, 482e). Callicles, in Plato's *Gorgias*, for instance, claimed that "nature and convention are opposed to each other", but have

always been considered together (Lamb, 1967: 482e). According to convention, doing wrong is merely foul; however, according to natural law it precipitates more evil and suffering.

Amongst the contributors of man-made law to political theory, Epicurus (341–270 BCE) and the Epicureans argued that law was solely an artificial contrivance that one should not be designed to valorise the virtue of self-sacrifice, but which should promote quotidian utility by minimizing desires and pleasuresFor them, there was no natural law or natural standard of justice as a pillar of divine reason, but merely a human made law in order to promote and secure pleasure and avoid unnecessary painful actions, and political judgment in this case was not for the pursuit of virtue or any human merit, but merely for their usefulness. Unjust actions were not wrong because they violated nature or the gods, but because they were harmful for humans, undermining each person's confidence, security and tranquillity (Lane, 2014: 240).

In chapter 5 I will show the relevance of the Greeks' *nomos* and the concept of natural law to the different perceptions of law in the works of Arendt and Schmitt. I suggest that while Schmitt's notion of law is determined by the Greek concept of *nomos* and natural law in order to support his conception of the extra-legal power, Arendt criticises these traditional concepts, because Roman legislative activity was disconnected from the truly political sphere, and detached the lawgivers and non-Greek citizens from the conformity of politics.

2.4.2 Ancient Rome

The Roman jurists conventionally interpreted Roman law in light of Stoic doctrines. Cicero employed two categories of law: natural law (*ius naturall lex naturalis*; also *ius gentium*)[5] and civil law (*ius civile*) (Hammer, 2014: 36). Civil law refers to a law code used to measure particular communities. Natural law, on the other hand, is the standard and hence the origin of what

[5] Before the 13th Century, Roman thinkers always used the terms *lex naturalis* to refer to natural law, particularly when combining the Roman law and the theological traditions, but it was gradually changed to the term *ius naturale* afterwards (see Pennington, 2008: 577).

is just (*ius*) in nature (a justice of nature). For Cicero, the reason of nature is universal and guides us to choose morally right action (Hammer, 2014: 37). It is also identical to a highest rational force of nature both in the sense of the mind of gods and the supreme right reason of gods (not in the will of individuals) that operate as a whole in a wise person (Asmis, 2008: 10-11; Brown, 2009: 332; Straumann, 2015: 30–32). Thus, the natural law or the law of gods is a primary and ultimate law that is superior to human law in such a way that the former is the guideline of the latter.

With respect to the Stoic principle, the Romans confounded the law of nations (*ius gentium*) with the law of nature, referring to a natural reason that establishes the common law of all mankind (Vattel, 1979/2008: 6). However, the concept of the law of nations later deviated from its original meaning and sometimes separated from the law of nature. According to *The Digest*, the Romans believed that men were born free and equal; thus, slavery and manumissions were unknown to natural law, but emerged from the introduction of the law of nations (*Digest*, 1.1.4). In some cases, the Romans related the law of nations to the positive Roman law created to accommodate foreigners, particularly merchants, which gave them standing in Roman courts (Straumann, 2015: 18). It could also refer to the relations of one man to another, comprising wars, rights of property, kingship, commerce and obligations, in contrast to the law of nature. Under the influence of the Roman idea of the common law of all people, modern thinkers identified the law of nations with international law, referring to a common consent between nations or sovereign states (Vattel, 1797/2008: 7). This sometimes included the concept of the 'just war' and the declaration of war in its meanings.[6]

[6] According to modern theory, the relationship between the law of nature and the law of nations is revealed in two aspects (Skinner 1978: 152; Malcolm, 2002: 439; Straumann, 2015: 54): as a part of the law of nature (e.g. Gentili, Hobbes, Pufendorf and Spanish jurists such as Covarrubias); and the distinction between natural law (*ius natural*) and the secondary law of nations (e.g. Aquinas suggested that the law of nature serves as the moral basis for the positive laws of individual commonwealths, which differ from the law of nations common to all societies and established and conducted in accordance with the principles of right reason and natural justice; Grotius referred to the law of nations as an aspect of positive human law, as distinct from the right reason of natural law).

Although the Romans developed and expanded patterns of behaviour that had already been established in ancient Greece in many fields of social and political practice, and unashamedly attempted to assimilate as much of Greek culture as they could glean, law was one of the few areas in which they offered genuinely original and substantial innovations. The Roman legal system comprised many types of law. The promulgation of the Twelve Tables in about 450 BCE was the first public and private law in the Republic. It was a list of important, laconic legal rules rather than a law code, indicating matters of family law, property, succession, and the set of rules for legal process (Johnston, Cartledge and Garnsey, 1999: 2; Williamson, 2015: 181; Straumann, 2016: 241). Unfortunately, the Twelve Tables do not survive, so we do not know their exact knowledge and provisions.

The second type of law was known as *ius*. It was recognised as an early law that consisted of custom, not declared by enactment (Johnston, Cartledge and Garnsey, 1999: 2). The concept of *ius* in terms of the customary law was translated as 'right and justice', which could be defined as the 'the constant and perpetual aim of giving each person his own right' (Vlassopoulos, 2010 58).

The third kind of law referred to statutes or *lex* (plural: *leges*), law passed by assemblies, including private/public laws and international laws. In the process of making law, magistrates would suggest proposals to the Roman assemblies, whose members voted and passed them as law. According to Gaius (157-86 BCE), *lex* was recognised as law enacted by the whole citizen body (*populus*) in order to command themselves, 'the command and ordinance of the populus' (Ibbetson, 2015: 29). It tended to be drafted in a very narrow and literal manner, reflecting extremely rigid canons of construction by putting specific names of places or persons (Johnston, Cartledge and Garnsey, 1999: 3).Apart from the Greek notion of law, chapter 5 will compare Arendt and Schmitt in relation to the Romans' *lex* and *ius*. It shows that the Roman concept of *lex* sheds light on Arendt's notion of the rule of law as the legislative activity that belongs to the realm of politics (e.g. the Roman law of the *Twelve Tables* is an agreement that shows how hostile

persons can become partners). Although Arendt criticises the natural law, she presents 'the law of nations' (*ius gentium*) as a basic category of natural law that characterises the communication or intercourse between communities, posited and framed by humans, in distinction from her critique of natural law. In this regard Schmitt adopted the opposite perspective. For Schmitt, the Romans' *ius* is relevant to the extra-legal power of the sovereign decision.

The next section considers ancient Greek and Roman concepts of war, which were the main concern of historians in both traditions, amply represented in the visual arts and literature. This finally shows the importance of the military aspect in the ancients' political lives.

2.5 War

2.5.1 Ancient Greece

The frequency of war in Greece and Rome might be described by the phrase 'unrelenting regularity' (Finley, 1986: 67). For example, the Greeks spent almost two years fighting in the Persian wars and the conquests of Philip of Macedon c. 338 BCE. The motivation for making wars also varied, from the personal interest and national glory of small city-states and tribes to the material benefit to the empire in respect of the big states, such as Athens and Rome (Finley, 1983: 113).

This section investigates the Greeks' perceptions of the occurrence of war, particularly the justification of war and the status of military department in Greek politics. There were a lot of debates on making war or building peace in the Greek assembly, and a decision on war was always a part of political process (e.g. the debate in Sparta that led to the decision to declare war against Athens, and the debates that led to the Athenian invasion of Sicily in Thucydides). The decisions to wage or join wars were based on concrete circumstances, and the justification of war depended on the claims of each side (Finley, 1986: 69; Lane, 2014: 54).

Ancient Greece did not separate citizens from the military. Unlike the Roman Empire, with its permanent, institutionalised standing army and vast, efficient military infrastructure of roads and forts, an individual Greek *polis* was highly vulnerable to invasion, thus leagues and confederations of mutual defence were the norm, which also assisted in imperial enterprises (Lane, 2014: 15). Greek citizens had a duty to protect their own state. Inhabitants, including male citizens, non-citizen residents, mercenaries, and sometimes slaves, were marshalled for defence of their communities or to invade other lands when deemed necessary (Lane, 2014: 15). During the 4th Century BCE the ancient Greeks employed professional generals and mercenaries, but retained the citizen militia as a basic military force (Finley, 1983: 59). The defeat of the state could lead to despoliation, enslavement or death.

In terms of war's political aspects, the Athenians' dedication to freedom and equality at home had to confront the temptation to exploit other weaker states by using actual or threatened violence outside the homeland. The situation was complex. While the Athenians claimed to support democratic regimes abroad against oligarchic interventions, they were also self-interested, turning vituperatively against any cities, whether democracies or oligarchies, who thwarted their will or crossed their ambitions (Lane, 2014: 111). This is the reason why ancient thinkers such as Pericles and Thucydides insisted that Athenians' justice in relation to others had been superseded by the demands of empire, which Finley (1986: 73) described as being of a "nakedly imperialist character", even though Athenians always claimed to fight for freedom against oppression (e.g. the Spartans), as a democracy against oligarchy.

Given Athenian expansionism and the Spartan fear of their growing power, Thucydides demonstrated that the Peloponnesian War was endemic and inevitable (Finley, 1986: 75). Thucydides wrote that the Peloponnesian War was a result of "the growth of Athenian power and the fear this caused in Sparta" (Thucydides, *The History of Peloponnesian War*: 1.23). Plato stated that Athenian war against Sparta had been a war for imperial power and loot rather than a war for independence, freedom and democracy, as claimed by

the Athenians (Lane, 2014: 154). The surrender of Melos in 416 BC during the Peloponnesian War illustrated that the decision as to what is a just or unjust war could happen merely under the circumstance of equality on both sides, since those who are able to take advantage can get whatever they can, whereas the weaker must be simply acquiesce and bear their exploitation (Lane, 2014: 53). Diodotus, a counter–debater to Cleon in the work of Thucydides, also confirmed that foreign affairs must not be conducted from the standpoint of justice, but rather the benefits of one's own side (Lane, 2014: 113-114). The situation of the Peloponnesian War also explained that Athenians' democracy only accepted the power of its own *demos* to live large and celebrate their maintenance of democracy at home, while abroad it acted as a tyrant in its domination of, and injustice toward others for opportunistic advantages and benefits (Lane, 2014: 110-111). Allies were treated not as friends, but as coalitions of convenience.

In chapter 6, I will demonstrate that Arendt's conception of war illustrates the Athenian expansionism as a deterrence of the continuity of politics, since it transferred to 'the war of annihilation' that ruined the political community instead of the formation of a new politics like in the Roman society, whereas Schmitt seems to be pleased with the continuity of war within the political sphere in order to articulate the distinction between friend and enemy.

2.5.2 Ancient Rome

The history of the early Roman Republic was analogous to the parallel situation in Greece. In the formative period, the Romans started engaging in competitive struggle for territory for survival; however, from the early 3rd Century BCE their hegemony was assured, and they extended their authority all around the Mediterranean *Mare Nostrum* ('Our Sea'), north as far as Caledonia (Scotland) and deep into Asia Minor (Black, 2009: 183). They also thought about borders not in terms of territory but natural boundaries such as rivers, mountains and coasts (Sidebottom, 2007: 5). Ordinary citizens could pursue a career in the military to be rewarded with financial security and (upon retirement) land grants, while the elite could prove their mettle as glorious political figures, particularly emperors (Black, 2009: 183). By not

grappling with the concepts of natural or unnatural war, the Romans claimed absolute justification of war or 'just war' (*bellum iustum*) by claiming that action was in defence or its allies or the interests of a world protectorate between the patron (Rome) and client (its allies) (*patrocinium orbis terrae*).

Ancient Rome had its own citizen militia, which at first glance was possible to maintain freedom and succeed in war. Since the *pax Romana* by definition never included the people outside the confines of Roman rule, waging war became the highest virtue of the Roman doctrine. The duty to lead military command in the field was a normal part of every consul's duties, since making war was a regular activity in the Roman Republic (Finley, 1983: 58). Polybius (c 200–188 BC), a Greek historian of the Hellenistic time who wrote about the rise of the Roman Republic, stated that no one could hold political office unless he had served in ten annual military campaigns. In the 2nd Century BCE after the conquest over Italy, Carthage and parts of Spain, Rome had developed a professional army, particularly after the beginning of the 1st Century BCE, when the militia system was transformed into the most effective professional army the world had ever seen (Levi, 1968: 158). A consequence of this was that war became a major economic issue, with the potential for enrichment from the plunder or enemy lands and defence of the *imperium*, or the ruinous expense of paying and arming soldiers, including the expectation of generous pay-outs to soldiers at triumphal marches (Finley, 1986: 83).

The Romans relied on alliance and a treaty (*foedus*) with allied states, including recently vanquished foes (Black, 2009: 182). In terms of the expansion of the empire, Rome conquered the whole world by changing hostile states into 'client' states or allies, in an ultimately diplomatic way (backed up by unassailable military strength). Unlike the Greeks, who imposed tributes and intimidated their subjects without establishing colonial centres of administrative power, the Roman Empire, by reforming the military system to be a professional force, pervaded its identity in the lands it conquered, and counted the people from those lands as its allies and

ultimately willing subjects enjoying the fruits of the *pax Romana* and rights analogous to those of Roman citizens (Levi, 1968: 171).

The language and practice of Roman diplomacy supported the perception that client states were part of the empire. If client states could fulfil the expectations of Rome, Rome would support their rule, and approve their choice of successor (i.e. local dynastic survival). Subject people inside the Empire who belonged to client states were called allies (*socii*), which meant they enjoyed the friendship of Rome (i.e. economic, diplomatic and military support) (Sidebottom, 2007: 4). They constructed a treaty of friendship which included statements of relationship, returns of booty, prisoners and deserters, and contributions to the Roman army (Sidebottom, 2007: 25). Inside the *imperium* and under its protection people could enjoy civilization, peace, arts, and the rule of law, while outside meant wildness, irrationality, savagery and barbarity.

Sallust (c. 86-35 BC), a Roman historian, politician and senator, considered that the establishment of freedom in Rome resulted in the expansion of the Empire (Sallust, *Conspiracy of Catiline*: cat. 7; Hammer, 2015: 5). However, the success and expansion of the Roman Empire over others did not always increase the freedom of the host citizens. Moreover, the expansion of the Roman Empire brought it into contact with more enemies, and its prosperity made it an appealing prize for potential (and actual) invaders, which ultimately corrupted the freedom of citizens who sacrificed liberty for security. In the work of a modern thinker like Montesquieu, Roman power and expansion was not the consequence of Roman liberty, but a primitive economy and political system that transferred internal feuds to external aggression (Hammer, 2008: 148, 162; Vlassopoulos, 2010: 64). In Montesquieu's eyes, the Roman emperors played a significant role in despotism whose glory and power had few merits.

In chapter 6 I show that the Roman tradition of war plays a significant role for Arendt's notion of war and the relationship to politics; war is justified as a key to unlock political conflicts that cannot be solved by political ways, and the agreement after war prevented any wars that might occur to politics in the

future. On the contrary, I suggest that Schmitt's conception of politics refers to the possibility of war in relation to the antagonistic concept of the Roman political engagement, expressing another perspective of the concept of alliance as distinct from the idea of Arendt.

2.6 Conclusion

This chapter summarises four key concepts of political studies, drawing a similarity and distinctions within and between classical Greek and Roman political theory and practice, as the basis for analysis in the subsequent chapters dealing those traditions with the engagement of Arendt and Schmitt.

First of all, the ancient Greeks considered politics to be a refinement of a cultivated urban life that stressed the importance of the participation of citizens in the *polis*, whereas the Romans had a wider sense of the Roman people which was not restricted only to adult male citizens. However, Roman citizens had more serious duties and responsibilities to the community. Secondly, the ancient Greek concept of democracy and isonomy was presented with regard to the concept of sovereignty. This chapter also refers to the ideas of Greek gods and Plato's Good, Constantine's monotheism and Augustine's conception of the Trinity and free-will in the light of the divine power of sovereignty.

With regard to the concept of law, the concepts of natural law and artificial law were described, with the Greek *nomos* and Roman *lex* and *ius*, which form part of the fundamental background for the theories of Arendt and Schmitt on law. In respect of the concept of war, warfare was a common issue in both Greek and Roman traditions. However, unlike Greece, Rome created treaties and alliances that changed their adversaries to friends. The justifications of wars in ancient views were based on a claim for the expedient necessity of each side rather than abstract moral considerations.

The next chapter presents politics as one of the core concepts of the political theories of Schmitt and Arendt. By comparing their works on politics, the different sets of ancient Greek and Roman intellectuals (e.g. the Greek *polis*,

the Roman *hostis* and *inimicus*) are used to separate a boundary of the political or public sphere from a private one, and also to create a politics anew without violence in Arendt's case, and with violence in Schmitt's case.

CHAPTER 3

THE CONCEPT OF POLITICS

3.1 Introduction

Hannah Arendt and Carl Schmitt contributed a great deal towards articulating the highly divergent understandings of politics. It stands to reason that Arendt understands politics in terms of the activity of acting and speaking, of manifesting a space of conversation and decisional action between people, while Schmitt perceives 'the political' as the 'unspeaking' activity of distinguishing between friend and enemy, which among other things implies the necessity of conflict and the possibility of violence; indeed, the absence of conflict makes politics impossible for Schmitt. Schmitt's conception of 'the political' is then deprived of Arendt's understanding of political speech and action, which Arendt described as 'mute' violence (Arendt, 1958: 26), in contrast to her own view of the political sphere.

Another equally important contribution to which we should allude is that both Arendt and Schmitt are great interpreters and appropriators of aspects of Greek and Roman philosophy, bringing to bear the relevance of various Greek and Roman ideas in their considerations of modern politics and society, as evinced in Arendt's works such as *The Human Condition* and *Between Past and Future*, and Schmitt's writings about law, state and sovereignty in *The Nomos of the Earth*. For instance, by criticising modernity, Arendt, in *The Human Condition*, makes much of the division between the spheres of the private and public in ancient Greek thought and life, while Schmitt's notion of *nomos* in *The Nomos of the Earth*, to which he attaches so much significance in his work, is a Greek term that he wants to recover for the purpose of his own criticism of modernity. With regard to the influence of ancient Rome, Arendt claims that the concept of 'authority' is Roman in origin and her concept of 'natality' is inspired by Augustine, and places great importance on these facts, while Schmitt's writing on *Dictatorship* also cited the Roman history of Sulla and Caesar.

This chapter aims at exploring the accounts of politics of these two thinkers by examining their appropriations from the ideas of Classical Antiquity (i.e. Greek and Roman political philosophy). Two arguments will be discussed in this chapter. Firstly, this chapter provides a systematic engagement of the subject of the similarities and differences between the conceptions of politics of Arendt and Schmitt. In contradistinction to the existing literature, which tends to see only the highly divergent understandings of Schmitt's conception of 'the political' and Arendt's conception of 'politics' (e.g. Frazer and Hutchings, 2008; Kalyvas, 2008; Barder and Debrix, 2011), this chapter argues that both Arendt and Schmitt share similar assumptions in three aspects within the different perspectives of political ideas: politics as an area of speaking and action for Arendt; and politics as a friend and enemy distinction and the possibility of war for Schmitt: (1) the systematic engagement of politics in light of the public realm; (2) the impossibility of neutrality (the absence of opposite views) in politics; and (3) politics/'the political' as distinct from ideology.

In the second argument, I suggest that both Greek and Roman traditions are appropriated, but in different ways, in the rival conceptions of politics by Arendt and Schmitt. This thesis suggests that the discussion of the traditions in this second argument makes a great contribution to an understanding of their conceptions of politics in the first argument. This argument comes from the fact that a systematic engagement of the concept of politics, which are discussed in the first argument, with their intellectual histories, has not been explored in depth. Some literature compares each of the two thinkers with other philosophers who have written about politics but without fully considering their intellectual histories (e.g. Zaretsky,1997; Kalyvas, 2008; Barder and Debrix, 2011). Moreover, while some scholars have tended to be more interested in Arendt's relation to these traditions (e.g. Beatty, 1976; Villa, 1998; Hull, 2002; Swift, 2008; and Birmingham, 2011a), Schmitt has never, to the best of my knowledge, been studied with respect to the recovery of Greek and Roman traditions in his writings. Those various writings, nevertheless, included Greek influence as only a small part of the overall view. As a consequence, the rich reflections of these traditions on

politics remain marginal and overlooked in these studies and much research is still to be done**.**

The next section examines Arendt's conception of politics as a way of life, associated with the ideas of political freedom, action, plurality and the public sphere, and identifies the support and criticisms of Greek and Roman antiquity in this political concept. Next, I investigate Schmitt's conception of politics, which is linked to the friend/enemy distinction in terms of the way of life and the criticism of modernity. The engagement of ancient thought is presented in the final section. Comparisons between the two thinkers are drawn throughout the chapter.

3.2 Part I: Arendt's Conception of Politics

3.2.1 Arendt and the Meaning of Politics

3.2.1.1 The Political Way of Life, Judgment and Ideology

Arendt (1958: 7) used the term *vita activa* to posit three basic activities of humans: they are bound to the necessities of the biological processes of the human body, producing and feeding in the life processes encompassed by the term *labour* (e.g. providing nourishment and enabling the propagation of the species by the literal labour of women in bearing children); they fabricate an artificial world of things that differ from all natural things,[7] by means of which they compensate for and mitigate the species' ever-recurring life cycle, and she calls this *work*; and human beings speak to each, debate and organise politically, which is not only a deed that discloses and performs, but including a decision deed on the grounds of mutual discussion, and she calls this *action* (Arendt, 1958: 136; Taminiaux, 2006: 166).

In this regard, I agree with Villa (1992: 298) that the essence of political life, for Arendt, is not a decision or consensus, but a debate between people; however, it does not mean that the decision is not politics, since the process of decision still requires the deliberative action of politics. Arendt divides the spaces of these three aspects of human existence into two realms: the

[7] The description of man under the human condition of work is called *homo faber* (a man the maker).

private sphere, which consists of the activities of labour and work; and the public sphere, where the human condition of action resides (Arendt, 1958: 7; Canovan, 1977: 60-62; Dossa, 1989: 73; Zaretsky, 1997: 222).

Many studies of Arendt's political theory refer to *vita activa* in the sense of a fundamental condition of human life which is distinguished from *vita contemplativa*, the contemplative life that involves the human mental faculties: thinking, willing and judging (e.g. Parekh, 1981: 103–130; Canovan, 1995: 253) In this chapter I present another aspect of *vita activa* by binding it to the very notion of the political way of life in the public sphere which, to the best of my knowledge, has never been done in previous studies.

I suggest that the view of Arendt is varied in line with the three activities of the human condition. While labour and work serve the despot's way of life in terms of necessity and usefulness respectively, only the way of life along the line of action, which Arendt called 'an autonomous and authentically human way of life', is a meaningful life (Arendt, 1958: 13). Arendt stated that if we followed only the advice of the scientific activities that falls into the human activity of work, in all earnestness our way of life in the private sphere would be adapted to one in which speech is no longer meaningful; speech would have lost its power because the language of science cannot be translated back into speech (see Arendt, 1958: 4). Conversely, if we follow the activity of action and speech, our way of life becomes a typical pattern of political being which experiences meaningfulness. This is because of the fact that humans are similar, but never identical, so we need to communicate with each other, in order to make sense to each other and to ourselves. Consequently, politics emerges when the way of life becomes political; that is to say, when people share each other's experiences/perceptions about their reality of the world with others by talking with or against them, and make a decision based on their conversation (Arendt, 2005: 128). In this sense, politics implies the idea of self-determination, in that people have freedom in determining their own way of life by using speech and action.

The next idea is how politics can reach a final decision/consensus. I think the way to meet a mutual agreement might not be involved with a legal decision, because when Arendt talks about speaking, it is not only one-way communication, but the whole conversation in which people can exchange their opinions, ideas, and reasons etc. In this regard, I suggest that the concept of judgment is the counter-argument to political ideology. Of the three basic contemplative faculties of life discussed by Arendt in her last book *The Life of the Mind* (1971) (i.e. thinking, willing and judging) as being distinct from *vita activa*, judgment is closest to political activity. This concept was never developed because of her untimely death. Whereas isolation is obviously favourable to the faculties of thinking and willing, Arendt uses judgment in an idiosyncratic way, referring to more than one meaning, such as the faculty of the mind that entails the political activity in the public realm, and as the faculty of the mind as distinct from a feature of political life in order to understand the meaning of the past and reconcile people to what had happened, particularly in tragedies.

In *The Critique of Judgment*, Kant (1970: 18–44) refers to the judgment of beauty as the transformation process of particular subjective to the universal without a concept that can determind the object of judgment. For example, when I claim that something is beautiful, I do not claim that this thing is agreeable to me or merely state that the subject preference to this thing, but I am sharing that this thing is beautiful and everyone should recognise this (subjectivity universality). Arendt reads Kant in *Lecture on Kant's Political Philosophy* (1982: 70–72) to observe judgment as a mental operation in our mind that takes a stand on particular events or persons, claiming general validity by making reference to a community. In relation to the concept of politics, Arendt asserts that the activity of judgment has the most potential in the political arena, revealing it as the most political of the mental abilities of man (Wellmer, 2001: 165; Fine, 2008: 155; Hayden, 2014: 169–170). The political power of judgment, which Arendt called reflective judgment, transforms a private and non-communicative sense of individuality into a publicly communicative sense of political community (i.e. speech and action) that depends on the full disclosure and representation of the mental faculty:

“When one judges, one judges as a member of a community” (Arendt, 1992: 72; Cascardi, 1997: 109; Hayden, 2014: 167). Reflective judgment in politics reduces the radical discontinuity between the events of history and the apocalyptic image of the final judgment, sublimating them into a process and space in which agreement can be formed. However, the conception of judgment reopens the space of deliberation threatened by an overly agonistic aestheicisation of action, such that the final decision or consensus is not the *telos* or the end of action and of judgment; rather, it is a kind of regulative ideal (Villa, 1992: 298).

In *Introduction into Politics* (2005: 103), Arendt refers to ideology as the standard of judgment, and the prejudgment that is based on such standards. While Schmitt criticises ideology because it is aimed at deterring other ideologies, making impossible the distinction between groups of friends and enemies, for Arendt, the concept of ideology assumes that humans can render judgment only in accordance with standards of the ideology, while the failure of standards means “a nihilism inherent in our age, as a devaluation of vales a sort of twilight of the gods, a catastrophe in the world’s moral order” (Arendt, 2005: 103). The human faculty of judgment, in Arendt’s eyes, insists on making judgment without any standards (without a set of values that ideologies serve) because judgment is neither a compulsory nature nor a force. Standards are established from rules, not judgments, and if any judgment is derived from standards that mean that the faculty of judgment is inadequate for making original judgments. As a result, the character of ideology deters political activity from the freedom of creating new judgments, to the following of any standards that have already been set up.

3.2.1.2 Freedom and the New Beginning of Politics

The political way of life is not necessary for life, but it is fundamental to the freedom inherent in the activity of action. It is in fact an amalgam of political *lives* shared together in a matrix of human meanings in the exercise of freedom in action and speech, namely ‘a space of appearance’. The key idea is not only to appreciate the freedom of individual autonomy to speak, as people can speak whatever they please, but to fully realise the

comprehensive implications of everybody determining the world only from their own perspectives, with no individual person being able to grasp the full sense of reality or the absolute truth of the world.

Arendt separates freedom in the political realm from 'inner freedom', namely free-will, which is placed in the mental sphere, and liberation, which is conceived as freedom from the private sphere of the household. (The concept of inner freedom as free-will connects to the idea of sovereignty and sovereign power as discussed further in chapter 4.) Liberation, in Arendt's view, refers to one's own claim to be free from negative issues such as want and fear, which liberates humans from the necessities of life – the biological needs of the human condition of labour as separate from the human condition of action in political life (Arendt, 1958: 4). Arendt's idea of liberation is rooted in ancient Greek conceptions.

Arendt states that the society in which liberty resides is egalitarian, because liberty is the prerequisite for individual men to live together (Arendt, 1958: 5). For Arendt, the Greeks referred to the liberation of slaves from masters. However, she dismisses the existence of classes in such a way that liberty means masters who liberate themselves from the human activity of labour (e.g. housework) in order to prepare to live in the public-political sphere.[8] Moreover, Arendt cites the example of Plato's cave, where the philosopher liberates himself from the fetters that bound him (Arendt, 1958: 20; see also the discussion on the idea of Plato's cave in chapter 2). Thus, according to Arendt, liberation from labour in the private sphere not only frees one for living in the public sphere, but also the philosophical.

The concept of freedom, on the other hand, refers to a form of political organisation where the citizens live together under conditions of no-rule and without a division between rulers and ruled (Arendt, 2006b: 24). It characterises the idea of isonomy, referring to the equality of all citizens under the political institution, even though they were born unequal in other

[8] It is also interesting that Greek thought on liberty is primarily about the liberty of 'citizens' from dictatorship and tyranny. It is analogous to modern Europeans wanting to be liberated citizens free from tyranny from their governments, while refusing to allow the enfranchisement of immigrants.

respects. The principle of freedom is also related to the concept of a new beginning (as discussed in the section on Augustine and natality). Arendt states that “freedom was created when man was created” (Arendt, 1958: 177; 2005: 58). Unlike the activity of work, which is confined within the clear limits of the blueprint and the end product, action is boundless because the freedom of interaction and communication always brings about new relationships and entails new reactions to human affairs (Taminiaux, 2006: 167).

Man in his freedom, in distinction to the categories of means and ends, can interact with others by speaking and persuading, confronting the opinions of the others and depending on their presence without any compulsion, force or rule (Arendt, 2005: 117). In totalitarianism, where violence rules absolutely, voices are literally absent (Owens, 2007: 5), and man’s capacity for freedom is destroyed thorough the isolating process of individuality (Zaretsky, 1997: 215). The newcomers and beginners respond to action on their own initiative, disclosing who somebody (not something) is; in this context, “to act... means to take an initiative, to begin” (Arendt, 1958: 177), which is to say that action is a continual form of rebirth (Arendt, 1969: 82).

Arendt binds the idea of the new beginning of action in politics to the concept of authority, claiming that it is Roman in origin, and she makes much of this fact. In the essay *What is Authority?* (2006a: 91), Arendt said her understanding of authority is different from the understanding of “authority in general”, which binds authority with the hierarchical relationship of power, wherein the character of persuasion, compulsion, coercion, violence, command, and order-obedience can be found. Authority, according to Arendt, is grounded on advising, initiating, proposing, and guiding in order to generate consensus. It projects a picture of the responsibility of guidance, and the respect of people’s rights and will in this regard.

According to Arendt, the Romans gave the word *auctor* (plural: *auctores*) or “author” to a man who “inspired the whole enterprise” (Arendt, 2006a: 122), and whose spirit is the part of Roman customs, laws and institutions (Hammer, 2002: 137). In this sense, Arendt’s account of the *auctor* refers to

the augmenter of the city of Rome, a person who was much more than a builder (*artificer*), and who inspired the whole enterprise of the city. Arendt claims that Roman tradition preserved the true meaning of the authority of the past, referring to the capacity of initiating, proposing, and giving guidance, rather than commanding and mandating (Klusmeyer, 2014: 141).

However, it might be argued that authority is associated as much with the etymological history of Greek word *archē* which refers to 'origin' and 'ruling'. Rosler (2005: 91) claims that for Aristotle authority appeals to the word *archē*' (rule), which essentially belongs to willing subjection or subordination predicated on the willing support or recognition of subjects in both the domestic and political realms. Aristotle's *Politics* refers to the word '*archē*' as political/public rule, where rulers learn by being ruled, which is distinguished from a free man in the domestic rule of the household (Humphreys, 2006: 337). Aristotle accommodates the concepts of political authority and obligation by addressing the moral connection between authority and obligation which entails that the idea of law implies the idea of a moral duty to obey it on the part of those who are subject to it (Rosler, 2005: 91).

In this respect, *archē* is the authority of a political ruler to the origin of rule by command and coercion rather than giving advice or guidance. This way of understanding authority is incompatible with Arendt's comprehensive thought of authority. Nevertheless, Arendt addresses that political action inevitably results in both the unpredictability of the outcome of free acts and the irreversibility of the process of action. Arendt argues that the remedy to these potentially divisive and dangerous aspects of political life is not any natural process, but instead the capacity of humans to make promises (the remedy for unpredictability) and to forgive one another (the remedy for deeds which cannot be undone). These capacities can be realised only in the public sphere, since human beings cannot make promises and forgive each other autonomously; by definition, they necessitate the participation of others (Arendt, 1958: 254–264).

3.2.1.3 Plurality, the Public Sphere and the Repudiation of Neutrality

Plurality is specifically the condition of all political life. Arendt referred to the word plurality in a number of senses. In the basic sense, it implies that political activity cannot be done alone or in isolation. She wrote that the human condition of action is “the only activity that goes on directly between men... men, not Man live on the earth and inhabit the world” (Arendt, 1958: 7). It also relates to the idea that a political consensus is not derived from a monopolised opinion or perspective, but from various views due to the experiences of each participant, which are beyond the control of any actors. In this sense, the concept of plurality is the phenomenon of official and unofficial human assembly in the common space wherein free individuals can assert themselves politically by speech and action.

Arendt further maintains that the public self is not fundamentally defined as a bodily set of functions or life processes that concern only immanent and private matters or serve a utility or necessity, but that the public self exists for the sake of human relationships, which serve as the centre of meaningful speech and action (Arendt, 1958: 111). For Arendt, politics exists in the public sphere, as it does in Schmitt’s idea of ‘the political’. However, ‘the political’ for Schmitt is neither concerned with the speaking activity nor freedom, rather it refers to the distinction between public friends and enemies, decided by sovereign power and not by free agents, which gives rise to the possibility of war and violence. Arendt’s conception of politics, on the other hand, implies the political or public freedom of men who enjoy their political life beyond the limited boundaries of the individual or private sphere. (Details of Schmitt’s idea of ‘the political’ are presented in the following section, and his conception of sovereign power in the chapter on sovereignty.)

Plurality, the idea of political men living together in the public sphere, is distinct from neutrality. Neutrality, from Arendt’s point of view, refers to the *vita contemplativa*, which is the lot of philosophers who enjoy a full-time life of free-will, not only in terms of leisure time, but also in terms of neutrality and refinement in a quiet life in accordance with the rhythms of nature, and

with changeless and deathless repetition, posited in the context of eternity (Arendt, 1958: 96). This philosophical life does not need the political space of plurality, and life can be eternal and natural not in the human condition but in the realm of *vita contemplativa* that contains the life of the philosopher, who enquires about the nature of human outside the *vita activa*. Consequently, Arendt expressed her ideas in an interview (Hannah Arendt, "Zur Person", 2013) and in *Between Past and Future*: that she is a political theorist, not a philosopher. Arendt also stated that philosophers since Plato, except Kant, also expressed their ideas as political theorists, not as philosophers. This is because philosophers can be neutral and objective with regard to nature, and their thinking is for all mankind, but a political creature cannot maintain such neutrality.

3.2.2 Arendt and the Ancients

Arendt admitted in an interview printed in *On Hannah Arendt* (1979) that she personally liked Greek antiquity, and not its Roman successor. This might be because Arendt sees the Greek *polis* as the prototype of the human condition of action, where public free debates outside the assembly could be found (Arendt, 1958: 13, 26), while Roman citizens lacked the imagination of the political way of life in the public space outside of assemblies (see chapter 2). However, Arendt argues in *Introduction into Politics* that apart from "the experience of action as starting a new enterprise in pre-*polis* Greece", ancient Greece "lost sight of man as an acting being", and she there accepts that the Roman tradition played an important role in seeking out new and appropriate politics (Arendt, 2005: 60). These statements show that while the ancient Greeks provided the touchstone of her concept of political action, Arendt also criticised some of their political assumptions and conclusions, and she acknowledged that Roman antiquity has not ceased to matter in respect of providing conceptions of politics of sustained value. Her nostalgia for both the Greek and Roman traditions stems from her eagerness to find the best model for a new political community, which was the same purpose for which modern writers such as Montesquieu and the revolutionary John Adams had turned to antiquity (Arendt, 1979: 331).

This section challenges previous literature such as Canovan (1977: 62), Kateb (1984: 37), Dossa (1989: 64) and Benhabib (2003: 19–23) that only refer to the straightforward influence of the Greek tradition in Arendt's political theory. I firstly suggest that both Greek and Roman antiquity have had an influence on Arendt's concepts of action and politics, whereas Schmitt is more exclusively grounded in the Roman paradigm. Moreover, I believe that Arendt's political thought is not only determined by and influenced from the ancient Greek thought, but it also shows her authorial power in reconstructing and playing with the Greek tradition in accordance with her own standpoints toward the critique of modernity.

3.2.2.1 Political–Public Realm: the Reconstruction of Ancient Greek Thought

As mentioned in the previous section, the activity of politics belongs to the human condition (*vita activa*) which "is loaded and overloaded with tradition" (Arendt, 1958: 12), and the tradition that is behind this term is Greek in origin. Arendt differentiates the *vita activa*, the activity of human beings, from the *vita contemplativa*, the activity of the philosopher, by tracing back to the Greek tradition, without reference to Roman antiquity.

Arendt refers to the specific origin of *vita activa* in the Aristotelian *bios politikos*, which means a way of life devoted to public-political matters. Aristotle divided a life that is full of freedom, which he called a way of life (*bioi*) or authentic life (*bios*), into three categories: the beautiful, the political and the philosophical contemplation (Arendt, 1958: 13). The beautiful life is primarily orientated towards Beauty, which is neither necessary nor useful, the political life to the Good, which produces beautiful actions, and the philosophical life to Truth, which is the life of inquiry, devoted to eternal and everlasting beauty without any interference or change, although all three of these are bound up in different ways with each form of life. Originally *bios politikos* was the original meaning of *vita activa*, implying the political life in the realm of human affairs that stressed action (praxis).

These three ways of life are different from a life devoted simply to propagating its own existence in the absence of freedom and joy: labour and the working life. Labour is the life of the woman and the slave, "coerced by

the necessity to stay alive and by the rule of his master" (Arendt, 1958: 12), which is the meaning of the biological life (*zōē*). Working life is the life of the craftsman or the master. Arendt noted that working life does not directly serve the biological necessities of life; rather, it is the life for producing artificial things. While the end of labour exhausts the power of labour itself, the product of working or a craftsman not only ends with a product that has exhausted his power, but also becomes a means to reproduce labour power, increasing from a demand for multiplication in the market which is "the art of earning money to his craft" in Plato's sense (Arendt, 1958: 143; the political theory of Plato is discussed in detail in chapter 2). Arendt also clarified that *work* and *action* cannot be distinguished in ancient Greek; both are called *erga*, but they are lexically distinguished into *poiein* or *poiēmata* for work and *prattein* or *pragmata* for action – in modern terms, *poiēmata* is *poiesis*, and *pragmata* is praxis – the latter term can be seen in the work of Plato and Herodotus (Arendt, 1958: 19).

Unlike Schmitt, who asserts an idea of politics ultimately derived from the ancient Greeks notion of a public enemy, Arendt reconstructed the *polis* of Aristotle in terms of the idea of action in the *vita activa*, and associated the life of the philosopher with the idea of *vita contemplativa*. The idea of life without freedom (i.e. that of the slave and craftsman) was transposed to the activities of labour and work in the *vita activa*. Arendt repeated that the term *vita activa* is more closely related to the term *askholia* or 'unquiet' in Greek, which refers to the dichotomy between the unquiet of *vita activa* and the quiet of *vita contemplativa* appearing in the work of Aristotle, rather than the distinction between the political (*bios politikos*) and the theoretical ways of life (contemplation, *theōria*), because Arendt's *vita activa* included labour and work, which are the life that is necessary and without freedom, while *bios politikos* is the life that is full of freedom and not necessity. Arendt also referred to the separation between the public and the household spheres in the thoughts of Plato and Aristotle, who held that the household is a pre-political phenomenon wherein freedom is excluded and which is thus free from politics; it is the natural association with its locus in the family group, and thus distinct from and contrasting to the political organisation of the *polis*

(Arendt, 1958: 13, 31, 37; details on the distinction between the political and household spheres of Plato and Aristotle are explained in chapter 2).

Concerning the way of life in the political sphere, the practice (action or *praxis*) of the Greek *polis* enters into the ideas of Arendt. She is explicit: “the political way of life… is due to the Greek understanding of polis life, a very special and freely chosen form of political organization and by no means just any form of action necessary to keep men together in an orderly fashion” (Arendt, 1958: 13). For Arendt, the Greek city-state was understood as the form of political sphere where citizens lived together without rulers and ruled, in a condition of what is called ‘isonomy’, not ‘democracy’ (Arendt, 1990: 30). Thus, Arendt does not use the idea of isonomia or isonomy in the ancient sense in opposition to a form of the single individual (a few, the rich, or the poor), but of all citizens in the political arena (see chapter 2).

In Greek thought and practice, the *polis* was a place where freedom was manifest by expressing speech germane to political life; by participating, speaking, exchanging opinion, debating and persuading, one contributed to decisions on common matters (Villa, 1998: 149). Arendt drew upon the Athenian distinction between the political sphere of the *agora* and the private space of the *oikos* within the *polis*, which was a distinguishing feature of the ancient Greek tradition and which divorced politics from social and economic concerns. What really distinguished the Greeks from the barbarians and slaves, according to Arendt’s reading of the tradition, was that the:

> Greeks, living together in a *polis*, conducted their affairs by means of speech, through persuasion, and not by means of violence, through mute coercion, [whereas] barbarians were ruled by violence and slaves forced to labor... they did not live with each other primarily by means of speech (Arendt, 2006a: 22).

The decisive distinction between politics and household also explains, according to Arendt, why the implicit threat of violence inflicted by the master on the slave is justified in Greek thought. When the concept of the slave is as

the ideal consummation of labour (*zōē* llife) in the human activity of the private sphere, force and violence are justified in this sphere as the means to master necessity.

Arendt mentions that the ancient Greek word *politeuesthai* described an agent who acts politically, or one who engages in political activities. This old Greek word was used as a 'middle-voice', which means as a subject of a sentence that can be both an agent of an action and one affected by action in some way. This is significant. "In Isocrates, the middle-voice infinitive *politeuesthai* means 'to be citizens together' or 'to engage in politics together…' In Plato, *politeuesthai* means 'to meddle in politics'" (Gronbeck, 2004: 50-51). I suggest that Arendt used the word *politeuesthai* in its active sense as a kind of 'middle' term helping to distinguish *political action* from the passive *labour* and the active *work*. The activity of politics is unproductive because it is an 'end in itself'. The activity of labour, on the other hand, is conducive and useful to the household although it is often passive (Arendt, 1969: 40), and within the area of work, workers (e.g. craftsmen, architects) produced and exchanged their products, distinct from the political activity in the *polis*, the meeting place of citizens in an unproductive *agoreuein* and *politeuesthai* of political affairs (Arendt, 1958: 160).

However, Arendt argued that Aristotle's idea of the *polis*, following Plato, was aimed at the transcendence of life into the 'good life'. In this respect, politics is a means to a higher end (the good life), a necessary step away from the necessities of life in the household (mastery and slavery) (Arendt, 1958: 37; 2005: 114; see Aristotle's idea of politics as the 'good life' in chapter 2). For Arendt, the true meaning of politics is not the 'good life', with all the individualistic or isolate connotations that implies, but the action and speech of people when they come together in the *polis*, so that politics is an 'end in itself' (Arendt, 1958: 37, 206). The *telos* of action and speech according to Aristotle lay in the activities themselves, but he thereby contradicted his own view that they were aimed at the good 'in itself'.

3.2.2.2 Augustine and Natality

As referred to above, Arendt's human condition of action is an essential – and essentially – human attribute referring to undertaking something new. The idea of a new beginning is close to the concept of natality. Arendt refers to natality in three ways. Firstly, it is under a natural category in terms of the birth of an individual life. The second way reveals the principle of beginning in the three aspects of the human condition – labour, work and action – in order to provide and preserve the world for newcomers. The third feature is connected to the second, particularly involved with the human condition of action. Arendt states that amongst three aspects of the human condition, action has the closest connection to natality because it is the capacity of beginning anew that is inherently possessed in all newcomers, even though they are not the same. Even though human beings are mortal, new men are born and promise new beginnings, showing the unique features of each man by performing new and unexpected things on their way through life within plurality (Arendt, 1958: 9, 11; Dossa, 1989: 74). The unexpected actions of new beginnings show that humans cannot be ruled or locked out by society or the previous actions of ancestors.

The Augustinian concept of natality is vital to understanding Arendt's concept of politics. It is interesting that Arendt refers to Augustine, a Roman theologian who was the focus of her doctoral dissertation, in terms of his complex position. While a Roman citizen and a Christian, Arendt considered Augustine to be more similar to Aristotle, the quintessential Greek philosopher (the particular influence of Augustine's political thought on Arendt with respect to the Greek and Roman traditions is elaborated upon in the following chapter). Arendt provides a definition of natality in *Love and St Augustine* by distinguishing it from the mortality of human beings that is so characteristic a concern in Greek philosophy (Arendt, 1996; Astell, 2006: 375). Contrary to Heidegger who promoted the concept of 'thrownness' beside his concept of *Dasein*, whereby the existence or presence of a human being as Being-in-the-world is "something from which it has already fallen away" (see Brunkhorst, 2000; Astell, 2006: 375; Birmingham, 2006), Arendt showed that the condition of natality transforms the private story of

mortal individuals in the pre-political sphere to one of immortality and distinctiveness in the political sphere (Arendt, 1958: 184; Fry, 2014: 27, 34).

Arendt cites Augustine's *City of God* (*De civitate Dei*) to demonstrate that natality includes the terms *creatus (creates)* and *initium* (beginning). According to Arendt, Augustine defines the birth of human beings in two stages: the birth created by God, and recreated through Jesus Christ; and being born of a human mother as a descendant of Adam. The first kind of relationship is involved with the notion of *creatio ex nihilo* of the omnipotent God, which Arendt considers as the idea of *creatus*. Literally, the Christians' concept of *creatio ex nihilo* substantiates the omnipotent power of God, who freely formed all things out of matter He willed into existence. Human beings can also produce things out of preexisting matter, but they are begotten, whereas God is ontologically distinctive because He is uncreated, has no beginning, and is unbegotten (Japhets, 2016).

Augustine was not the first theologian to attempt to explain the omnipotence of God; for example, he was preceded by Athenagoras (133–190 CE), Tatian (120–180 CE), Thophilus of Antioch (120–190 CE), and Irenaeus (140–202 CE). However, the idea and doctrine of *creatio ex nihilo* finds its mature form in Augustine's writings. In *Confessions* (1.2.2) Augustine states that God is the author of all things, since "nothing which exists could exist without Thee [God]". As recounted in *Genesis*, in the beginning God created heaven and earth; according to this, God creates all things, including man, in six days of beginning, not *in* time, but *with* time (Christian, 1953: 2). God, for Augustine, is "most highest, most good, most potent, most omnipotent; most merciful... most present, most beautiful, yet most strong, stable, yet incomprehensible; unchangeable, yet all-changing; never new, never old" (Augustine, *Confessions*: 1.4.4).

For Augustine, God's creation is good and contingent on the Triune Creator: Father, Son and Holy Spirit. In passage 13.5.6, he wrote:

> And under the name of God, I now held the Father, who made these things, and under the name of Beginning, the Son, in

> whom He made these things; and believing, as I did, my God as the Trinity, I searched further in His holy words, and to, Thy Spirit moved upon the waters. Behold the Trinity, my God, Father, and Son, and Holy Ghost, Creator of all creation (Augustine, *Confessions*: 13.5.6).

Augustine continues that the Word was in the beginning with God; so, we can say in other words that the Word is God (Augustine, *Confessions*: 7.9.14). After human beings were created, 'God the Word' became the light of every man who comes into the world. He was made flesh and dwelt amongst humans, born as Jesus Christ to the Virgin. In this sense, Jesus Christ is the Only Begotten Son of God; He is in the glory of 'God the Father', being the same substance with God. Jesus Christ was sent for the confessional purposes of man, the remission of sins of human beings, in the sense of the Mediator between immortal just One (God) and mortal sinners (human beings) (Augustine, *Confessions*: 7.18.24).

For Arendt, Augustine's concept of God as the Creator of human beings – God as the Supreme Being who created everything in the world from nothing (an absolute beginning, *ex nihilo*), and the redeeming of Christ from death – are the historical events that prove created life is dependent on its source, on God as the Creator (Arendt, 1996: 103; Astell, 2006: 384).

The second stage of the relationship is the idea of an 'earthly city' where the descendants of Adam depend on themselves and each other, independent of the Creator God (Arendt, 1996: 100; Astell, 2006: 384). The term 'earthly city' is the counterpoise to the eponymous *City of God*, which Augustine distinguishes as the real faithful way of people who truly love God above all else, and who are marked by the standard of the Spirit as distinct from the denizens of the 'earthly city' – the secular, worldly people who live by the standards of the flesh (Augustine, *The City of God*: 14.1–14.4). What distinguishes these two cities are the different kinds of love: the City of God was created by the love of God, and the earthly city was formed by self-love, the root of sins, reaching the point of contempt for God (Augustine, *The City of God*: 14.1–14.4, 14.28).

Arendt interprets Augustine to infer that the relationship between human beings in this form is described by 'imitation' which makes sense of the idea that everyone equally shares the original sin from birth. Man needs the Creator not only to find the meaning of his own existence, but also to relate back to God and His love toward His creatures in the first place (Kampowski, 2008: 205). Arendt perceives that the love of God is antipolitical and worldless because He only creates the world, but has nothing of the world. However, the imitation of His love by humans is the activity of action because it appears in the world as the pursuit of acting between people.

This comes to the point whereby human beings contain the feature of natality. By referring to the writings of Augustine, Arendt argues that human beings are born of their mother, and enter into an already existent network of relations, so that the existence of human beings is never isolated. Natality is the decisive fact whereby men can be conscious and remember that they enter into the world through birth (Kampowski, 2008: 208). I think Arendt's notion of the human activity of action and speech implied the idea of natality as the second birth in terms of the imitation of the love of God in the 'earthly city', which connects the beginning of human beings to the word *initium* rather than *creates*. The remembrance of birth shows that human beings as newcomers have freedom of action to start a new thing, and to change and alter after coming to the earth, whereas the Creator cannot be changed in any respect (Arendt, 1996: 52). This is the idea of the gratitude of life that springs from the remembrance of birth, "for a life cherished even in misery", not from desire (Arendt, 1996: 45, 51; Astell, 2006: 375; Kampowski, 2008: 207, 222). As a result, Augustine's concept of natality implies that the character of political action is inherent as a condition of all human beings.

3.2.2.3 The Ancients and the Critique of Modernity

While the previous sections refer to the engagement of Greek and Roman traditions in Arendt's conception of politics, this section is involved with Arendt's criticism of modernity's misconception of Greek political theory and practice that integrates political issues into the non-political sphere. I suggest that this misconception is backed up by three explanations. Firstly, I discuss

the study of Pitkin (1998: 10, 13) that examines the emergence of a new domain of modernity called 'the social', where the ancients' idea of the distinction between the spheres of politics and labour becomes blurred. I also suggest two other explanations in this thesis: that on the one hand, Arendt criticises Plato's and Aristotle's misconception of Greek tradition that promoted the contemplative life (*vita contemplativa*) to be superior to politics, which is influential to the Marxists' support of the hierarchy between labour and political philosophy; and on the other hand, the Marxists' misconception of the separation between philosophical and political sphere in classical theory manifests how Arendt gives an account on the term 'ideology', which combines the issues of philosophy and politics together and eventually distorts both meaning of philosophy and politics themselves.

1. The Social

As mentioned in the previous section, Arendt divided the human life into *zōē* and *bios* by using Greek terms (Arendt, 1958: 96). *Zōē* is used in the sense of biological life in the human condition of labour within the realm of private sphere; it is essentially animal life, and the activity of this type of life is determined by the necessity to stay alive. *Zōē* is limited by the needs of biological life that compel human beings from nature to live together in the realm of economic production and distribution, and of taking care of the body by means of the division of labour, which is inadequate as a foundation for human political life.[9]

Bios, on the other hand, is the life of freedom within the political sphere. It signifies the condition of the human being as a speaking and cooperative being whose capacities for speech and action show the capacity for lives having greater meaning than mere self-preservation and propagation, for lives that can escape from the concept of necessity. In this context, the human life in the private sphere represented the necessary of life in household called *zōē*; that is, men had to live together since they were driven by needs (Arendt, 1958: 30). The human life in the public sphere,

[9] This concept was elaborated upon at length by Agamben (1998), showing how violence can invade the political realm in modernity.

namely *bios*, represented the distinctive trait of freedom that occurred at the expense of the private sphere.

The misunderstanding of the concept of politics in modern times is involved with the emergence of the social in the political sphere (Arendt, 1958: 33-37), which in Schmitt's eyes is the invasion of economic issues into the public sphere might become a part of politics if it reaches the ultimate degree of the distinction of friend and enemy, the distinctive degree of the possibility of killing. The social, for Arendt, is not a realm of the public; rather, it is Roman in origin and has a root in the Latin usage of the word *societas*, which means an alliance between people for a business and private purpose (Arendt, 1958: 23). The matter of the social in ancient Greece was wrongly embedded, according to Arendt, in the political sphere in later commentaries by medieval philosophers. It arose from scholasticism, particularly the rendering Thomas Aquinas gave of Aristotle's phrase in *Politics* that "man is by nature a political animal" (Aristotle, *Politics*: 1253a), whereby "man is by nature political, that is, social" (Arendt, 1958: 23). During this time, the meaning of social was deducted to a society of mankind and became a general meaning of a fundamental human condition. In her eyes, "this unconscious substitution … betrays the extent to which the original Greek understanding of politics had been lost" (Arendt, 1958: 23).

Arendt continues that the misunderstanding of the social has become more confusing with the expansion of economic activities in modern times. The increased pertinence of household activities in the public sphere (i.e. in capitalist economies, whereby the private sphere and government itself is part of the machinery of capitalist production and consumption), changes the modern understanding of social to be the economical organisation of a 'collective housekeeping' or 'collective of families', and that of 'nation' to be the political form of the social (Arendt, 1958: 28–29). The rise of the social absorbed the family unit into corresponding social groups where all members are equal. In Arendt's view, this modern equality is different from the concept of equality in ancient times, because it is based on the conformity of society rather than 'a fiercely agonal spirit' in politics (Arendt, 1958: 41). This

conformity relies on large numbers of people conforming to consensual ideals despite their individual multiplicities, which eventually develops an almost irresistible inclination toward despotism, the despotism of majority rule. To this end, all substitution of life processes traditionally in the private sphere were transposed to become valid in the public sphere in modern society. The social as a new domain of the private extended to economic activity, resulting in a reconfiguration of the distinction between the public and the private spheres (Calhoun, 1997: 235).

One of the indications that modern society constitutes the public organisation of the life process is that the new social realm transformed all modern communities into societies of wage-earners (Arendt, 1958: 46). In this context, politics became nothing, but a function of society and social interest which served only the activities of labour processes (Arendt, 1958: 33). Consequently, modernity reduces politics from the Greek idea of an end in itself to be a means to the achievement of utilitarian ends associated with human labour; politics as a space of freedom and action is lost, to be replaced by the politics of economic necessity and animal labour.

Arendt is critical of the modern tradition of social contract theory, which advocates the emancipation of the human from animality (*zōē* life in the state of nature) in a political society, but then returns him to the plurality of the animal, subjected to sovereignty and engaged in non-political association in terms of the social contract (Arendt, 2005: 95; Vatter, 2006: 147-148). Arendt argues that this type of plurality is valid only where large numbers could be counted statistically in political matters. This implies that modernity has 'the rule of nobody', which does not mean it has no rule, but the rule of government – which is mostly bureaucracy – is exercised by every citizen.[10]

[10]Arendt argues that bureaucracy is the attraction of violence. It is the modern form of government that is governed by nobody with command and obedience. In this type of government, power is monopolized, and citizens are deprived of freedom and action, which finally leads to the weakness of the political form itself (Arendt, 1969: 85–87). A famous exemplification of bureaucratic government was the case of Eichmann who was characterised by Arendt (who reported on his trial) as a pure bureaucrat and not a moral agent or indeed an anti-Semite in the traditional sense, the crux of her description of 'the banality of evil' in modern states (Greenberg, 2007: 84–87).

In this milieu, rather than being ‘end in itself’, politics becomes only a means that allows the use of violence as the monopoly of government to protect the social (society) (Arendt, 1958: 31). Violence spills over from the private into the public realm and precipitates trouble that cannot be solved by recourse to the Greek paradigm. Unlike Schmitt, who asserts the possibility of violence on politics, Arendt argues that if politics exists within the social realm, it will result in the most cruel and tyrannical versions of political violence, aiming to reduce man “to the level of a conditioned and behaving animal” (Arendt, 1958: 45). This kind of situation is unacceptable for Arendt.

2. *Vita Activa* and *Vita Contemplativa*: Tackling the Problem of Hierarchy and Ideology

The idea of the philosopher in classical Greece, particularly in the thoughts of Socrates, was understood primarily as an aesthete, a lover of *beauty*, not of *goodness* or *fitness* as actually envisioned in Plato’s *Republic*. This shows that the duty of the philosopher was the contemplative activity (*vita contemplativa*) in a philosophical state of mind, an activity of an individual who searches for nature and the neutral explanation of the world, not the political activity of plurality in the public sphere, or the working activity in the private sphere of the household. Arendt’s critique of ideology as the standard of judgment that distorts the meaning of politics, and her understanding of neutrality as a faculty of contemplation distinct from politics, are backed up by the distinction between *vita contemplativa* and *vita activa* in the Greek tradition.

In this subsection, I examine the problem of the exaggeration of the contemplative life as another misconception of politics in modernity. Unlike the issue of the social that is merely modernity’s misconception of ancient political thought, Arendt asserts that the exaggeration of contemplative life arose from Plato’s and Aristotle’ misconception of ancient political philosophy, and that is has had an influence on modern theories like Marxism.

Arendt confirms that the philosopher's life is not superior (or inferior) to politics and other human activities, although it is eternal and distinct from politics (Arendt, 1958: 20). Socrates, for example, affirmed the implications of philosophy to the immortality of political life from the moment that the thoughts of philosophers appear and connect to the world through their writings or speeches (Arendt, 1958: 20). In *The Life of the Mind* (1971: 172), Arendt refers to Socrates as a philosopher who connected with the community by teaching. It is not that Socrates himself knows the answers and makes them perplexing to others; rather, it is his capacity to infect others with the perplexity that he himself experienced.

The problem emerged when Plato and Aristotle praised the activity of contemplation as enormously superior to other activities. Plato's idea of the cave represents the reduction of the meaning of politics to be a space that clever people must escape from in order to discover the clear sky of eternal ideas, and claimed the superiority of the life of philosophers, who can escape from the cave, which is symbolic of unenlightened ignorance, to the world outside the cave, which is the sphere wherein they can fulfil their highest ability – the *vita contemplativa* (Hull, 2002: 12; Arendt, 2006a: 17; see Plato's idea of cave in chapter 2).

According to Arendt, Aristotle distinguished the philosophical from the political life, as the former is a speechless and quiet activity, whereas the latter is 'un-quiet' (Arendt, 1958: 14, 1990: 98). For Arendt, Aristotle praises the life of philosophy above all other lives. She writes "Aristotle's very articulation of the different ways of life… is clearly guided by the ideal of contemplation (*theoria*)" (Arendt, 1958: 14). This is because, in Arendt's view, Aristotle sees the contemporary life as a set of 'philosophical standards' that are comprised of a life with freedom (*skholē*) from the *vita activa* – the freedom from all necessities of life and of the political activity controlled by others (Arendt, 1958: 14, 1990: 102). This is accompanied by the idea that the contemplation is the place for the truth which is transcendent speech and reason in political life. According to this view, every kind of activity must eventually culminate in the philosophical life.

Nevertheless, if we track back to Aristotle's work on *Politics*, we may see a critique on this point. In the passage *1324a* of *Politics*, Aristotle questions whether the political or contemplative life is more desirable and superior. He answers that both kinds of life are right on some points and wrong on others. While it is true that life of free individuals in contemplation (i.e. the contemplative life) is inherently better and superior to the political life of menial duties, not every form of authority of the political life is dependent on such menial duties. Aristotle posits that the life of goodness, the excellent life, or the best of all goods is the most desirable and superior, whether in the form of the contemplative life or political life.

The ability and capacity to achieve goodness might be achieved by either path, according to individual talents and opportunities, or the external context in which the individual operates (Aristotle, *Politics*: 1325b7). To give a practical example, if one views the Alexandrian Empire as good, the best course for Alexander the Great, with his charisma and military genius, was to engage in the political sphere, rather than retiring to a contemplative life in the mountains of Greece; for a profound and gifter thinker such as Artistotle himself, a bureaucratic career in public life would have wasted one of the stellar intellects of world history.

When viewed from the perspective of pragmatic expediency, the meaning of politics as a distinct realm from the contemplative or private life is lost; action is recognised both as a necessity for life in the same way as labour is, and as a servant of the apolitical contemplation of philosophy that aims at the highest possibility of human destiny (Arendt, 1958: 14). Arendt wrote that politics for Platonism and Aristotelianism has its origin in the prepolitical data of biological life and ends with the postpolitical, highest possibility of human destiny; "since it is the curse of prepolitical necessities to require labouring, we may now say that politics is limited by labour from below and by philosophy from above" (Arendt, 2005: 83). In this way, the contemplation of life (*vita contemplativa*) was left as the only truly free way of life and performed as the freedom from any activities in *vita activa*.

Arendt continues that, in modern theory, Marxisant thought resurrected the Greek hierarchy of the relationship between *vita activa* and *vita contemplativa*, but in inverted form (Arendt, 1958: 17; Breen, 2007: 352).[11] In the open statement of *The Communist Manifesto* (1848/1970: 30), Marx and Engels noted that "The history of all hitherto existing society is the history of class struggles". According to this view, the transformation of society is the process of transformation of modes of production which is driven by a struggle of class against class that comes about throughout history.[12] With regard to a capitalist state, class antagonism lies in the form of the struggle between the bourgeoisie (oppressors) who own capital and the means of production, and the proletariat (oppressed), the working class who produce the wealth misappropriated by the bourgeoisie. Due to their opposite interests, these classes are in constant opposition to each other. The transition from the capitalist mode of production to the communist society arises from a social revolution of the working class against the exploitative nature of capitalism, which eventually ruins all of the contending classes, which are obsolete in the culmination of capitalist, technological society (Martin, 2015: 58).

According to Arendt, Marx's ideal society after the revolution demonstrates a combination of the classless and stateless society where labour humans leap from the realm of necessity to the freedom of productivity (Arendt, 2006a: 35). This modern thought elevates labour to the top of the hierarchy, making labour higher than work or political action, and glorifies violence as a 'midwife' of a new classless and stateless society. Labour, in this sense, is neither the Greeks' idea of the necessity of life, nor that of the productivity of work that Arendt applies in her concept of the human condition of labour and work, but is known as the labour of productivity.

[11] Arendt criticised Marx's inversion "the traditional hierarchy of thought and action, of contemplation and labor, and of philosophy and politics" (Arendt, 2006a: 18).

[12] In Marxist theory, the different modes of production from the first form of ownership (i.e. tribal communities) to capitalist states corresponds to relations of production, and productive forces (labour power and means of production, along with the various stages of the development in the division of labour, the different forms of ownership, and internal and external intercourse), which eventually shape the various forms of social structure in human organisation (Marx and Engels, 1846/1974: 43–44).

Moreover, as mentioned in section 3.2.1.1, Arendt criticises ideology as judgment from standards which prevents the political judging freely. While Schmitt's criticism of ideology is the counter-attack of liberalism, Arendt's account of Marxism is an exemplification of the feature of ideology which originates from the indistinguishing of two distinct issues: politics and philosophy. Marxist theory does not only downgrade philosophical contemplation (*vita contemplativa*) to be below the labour power, it also pushes philosophy into the realm of politics in the form of political philosophy, making it the duty of the philosopher to change the world rather than merely interpret it. According to Arendt, this makes political action become ideology, being more theoretical and dependent on a set of Marxist standards instead of being the freedom of speaking and acting, and ends up with the loss of the significance of both politics (action) and philosophy (thought); "The end came when a philosopher turned away from philosophy so as to "realize" it in politics." (Arendt, 2006a: 17, 18, 20, 30). To this end, Marxism became subject to the characteristic of 19th-century ideologies that ended in the devastating logic of totalitarian regimes and the promoting of violence that was not bound to the constraints of reality (Arendt, 2005: 74).

Nevertheless, Arendt's interpretation of Marx recalls two discussions about Marxist ideology. Firstly, in his most famous book *Capital*, volume 1 (1867/1976: 916), Marx wrote "Force is the midwife of every old society pregnant with a new one". Arendt views 'force' (i.e. violence) as intrinsic to social progress in Marxist revolution, but many scholars (particularly Marxist apologists) view this interpretation of Marxist revolution as fallacious, suggesting that Marx and Engels, and even Lenin, allowed for the possibility of the political class struggle of the proletariat against the bourgeoisie as being driven by the force of economic power in peaceful transformation, not necessarily requiring physical violence (see Schaff, 1973; Singh, 1989).

While this may seem absurd if viewed from the perspective of classical Marxism and the carnage of the Russian Revolution, prominent European Marxists such as Kautsky and Bernstein suggested a 'passive attitude' of a 'wait and see' position, which refers to economism as a kind of mechanical

determinism that tends to promote the idea of an automatic evolution of communist society. According to this idea, Marxists can just wait for the inexorable economic collapse of capitalism, without the need for violent revolution (Simon, 1999: 15; Callinicos, 2007: 111–115). Gramsci gives a place for other elements against economism in the analysis of the transitional process, for example, history, culture, ideology, morality and intellectual (Boggs, 1984). For Gramsci, a violent struggle may occur in a short period in order to take control of fragile, less developed state. However, Gramsci is more concerned about how to gain a hegemonic position over society.

Additionally, the process of the transition from the capitalist state to the communist system in Marxist visions are not as simple as envisioned by Arendt. Regarding the transitional process, Marx and Engels suggested *a dictatorship of the proletariat* as a revolutionary reconstruction of society of the working class, known as a proletarian revolution, including the creation of a democratic state constitution and producing the political supremacy of the proletariat (Herres, 2015: 25). Naturally this subject has been of intense concern to Marxists. Lenin suggested that the dictatorship of the proletariat must be led by a revolutionary vanguard of Marxist intelligentsia dedicated to the communist system, who must lead the rest of the working class. By this, state capitalism (also known as state socialism) as the post-revolutionary, transitional state has to be constructed in order to guide and control all of state policy and the economic system.

To conclude my examination of Arendt's conception of politics, the Greek *polis* gives a systematic engagement of politics as an acting and speaking area where people have freedom and enjoy their conversation with others, and Augustine's idea of natality shows the implication of freedom in politics. However, this section indicates that Arendt does not only absorb this tradition into her political thought, but also played with it and interpreted it in a way that is compatible to her thinking. I now move to compare this concept to Schmitt, who I argue gives a substantively distinct concept from that of Arendt.

3.3 Part II: Schmitt's Conception of Politics

3.3.1 Schmitt's Conception of 'the Political'

3.3.1.1 Friend and Enemy Distinction: 'the Political'

Schmitt's conception of 'the political' is also placed in the public sphere, the same as Arendt. However, while Arendt refers to politics in the sense of freedom and the plurality of speech and action in the public sphere with the common perception that no one can grasp the ultimate truth of the world, Schmitt recognised it as a polemicist concept in terms of a political symmetry between the conduction of politicisation and the friend–enemy distinction (Slomp, 2007: 200; Smith, 2011: 190). The power in making a distinction brings Schmitt's notion of politics into the dimension of decisionism and brings a state into the issue of absolute power centralised government (as discussed in chapter 4). In this respect, politics will be problematic if it loses the sovereign power of creating homogenous and heterogeneous identities of association.

Bendersky (1983: 93) and Norris (1998: 75), argue that Schmitt's concept of the political in the distinctive sense is entirely a matter of the conflict with enemy, where the relation with friend is merely a peripheral activity of politics. This argument is accompanied with the fact that Schmitt does not contribute much to the explanation of friend. Yet, I take the view that the essence of the political is not only the enemy, and the notion of friend should be taken into consideration no less than the concept of enemy. Schmitt wrote "the core of the political is not enmity *per se*, but the distinction of friend and enemy, and the presupposition of friend and enemy" (Schmitt, 2007b: 91). Although the concept of enmity is more distinctive in Schmitt's understanding of the political, whereas political friendship has rarely been recognised as starting a war, this does not mean that the concept of friendship is secondary or less important than the concept of enmity since it is a type of political recognition that gives the partisan the ability to think and act egoistically.

I agree with Slomp (2007) and Smith (2011) that Schmitt's conception of friendship reveals the intensity of human association in the sense of a way of life. I go further by suggesting that it is not only the concept of friendship, but

also the concept of enemy that connects to ‘the political’ as a political way of life in a public sphere. For Schmitt, a friend is not just only someone we do not want to be killed and dead, but also someone we can be killed and die for (Slomp, 2007: 201; Smith, 2011: 195). The concept of friend relates to human association; solidarity in the face of a shared commitment – a shared identity and a homogeneity of the way of life – subordinating all other concerns and having an obligation to the community in the form of a homogenous nation, state or collective people, in opposition of enmity (Smith, 2011: 193, 195; Botwinick, 2016: 341).

On the other hand, the idea of enemy links to the intensity of human disassociation, referring to someone who we require to kill and be dead. Enemy is not just the otherness or anyone who has a different and heterogeneous identity from the group of friends, but is also the very negation of friend, someone who is dangerous to our way of life and decisively challenges our very being, “and therefore must be repulsed or fought in order to preserve one's own form of existence” (Schmitt, 2007a: 278). The distinction between friend and enemy must be concrete and real, not abstract ideals, defined by the possibility of war.

Schmitt also noted that the differentiation of enemy from friend is self-knowledge. In other words, we know ourselves in so far as we know who our enemy is, and in so far as we decide the enemy by defining ourselves (Meier, 2011: 44). This does not mean that the distinction between friend and enemy is groundless; rather, it suggests, as Meier points out, that the opposition between friend and enemy is based on faith which is dynamic; present friends can become future enemies, the same as our present enemies can be our future allies.

In this regard, Arendt seems to stand with Schmitt that a political issue is defined in terms of a political way of life in a public sphere that is distinct from individualism, the idea that promotes the precedence of private and individual matter over groups (e.g. liberalism). However, where Arendt contrasts individualism with a public life of the sort that encourages the formation of plurality without identifying friend or enemy, Schmitt contrasts it

with the distinction between friend and enemy in relation to the defence of each's own way of life and the potential physical destruction that is motivated by an existential threat to this way of life (Schmitt, 2007a: 49).

3.3.1.2 The Possibility of War

This section examines Schmitt's understanding of the distinction of friend and enemy in light of the possibility of war. This signifies the utmost degree of intensity of association or dissociation neither in abstract nor normative or legal ideals, but in the actual sense, referring to the possibility of war between friend and enemy that entails an experience of dying and killing (Hirst, 1999: 9; Frazer and Hutchings, 2007; Schmitt, 2007a: 28).

The friend and enemy distinction also exists independently from other distinctions, such as the independent criteria of good and evil in the moral sphere, the antithesis between beautiful and ugly in the aesthetic sphere and the contrast between profit and loss in the economic sphere (Schmitt, 2007a: 26-27). For Schmitt, the morally evil, aesthetically ugly and economically damaging does not necessary become the enemy in the political sense; the good, beautiful and profitable are also not intrinsically 'friends'. Moreover, the distinction between friend and enemy is essentially the political issue inasmuch as their shared way of life is related to the preparation of death and to kill each other, which is a far greater extent of the possibility of physical harm than other (dis)associations such as family, class or gender (Slomp, 2007: 201). Nevertheless, the association or dissociation of human beings that arises from those motives can be counted as a political issue if they reach a certain level of intensity of politics.

For Schmitt, the idea of friend and enemy distinction is presupposed by the idea that human beings are evil by nature. The term 'evil' in this paragraph is not taken in any specifically moral or ethical sense, but in terms of a dangerous being or a risky or harmful creature with the capability for violence that presupposes every further political consideration (Schmitt, 2007a: 58). In this respect, Schmitt appears to be very Augustinian – much more so than Arendt, who is more Pelagian. Schmitt quotes a number of political theorists who suppose man to be inherently evil in nature, such as Machiavelli,

Hobbes, Bossuet, Fichte, de Maistre, Donoso Cortés, Taine, Nietzsche and Hegel (Schmitt, 2007a: 61). Schmitt adds that theologians like Maistre and Cortés implied this concept by their acknowledgement of the original sin. This is the theological dogma of the evil man and world leading to the impossibility of 'the undifferentiated optimism of a universal conception of man' (Schmitt, 2007a: 65). In his eyes, these theorists are conceived as pessimists and their theories are realist because they show the reality or possibility of the distinction of friend and enemy.

Meier (2006: 46) supported Strauss's idea about Schmitt's perspective of Hobbes's 'state of nature'; that is, the state of war reveals the existence of 'the political' (see also Hobbes, *On the Citizen*: V.1). Nevertheless, Hobbes's state of nature as the state of war exists in the pre-political sphere, and the origin of society is to suppress this violent circumstance. Schmitt borrows Hobbes's idea of state of war by suggesting that man is evil by nature, as maintained by Hobbes, but in Schmitt's view, the evil feature of human nature makes a possibility of war between opponents, which is the definition of the political. Strauss suggests that for Schmitt, if the state of war ends, society will become a liberal state, where both politics and state disappear because it is 'depoliticised' and 'neutralised', thus bringing to an end the distinction between friend and enemy.

The background of this reflection is that Schmitt is a critic of liberalism. For him, the liberal state is not a desirable state, because it is deprived of the conflict between friend and enemy. Meier goes beyond Strauss by suggesting that what Schmitt presented is not only a polemic against liberalism, which can be explained only within limited time and space according to Strauss, but rather it is the metaphysical construction of 'faith' against 'faith' in political theology. Schmitt does not go further than referring to Hobbes's state of nature when he gives a picture of the conflict in politics. However, I think for Schmitt Hobbes's absolutist state might not lead to the end of the political, but bring to a new political arena; that is, the possibility of war between sovereign states.

This is controversial because Schmitt equates politics as the state of war of groups, states and nations, with Hobbes's state of war of individual. Accordingly, it might be argued that although the condition of the potential conflict between people is terminated after people give their authority to the sovereign state, the sovereign state faces a new political arena when confronts other states, and this opens a space for the ever present possibility of war between sovereign states. This links to Schmitt's idea that we can know who the sovereign is only during the war between states. Schmitt refers to Hobbes as the one who "had experienced this truth in the terrible times of civil war" (Schmitt, 2007a: 52). If during the war there is another organised party capable of protecting people better than the sovereign state, this organised party is the real sovereign that people have to obey.

In this respect, while politics for Arendt is distinct from violence, Schmitt's idea of the friend and enemy distinction to the possibility of violence exists in the political realm, which Hobbes expressed as the 'state of nature' or 'state of war' (see Hobbes, *On the Citizen*: VIII), and the killing or violence in politics is the relations of enmity in its purest sense. However, it might be a misinterpretation to say that Schmitt praises war. Schmitt notes that the assertion of one's identity might not necessarily result in a violent conflict against its enemy; "war is not the aim nor the purpose nor even the very content of politics" (Schmitt, 2007a: 34). 'The political' as a way of life does not reside in the battle or the real physical harm itself, but in the form of the possibility which contains the commitments to sacrifice our lives when the sovereign demands us to do so (Norris, 1998: 78).

Consequently, the solidarity of group identity that sets up a particular form of life should be noted as the priority to physical existence. However, since the homogeneity of friend in its ultimate term is inevitable to eliminate or erase the heterogeneity of enemy, war is essentially a political matter. The distinction between friend and enemy leads to 'an ever-present possibility' of war which returns to presuppose and determine the way of human action and thinking, creating 'a specifically political behaviour' in terms of a concrete political existence (Schmitt, 2007a: 34; 1988: 11) (this point will be

elaborated on in chapter 6). By this point, the solidarity of identity is not a matter of popular participation, the right to debate political issues, the revocable consent or liberal parliamentary system; rather, it is an issue of the sovereign decision of the ruler over the ruled which is reconcilable with a form of dictatorship (the details of this point will be presented in chapter 4).

3.3.1.3 State, Ideology and the Critique of Liberalism and Neutrality

This section suggests that Schmitt mainly describes the attributes of the friend and enemy distinction in his three writings: *The Concept of the Political* concerns the concept of state and his critique of neutrality in terms of liberalism and pacificism; *The Großraum Order of International Law* moves forward from state actors in the first writing to the concept of *Großraum* in contradiction to universalism and liberal–individualist ideology; and *Theory of the Partisan* contributes to the concept of the *partisan*, presenting the Spanish struggle against Napoleon's invasion and the resistance of political ideologies on the global level. All of these three writings manifest the incompatibility between 'the political' and political ideologies because each ideology aims at the exclusion of other ideologies and endorses only one ideology to the world, which results in it being impossible to define friend and enemy and therefore destroying the meaning of politics in Schmitt's eyes.

In *The Concept of the Political*, Schmitt (2007a: 19) begins by stating that "the concept of the state presupposes the concept of the political". State, for Schmitt, is a specific entity, "a machine or an organism, a person or an institution, a society or a community, an enterprise or a beehive, or perhaps even a basic procedural order" which is not limited only by territory (Schmitt, 2007a: 19), wherein the decision about crisis situations resides. It generally expresses its authority only in the public sphere, and its main activity relates to the division of friend and enemy – the activity of 'the political'. Similar to Arendt, Schmitt asserts that the political exists in a public sphere, which is distinct from any aspect of the private sphere (the activity of individuals related to the domains of economy, religion, culture, education, law and science, characterised by neutralisations and depoliticisations) (Schmitt, 2007a: 22). However, while Arendt refers to the space of the *public* as the

space of speaking and acting activities, Schmitt binds it with the concept of state. This does not mean that the concept of 'the political' must be defined by the concept of state and manifests only in the state; rather, the state embraces the full meaning of 'the political', characterising how politics would appear and should behave (Smith, 2011: 196). Schmitt confirms that if any organised parties within the state is able to protect their members more than the state, people should follow these parties. However, since the theory of state still holds this ability, the concept of state presupposes the concept of 'the political' (Schmitt, 2007a: 52).

As modern states emerged after the Treaty of Westphalia, they achieved, according to Schmitt, the unity of *auctoritas* – the traditional claim of state by emperors – and the *potestas*, which was the preserve of the papal state in the Middle Ages. In this case, territory became a basic assumption of the continental states, which developed a single territorial status of monolithic and absolute states (Schmitt, 2003: 50–55). The achievement of national (state) unity is the achievement of the monopoly of the sovereign power to decide on exceptional situations and choose enemies on its own terms, recognising the just enemy, called *justus hostis*, in a concrete situation (Hooker, 2009: 18–20). Considerations of the moment in which to exercise military force are also beyond the question of justice. The state, according to Schmitt, can see the world from its independent eyes and chooses to act in whatever manner it sees fit (Hooker, 2009: 20).

The state is held to represent the sum total of participating collective wills ('totalism'), rather than being a man-made product of mechanisms seen in the ideology of neutrality and absolutism represented in 17th-century models (Schmitt, 2008b: 98; see also Schmitt's short writing *Total Enemy, Total State and Total War*: 1937/1999). It can be seen from this point that both Arendt and Schmitt fundamentally share a belief in the impossibility of neutrality in the realm of politics. Neutrality for Arendt belongs to the *vita contemplativa* of man, not the *vita activa* where politics resides. For Schmitt, neutrality refers to the liberal ideology that has repackaged pacifist terminology and transformed politics into a series of humanitarian sanctions,

rendering the distinction between friend and enemy impossible (Schmitt, 2007a: 79). Liberalism, for Schmitt, promoted pacifist ideology that transformed an enemy into being a disturber of peace, an outlaw of humanity, and changed the notion of war to be the last war of humanity, announcing the perpetual peace where the distinction between friend and enemy no longer existed: “A war waged to protect or expand economic power must, with the aid of propaganda, turn into a crusade and into the last war of humanity” (Schmitt, 2007a: 79). In *The Crisis of Parliamentary Democracy* (1923/1988) Schmitt supplemented the picture of liberal democracy in the German parliamentary system that implied a manifestation of neutralisation and depoliticisation. In this system, the rational power of discussion from different angles ceased to exist, and no one could be persuaded that the outcomes of the political games were justifiable (Kennedy, 2004: 77).

Apart from the connection to state and ‘the political’ in *The Concept of the Political*, Schmitt in *The Age of Neutralizations and Depoliticizations* (1929/2007c) extends the space of politics to the concept of nation where the homogeneity of culture in a nation shows the solidarity of friends as distinct from enemy. This idea was elaborated again in the concept of *Großraum* in the writing *The Großraum Order of International Law*. During this time, Schmitt’s basic thesis strongly shows the conceptual battles against intellectual hegemony from the neutralisation of liberalism to the discrimination concept of war (Strauss, 2007; Pankakoski, 2010; Teschke, 2016). However, his attempt to separate politics from the theory of state as a mere polemical device to serve his immediate critical goals was still ambiguous in this period. The concept of *Großraum* harks back to the trouble of the overly statist principles that took place in the mid-1930s; that the relationship between (unequal) states is not enough to understand politics of empire and imperialism in the modern world. Schmitt argues that the growth of universalism that appears in “regional pacts” is characteristic of a liberal–individualist ideology. The principle of universalist international law is based on the negotiations of peace agreements and security between states that have similar geographical positions or community interests, such as the

League of Nations or the Little Entente between Czechoslovakia, Romania and Yugoslavia (Schmitt, 2011b: 82). For Schmitt this kind of relationship is immoral and inhumane.

The concept of *Großraum* (plural: *Großräume*) bridges the gap between big and small states by suggesting a new way of thinking in terms of the 'globe', which is a kind of relationship between groups of states that still retain the features of state and nation without turning to a 'universalistic-imperialistic law' (Schmitt, 2011b: 111). This kind of order was also the only means to prevent the replacement of the European international juridical order by an American empire after World War II (see Koskenniemi, 2016: 593).

Readers of Schmitt have linked the concept of *Großraum* order to the influence of Nazism as a historical fact of his life, whether by conceiving it as the development of Nazi international law, given the justification of Nazi Germany's relentless expansion to other states, or the unsuccessful attempt to return to prominence in the regime, or racism, or all of them (see Meierhenrich, 2016: 201 – 202). Nevertheless, it can be argued that the concept of *Großraum* order was far from the promoting of racism and the expansion of power that was remarkable in Nazism. In this regard, Schmitt claims that *Großraum* order is the political idea of 'the non-intervention principle' because it is based on mutual respect for nations. He wrote that "*Großraum* is a comprehensive modern tendency of development of arising areas of human planning, organisation, and activity... connected achievement space" (Schmitt, 2011b: 79). The characteristic of *Großraum* is mainly bound by geopolitics, but also gives space to sufficient cultural homogeneity (e.g. heritage, language and identity) in order to allow the idea of the leading power to radiate and unify the space (Hooker, 2009: 133).

After the defeat of Nazism in the Second World War and his arrest in 1945, Schmitt became a less committed devotee of the state and nation. His subsequent writings, particularly *The Theory of the Partisan*, changed from a state-based conception of 'the political' to one where 'the political' could no longer be contained by the Westphalian state. Hooker (2009: 4) attributed this variation to Schmitt's understanding of the history of the Westphalian

state that prevented him from understanding the international order, therefore he affected a reactionary defence of the flawed state form and a breathless anticipation of an apocalyptic world unity. As a result, Schmitt's writings after 1945 were recorded as the transcendence of the Westphalian state, and retained the vital public enmity in the area of global politics.

In *Theory of the Partisan*, Schmitt connects the concept of 'the political' to the idea of *partisan*. The word *partisan*, in Schmitt's eyes, means anyone who follows a party in various ways (e.g. fellow-traveling, comrades-in-arms, military troops and fellow-captives), in accordance with four criteria: irregularity (illegality); increased mobility of active combat; increased intensity of political engagement; and 'telluric' character (including both land and sea wars) (Schmitt, 2007b: 18, 20, 22). Schmitt examines the 1949 Geneva Convention as a classical concept of the partisan. This convention is the development of regulations from the 1907 Hague Convention that changed many comrades-in-arms who were partisans into combatants, limited and regulated by *jus publicum europaeum* (Slomp, 2007: 203). It was based on traditional and classical international law, characterising the clear distinctions between war and peace, military and civilian, enemy and criminal, state war and civil war (Schmitt, 2007b: 34). In this respect, militaries were provided uniform codes with a duty to protect civilian populations, whereas war and enemy were distinguished into just and unjust sides, where any battle against non-uniform populations outside a battlefield was discriminated as an unjust war.

The Spanish guerrilla war against the Napoleonic invasion gives another meaning of the modern concept of partisan which is the model of relationship that Schmitt accepts is most compatible with the conception of 'the political'. It was the prototype of the following partisans, such as the Prussian army in 1813, that was not based on a state but the relationship between groups in terms of a similar way of life (both semi- and para-regular groups). Schmitt notes the Spanish war was a combination of the revolutionary war of national liberation and local militias, which showed the collaboration of the partisans to menace the enemy (Schmitt, 2007b: 17, 43). In the typical situation of

revolutionary war, the fight of partisans against enemies is called the revolutionary war against the 'real enemy'. It has a tactical and strategic target: to attack the 'proudly-worn uniform' of conventional soldiers, which is not only on an open battlefield or open fronts (Schmitt, 2007b: 69). In Schmitt's view, the revolutionary partisan is the true central figure and hero of war because it promotes a war of just cause (*justa causa*) without identification of just enemy (*justus hostis*) (Schmitt, 2007b: 45).

The emergence of modern technological advancement changed the enemy from a real enemy to absolute enmity (Schmitt, 2007b: 74). Schmitt made a very derogatory remark on this type of enemy. It refers to the struggle of ideology, fighting for abstract notions of justice, without a special bond to a particular land and located throughout the whole world. Schmitt argues against an ideology that promotes absolute enmity because it leaves no place for other ideologies. By involving with ideology, absolute enmity transcends and defies all legal and political bounds, leading to the possibility of a universal enemy which degrades the enemy into moral or other categories, a monster that must be destroyed, not just defeated (Schmitt, 2007b: 93). The war of absolute enmity is declared as the last war (and enemy) of mankind, which is totally criminal and inhuman not only because of the mass destruction of weapons, but the inescapability of a moral compulsion (Schmitt, 2007b: 94). In this respect, the phenomena of technological development do not only make the partisan die out and become unimportant, but they also destroy all of the political actors (e.g. friends and enemies, regular and irregular fighters) (Schmitt, 2007b: 79–80). Nevertheless, Schmitt noted that it is impossible for an ideology to escape the logic of the political since, in a practical way, it is inevitable that it will serve existing or emerging friend and enemy groupings (Schmitt, 2007a: 79).

3.3.2 Schmitt and the Ancients

Writers such as Schwab (1989), Norris (1998) and Balakrishnan (2000) suggest that Schmitt's conception of 'the political' was developed from his experience in the Nazi party and an effort to protect the Weimar Republic from other extremist political parties (see also Pichler, 1998; Huysmans,

1999: 324). Some challenge this approach by disconnecting the influence of Nazism from the substance of Schmitt's political theory and stating that the relationship between these two issues was just accidental (e.g. Bendersky, 1983).

This chapter focuses neither on refusing nor supporting the spectre of Nazism in the interpretation of Schmitt. Rather, it gives another aspect of interpretation by following the appropriation of ancient Greek and Roman political thoughts in the work of Schmitt. This section examines the Greek understanding of *πολέμιος* (polémios) and *ἐχθρός* (ekhthrós) and the Roman concept of *hostis* and *inimicus* as the origins of the political lexicons of private and public enemy. Moreover, it investigates the concept of friendship in both ancient Greece and Rome in terms of *philia* and *amicitia* respectively.

3.3.2.1 πολέμιος and ἐχθρός: The Two Perspectives of Enemy in Ancient Greece

The concept of enemy that resides in the concept of 'the political' in its internal and international aspects is solely that of a 'public enemy'. What Schmitt means by 'public enemy' is that "one fighting collectivity of people confronts a similar collectivity" (Schmitt, 2007a: 28). In other words, public enmity is a relationship between two groups of people, which self-define as groups, and the notion of enemy becomes a public issue because of this kind of relationship. It also means that a public enemy is not only someone who differs from us or opposes us, but also a collective identity that threatens our way of life. Only a private person who lives in a private individual sphere outside the political community has no political enemies (Schmitt, 2007a: 51).

Schmitt relates his concept of public enemy to the term *hostis* in ancient Greece. He wrote: "the enemy is *hostis,* not *inimicus* in the broader sense; *πολέμιος, not ἐχθρός*" (Schmitt, 2007a: 28). In an important study, Dusenbury (2015: 433) points out the subtle changes in the iterations of this sentence in the three versions of Schmitt's book, *The Concept of the Political*. The above statement can be found in the 1927 edition and is not revised for the 1932 edition, but is there appended with citations. Dusenbury

(2015: 434) also points out that the set of coupled terms, *πολέμιος* (polémios) – *hostis* and *ἐχθρός* (ekhthrós) – *inimicus* were obscured as the German word *Feind* and English word *enemy*.

In the 1927 version of the sentence, Schmitt notes that Plato's *Republic* shows the strong contrast between *πολέμιος* and *ἐχθρός* in connection with the separation between two kinds of war (Schmitt, 2007a: 28–29). The former term is connected to a public enemy while the latter alludes to a private enemy. However, Schmitt did not provide any evidence of the dichotomy between these two words; rather, he turned to show how Plato connected the terms *πολέμιος* and *πόλεμος* on one side, and the terms *ἐχθρός* and *στάσις* on the other side.

In *The Republic* (470b) Plato wrote:

> In my opinion, just as we have the two terms, war and faction, so there are also two things, distinguished by two differentiae. The two things I mean are the friendly and kindred on the one hand and the alien and foreign on the other. Now the term employed for the hostility of the friendly is faction, and for that of the alien is war.

The first type of conflict, war or *πόλεμος*, applied to hostilities with strangers or foreigners (i.e. a war between Hellenes and Barbarians), which Plato considered to be a real war, and perceived enemies of this kind of war as natural enemies. The word *πόλεμος* was used at least four times in *The Republic* (373e, 521a, 575b, 660a), mostly in the context of wars between Hellenes and other states, except in 521a, where it was used in the context of civil and internecine strife.

The word *πόλεμος*, in the sense of a war against foreigners, can also be seen in Thucydides's *History of the Peloponnesian War* (5.84.2). The dialogue between the Melians and Athenians (the 'Melian Dialogue') happened (although this is Thucydides' reconstruction, and no doubt much of it is imaginative) during the Athenian-Spartan war, when the people of Melos claimed to be neutral, refusing to help either side. When Athenian

troops reached the territory of Melos, they did not immediately approach the land; rather, they opened negotiations with the Melians. This shows that at first the Athenians did not consider the Melians as their enemies or a part of Athens. Since the Athenians' claim to wage war against Sparta was not accepted in the Melians' eyes, the end of the diplomatic conversation between the people of Athens and Melos was replaced by war (*πόλεμος*), finally leading to the defeat and the surrender of Melians with their enslavement or death. The word *πόλεμος* shows how the Athenians' perception of the status of the Melians changed from potential alliance to barbarian when they started making war (Forde, 1989: 51–52; Hawthorn, 2014: 160–162).

The second kind of conflict, called faction or civil war (*στάσις,* plural: *στάσεις*), was conceived as a war with one's own and akin to an internal conflict (i.e. a conflict among Hellenes). A civil war is a self-laceration in the sense that after this kind of war, a new state or new people cannot be created. In *The Republic* Plato also referred to the word *στάσις* at least four times (470d, 545d, 545e, 560a) in the sense of disharmony among the Greeks. Moreover, in *Phaedo* (66C) Plato used the term *στάσεις* when referring to a conflict caused by body and desire, where death releases and separates the soul of the philosophers from the body and from this conflict.

Apart from those two words, although Plato never expressed the differentiation between the terms *πολέμιος* and *ἐχθρός* in his writings, we can find how he used these terms in different contexts. The term *πολέμιος* is referred to in passage 415e of *The Republic*, in a conversation between Socrates and Glaucon about the qualifications of the governor. Socrates spoke of one way to train the guardians by preparing suitable housing. The resident of the guardians must be located in a position that, on one hand, with regard to the internal politics, can control any rebels against the laws of the city; and which on the other can repel any aggression from outside of the city (like a sheep dog regulating the herd and defending it from wolves). Aggression in this case is linked to the term *πολέμιος* in the sense of an enemy who comes from outside of the city to wage war against it. Moreover,

Plato also used the related words *πολεμίζω* and *πολεμίους* to indicate interstate enemies.

On the other hand, the term *ἐχθρός* and its related words, such as *ἐχθρούς* and *ἐχθροί*, were more frequently used in order to show other aspects of the enemy. In *The Republic*, Polemarchus suggests that the just man or justice is defined in terms of benefits rendered to friends and harm to enemies: “To do good to friends and evil to enemies” (Plato, *The Republic*: 332d). Socrates argued that a man who seems to be good may not be really good and thus a friend, while one who seems to be evil may also not be evil and thus an enemy (Plato, *The Republic*: 335a). As stated before, Schmitt extracts the distinction between public friend and enemy from the distinction between good and evil. In this respect, Schmitt conforms to Socrates when he uses the word *ἐχθρός* to present the idea of a private enemy who is evil, fighting for his own private interests, and not as a bona fide allied combatant in a war between states.

In passage 352b, after Thrasymachus replied to Socrates that injustice results in the disempowerment and ineffectiveness that alienates a man from himself and makes him an enemy of justice, Socrates notes that if Thrasymachus were right, an unjust man (*ἐχθρός*) might be hateful to the gods who are full of justice, and he finally disproves the statement. Plato remains focused on the content of a conflict between individuals or a private conflict when referring to the idea of enemy, but it is also bound up with the meaning of an unjust person: a private enemy (*ἐχθρός*) is someone who has no justice.

It is also interesting that in passage 375c Plato used the term *πολέμια* (the neutral plural form of the noun *πόλεμος*; matters of war, hostiles, enemies) in the context of an enemy of a guardian, delivering the idea of a state enemy, or public enemy, in Schmitt’s writing. On the other hand, the term *ἐχθράν* (the related term of *ἐχθρός*) in the subsequent passage 376b was used in

the example of a dog differentiating a friendly person from a hostile one, showing the sense of personal enemy, or private enemy in Schmitt's word.[13]

To conclude, Schmitt used Plato's taxonomy of friendship and enmity to support his account of the public enemy. In the first place, Schmitt agreed that there are multiple dimensions of enmity. With regard to the distinction between *πολέμιος* and *ἐχθρός*, or between *πόλεμος* and *στάσις*, Schmitt considers Plato's idea of public enemy to be an enemy from outside of the city (an enemy of the city), and a war between such enemies comprises war against the state, whereas the idea of a private enemy is linked to the concept of civil war in the sense of faction, and the fragmentation of the state in the sense of a conflict between citizens of the state or personal crime (Schmitt, 2007a: 28– 29). Schmitt noted that the decisive distinction in Plato's concept of the enemy divides a public enemy and the related category of an interstate war (a conflict between the Greeks and barbarians) from a private enemy and its related category of civil war or state crime (a conflict between the Greeks).

My argument is that when tracking back to the etymology of the words used by Plato, and other relevant historical conditions, we can see that the difference between *πολέμιος* and *ἐχθρός*, or between *πόλεμος* and *στάσις*, is determined by territorial states: the Greeks' public enemy is the enemy outside ancient Greece, and their private enemy is the enemy inside the Greek world. However, the dichotomy between public and private enemies in

[13] I also turn to consider the comprehensive meaning of the terms *πολέμιος* and *ἐχθρός* in the other writings of Plato. With regard to the public enemy, Plato's *Crito* (53b) used the word *πολέμιος* when referring to an enemy. The content of this dialogue shows a conversation between Socrates and Crito on how the former insisted on being penalised by death even though Crito offered him a way to escape from prison. Socrates said if he did not accept his penalty and fled to another civilised city, such as Thebes or Megara, he could be considered an enemy (*πολέμιος*) of those cities. An enemy in this context is an individual, public enemy, because the allegation that Socrates corrupted the young is conceived of as a public issue, as he was considered dangerous to the city. If he escaped to another city, he would be considered a barbarian, not a citizen of the new city, and he would be an unambiguous public enemy, primed to fight against the law of the new city at any time. In Gorgias (480e) Plato connected the term *ἐχθρός* to the personal enemy, which he distinguished from a national enemy, *πολέμιος* (Lodge, 1891). In this work, Socrates queried the utility of rhetoric if it can help an enemy (*ἐχθρός*) who commits a crime and deserves the death penalty to escape and not be punished. Plato refers to crime as a private issue that affects individuals, not the national interest, and the enemy (*ἐχθρός*) in this point belongs to the private or personal enemy whose bad action was judged by the city courts.

Schmitt's eyes does not precisely connect to the separation between enemies from inside or outside the state, and civil or international war; rather, both interstate war and civil war can be considered as conflicts against a public enemy, who is on another side of a national collective (e.g. between classes), whereas Schmitt's interpretation of the private adversary refers to the hate of one person who is not strong enough to bring forth the possibility of battle, war and violent death.

3.3.2.2 Hostis and Inimicus: The Two Perspectives of Enemy in Ancient Rome

In terms of the legacy of the Roman tradition, Schmitt discusses the idea of the public enemy with reference to two kinds of enemies broached in Forcellini's *Lexicon Totius Latinitatis*, which Schmitt praises as "the most clear-cut definition with additional supporting material" (Schmitt, 2007a: 29). In this dictionary, a public enemy corresponds to the Latin term *hostis*, which is in turn connected to a public war. It differs from a private enemy (*inimicus*) in the sense that *hostis* is "a person who fights against us", while *inimicus* is "a person who hates us" in line with an unfavourable moral judgement (Schmitt, 2007a: 29). However, as Dusenbury (2015: 435) argues, Schmitt's understanding of Forcellini's *hostis* contradicts Forcellini's original argument. In each edition of the *Lexicon*, Forcellini wrote:

> HOSTIS, nemico, πολέμιος, ἐχθρὸς (1771 edition)
>
> HOSTIS, an enemy, πολέμιος, ἐχθρὸς (1828 edition)

This shows that the terms *πολέμιος – ἐχθρὸς* still overlapped with the Latin lexicon. In Cicero's *De Officiis* I12 (*On Duties* 1.12), Forcellini also noted that the term *hostis* in the Roman tradition referred to a "stranger" rather than expressing the decisive meaning of "enemy". Particularly, Cicero referred to the notion of *hostis* in the *Twelve Tables*, according to which usage the term was synonymous with the word *peregrine* or stranger (Berger, 2004: 489). In *On Duties* (1.37) Cicero wrote:

> A further point is that the name given to someone who ought properly to have been called a foe (*perduellis*) is in fact a

> *hostis* … For *hostis* meant to our forefathers he whom we now call a stranger. The Twelve Tables show this: for example, 'a day appointed for trial with a *hostis*'; and again, 'right of ownership cannot be alienated in favour of a *hostis*'.

In Cicero's view, "stranger" as the real meaning of *hostis* was abandoned during a process of semantic drift, and the term came to mean anyone who "bears arms against you". Cicero also reflected on the word *hostis* many times in the sense of a "stranger or guest, served to pacify or soften the semantics of Roman enmity" (Dusenbury, 2015: 437). This understanding differs from Schmitt's *hostis*, which corresponds to a political enemy and war. In other words, Schmitt's *hostis* is not only a stranger, but a collective stranger who threatens our collective identity, giving rise to the real possibility of physical killing. Moreover, while Schmitt's *inimicus* refers to the consistency and specificity of a private enemy who cannot introduce the possibility of war as a public enemy, Cicero's *inimicus* alluded to a personal enemy who does have the ability to conduct a war (Dunsenbury, 2015: 437).

Another study about the difference between private and public enemy that Schmitt cited in his work is the *Digest of Justinian* 50.16.118, which is mostly cited for the concept of *hostis*.

> Hostes are those against whom we (the Roman people) have publicly declared war or those who have done so against us (D. 50.16.118; cited in Berger, 2004: 489).

However, Pomponius's concept of *hostis* in the *Digest* is slightly different from Schmitt's understanding. Although Pomponius's *hostis* expresses a notion of public hostility, this word does not find its antithesis in the term *inimicus* as in Schmitt's writing. Rather, it is opposed to the terms *latro* (brigand) and *praedo* (pirate) (Dusenbury, 2015: 438). In this sense, *hostis* corresponded to the public enemy of Rome as denominated in a declaration of war, whereas *latro*/*praedo* referred to a robber or plunderer, who might not be a Roman citizen but stole things/belongings from a Roman citizen. Moreover, the Roman-legal concept plays a significant role in Pomponius's

concept of *hostis*: *hostis* is the combination of the juridical, martial and public statuses. Schmitt's concept of *hostis*, on the other hand, is defined as an act of the extrajudicial exercise of sovereignty which recalls another of Cicero's concepts that, although no war is just in general, it can be justified by a formal demand for restoration or a formal declaration of war (Dusenbury, 2015: 438).

I suggest that the closest meaning of Schmitt's *hostis* in the ancient world can be found in the late republic, and that this illuminates Schmitt's concept of the real enemy. In the period of the late republic, *hostis* stood for the term *perduellis* or public enemy, but in the sense of an individual, citizen or stranger, "who was declared to be an enemy of the state by a statute or by the senate", and who could be killed within Roman territory by any citizens with full impunity (Berger, 2004: 489). For example, in 88 BCE, C. Marius, a Roman politician and consul, and his supporters caused political turmoil against the dictator Sulla and were declared *hostes* (plural of *hostis*: enemies) in a senatorial decree and statute passed by an assembly (Taylor, 2016: 377). Before this time, the senate also passed *hostis* decrees as emergency decrees during many crises. *Hostes* in this kind of decree named (Roman) individuals. They would lose their civil rights, including the right to appeal in court, and could be killed with impunity (Taylor, 2016: 377). Cicero argued that any conspirators who were apprehended in Rome were automatically the enemy of Rome and lost their citizenship (Taylor, 2016: 337). This character of *hostis* parallels to a feature of real enmity in Schmitt's *Theory of the Partisan*. Schmitt's real enemy was used for individuals defending their territory during a revolution, civil war or colonial occupation.

This evidence shows that both the Greeks and Romans shared some common understandings of the terms *hostis* and *inimicus*. Both the Greeks and Romans referred to *hostis* as a stranger apart from us. However, while *hostis* in ancient Greece signified an enemy who was outside our city, the Romans used this term in a broader sense: in the days of the Roman Empire, the term *hostis* was used for a stranger of the Romans who might/might not be enemy; in the *Digest of Justinian* it referred to an enemy

of the Roman people with whom the people were at war; while during the late Roman republic, *hostis* denoted any Roman who was declared by the senate to be an enemy of Rome.

Whether intentionally or unintentionally, Schmitt reinterprets the term "enemy" from the ancients as compatible with his reflection on 'the political'. Schmitt asserts a linguistic alignment of *hostis* with *πολέμιος,* that serves as a technical term of public enemy (or political enemy), in contrast to the linked terms, *inimicus* – *ἐχθρός*, that were marked to be technical terms for private enemies by excluding the real meaning of these original terms. In this view, although Schmitt equates the idea of public enemy with Roman *hostis*, the hidden meaning of Roman public enemy lies in the use of public power (sovereignty) in respect of any private matters, such as the punishment of a private citizen who steals money from another, which is not a political matter for Schmitt. Competition in the private sphere, such as in the economic, religious and legal spheres, is quite separate from the ultimate distinction between friend and enemy. Only interstate and civil war present politically the highest possible degree of physical killing between two sides, which in this case can be considered as a public enemy – a collective of people who oppose another such collective and may fight against them.

3.3.2.3 The Concept of Friend for the Ancients

Unlike the concept of enemy, Schmitt never clarified the origin of the word friend in his writing. However, this section investigates the ancient aspects of friend, and suggests that the Roman tradition provides a greater contribution to the understanding of Schmitt's concept of friend rather than the Greek philosophers (i.e. Plato and Aristotle).

The Greeks used the word *philia* to describe the notion of friend. Plato bound the idea of *eros* (love) with *philia* (friend) to show the close relationship between lovers, or between an educator and his boys, which is elaborated on in the related issues such as love, wisdom, and the good and goodwill (Annas, 1977: 532). In *The Republic*, Plato lifts the concept of friendship to the harmony between the desire of good of individuals and the others in the *polis*. Similarly, Aristotle's account of friendship arises from three grounds –

utility, pleasure and virtue (love) – in respect of the recognition, the wish and the return of the goodwill to the other (Konstan, 1997: 73; Smith, 2011: 72 – 75). The extension of friendship into a civic bond between fellow citizens characterises the form of political friendship in the community of the *polis* that focuses on virtue as an agreement of citizens with a mutual advantage and the stability of the achievement in this agreement (Smith, 2011: 68).

Both Plato and Aristotle refer to the implication of friend to the political community based on personal intimacy, affection and generosity, and the harmony of private interests with public considerations in the relation to the good within the community (Konstan, 1997: 5–6). Their ideas are not compatible with the work of Schmitt for whom the concept of friend is defined by the homogenous way of life in relation to public issues, such as state, nation, cultural and political engagement, as distinct from private interests. Moreover, in searching for the definition of justice, Socrates in Plato's *The Republic* (380 BCE b: 334d***,*** 335d–335e), refers to the friend (***φίλος: philos***) as a person who never seeks to harm his enemy because it is not easy to distinguish friend from enemy, and it does not seem to be just to harm anyone, even an enemy. This perspective of friend does not conform with the existence of enemy and with the possibility of fighting between friend and enemy as argued in Schmitt's concept of 'the political'. The separation of a friend who has a homogeneous way of life from an enemy who has a different way of life, and increasing the possibility of physical harm against an enemy if the act of the enemy is dangerous to the way of life of the friend, implies the negation of liberalism and pacificism, which are the ideas that aim for peace in the world where the political struggle between groups of people is unacceptable.

Unlike the Greeks, Romans used the Latin word *amicitia* (friendship) and *amici* (friend) in reference to both personal connections with a friend and to alliances (***societās***) of the state, and in opposition to the public enemy (*hostis*) (Konstan, 1997: 122; Roberts, 2007). In terms of personal relationship, Cicero referred to friendship (*amicitia*) as an agreement (*consensio*) between friends with goodwill (*benevolentia*) and love (*amor*).

Another idea of personal friendship that was widespread in Roman literature was based on genuine trust and affection in exchange for gifts and services (Verboven, 2011: 406). In this respect, the term *gratia* was used to refer to the obligation of friends to return a service (*officium* or *beneficium*) to whom they have received from, and the debt or gratitude that is morally incumbent on the beneficiary, which is the foundation of personal alliances between political leaders (Konstan, 1997: 123).

For example, *The Philippics* (Phil. 1–14), speeches Cicero gave condemning Mark Antony, express this feature of personal friendship in Rome. In one oration, Cicero condemned Antony for breaching the *amicitia* between them and that he acted as a public enemy (*hostis*) of the country by trading in *beneficia* and *gratia* with an improper sort (Konstan, 1997: 127). Another example is that when Antiochus III was attacking the Kingdom of Pergamum in 198 BCE, Attalus II Philadelphus begged for Roman military intervention. The Romans refused the request by stating that they could not aid Attalus against a friend of the Roman people (*socium et amicum populi Romani*), but the Romans would send a delegation asking Antiochus to leave Attalus alone to preserve the peace amongst allies and friends of the Roman people since Attalus was also the friend of the Romans (Burton, 2011: 105). This shows that, unlike the Greeks for whom the concept of friend stood without the concept of enemy, the Roman conception of friend, even personal, was always accompanied with the concept of public enemy in the same way as Schmitt.

Turning to consider an aspect of the friendship of state, although *amicitia* mainly involved the personal obligations to return a service or debt, this term was often connected to and dependent on the word alliance (*societās*), referring to allies (*socii*) of Rome who did not follow Roman law, but had agreements/treaties to supply the Romans in exchange for military protection by Rome (Roberts, 2007). Moreover, the word *amici* was used for another group of friends that arranged treaties with Rome without the obligation to send troops to Rome (e.g. Rhodes). In this regard, the idea of an agreement or an exchange of gifts and services that were inherent in the notions of

personal friendship in Rome was also evinced in the relationship of friendship between states.

Schmitt's understanding of politics as the friend and enemy distinction as distinct from the depoliticalisation of ideology is reminiscent of the notion of friend in the history of Rome; that the idea of friend and friendship was accompanied by the scrutiny of enemy. Conversely, this feature was unknown in the thoughts of Plato and Aristotle who perceived the idea of friendship from the level of soul without concerning the idea of enmity. The Roman definition of personal friend as the exchange of gifts and services also provided a wider idea of the military support for alliances during a war, showing the cooperation between states within the alliance to fight against an enemy of a member of the alliance, which is similar to Schmitt's notion of friend as someone who one does not only have goodwill towards, but also someone for whom one is willing to kill and die.

Given the substantial similarities and differences between the ideas of Schmitt and Arendt on politics, two distinctive models of politics can be drawn from the comparative analysis: the politics of self-determination of Arendt, and the centralized power of politics of Schmitt. To Arendt, politics as a self-governing activity focuses on the participation and capacity of people on account of plurality, which she mentions in *The Human Condition* (1954) as a human condition of action. Accordingly, Arendt relies on the political recognition and reconciliation that enhances a process of democratic decision along the lines of collective self-determination, not by using a sovereign power, and rejecting the distinction between rulers and ruled. In this case, any actions that impede this character of politics becomes problematic in her view.

In contrast, Schmitt takes the notion of politics into the dimension of decisionism, and brings a state into the issue of absolute power and centralised government (see chapter 4). In this respect, the decentralised sovereign power, the limited power of rulership, and the empowerment of citizenship are problematic, because they bring about the loss of ability to create homogenous and heterogeneous identities of association; that is,

there will be no talk of a political association if association is no longer with the sovereign embodiment of the people, to differentiate friends from enemies.

3.4 Conclusion

Arendt defines politics with respect to the human condition of action in the public space, believing the activity of speaking and acting (including a decisional action) between people as distinct from the human conditions of labour and work in the private sphere and the contemplative life in the philosophical sphere. . Schmitt's concept of 'the political' is also associated with the public sphere, but, in contrast to a sphere of speaking and acting as Arendt suggested, Schmitt shows the distinction between the public friend and public enemy. For Schmitt, the concept of neutrality is backed up by ideologies (e.g. liberalism, pacificism and universalism) that back away from the identification of the difference between friend and enemy, which is the essence of 'the political'.

In his early work, Schmitt identified politics in his conception of the state, but he later changed his mind in *The Großraum Order of International Law* and *The Theory of the Partisan* from the state-based battle to be settled in a matter of politics and war outside states. This can be seen, for example, in his concept of *Großraum,* in which the idea of the sovereign decision is elaborated on the 'globe' as a kind of the relationship between groups of states, called 'achievement space', and in his conception of partisan, whereby the conflict within and between states changes to be a conflict between actors in a revolutionary war, called real enmity, and global revolutionary issues, called absolute enmity. Thus, Schmitt's concept of politics shows the closeness between his idea of 'the political' and violence, whereas Arendt refuses the necessity of the relationship between politics and violence. .

The influence of Greek intellectualism that distinguishes the political way of life from the other kind of life was developed in the dualisms of Arendt, for example ***zōē*** and *bios*, necessity and freedom, *poiesis* and praxis, private

and public. These concepts show the boundaries of politics in the public sphere that allocate labour and work to the private sphere and contemplative faculty to the philosophical sphere. Arendt also contributes to the concept of natality, derived from Augustine, as a key point in the concept of freedom in order to start a new political action in the public sphere that is prominent in Arendt's vision of an unneutral action.

Moreover, I suggest studying Schmitt's political thought by linking to the ancients, by which I mean that even though attention to the Greek and Roman concepts does not alter the picture of Schmitt's political theory, some of the relevant concepts of the distinction between private and public enemy, such as *πολέμιος* and *ἐχθρός*, *hostis* and *inimicus*, and Roman understanding of the close connection between *amicitia* and *societās* still vibrantly influence his notions of the public friend and enemy as distinct from the promotion of neutral ideology.

This chapter also ties the discussion around the critiques of political issues in the non-political realm in Arendt and Schmitt to their critique of modernity, with the former drawing from the Greeks and the latter drawing from both the Greeks and the Romans. It elaborates on Arendt's account of the repudiation of ideology that was set out from the integration between the contemplative and political life which can be seen in Marxist theory. Schmitt's engagement of the ancient concepts of public friend and enemy, to which he attaches so much significance in his work, is for the purpose of his own criticism of modernity, which relates to the negation of liberal ideology that has repackaged neutral and pacifist terminology and transformed politics into a series of humanitarian sanctions, rendering the distinction between friend and enemy impossible. Issues of economic organisation, production and distribution, which others have conceived as political issues, are relegated to the sphere that Arendt calls the 'social', and Schmitt too argues that matters such as the economy, science and culture are essentially not political matters.

The next chapter shows substantial differences between Schmitt and Arendt toward the ideas of sovereignty, using the lens of the theological (i.e.

Christian) perspectives of ancient Greece and Rome, which reflect the perspectives of Schmitt as a supporter and Arendt as a defender of sovereignty in the political realm.

CHAPTER 4

THE CONCEPT OF SOVEREIGNTY

4.1 Introduction

Arendt and Schmitt were two of the foremost 20th-century analysts of the concept of sovereignty. Most commentators understand the implications of their discussions of sovereignty in terms of the state rather than politics *per se*.[14] A systematic engagement with the concept of sovereignty as one link connecting these two thinkers to the notion of politics and to the classical traditions remains to be undertaken, although some important analytical and critical work has emerged.

The focus of this chapter centres on the concept of sovereignty in the political theories of Arendt and Schmitt as an important concept in its own right. Some scholars (e.g. Dyzenhaus, 1997; Kalyvas, 2008) understand from the accounts of sovereignty given by Arendt and Schmitt an extraordinary power by which to conceptualise the theories of democratic politics and legal theories. However, these writers are handled independently of the ancient traditions, which I argue play an important role in their contributions to rethinking the concept of sovereignty. The objective of this chapter is to delineate more clearly where the appropriations from the Greek and Roman traditions on the part of Arendt and Schmitt might help understand their positions on sovereignty and how such positions inform their understandings of other political concepts.

This chapter addresses two arguments outlined in the Introduction, the first of which is related to the main argument of the thesis, whereas the latter is the main objective in this chapter. Firstly, I address the reflection of the divergent understandings of sovereignty in their different ideas about the

[14] For example, Benhabib (2004) examines Arendt's stress on the problem of sovereign state system as a cause of 'statelessness', while Prokhovnik (2008) compared Schmitt to Foucault by emphasising an argument about legalistic interpretation which implies a version of state sovereignty.

concept of politics. Arendt agreed with Schmitt on the definition of sovereignty as a property of the faculty of will. However, Arendt distinguishes sovereignty from politics and power *per se* because politics is the exchange of *doxa* (opinion), not wills (see chapter 3). In this respect, sovereignty illustrates a sign of weakness for the concept of politics and should, according to her, be removed from the political sphere. Unlike Arendt, Schmitt's concept of sovereignty is conceived as a matter of politics; sovereignty as an extraordinary power reveals the absolute power of the sovereign during an exceptional time (chapter 4), leading to the real possibility of violence and conflict in politics (chapter 6). Moreover, I show how the concepts of free-will and freedom in Arendt's thought are distinct from each other. While Schmitt seems to overlook freedom as an element of politics, free-will in the eyes of Arendt is the domain of sovereign domination of one's self as contradictory to the freedom of action (e.g. speech, opinion) in the political sphere.

Secondly, I show that Arendt and Schmitt have different perceptions of the concept of sovereignty with regard to their approaches to Christianity, and thus I explain their different understandings of Western Christianity in relation to the Greek and Roman traditions. I connect their concepts of sovereignty to a political-theological concept that ultimately refers to the divine command regime of the God of the monotheistic religions. However, for Arendt, the essence of Christianity is the triune God (i.e. the three-in-one of the Trinity of Father, Son and Holy Spirit). I argue that Arendt's idea of Trinity is developed from the Greek tradition, particularly from the Platonic idea of Idea/Form, as developed by Augustine, the Roman theologian Arendt admired as a philosopher whose thoughts were rooted in ancient Greece, as discussed in chapter 3. The point to be concerned is that firstly Arendt's debt to Augustine on the Trinity underlines the support of a system of checks and balances and a mixed constitution in politics. Secondly, the influence of Augustine's idea of Trinity backs up the concept of will in Arendt's political theory of sovereignty. However, her reference to the will and its relation to action is puzzling. On the one hand she suggests the presence of free-will as the domain of

sovereignty that should not reside in politics; on the other, will is the predominate faculty of the human activity of action.

Schmitt related sovereignty to the absolute command and will of the monotheistic God of Christianity, according to his alternative account of Christian theology. The Roman example of the Conversion of Constantine precipitates the union of the powerful monotheistic God and earthly political sovereignty, which formed the blueprint for the emergence of Western societies and states. Schmitt's political theology affirms that the sovereign can use extraordinary power in exceptional cases, which essentially confers legitimacy on political violence during the state of exception.

There are two main sections in this chapter. The first section is divided into two subsections. Firstly, I present Arendt's conception of sovereignty, which she associates with an individual will independent from any other (Arendt, 2006a: 162). I contrast her concept of sovereignty to freedom and politics, identifying sovereignty in the realm of philosophical manifestation. Secondly, I connect this approach to the idea of the Trinity by identifying that for Arendt the main exponents of the concept of sovereignty are the Platonists and Augustine, given that the Platonists and early Christianity were interlinked in her view of sovereignty, whereas Arendt claimed that Augustine made Christianity identical to the political philosophy of Aristotle, which influenced her concept of free-will as opposed to that of politics (Arendt, 1971: 84).

In section two, I examine Schmitt's conception of sovereignty in terms of decisionism, which gives absolute power to the sovereign will under the exceptional occasion of politics (Schmitt, 2005: 5). I link the implication of absolute decision in sovereignty to Christian theology in the sense of One (omnipotent) God and theism, which has its roots in Roman thought. In this respect, the highly divergent concepts of sovereignty between Arendt and Schmitt reflect strongly opposed backgrounds on Christian theology that bind the Greek tradition and Augustine to the idea of the Trinity Monotheism and deism in Arendt's view, and Roman antiquity to the concept of Monotheism and theism in Schmitt's view.

4.2 Part I: Arendt's Conception of Sovereignty

4.2.1 An Individual Sovereign Will as Opposed to Freedom and Politics

There is evidence that Arendt admires Schmitt as 'the most able defender of the notion of sovereignty' among modern political theorists, who knows that the essence of sovereignty is 'the will', and the sovereign is he 'who wills and commands' (Arendt, 2006b: 289). This statement implies that, in a certain way, Arendt shares a common understanding of sovereignty with Schmitt; consequently, Schmitt sheds light on Arendt's notion of sovereignty, and vice-versa. However, I do not think that it is enough to give full weight only to the major concern of the territorial state and legal debates to understand the notions of sovereignty in the writings of Arendt (and Schmitt);[15] rather I believe that this particular concept can be better appraised once when placed within their broader theological perspectives, with ideas of God and sovereign will originating in Greek and Roman philosophy.

While the idea of sovereignty is rich and nebulous in Schmitt's work, Arendt implies a much simpler conception of the concept, connecting to an individual will that is in opposition to freedom and politics. Arendt points out that sovereignty is "the ideal of uncompromising self-sufficiency and mastership, [which] is contradictory to the very condition of plurality" (Arendt, 1958: 234), and "the ideal of a free will independent from others and eventually prevailing against them" (Arendt, 2006a: 162). While politics is a collective decision, deriving from conversations between unquiet people, Arendt refers to sovereignty as the idea of mastership, domination, or absolute decision, deprived plurality of freedom, showing the unquestioned

[15] The exemplification of works that limit sovereignty to territory, such as Degryse (2008), focused on the totalitarian implications of Arendt's reading of Hobbes and the idea of the Leviathan state, suggesting that this type of state gives birth to totalitarianism, leading to her understanding of sovereignty as the domination of an absolute state over subject citizens. For Degryse, this idea corresponds to the idea of 'the social as The Blob' in the work of Pitkin, according to which the social was described as an 'evil monster from outer space', destroying human beings by gobbling us up and spewing out robots that serve only its own purposes (Pitkin, 1998: 4). However, I do not think that Pitkin conceives the social in the sense of state as a territory as in Degryse's viewpoint. For Pitkin, 'the social' contrasts with Arendt's notion of the human condition of action, but goes alongside labour and work, which can be linked to Marx's fundamental idea of alienation (Pitkin, 1998: 177–178).

superiority over every freeman, disposing the engagement of the future in which political power can be effective (Arendt, 1958: 245).

The command of sovereignty in this case is not only the explicit command of the higher to the lower; rather, it is the command and mastery of oneself from one's inner will. This does not mean that sovereignty and will are identical in Arendt's eyes; rather, the relationship between these two issues is that the former turns on the latter in terms of the will to command. Here, Arendt is speaking of sovereignty in the sense of individuals possessing sovereignty, not state sovereignty, as did Schmitt.[16] This will is not the will of the nation or of the people, but that of each individual, which is independent from others (Martel, 2010: 157).

In this regard, sovereignty is the property of will in a certain kind of self. It associated with a will unconstrained by reason or relationship within one of the fundamental faculties of the *vita contemplativa*, leading to a life of non-political acting without participation in a community. In *The Life of the Mind* Arendt suggests that willing is different from thinking, since it looks forward by dealing with the possibility of our power to achieve, whereas thinking always looks backward to the things that are beyond our power (Arendt, 1971: 37). However, Arendt asserts that the will/sovereign will does not bind itself for the future, because "a community actually founded on this sovereign will would be built not on sand but on quicksand" (Arendt, 2006a: 162). The problem of the will is how to reconcile the restlessness of change with the stillness of thought. The only human business that looks to the future is politics, because in politics individuals make use of the faculty to promise and to keep promises in the uncertain view of the future. The will is one of the human faculties of the *vita contemplativa* (including thinking, willing and judging), where sovereignty resides.

In contrast to individual sovereignty, the basic human condition of action and speech reveals the features of equality and distinction; speech and action provide equality in the ability to understand each other, including those who

[16] Nevertheless, there are some scholars that consider Arendt with state sovereignty; for instance, Arato and Cohen (2010) suggest two concepts of state and organ sovereignty.

came before and will come after, and the distinctive character of humans requires speech and action as the expression of the needs and wants of each person, distinct from others (Arendt, 1958: 176). These two features cast light on the concept of freedom in the politics of self determination. Freedom that exists in the public sphere represents the very opposite of the will in the space of the *vita contemplativa*; it belongs to the *vita activa* (Arendt, 2006a: 145). The free will of sovereignty is not only different from freedom, but also leads to the absence of freedom: "if men wish to be free, it is precisely sovereignty they must renounce" (Arendt, 2006b: 163). Moreover, while men can live without the activities of domination and sovereignty (e.g. the rule of master over slave) in the human conditions of labour and work, the absence of action and speech brings death to the world: "it has ceased to be a human life because it is no longer lived among men" (Arendt, 1958: 176).

Arendt argues that sovereignty is similar to the force of mutual promise in the sense that both "reside in the resulting, limited independence from the incalculability of the future" (Arendt, 1958: 245). However, promise as one of the redemptions of politics (the solutions for the frustration) is based on the idea of reciprocity and equality, which binds people together in order to form a new community that comprised of freedom of citizens, not to a superior or isolating us as individuals, which marks the very distinction of human from animal life. The concept of 'promise' enhances Arendt's understanding the idea of law (see chapter 5) as Arendt's solution to deal with the unreliability of freedom in the moment that people depart from each other, resulting in the disappearance of the sphere of political action. Sovereignty, on the other hand, is a property of a will that is free from any binding promises or purposes due to unquestioned superiority (Arendt, 1958: 245).

Arendt also criticises sovereignty by laying stress on the ambiguity of international law, which leads to the paradox of the sovereign state system based on the modern notions of territory (Benhabib, 2004: 49-50). This kind of situation causes the 'political evil' of 'statelessness', which disregards stateless people by depriving them of their citizenship rights, which Arendt

considered as human rights. According to this notion, on the one hand, with sovereign power, a state has a 'universalist moral right', which is an obligation "to grant refuge to each human being in need" and "not to deny membership or the right to have rights" within his territory; on the other, the act of *inclusion* undeniably generates the *exclusion* of someone else not included in this territory (Arendt's critique of the inclusive/exclusive people in the political community links to the idea of Greek's *polis* and the Roman foundation; see chapter 5): "The paradox of democratic self-determination leads the democratic sovereign to self-constitution as well as to exclusion" (Benhabib, 2004: 66). Arendt notes that the inviolability of the sovereign state is incompatible with civil disobedience, which is the right to dissent deriving from the promise in the beginning of the social contract, corresponding directly to the existence of freedom.

In terms of state sovereignty, there are two concerns here: internal and external sovereignty. On the one hand, Arendt exemplifies the case of the USA to disagree with the idea of internal sovereignty. In the independence of the US, its powers were not from the Constitution, but from the moment of the Declaration of Independence from the British Crown.[17] In *On Revolution* Arendt supplements that the limited and lawful government of a sovereign state is not the answer of the body politic, because such power cannot be checked by law; the lawful government of sovereign state can manipulate, monopolise and destroy the power of the many (Arendt, 2006b: 142). Instead, she suggests the system of checks and balances on powers, a mixed constitution, that not only guarantees against the monopolisation of power, but also generates new power that is unable to grow over the other centres of power (Arendt, 2006b: 143).

[17] Historical note: The 13 colonies that became 'States' to form the 'United States of America' were crown colonies directly under the auspices of the British monarch (and did not have any form of political representation comparable to England; a key revolutionary slogan was 'no taxation without representation'). The Declaration of Independence (1776) was issued some years prior to the drafting of the US Constitution; the latter was delayed due to the Revolutionary War. The DoI has a much more 'popular sovereignty' tone as it expounds the reasoned and appropriate rationale for rejecting a government instituted to protect men's rights to life, liberty and 'the pursuit of happiness' (originally 'property').

Accordingly, Arendt saw the American Revolution as the foundation of a 'confederate republic' characterised by a mixed constitution that reconciled "the advantages of monarchy in foreign affairs with those of republicanism in domestic policy". In this regard, the power of the Union and of the thirteen states would not decrease or destroy one another (Arendt, 2006b: 143). By declaring that the powers of the three branches of the federal government shall be separated, the US Constitution, the treaty of a federal government, cannot be broken by anyone in the state, including leaders, so sovereignty cannot find a place in the Constitution (Young-Bruehl, 2006: 127). This case shows that the sovereignty of the US was not under the auspices of the US Constitution; Arendt quotes James Wilson's aphorism that "to the Constitution of the United States the term 'sovereignty' is totally unknown".

Conversely, Arato and Cohen (2010: 152) suggest that Arendt identifies the linchpin of the maintenance of the external sovereignty of the federal state as the executive powers of the US President. They refer to Arendt's idea in *Civil Disobedience* (1972) concerning the unconstitutionality of the US Supreme Court to consider the 'political question doctrine' – the matter that affects the sovereignty of the state – in the case of the Vietnam War, and the inability of the Supreme Court and international courts to enforce any decision that affects the interests of sovereign states (Arato and Cohen, 2010: 155). However, I do not agree that Arendt supports the external sovereignty of the US. In fact, in *Civil Disobedience* Arendt relates external sovereignty to the American legal system, not American law, by referring to the authority of government to decide the case of the 'political question doctrine' even if it is 'illegal and unconstitutional', whereas the Supreme Court cannot get involved in this kind of question:

> The political doctrine is in fact that loophole through which the sovereignty principle and the reason of state doctrine are permitted to filter back, as it were, into a system of government which in principle denies them (Arendt, 1972: 100).

Although for Arendt the Supreme Court and international courts are unable to enforce any decision that affects the interests of sovereign states (Arendt,

1972: 101), this does not mean that she supports external sovereignty over the constitutionalised legal order.

4.2.2 The Relationship between Sovereign Will and Political Theology: The Greek Tradition and Christianity

One of the most prominent examples of sovereign will is the concept of God in Christianity (Elshtain, 2008). Arendt's critique of sovereignty in consideration of Christianity is confirmed by the statement that "the modern Absolute State, even without a Prince, was able to make claims like a Church" (Arendt, 2006b: 146). She reveals the notion of a divine power whereby God's will was represented on earth to make law powerful, and power legitimate. This indicates that the state needed the sanction of religion more than the religion needed to support the state and the king (Arendt, 2006b: 152).[18] She notes:

> The point of the matter was that the absolute monarch – unlike the constitutionally limited king – not only represented the potentially everlasting life of the nation, so that 'the king is dead, long live the king' actually meant that the king 'is a Corporation in himself that liveth ever' (Arendt, 2006b: 147).

The archetypal doctrine of the divine appointment of the king transmogrified into sovereign absolutism in the context of increasing secularization from the 16th Century onwards, contemporaneous with political challenges to the authority of the Church (Arendt, 2006b: 150). The rise of a new kind of sovereign absolutism (i.e. the modern sovereign state) precipitated further secularization and revolution, which inherently could not distinguish from the old kind of absolutism (the residual forms of traditional Christian kingship in the modern state). For example, the French Revolution can be found in an attempt to establish 'the cult of a Supreme Being', which meant an 'Immortal

[18] *Vicarius Dei* ('the vicar of God') was a core concept of European kingship and sovereignty from the early Christianization of the barbarian kingdoms (e.g. the Merovingians). The Church itself conferred such privileges on barbarian kings to coax them into Christianity after the collapse of the Roman Empire in the West, and early law codes (e.g. *Lex Sallica*, the basis of modern Western European law) were derived from the Jewish Bible and implied that the sovereign was the representative of God on earth, drawing on the tradition of the Israelite prophet-kings (Wallace-Hadrill, 1962).

Legislator' (an 'ever-present transcendent source of authority', an absolute sovereignty) (Arendt, 2006b: 176).

Arendt argued that the French Revolution is not the essence of revolution, because it was a 'war of defence and aggression'[19] that formed a new absolute authority (Robespierre) to be axiomatic for all factions and parties, which is the theoretical substitute for the sovereign will of an absolute monarch (Arendt, 2006b: 176). Because the people had neither organised nor constituted what she considered authentic political activity, Arendt wrote that this Revolution "dissolved automatically the political structure of the country as well as the bonds among its inhabitants, which had rested not on mutual promises but on the various privileges accorded to each order and estate of society" (Arendt, 2006b: 173). In this regard, Arendt considered secularism in modernity at length, with regard to politics (as opposed to sovereignty) being impossible without an inherent theological dimension.

The relationship between Christian theology and the concept of sovereignty leads to the question of how Arendt understands the idea of Christian divinity, which supports her conception of sovereignty. It also raises the question of how Christian theology relates to the concept of the will (free-will), since for Arendt (as explained previously) sovereignty entails a particular conception of will. In order to solve these questions, this section presents the ideas of Plato and Neo-Platonism that influenced Christian religion, together with Arendt's understanding of the idea of God in three substantial persons, in light of Augustine, as the roots of the concept of sovereignty.

4.2.2.1 Christianity and the Greek Tradition

In *The Human Condition* Arendt wrote that sovereignty is "the ideal of uncompromising self-sufficiency and mastership, [and] is contradictory to the very condition of plurality" (Arendt, 1958: 235). I suggest that the main point

[19] According to Arednt, the French Revolution was a war of aggression, because its agents did not know the difference between violence and power. They understood that the power that resides in the people is a natural force that lies outside the political sphere. This pre-political, natural force of the multitude outside of political organisation led to the accumulation of violence, whereby all political institutions were swept away (Arendt, 2006b: 175).

of this aphoristic formulation is linking to Christians' monotheist conception of God: God is sovereign because He is the only One God. The belief in the absolute power of One God does not mean that she refuses the existence of Jesus Christ as the Messiah, whom she perceives as "the discoverer of the role of forgiveness in the realm of human affairs" (Arendt, 1958: 238). This idea affirms a great power of Jesus Christ in His full divinity besides God:

> Jesus maintains against the "scribes and pharisees" first that it is not true that only God has the power to forgive, and second that this power does not derive from God – as though God, not men, would forgive through the medium of human beings – but on the contrary must be mobilized by men toward each other before they can hope to be forgiven by God also (Arendt, 1958: 239).

The thought of Arendt on Jesus Christ leads to two important issues involving her understanding of Christianity and its relationship to Greek thought. Firstly, it opens a space to the idea of the Trinity, affirming the substance of the Son Jesus derived from the Father God. The belief in Jesus as the Son of God and a party to the Godhead according to the Trinity, which forms the basis of Arendt's theology, is antithetical to Judaic theology. Although Arendt was a secular Jew, it is interesting that the great attention she pays to the Trinity and Christianity as interpreted by Augustine is fundamentally antithetical to the austere monotheism of Judaism's God.[20]

Secondly, it reveals the deist idea of Christian religion, relating to the Neo-Platonist cosmos, which is differentiated from theism; God does not interact with the sensible world, since Jesus has his own power to redeem sin (i.e. an instrumental, material power). It is also interesting that writers of the New Testament often translated words (e.g. *aphesis*, 'forgiveness') from the Septuagint version of the Bible (the Greek translation of the Old Testament) instead of the original Hebrew Bible (Olsen, 1963). The idea of forgiveness

[20] It can be said that the essential doctrinal difference between Judaism and Christianity from the perspective of the former is Judaism's uncompromising monotheist belief in the One God, and the belief that God entered into a special covenantal relationship with Abraham, Isaac, Jacob and the Children of Israel, who were sanctified on Mount Sinai: "In the call of Abraham, the Exodus from Egypt and the giving of the Torah on Sinai, God had elected and chosen his own people" (Kessler, 2010: 31).

received from the New Testament in Arendt's *The Human Condition,* then, shows her close relationship to the Greek tradition rather than the Roman.

Plato's definition of the Good and Idea is close to the definition of the Christian God, although Plato never called Good 'divine' or 'god' (Gilson, 2002: 285). In Plato's mind, a god was inferior to the Idea: "a Platonic god is a living individual endowed with all the fundamental attributes of an Idea" (Gilson, 2002: 28). God in this point is the intelligible model of the supreme soul, which is furnished by the Idea (Feibleman, 1997: 28). Since human bodies can perish, the Idea that is inherent in the immortality of the soul proves that it is godly. In this respect, only the Idea is truly real and composes sensible things in terms of the Form of objects. This Idea is immaterial, immutable, necessary and intelligible, ruled by reason over the spirited and appetitive faculties (will and desire) (Feibleman, 1977: 27). The Idea of Good dominates all other Ideas because "all that is, in so far as it is, is good" (Gilson, 2002: 25). Plato said the Idea of Good is "the power upon which he who would act rationally either in public or private life must have his eye fixed" (cited in Gilson, 2002: 25) (the discussion of the Forms in Plato is also elaborated in chapter 2).

This section suggests the influence of Platonic philosophy in the theological concept of the Trinity is found in Philo, the chief founder of Neo-Platonism (Feibleman, 1997: 97). Philo played a key role in reconciling Greek philosophy (rationalism) with the Hebrew Bible (revelation). His model was followed by many theologians, such as Plotinus and Augustine. There were three main conceptions of the role of Plato's Ideas in Philo: "the Ideas as the thoughts of God from eternity; the Ideas created by God as incorporeal being prior to the creation of the world; and the Ideas as implanted in the world by God" (Feibleman, 1997: 109). For Philo, God "had created first the world of intelligible things, the Ideas, as patterns in the divine *Logos* and then copied the sensible things from them" (Feibleman, 1997: 109). The Ideas thus cannot separate from the mind of God.

The reason to raise the idea of Philo is the explanation of *Logos* in the Old Testament. The Ideas as the pattern of divine *Logos* is important to

Christianity because it is the political act of constitution-making; as Freeden (2013: 95) points out, when "God 'spoke', the creative act took place", for the *Logos* is "the satisfying rational principle for understanding the universe". The Old Testament refers to the existence of divine immanence besides the Creator God's transcendence: the Spirit of God; the Wisdom of God; the Word of God (Plantinga, Thompson and Lundbert, 2010: 113). The Spirit concerns the power by which God animates creation and empowers special agents such as prophets and the Messiah.[21]

Wisdom is closely related to God's law and a mechanism in the structure of Creation. The Word of God applies to the way God communicates in creation and effects the divine purpose. The idea of God's Word was personified by Philo, who found great compatibility between it and the Platonic idea of *Logos*. God's Word (*Logos*) is used to identify the mind of God which is similar to His essence, and to identify a created mind which is different from His essence (Feibleman, 1997: 109). "The Son as Word (*Logos*) exists eternally with the Father as his 'immanent Word' (*Logos endiathetos*) and acts in time through creation and revelation as his 'expressed word' (*Logos prophorikos*)" (Phan, 2011: 8).

These three routes are the central channels by which the transcendent God interacts with creation, while they also take on a life of their own with an independent personal existence. They were later found in the New Testament by analogy to the idea of the real, historical person of Jesus Christ as Word and Wisdom, and the person of the Holy Spirit as Spirit. Accordingly, Philo's idea of *Logos* exerts a great influence on the idea of Trinity. Later, early Greek Trinitarian theology, such as that of Origen and the Cappadocians, was heavily influenced by neo-Platonism, led by Plotinus (Phan, 2011: 8). Given the Platonic implication involved, in the next section I suggest that Arendt's favour of a system of checks and balances and the will that plays a predominant role as the faculty by which free action is possible

[21] Also God's breath incarnated the soul in Adam – the human soul is thus a thing separate from material creation (the body) and from God, although it is *of* and *from* God.

is grounded in the Trinitarian theology elaborated in the philosophical thought of Augustine.

4.2.2.2 Free-Will in Support of the Holy Trinity: The Implication of Augustine's Idea of Will and Trinity in the Concept of Sovereignty and the relationship to Politics

As presented above, Arendt's conception of sovereignty entails a particular concept of will, associated with the sovereign will in Christianity. In this chapter I posit Augustine as one of the primary thinkers for analysing Arendt's relationship between the concepts of sovereignty and free-will. Arendt clearly wrote that the concept of will as a distinct faculty separate from freedom was a wisdom unknown to the Greeks as well as the Romans,[22] but the relevance of the ancient traditions might be clearer when considering Augustine's idea of Christianity and its connection to Greek thought (Arendt, 2006a: 156). It was not any other Neo-Platonist who inspired Arendt's understanding of free-will in Christian religion, but Augustine: "Augustine is the only philosopher the Romans ever had", who made "Christian philosophy became equal to that of Aristotle – for the Middle Ages 'the philosopher'" (Arendt, 1971: 84, 86).

She also called Augustine the "first philosopher of the will" (Arendt, 1971: 84). Even though Augustine was the preeminent Roman theologian, whose screed *City of God* provided theoretical and political justification for the continuation of Christian sovereignty in the Roman Empire despite the catastrophic Fall of Rome, he was understood by Arendt as an essentially Greek philosopher in his thought, which confirms her perception of the idea of will in the area of the *vita contemplativa*. For Arendt, Augustine differs from classical Roman thinkers, such as Cicero, because of his systematic thinking on Christianity. Throughout his life, Augustine devoted himself to philosophical inquiry, defending the crucial dogmas of Christian theology and developing his own original philosophical position in the same way as the

[22] Jesus was a poor and materially insignificant subject of Roman power, who transcended the contemporary concept of sovereignty by his messianic mission (repudiating the mocking epithet 'King of the Jews' by actualizing sovereignty over all mankind).

Greek philosophers, while classical Roman theorists (notably the Stoics) only searched for the personal, individual happiness of the philosopher's life (Arendt, 1971: 84). Nevertheless, Arendt does not mention what criterion she uses to measure Augustine's success, and to what extent this is tangibly equal to Aristotle (as she ranked Augustine).

Another important point in Augustine's theory of Christianity is the relationship between the ideas of free-will and deism. In the first point, in Augustine's *Confession* (4.12.18; see also Hill, 2002: 15) he described himself as a creation of God, and he possessed his own being only in the context of a relationship with his Creator. Augustine enlarged this issue by saying that God is Being, on which all created being depends. God is the creation from nothing (*creation ex nihilo*) (Torchia, 1997, 1999), while human *being* is conditional on its creation by God. Despite their created nature, humans have a free choice to determine their own self-fulfilment (*formation*) by choosing between turning to God (*conversio ad Deum*) and turning away from God (*adversio a Deo*). In Augustine's ontology, creation is destined to find its fulfilment through a return to God, Who awaits the free response of His creature (Alexander, 2008: 263). For Augustine, in the first centuries after Christ, the universe is an emanation, "the outflow of divine and anti-divine forces", without the personal God found in the Hebrew Bible. The main argument is that "God only foreknows; He does not compel".

According to Christian belief, God is both omnipotent and omniscient, so He created the world of His own free-will, *ex nihilo*, and then He created man after His own image, with a free will. However, God does not see knowledge in three different times – past (presenting in memory), present (presenting in mental intuition) and future (presenting in expectation) – like humans, but His foreknowledge is manifest in the presence of an unchangeable eternity. Augustine's idea of the image of God reveals the idea of natural law as the conscious participation of rational man in the name of the eternal law (*lex aeterna*), which is imprinted on our soul within the scheme of earthly morals. In this regard, natural law serves as images of the will of God, the ineradicable and sublime administration of all things proceeding from divine

providence (Augustine, *Eighty-three Different Questions*: 51, 53; Chroust, 1944: 198).

Consequently, any ethical principles, including the guiding principles of all practical laws or norms, and the idea of right and justice, are derived from the command and providence of God, from His arbitrary act of Will, and are simultaneously drawn from the 'natural' (i.e. primary natural law) imprinted in all individual souls (including those who are responsible, as legislators, for the making and enforcement of civil laws, or for the enactment of natural laws as civil laws).

For Arendt, the will of the omnipotence of God can be reconciled with the free-will of man only in the perspective of the temporality of the human faculties (Arendt, 1971: 107; Kampowski, 2008: 168). In terms of the will of humans, in Arendt's view, Augustine understands that the will commands itself, responding by both willing and nullifying: "In every act of Will, there is an I-will (*velle*) and an I-nill (*nolle*) involved" (Arendt, 1971: 89). However, the will does not surrender to a command-obeying faculty. Augustine opens a space for the interpretation that the human faculty of will might not only be a command, because humans also have 'reason' to resist this command – but also the faculty of choice, for example, the choice to believe or not to believe in God. However, the freedom of the faculty of the will is limited because "no created being can will against creation" (Arendt, 1971: 88, 91). In other words, in the moment of willing, no other counter-will (or *nill*) can stop this will, since we are still *being*. This opens to the idea that the will which commands the body is the mind, whereas inside the mind, the will and the counter-will contest infinitely.

Arendt was influenced by interpretation of Augustine offered by the medieval philosopher and theologian Duns Scotus, who gives more detail about the idea of man living 'with time': "[Duns Scotus] remains an Augustinian who profited to the utmost degree from the Aristotelian method in the exposition of the thoughts and doctrines that form his metaphysical vision of reality", conceiving that humans manifest the weakness of natural reason in their lives; that is, they have a limit for giving reasons (Arendt, 1971: 128-129).

However, for Scotus man has a mental capacity to transcend whatever is given to him. He can conceive of something infinite like God with this limited reason, and transcend this limitation by the Will, because the Will gives him faith that cannot be proved or refuted by natural reason. This faculty of Being shows the fact that man was created together with Being, and confirms the quality of the freedom of the human to decide whatever he *will* or *nill*.[23] Because of this freedom, man can choose to praise God's Creation or refuse to love (believe in) God; even though man wishes to be happy and the love of God leads him to be happy (natural will), man has freedom to transcend this nature if he suspends it (free will) (Arendt, 1971: 134). Scotus argues that this is the price that we have to pay for the freedom of free will.[24]

According to Arendt, Augustine found a way to resolve the problem of the Will without annihilation or resistance, namely Love, which leaves footprints on the mind (Bradshaw, 1989: 90). In her view, a free-will to choose to love or not to love God for Augustine and Duns Scotus is the Will's inner conflict. The solution of this conflict is to transform the Will into Love (Arendt, 1971: 135). The character of the Will presents the functional operative aspect in terms of Love that unites a sensory apparatus of man with the real world outside the mind, transforming sensation into perception, and then drags it back into ourselves, joining together a difference in mental faculties of man, in order to prepare it for further mental operation. This solution is supported by Scotus's idea of 'contingency'. It combines the idea of Christianity – the Creator-God who gave birth the world from his 'contingency', though it was not 'necessary', with His entirely free will to create the creatures – with the

[23] Although the Will is free, it is not omnipotent or unlimited, since action stops the Will's internal division. The Will causes volitions which cause the effects and actions that the Will cannot undo. To this, the deeds and actions is beyond the reach of the Will; when we act, the (free) will becomes ended (Arendt, 1971: 102; Young-Bruehl, 1982: 288).

[24] Scotus's idea of will is related to theological voluntarism, as opposed to intellectualism. Voluntarism provides primacy to God's sovereign will and divine omnipotence as the source of the dictates of natural law and also the determination of moral rules and values (Zagorin, 2009: 9). William of Ockham, for example, refers to the supremacy of divine will residing in a collection of unrelated individuals, not the reality of universals. Given the absolute character of natural law, Ockham places the sovereign will within the framework of the ordinary power of God, whereby God establishes a moral order, not the absolute power of God, by which God could order the opposites of the acts which He has forbidden (Oakley, 1961: 71–72).

Aristotelian law of causality (Arendt, 1971: 135). This, Arendt points out, is the first time that the Christian faith and Greek philosophy become one.

Turning back to the Book 8 of Augustine's *On the Trinity*, love is different from desire since it is the issue concerning the Trinity. For Augustine, love shows the image of the Trinity: the mind, its knowledge, and love (Augustine, *On the Trinity*: 8.10.14). Love is also related to three issues: the lover, the beloved, and the love itself. Given the relationship between these three things, the mind (the lover) can love (the love) itself (the beloved) only when it knows itself. According to this, the mind, the knowledge, and love are related to the others in the sense of one spirit and one essence.

Arendt's view of love as the solution for the contradiction of the will and the nill is backed up by Augustine's project of the Trinity of God, not the Trinity of the mind, the knowledge and love, as in the original text. For Arendt, Augustine's idea of love illuminates an image of the Divine Trinity which shows the independence of each substance, but combined together with friendship and unity: "God remains One while related only to Himself but He is three in the unity with Son and Holy Ghost" (Arendt, 1971: 98; see also Matthews, 2002: xvi for the relationship between Augustine's idea of love and the Divine Trinity).

In *On the Trinity*, Augustine suggests two features on his Trinity project of God. The first one is the plural nature of God's syntax: Father, Son and Holy Spirit. In the beginning of book 8 in *On the Trinity*, Augustine wrote:

> Thus the Father is God, the Son is God, the Holy Spirit is God; the Father is good, the Son is good, the Holy Spirit is good; and the Father is omnipotent, the Son is omnipotent, and the Holy Spirit is omnipotent; but yet there are not three gods, nor three goods, nor three omnipotents, but one God, one good, and one omnipotent, the Trinity itself (*On the Trinity*: 8, Preface).

For Augustine, God is the Creator and the ruler of all creation. The Father, the Son (Word) and the Holy Spirit (Wisdom) are three persons of God, 'a trinity of inter-related persons, and the unity of an equal substance'

(Augustine, *On the Trinity*: 9.1.1). According to the passage of John's Gospel, "In the beginning was the Word and the Word was with God, and the Word was God... And the Word became flesh and dwelt among us, full of grace and truth" (John 1:1–14). For Augustine, the Word is the second person of the Trinity but links to the first person. Intellectual memory is a function of our minds that contains all of the knowledge, and the particular piece of knowledge is born as the 'word of the heart' (*verbum cordis*) or the 'mental word' (*verbum mentis*), which is pre-linguistic in relation to all words and languages.

Since the Father's knowledge is the Father's essence, the Word born from the Father's knowledge is the divine essence generated or begotten. In terms of the unity of substances of God, Jesus was sent to absolve and forgive people from their own sins as a symbol of the love of God. Consequently, the Son is identical with the Father because They are one, of the same divine essence, differing only because Son and Word *emanate from* the Father (Friedman, 2010: 52–55).

The second feature is the idea that Adam, and later Eve – the original ancestors of human beings – are made in the image of God (*imago Dei*). This image is neither created according to the form of body, nor any part of the mind, but according to "the rational mind where the knowledge of God can reside" (Augustine, *On the Trinity*: 12.7.12). Augustine also raises an issue in Book 12 of *On the Trinity* that if Son is also the true God, it is right to say that the Father is made in the image of the Son, and man is the image of the Son. This might make a misunderstanding that man is not the image of the Father, but of the Son, and the Son is unlike the Father (Augustine, *On the Trinity*: 12.6.7).

However, as stated previously, since the Trinity addresses the equality of essence between the Father and the Son, "what has been made in the likeness of the Son has also been made in the likeness of the Father". According to this point, the Trinity itself is the one true God, and man is always the image of the one true God. This sets human beings to be apart from other animals, and remain derivative from the image of God. However,

it is impossible for human beings to imitate its original image of God (the Divine image) in perfection because they are only the image of God who is absolutely perfect (Augustine, *On the Trinity*: 12.7.12; see also Matthews, 2002: x).

Given the idea of a three-in-one Trinity, man, as Arendt notes with regard to Augustine, is created in the image of God, and thus the three-in-one can be found in the structure of the man's mind which the love of God delivers to human beings. Man is different from other creatures created 'in numbers' (as species) before Man. Man was made in 'the singular', 'propagated from individuals', and had an individual character which can be distinguished by the Will. Man is a creature that is essentially temporal under the movement of times (i.e. past, present, future), living *with* (not *in*) time, because he has his own will which is different from that of other men (Arendt, 1971: 108-109). Insofar as we as temporal creatures speak of divine foreknowledge, we can think about it in terms of our knowledge which is limited only by (the movement of) time. Consequently, no one can speak of God's foreknowledge (the real Foreknowledge of God), so that it is more proper to abandon the idea of foreknowledge altogether with the acceptance of the capacity for free choice, between *willing* and *nilling*, as the essence of man.

This section elaborates more on the implication of Augustine's conception of will and Trinity toward Arendt's understanding of sovereignty and its relationship to politics, which can be divided into three points. Firstly, I suggest that the will is a predominant role of human faculty that provides freedom of action in politics. The will in this case has an Augustinian root and is related to the concept of the new beginning in the eyes of Arendt. Secondly, Augustine's notion of will that encourages the concept of politics in the first point conducts the character of sovereignty as a commanding will that should be banished from the political realm. Lastly, I show that Arendt's fondness for a system of checks and balances (or a mixed constitution) is grounded in Augustine's conception of the Trinity.

In the first point, the implications of Augustine's Christianity in the eyes of Arendt include that God created the world of His own free-will, and out of

nothingness, so the creation of God was an absolute new beginning *ex nihilo*. This also implies that the human being who was created in the image of the Creator-God is a beginner, who can begin something new (Arendt, 1971: 17). Thus, human willing and acting are comparable to the divine act of creating, as acts of beginning something new. The limitation of the analogy between divine action and human willing/acting turns on the different characteristics by which man creates things within a temporal context and given conditions, whereas the ability of God's creating is an everlasting present, beyond times and *ex nihilo*.

From the background of the mental activity of willing, the ability of man to create a new thing shows the second step of the concept of the new beginning. This type of new beginning resides in the freedom or human capacity of action, and manifests itself in the activity of politics. For Arendt, freedom and action are identical and exist only in political-public sphere: "Men are free… as long as they act, neither before nor after; for to be free and to act are the same" (Arendt, 2006a: 151). The activity called politics is understood as the activity of action among men; Arendt wrote that "men, not Man, live on the earth and inhabit the world" (Arendt, 1958: 7). Arendt uses the plural 'men' to show the worldly experience of our intercourse with others in the correspondence to the human condition of plurality. The human condition of action can be actualised only in a human community; it is expressed in the activity of speaking and acting – the condition for speaking and disquiet – that cannot be undertaken alone (see also chapter 3). Politics appears when people share their own experiences about the reality of the world with others by speaking with or against others, resulting in the beginning of a new thing in a sense of creating the "world anew" (Arendt, 1976: 466; Arendt, 2005: 128).

Although Arendt associates the will with the idea of beginning something new with freedom and action, the influence of Augustine leads to Arendt's conception of I-can (freedom) and I-will (free-will) not being the same thing. Free-will and freedom are not identical, since free-will is the faculty of mind that excludes all processes of exchange of opinions and agreement between

people (Arendt, 2006b: 73–94, 321; Fine, 2008: 161). In political philosophy, the concept of political freedom is given over to the exercise of isolated individuals of their autonomy, moving from the *vita activa* to an inner conception of individuals – the conscience and consciousness – which is identical to the 'sovereign' individual and associated with political philosophy rather than political action.

Freedom, in this case, refers to inner free will (sovereign will), which in turn privileges self-ownership and a protective will to exercise power over others, rather than freedom to act in concert. The worldly experiences that once had been received from the freedom of the exchange of opinion in politics were transformed into the free-will of experience of one's own. The linkage between sovereign will and freedom tends to be an obstruction of plurality, the very condition that makes for the possibility of politics, leading to what Arendt considers to be the decline of politics and freedom (Havercroft, 2011: 22). Hence, "the moment men *willed* freedom, they lost their capacity to *be* free" (Arendt, 2006a: 160).

Secondly, in *The Life of the Mind*, the chapter on Augustine is the longest of all chapters in the second volume on "Willing" (see Kampowski, 2008: 146). To Arendt, Augustine's conception of free-will associates it with the command of sovereign will. This was interpreted by Arendt to be manifest in the three divisions of the human mind – will, intellect and memory – "but their Oneness is due to the Will" (Arendt, 1971: 99). That is to say, the Christian statement that 'thou shalt will' has a sense of command to address one individual man. However, this command does not address my will to address my act, but addresses my will itself. Whatever I may do in reality, the command to will implies that I can answer 'I will' or 'I will not', which implies the possibility of obeying or disobeying (Kampowski, 2008: 158).

The free choice of will also conducts the principle of free-will that resides in the Christian dogma of creation by God. Arendt wrote that in Augustine's mind, the will does not split up between good and bad, such as good spirit and evil body, but between 'I will' or 'I will not', both of which are possible to be equally good or equally bad. This reaffirms that theology and philosophy

are in the same realm. It also confirms the closeness between Augustine and the Greek intellectuals in Arendt's viewpoint. The concept of sovereignty that entails the will is incompatible with action in politics, because the essence of politics is not the will to command (as in sovereignty), but the sharing of opinion and speech in a public realm.

Finally, one of the influences of the Trinitarian theology of Augustine developed from the 13th Century is the suggestion of the system of checks and balances and a mixed constitution in the form of government. The concept of the Triune God in Augustine was developed in the thought of Arendt, accompanied by the support of the system of checks and balances in the body politic. As referred to above, Arendt admired the US Constitution due to its implicit affirmation of the tripartite separation of powers of excusive, legislative and judiciary, because in this system the construction of a new central power still remained the prerogative of federal states, and appeared to contradict the supreme power of government. The system of checks and balances recalled the spirit of Trinity, as the three persons of God in the One substance, implying the coordinate uses of the power by the three hypostases of the triune God, which have been seen as a horizontal distinction (Pabst, 2012: 107).

I argue that the reconciliation between the notion of separation of powers and the Trinitarian conception of God is different from Lockean doctrine of separation of powers because sovereignty, according to Locke, is not based on the separation of powers, but the 'separation of functions' of the single supreme political power (Gencer, 2010: 330). Moreover, I argue that there is still the difference between the idea of the separation of powers and the concept of the Trinity of God. In the former concept, powers were separated into three substantial divisions, each of which is independent from, but responsible to the other two by the system of checks and balances. Conversely, in the concept of the Triune God, the distinction between Father, Son and Spirit in terms of the different functions cannot imply separation or division, since they are of the same substance. The conclusion of this point is not that there is no sovereign in the US Constitution, but that the sovereign

of the US Constitution differs from Arendt's understanding of the sovereign in the Christian concept of the Trinity.

This section has situated Arendt's conception of sovereignty in the context of Greek theology and its influence on the idea of the triune God of Christianity. The next section explores how Schmitt essentially shares the meaning of sovereignty with Arendt, while detaching sovereignty from the political sphere. He uses the support of Roman perceptions of Christianity to conceive of sovereignty and sovereign power as a component of politics.

4.3 Part II: Schmitt's Conception of Sovereignty

4.3.1 Sovereignty as Decisionism in the Matter of Politics

As mentioned above, Arendt shares the same conception of sovereignty with Schmitt as being intimately related to the free-will of the human mind. However, Schmitt refers to this idea in terms of decisionism (Loughlin, 2013: 2), which means that the sovereign decision is the expression of the sovereign's own free-will, which answers to no reasons and is not completely comprehended by its causes, and is manifested by the distinction between friend and enemy. In *Political Theology*, a book written during 1922 before *The Concept of the Political*, Schmitt suggests that the sovereign "is he who decides on the exception" (Schmitt, 2005: 5). In this work, Schmitt posited a radical form of exceptional power when he allowed the ordinary rule of law to be encroached upon by exceptional, unlimited absolutism during crisis situations. In other words, in the first direction, sovereignty is about having capacities to exercise rule and coercive power, whereas in the second it discloses the capacity to make a crucial decision under political crisis (Prokhovnik, 2007: 43) (chapter 5 explains that the use of extra power over laws in a normal situation is the extra-legal power).

As distinct from Arendt, who separated sovereign power from political matters, Schmitt's *The Concept of the Political* shows an attempt to bind the concept of sovereignty to politics. Since the integral existence of conflict and the real possibility of war between friend and enemy define politics, the extension of sovereign power over normal law is necessary in order to deal

with critical situations that can occur any time when the conflict between enemies escalates beyond normative political configurations and structures. Schmitt referred to the sovereign decision during an exceptional case, revealing the characteristic of politics as the most extreme consequence of the friend and enemy distinction (Schmitt, 2007a: 35). Within this type of situation, any circumstance cannot be subsumed under law and cannot be specified in advance. Sovereignty then discloses the concealment of statute and constitutional laws. It provides the reality of the politics (the political) that reveals itself at an exceptional time and circumstance which could not be envisioned or prescribed in law (see chapter 5).

Kalyvas (2008: 89, 94) puzzles out how Schmitt understands the concept of sovereignty by relating it to a constitutional theory of the extraordinary, which is the moment that the sovereign decision establishes a new juridical system, when the old one is disruptive or inexpedient. This leads to the idea that the foundation of political sovereignty is from the constitutive decision, not consent or deliberation (Geréby, 2008: 10). The decision of sovereignty on the exception also stands over the valid legality, which implies that the sovereign has an unlimited freedom beyond existing laws and constitutions: “what characterises an exception is principally unlimited authority, which means the suspension of the entire existing order” (Schmitt, 2005: 12). This is because sovereignty is the highest power, not a derived power, so there must be no barrier (i.e. norm) to prevent its expression (i.e. power).

A state of exception, on the one hand, is an underlying reality of all normality. What Schmitt attempts to illuminate by invoking the possibility of the state of exception is the concealed truth of every working ‘normal’ order. Schmitt confirms that normality is a necessary pre-existing collective entity to all legal norms. In order to make sense of a legal order or to decide a state of emergency, a normal situation must exist, and sovereign is who decides whether the normal situation should exist. Accordingly, normality is a political achievement of the sovereign in deciding a state of exception that must be conceived in genuinely political terms, not the given societal order simply taken for granted, as in liberalism (Bielefeldt, 1996: 384).

On the other hand, a state of exception is linked to a state of emergency when conditions come perilously close to scuttling the normal course of affairs, requiring an emergency measure in order to avert calamity. A situation of exception appears with the absolute power when valid law in a normal situation breaks down (Schmitt, 2005: 13). In this situation, a new, radical legality emerges with the inability to back-track or reduce to anything external or posterior to itself, or "provide its grounds though any system of rules transcending itself" (Kalyvas, 2008: 94). This shows that, in an emergency situation, sovereignty has legitimacy in overriding extant constitutional provisions and laws, including the legitimacy to inflict political violence.[25] This also implies that the state of emergency in politics clearly defines the essence of politics more than everyday politics (Braspenning and Tanghe, 2009: 104). In this respect, the exception "is to be understood to refer to a general concept in the theory of the state, and not merely to a construct applied to any emergency decree or state of siege" (Schmitt, 2005: 5).

These ideas emphasise the importance of a sovereign actor who should decide on the exception and war (see also chapter 6). In order to use an extraordinary power during a state of exception, the qualified sovereign as an actor must be free from any controls or political scrutiny (i.e. a checks and balance system), and this role may also be specified in a constitution (Schmitt, 2005: 7).

Schmitt criticises modern theorists of the concept of sovereignty (e.g., Wolzendorff, Krabbe, Preuss and Kelsen), who enlarge the power of legal order over the state. For these thinkers, "The state should preserve law; it is 'guardian, not master'", and it is the "responsible and ultimate guarantor" (Schmitt, 2005: 26) because it belongs to the formation of law. In this respect, any decision of the state must belong to every legal perception (called 'legal decision') rather than personal and command elements. Schmitt denies this maxim of legal order by arguing that legal prescription

[25] Similar to the idea of Walter Benjamin; sovereignty is not the foundation of law-making violence, but a peculiarity of it, whereby the state suspends its own protection.

cannot apply to all cases when each circumstance requires a decision that remains “an independently determining moment” (Schmitt, 2005: 30).

As Schmitt notes, the legal prescription merely confers authority on commanders who already possess *de facto* power (e.g. the king in a monarchy or the people in a democracy); it cannot invest power in novices. The incapability of law to name anyone to execute a law also shows its incapability as a form of decision, which is the essential action of the exception. For him, a decision must become independent of argumentative substantiation in terms of legal validity, since the latter may contribute to a wrong and erroneous decision.

Although the idea of sovereignty stands over existing laws, it does not stand above or outside legal systems (this idea is elaborated more in chapter 5). This is because, according to Schmitt’s standpoint, legal orders are based on a decision, not on a norm (Kalyvas, 2008: 94), and the real exception cannot arise from a norm: “the legal prescription, as the norm of decision, only designates how a decision should be made, not who should decide” (Schmitt, 2005: 5, 33). Schmitt also notes that “order in the juristic sense still prevails even if it is not of the ordinary kind” (Schmitt, 2005: 12). The sovereign who holds this decision is then the greatest legally independent, underived power (Kalyvas, 2008: 94).

Schmitt refers to sovereignty in the sense of ‘a productive agency’, which departs from previous definitions of sovereignty that emphasise ‘an absolute instance of command’ or ‘a supreme power of domination’: “the mission of the sovereign is not to command or to exercise power, but instead to invent the higher rules and to determine the fundamental laws of a political community” (Kalyvas, 2008: 95). Consequently, the sovereign demonstrates the extraordinary primordial power of the state prior to existing constitutions and laws, and the decision of the sovereign is extra-legal rather than illegal (Kalyvas, 2008: 345). In *Political Theology II*, Schmitt further re-affirms that what he said about political theology is the statement of a jurist upon the theoretical and practical legal-structural similarity between theological and

juridical aspects of sovereignty (the relation between political theology and sovereignty is discussed in the following section).

Two possible cases of the status of exception are revealed: the exception that is written or unwritten in law. The first one implies the use of exceptional power under the emergency law – the existence of emergency law within the law – which is different from an enforcement of law in a normal situation and not lawless. Schmitt (2005: 11) cites article 48 of the Weimar Constitution (1919) and article 14 of the French Charter (1815) as exemplifications of the second type of case: according to the former, unlimited power in terms of exception can be applied under the control of parliament and a presidential declaration, while in the latter an individual state (monarch/sovereign) which cannot have the power to declare the exception can no longer hold his status of state. With regard to the use of sovereign exceptional power without a legal support, even if sovereignty does not obtain its power of exception from law, it still has a systematic, legal-logical foundation in terms of the highest power, since sovereignty possesses supreme power over any laws. However, in both cases, the precondition of jurisdictional competence of sovereignty must be unlimited. These also show the legitimacy of the use of political violence by the sovereign in Schmitt's viewpoint. Consequently, the nature of sovereignty can be misunderstood if it is focused only on the rule of law.

4.3.2 Dictatorship and the Romans

Schmitt also demonstrated the concept of the exceptional power of sovereignty in the relation to the concept of dictatorship. In *Dictatorship*, Schmitt differentiated two kinds of dictatorship, commissarial and sovereign, and affirmed that the concept of dictatorship means personal rule combined with two conditions: a consensus of the people and a centralised governing apparatus (Schmitt, 2014: xxxviii). These forms of dictatorship are complementary and interrelated rather than dichotomous, but in the latter dictatorship is the transformation of the former in history. Sovereign exception makes these various kinds of dictatorship possible; the emergency power of dictators is acquired during emergency situations (or crises),

whether such power is used in a temporary break of the (old) constitution or law, in the case of commissarial dictatorship, or exists in the (new) constitution, in the case of sovereign dictatorship (Strong, 2005: xiv).

Commissarial dictatorship refers to dictators who use extraordinary power within an existing constitution. It is a power during a temporary break, emphasising the notion of violation and transgression of the established law, called 'the constituted power'. The problem of dictatorship appeared in the case of commissarial dictatorship when the realisation of legal norms rested inevitably on a form of unregulated discretionary action. A commissarial dictator must restore and preserve the pre-existing system of ordinary law after using an unregulated power during a concrete exceptional situation; otherwise, he will become a mere despot (Scheuerman, 1999: 31).

Sovereign dictatorship, on the other hand, searches for a new constitution with the collapse of the old one, representing the lasting foundations of the established juridical system in the notion of the original foundation and creation (establishment) of a new order, called 'the constituent power' (Kalyvas, 2008: 91). In this regard, Schmitt identified the sovereign decision as the constituent power, which creates law and the constitution outside any forms of legality, and totally holds a concrete decision on matters of juridical and political existence (Kalyvas, 2004: 323). Schmitt also affirms that this second type of dictatorship derives its sovereignty from the authority of the people, and cannot be reduced or traced back to the preceding procedures. I am of the view that Schmitt's idea of sovereign dictatorship moves away from the account of an exceptional power to the systematic implication of state and constitutional law as the central conception of the legal study.

There numerous examples of dictators who used a sovereign power of exception during the whole of the first century BCE of the Roman Republic, when the *imperium* was shaken by repeated waves of threat and civil war (Lane, 2014: 267). Dictatorship has power only during war, in the absence of which "the people always remain the sovereign" (Schmitt, 2014: 23). This was a time of commissary dictatorship and conspiracy, which bestowed emergency powers that allowed the abrogation of other offices and laws for a

limited period (in Schmitt's viewpoint). For example, the classical Republic was first shaken by the Sulla dictatorship, followed by the patrician conspiracy of Catilina, the breakdown of the Triumvirates, Caesar crossing the Rubicon, and the ultimate monarchical system established by Augustus (Lane, 2014: 267; see chapter 2). In the reign of Vespasian, in 69 CE, the Senate announced the maxim *lex de imperio Vespasiani* ('the law of the emperor is best') to empower the executive to use discretionary powers without deference to the existing body of Roman law (Lane, 2014: 288). While allowing for the potential legitimacy of self-proclaimed dictatorship, Schmitt reserves the sovereign right of the people to force the dictator to resign; thus the legitimate dictator can be "forced by an assembly of the people – *the coetus populi* – to resign at any time before the end of his term of office, because here the people always remains the sovereign" (Schmitt, 2014: 23).

However, Kalyvas (2008: 89) differentiates Schmitt's idea of sovereignty and sovereign power from his conception of dictatorship. For Kalyvas, dictatorship – both commissarial and sovereign – represents a rupture of existing law, expressing in the motion of violated, coercive and repressive of an established order which is originally illegal. Conversely, sovereignty appears in the creativity and productivity of a new order, constituted extra-legally (Kalyvas, 2008: 95). Moreover, Schmitt's idea of dictatorship should not be confused with the real supreme power of sovereignty because, Kalyvas explains, the dictatorship "is not the subject or holder of the constituent power, but only its delegate" of constituted power during a short period of revolution (Kalyvas, 2008: 97), whereas the sovereign "is the one who has the power and the authority to take a concrete, total decision on the type and form of the political existence… to determine the existence of a political unity in its entirety" (Kalyvas, 2008: 98-99).

I argue that Schmitt's notion of dictatorship can still be cited with regard to the concept of sovereignty in the sense that the first one is a part of the second political issue. It is true when Kalyvas looks at Arendt's sovereignty as the productive order rather than in temporary violated power during an

exceptional case, as Freeden points out: “At any rate, sovereignty cannot be reduced to declaring states of exception” (Freeden, 2013: 123). However, it cannot be denied that Schmitt defines the sovereign as the person who decides on the exception; in practice, we only know who is a sovereign during the exception, and a dictator characterises the idea of a sovereign who can make a decision during this exceptional period. Moreover, when referring to creativity as the characteristic of sovereignty, Kalyvas throws away the power of sovereignty as a commander, which I think is one of the key concepts of Schmitt’s sovereignty.

4.3.3 The Relationship between Sovereign Will and Political Theology

4.3.3.1 The Roman Tradition and Christianity

Schmitt’s concept of the sovereign as the absolute decision-making power has its roots in the Christian theology of the Roman tradition. In the opening statement of chapter three of *Political Theology*, Schmitt wrote that “All significant concepts of the modern theory of the state are secularised theological concepts” (Schmitt, 2005: 36). By this, Schmitt means that the political concepts of modernity share a systematic structure and a certain historical grounding as theological concepts. For Ostovich, Schmitt’s political theology is not primarily concerned with religion, rather it relates to the structural parallels between theological and political concepts (Ostovich, 2007: 50), whereas for Geréby, Schmitt means by ‘political theology’ that ‘politics [is] analogical to theology’, declaring “the structural identity of certain early modern theological and legal argumentations” (Geréby, 2008: 10). I think Schmitt not only see the likeness between politics and theology, as in Ostovich’s viewpoint, rather the concept of politics is entirely ordered upon theology, a viewpoint described by Müller as involving “the collapse of politics into theology” (Müller, 1999: 69).

The reason for this assertion is not because of the historical development over the modern period, which transfers theological concepts to the theory of the state, but also the consistency of systematic structure between the theory of state and theology that empowers the concept of sovereignty: “It amounted to a substantial demand to structure the political according to

theological principles" (Müller, 1999: 69). The theological concept moved from the assumption that the power of head of state was based on all-powerful God who governed the world in such a way that He could intervene directly anytime to the powerful decision of secular leaders, whose power bears a close resemblance to that of God.

Kantorowicz's *The King's Two Bodies* (1957) shows various outstanding examples of the transcendence of the king identified with the theistic God, whereby the king is immortal in an abstract physiological fiction; that is, the physical body of the king can suffer and die, but his spiritual body transcends, serving as a symbol of his office in the same way as the divine right to rule – he can never die and can do (or even think) no wrong. The structural similarity between theological and sovereignty concepts leads to Schmitt's fundamental idea that sovereignty is a secularised theological concept (Buijs, 2006: 232).

Similar to Arendt, the point of concern in this section on Schmitt is that in the Christian perspective, sovereignty is perceived as first and foremost a conception of God's power and right to rule, and the sovereignty of God is said to revolve around His Will. This reveals the close relationship between sovereignty and will, and also confirms the statement of Arendt about Schmitt's conception sovereignty, where the sovereign wills, and sovereignty is in *the will* (Arendt, 2006b: 289). However, while God and will are represented as the same thing for Schmitt (the Wilful God), Arendt's idea of will is representative of God in terms of three personalities (i.e. the Triune Godhead). This section begins by exploring the relationship between Schmitt's sovereignty and the Roman tradition, then the idea of Christianity as an inheritance from that tradition is explained.

Regarding the influence of theology, Geréby (2008: 10) suggests that Schmitt and his modern followers talk about theology in the sense of Christian theism of the 18th and 19th Centuries, ignoring the classical Graeco-Roman tradition. I totally disagree with this statement. In fact, in *The Age of Neutralizations and Depoliticizations*, Schmitt, as a great critic of liberal thought, refers to the transition from the modern theology of the Graeco-

Roman world in the 16th Century to four further stages: the metaphysics of the 17th Century; the construction of deistic philosophy of the 18th; the secularization of the 19th; and the age of technology in the 20th. Schmitt argues that from the end of the 16th Century, Europe, under the spell of liberalism, gradually became a 'neutral domain', reaching common agreement without conflict in debates and opinions, allowing the possibility of security, clarity, prudence and peace (Schmitt, 2007c: 88). As a consequence, the controversy and arguments on Christian theology (reflecting a 'natural system' of theology, metaphysics, morality, and the law) became uninteresting and merely private matters. In the 18th Century, "God himself was removed from the world and reduced to a neutral instance vis-à-vis the struggles and antagonisms of real life" (Schmitt, 2007c: 90).

In *Political Romanticism* (1986), by criticising the political attitude of Adam Műller, Schmitt supplements his stand on political theology with the claim that liberal ideology was a kind of romanticism because it lacks a concept of the free decision. In this, life became a fantastic project, and God's activity in the world was replaced by the bourgeois life, making the private its primary sphere, and suffering the illusion of self-realisation (Kennedy, 2004: 52). In the 19th Century, Christian belief in miracles and an afterlife was turned into a religion of technical miracles (i.e. inventions and technical progress), human achievements, and the domination of nature (Schmitt, 2007c: 85). Schmitt's critique of modernity in this context is expounded in *Political Theology* and *Political Theology II*.

4.3.3.2 Sovereignty and the Political Theology of Constantine

This section elaborates on the implication of the political theology of Constantine toward Schmitt's notion of sovereignty. Gray (2007: 195) criticised Schmitt's political theology as the idea of a re-paganised polity. On this view, Schmitt supports the power of divinity given to the king, being preached in a national church, where "the state has once again subsumed the religious under its auspices" (2007: 195). I argue that Schmitt's perception of theology is far from paganism, but closest to the Christian theology of Constantine, recalling the absolute power of sovereignty in

decisions in the same sense as the absolute power of the Supreme God. In this respect, the civic religion of Roman antiquity was implicit in Schmitt's thought. Moreover, while Arendt connects Christianity to the Greek tradition, and also to Augustine who is the representative of Greek theology in Roman times, referring to the concept of triune God, I link Schmitt's political theology to Roman antiquity, especially the time of Constantine, underscoring the monotheist character of the sovereign God, not in the sense of the Trinity like Arendt, but that of the imitation of the One God to the One King. Peterson (2011: 94) stated that this feature of monotheism is the metaphysical corollary of the Roman Empire. In order to construct peace within the *imperium*, monotheism dissolved nationalities where a pluralistic sovereignty, local kingship and the rule of national gods as a concept of pagan political theology were removed from the Empire. In this regard, people and nations turned away from their own gods and beliefs to be under the only one creator God, thereby according analogous concentrated power to the emperors. This principle began under Augustus, but most clearly came to fruition at the time of Constantine, with the synergy of *imperium* and Christianity.

According to the history written by Eusebius, Constantine converted to Christianity due to a vision of a cross in the sky with the words "In this sign, conquer" at the Battle of Milvian Bridge in 312 CE (Woodhead, 2004: 43). In 325 Constantine convened the Council at Nicaea, including 230 bishops, to settle on a creed that affirmed the status of Jesus Christ as "only begotten – that is from the substance of the Father; God from God, Light from Light, true God from true God, begotten not made, consubstantial with the Father" (Woodhead, 2004: 47). His conversion was expedient in uniting the increasingly Christian peoples of the Empire (Woodhead, 2004: 9). As part of its polemic against the Arians who took the position that the Son is inferior to the Father, and the Spirit inferior to both, the creed rejected their position in favour of a vigorous assertion of the divinity of Jesus Christ (McGrath, 2011: 17). This conception became the official understanding of God in Christianity after the informal leadership of Athanasius (see also chapter 2).

The Conversion of Constantine marked a watershed in the history of Roman religion, which was an eclectic blend of beliefs and deities that easily assimilated and absorbed the numerous gods and goddesses that the Empire's peoples encountered (e.g. Isis in Egypt or Mithras from Persia); Christianity, by contrast, was "an exclusivist, universalist, monopolistic monotheism focused on a single all-powerful God" (Woodhead, 2004: 9). During the time of Constantine, the character of the political monarchy was re-established by imitating the Divine Monarchy, whereby One King on earth corresponds to the One God, who is the One King in heaven and the One royal *Nomos* and *Logos* (Peterson, 2011: 94). The distinctive theological qualities of Christianity provided a useful tool for emperors: since there was only One God, so there was only One King, and the powerful single God (and King) demanded loyalty from followers, rather than sacrifice to other gods. It also licensed a supreme power for God (and King) to establish a world empire, securing and maintaining unity of alliance, and destroying rival enemies.[26] Consequently, Constantine received the advantages of combining an expansive imperial project with missionary monotheism: a means of consolidating unified control over the old (pagan) ruling classes with his continuing imperial power of Rome (Woodhead, 2004: 43).

In Judaism the idea of Messiah is associated with the coming of the Messianic Age, in preparation for which Jews must "study the Torah, so as to prepare themselves for the Coming Age or 'World to Come' (*olam ha-ba*)" and the one "who will rescue Israel from its historical predicament and inaugurate a golden age of peace and harmony" (Lange, 2002: 201–202). Anyone who was killed before completing these tasks (e.g. the gathering of Israel and leading all of Israel to follow the way of Torah) cannot be a

[26] However, some historians observe that this was really a feature of the barbarian kings (e.g. Franks and Anglo-Saxons) who emerged after the collapse of the Western Empire, rather than a classical intrinsic feature of the Roman Empire itself (Wallace-Hadrill, 1962). Constantine took a political gamble due to the entrenchment of classical paganism in the Roman state (Christianity being traditionally an officially persecuted religion of slaves), and the supposed advantages of the One-God, One-King model presented here were achieved much more successfully by the Egyptian pharaohs under the formula many-gods, one-king (indeed, the Roman Emperors themselves were viewed as gods in paganism, as in 'the Divine Augustus', and thus much more worthy of being obeyed than a Christian monarch as vicar of Christ).

messiah according to rabbinical exegetes. Since the Messianic Age has not yet been presented, Judaism has never accepted Christians' belief that Jesus was the Messiah, a concept that was later developed into Christian doctrines unfamiliar to Judaism, including the Saviour and Christ as Son of God (along with all this entails, including salvation through the blood of Christ and the Eucharist, etc.), which are alien to Jewish understandings of the *Tanakh*. Indeed, Christians comprehensively overhauled the Jewish scriptures to project their readings favourable to their own interpretations and beliefs that bear no relation to archetypical Hebrew narratives (Kessler, 2010: 31).

Although the Gospels themselves reconstructed the Judaic character of the mission of Jesus, Christianity as institutionalised under Constantine had a different conception of God from the God of the Hebrew Scriptures as adopted and understood in the Christian Bible.[27] The God of the Judaic tradition was represented "as the mighty Lord of the entire universe, beside whom all other gods were not just imposters but 'demons'" (Woodhead, 2004: 10). For Christians, this mighty God had sent his Son Jesus Christ (the Saviour) to earth "to proclaim his rule and to throw open the gates of heaven to all who would repent, turn from their old gods and old ways, and give total loyalty to him" (Woodhead, 2004: 10).

For the Christian, the biblical prophesies concerning the Messiah affirm Jesus as "divinely inspired" and "as the continuing normative authority for the faith and life of the people of God" (Kessler, 2010: 26). These disparate theological positions congeal in the doctrine of the Trinity, whereby the traditional authority of the God of Israel is accrued by Jesus Christ. Subsequently, the God of Constantine included Jesus Christ, interpreted not as a mere creature and not made, but as 'begotten' from 'the substance' of the Father, united with the God and inseparable from God the Father. While Constantine was quintessentially instrumental in the formulation of the

[27] The Christian 'Old Testament' is essentially the Jewish *Tanakh*, which is reinterpreted by the additional Christian 'New Testament'; naturally observant Jews reject the spiritual authority of the additional Christian scriptures and their interpretations of the *Tanakh* (Kessler, 2010: 2).

doctrine of the Trinity, Schmitt accepts only monotheism from Constantine, and rejects all sense of belief in the Trinity.

Peterson's modern German theology can help in understanding Schmitt's monotheism. In *Political Theology II*, Schmitt (2012: 103) wrote "The doctrine of the divine monarchy had to fail on account of the Trinitarian dogma, and the interpretation of the *pax Augusta*[28] had to fail on account of Christian eschatology". Peterson, a contemporary of Schmitt but an active opponent of the Nazis, suggests that the divine Monarchy in the Roman Empire "was juxtaposed with the Christian Trinitarian dogma" (Peterson, 2011: 102). However, in Jewish tradition, God is understood as the Absolute One. As explained previously, Judaism rejects Jesus as the Messiah, and rejects him as a personal saviour and Son of God etc. by default. In Peterson's mind, the theology of Judaic monotheism was incompatible with Christianity, so Schmitt in some sense was more Jewish than Christian in his own rejection of Jesus Christ as the Messiah; in terms of sovereignty, Arendt was affiliated with Peterson's conception of monotheism (i.e. the Christian view), which she claimed was a continuation of ancient Greek thought via Augustine, while Schmitt's affirmation of austere Semitic monotheism was aligned with his Roman concept of the state.

The argument is emphasised in the works of Hobbes, Schmitt's predecessor on the idea of sovereignty. Schwab (2005: lii) asserts that Schmitt is to be called "the Hobbes of the 20th Century". For Schwab, Schmitt's idea of the sovereign shows an extraordinary power over the law in the same way as the sovereign in Hobbes's writing: both believe that man is dangerous in nature, and his primary goal is physical security. For Hobbes, men are equal by nature; therefore, if they desire the same thing, they can be enemies, and seek to destroy and subdue one another at any time (Hobbes, *Leviathan*: XIII). According to Hobbes, the state of nature is then the state of war, embodying "fear, and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short" (Hobbes, *Leviathan*: XIII).

[28] This is essentially synonymous with the *pax Romana*, but refers specifically to the role of the eponymous Divine Augustus, as explained previously.

As with Schmitt, Hobbes set himself against the Greek influence in Christianity, rejecting the Greek understanding of nature, the cosmos, mental processes and structures (Wright, 2006: 183). Hobbes in *Leviathan* mainly aims to eliminate Greek popular religion about the 'incorporeality of the soul' from Christian theology (Hobbes, *Leviathan*: XLIV.340.15; Wright, 2006: 189). Nevertheless, while Schmitt's notion of sovereignty is linked to the transcendence of Supreme God, Hobbes referred to God as an artificial person, not a natural one. The sovereign is the supreme representation of the supreme being of a personal God which is applied to the Trinitarian doctrine of Christianity – three persons in One substance. In this regard, Hobbes "not only set the persons of the Trinity on an equal plane with the person of God as represented by a civil sovereign, but also stated his view – already implicit in Leviathan – that the third person of the Trinity is borne in each commonwealth by its sovereign" (Abizadeh, 2017: 18).

Schmitt's perception of Christianity is opposed to Arendt's reading of the triune character of the God of Christianity. With the refusal of the Trinity, Schmitt conflates the concept of monotheism and monarchy (One God, One King) to the idea of the sovereign. Sovereignty is, Schmitt said, "principally unlimited authority, which means the suspension of an entire existing order" (Schmitt, 2005: 12) – the supreme power of sovereignty as in the case of the God of Constantine. This political formulation depends on power dominated by an individual, fortified by many theological axioms and bound with theology itself.

Schmitt argues that the sovereign can be a single person who has a capability of action (e.g. divine monarchy) or a majority of people in democratic regime. However, in the latter case, the representative is only an agent of sovereignty belonging to the people, which are presented as one person. Furthermore, the sovereign can comprise multiple people – which Schmitt called popular sovereignty – because there are political units comprising a plurality of people or groups both in pagan and theological worlds, for example the Judaic 'God's people' (Schmitt, 2012: 71-72): "If the formula is no longer: One God-One King, but: One God-One People, and if

the political side of political theology is no longer oriented towards the single monarch but towards a people, then we turn to democracy" (Schmitt, 2012: 72). The point is that, for Schmitt, the sovereignty of people in a democratic society is implied as the sovereignty of one person.

When tracking the usage of this term, political theologians such as Origen, Alexandrian theologians and St. Athanasius choose the word *monas*, which relates to the 'Pythagorean unity of the number', instead of the word 'monarchy', which implies the Aristotelian *mia arche* – the principle of the One (Schmitt, 2012: 73). This is reflected in the continuity of the dualism in the Roman Empire "between the Roman Senate and the Roman people, between the *patres conscripti* and the *populous* – that is, the assembled citizenship – between *auctoritas* and *potestas*" (Schmitt, 2012: 73). Even in the sense of Augustus, the word 'monarchy' is based on the notion of legitimate republicanism (Schmitt, 2012: 73).

The Roman tradition also shows how dictators as sovereigns receive utility from political theology in the same way as Schmitt. Historically, supreme rule comprises two elements: the highest military command; and *potestas*, the actual legal powers prescribed under the law (Buijs, 2006: 240). However, in the time of Caesar Augustus the second element of supreme power was not based on his *potestas* but on his *auctoritas* (personal authority), the source of which is far from legal order.

By linking the present with the great power of ancestors and founders of Rome in the past, Augustus embodied the spirit of the founders and the essence of Rome, becoming a unique representative. Because of increasing his *auctoritas* and power in government, Julius Caesar was declared to be divine after his assassination. Augustus also called himself the 'son of the divine Caesar' and established a cult of emperor worship that spread rapidly throughout the empire, harmonising with the worship of traditional deities. Hence, Roman political power represented the unification of power between Caesar and God, by which the Caesar reigned supreme (see also chapter 2).

As Schmitt supports the idea of the God as Creator, Peterson argued that Schmitt's arguments of political theology were 'not systematic'. Schmitt, for Peterson, attempted to change the domain of theology to be a part of political thinking, harmonising theology with the political activity of the city, implying the 'theological impossibility of a political theology' (Peterson, 2011: 234). Eusebius of Caesarea (the 'court theologian' of Constantine in the 1st Century) and Orosius (the 5th-century Iberian theologian of history) are two historical examples of this theological argument in the early Roman Empire. They both attempted to encompass theology in the classical *imperium* by fulfilling the eschatological promise of the universal rule of God (Geréby, 2008: 19).

However, Peterson rejected this idea by shifting to the idea of Augustine, that this eschatology of political theology is a political utopia that has never happened in history: "A thoroughly eschatological view of the church cannot look on any existing political order as fulfilling the promise of the heavenly Jerusalem and the coming kingdom of God" (Geréby, 2008: 20). Schmitt argues that an absolute separation between politics and theology is only possible in the abstract when Jesus, the Son of God, "represents the perfect unity of the two natures, the human and the divine" (Schmitt, 2012: 82–83), due to the understanding that divinity was incarnate in his humanity, born of Mary, his biological mother.

Accordingly, the power of the divine emperor in Roman history reveals the notion of sovereignty in the same way as in Schmitt's political theology. The idea of a personal and wilful God empowers Constantine, by extension, to govern his followers with royalty, as well as for Schmitt's sovereign during the state of exception. The divine right of kings in the Roman antiquity is subsequently associated with theism and the transcendence of God in Christianity; God had a power independent from and beyond any of secular law, just as the divine Roman emperor derived authority from God.

Like God, Schmitt's notion of sovereignty refers to anyone who bears the power to declare when the exceptional situation exists, and this exceptional bearer can make the decision without the hindrance of any legal obligations

(Gray, 2007: 179). Since Constantine and Schmitt represent an absolute power of the rulers over the ruled, God must be monotheistic, and cannot delegate His own power to others; he is also a theist, personal God who creates and participates in the world, implying the inseparability of politics and theology.

4.4 Conclusion

This chapter explores the meaning of sovereignty in the ideas of Arendt and Schmitt. Arendt and Schmitt share the understanding of the concept of sovereignty by hinging on the idea of will; for Arendt, sovereignty is the property of the faculty of will that resides in the philosophical sphere, whereas for Schmitt, the idea of will connects to the power of decision in extraordinary situations. In respect of relating Arendt and Schmitt to two traditions, the Greek and Roman, this chapter has demonstrated the connection between the concept of sovereignty and Christianity, by integrating the discussion of theology into each tradition. With regard to Christianity, Schmitt's political theology aims to transpose the transcendence of God to the omnipotence of the sovereign in the political sphere, similar to Roman religion. Arendt, on the other hand, sees the dichotomy between political matters and philosophy as being more akin to Greek and Augustinian than Roman spiritual ethics.

Schmitt received the idea of a powerful God and theism from Roman thought, leading to his support of sovereignty in the political realm. Arendt's account of Christianity, on the other hand, was drawn from the idea of the Triune (not absolute) God and deism, as developed from Platonic and Augustinian concepts. Arendt's perspective of theology helps to understand her distinction between the concept of free-will in sovereignty and freedom in politics – the will as the predominant role of political action and the support of a mixed constitution, with a system of checks and balances in the body politic. Consequently, the power of citizens in a public realm must be strengthened, from which the concept of sovereignty could be banished.The next chapter explores the conceptions of law advanced by Arendt and

Schmitt with reference to the Greek *nomos* and Roman *lex* and *ius* grounded on these concepts of sovereignty.

CHAPTER 5

THE CONCEPT OF LAW

5.1 Introduction

Chapter 3 demonstrated that the conceptions of politics of Arendt and Schmitt are situated within the Greek and Roman traditions. One could say that what constitutes *political life* for Schmitt is *unpolitical* for Arendt; that is to say, Schmitt's conception of 'the political' harbours the possibility of conflict and war that is evident in the Greek and Roman terminologies of public friend and enemy, and which is manifest as an obstruction to a freedom of action and speech, both of which constitute the essence of the Greek *polis* and of politics as properly conceived in Arendt's account.

Since Arendt's understanding of politics refers to the freedom of action and since Schmitt perceives the perpetual possibility of the eruption of disorder to be at the heart of politics, this begs the question of whether the law is significant for their conceptions of politics. The divergence between these two conceptions of politics also leads to the question of how their understandings of law should be placed in relation to politics, and how their perceptions of law contribute to their conceptions of politics. In this respect, I present their ideas of law to be as thin and denuded as one might expect.

This chapter mainly compares the notions of law of Arendt and Schmitt in light of their appropriations of the Greek and Roman traditions, which is not examined in sufficient detail in comparative studies. The relevant secondary literature, such as important works by Lindahl (2006) and Jurkevics (2015), touch upon the subject in considering the spectrum of the Greek *nomos* as a space running the gamut from a contained political community to a global community in the ideas of Arendt and Schmitt. However, rather than presenting a systematic comparison between these two thinkers, they mainly stress how Arendt reflects on Schmitt's writing.

This chapter begins by analysing their different notions of law, then it compares their backgrounds in the classical traditions, especially with respect to the ideas of *nomos*, *lex*, *ius* and the distinction between natural and artificial law, in the interpretation of which both Schmitt and Arendt provide significant contributions in different ways, concluding that both Arendt and Schmitt are influenced by the Greek and Roman traditions. To this end, the argument is divided into three main points.

First of all, the divergence between the conceptions of law of Arendt and Schmitt are presented. The original writings of Schmitt and Arendt on law reflect in part different disciplinary approaches in line with their different educational backgrounds. While Arendt engages in a systematic presentation of philosophical perspectives on the law, Schmitt goes back to the practical and substantive details of legal order. In contrast to Schmitt's conception of law as the interrelationship between the concept of a concrete order and decisionism, which has roots in the sovereign decision and the distinction between friend and enemy, and which opens a space for an extra-legal power in moments of exception, I show that the Arendtian conception of law is inherent in the politics, wherein treaties and alliances can contribute to the building of a new political world. In this respect, law is the protector of all political lives in 'the appearance of politics', rather than being limited to each *polis*.

Secondly, I suggest that comprehensive understandings of their rival conceptions of law can be better understood through the lens of the Greek and Roman backgrounds, demonstrating how these two thinkers develop the conceptions of law found in the ancient traditions into tools for comprehending the critical legal aspects of the political conditions of the times in which they wrote. It is widely acknowledged that many writings on the conceptions of law of Arendt and Schmitt fail to develop their arguments in the context of the classical traditions (e.g. Scheuerman, 1998; Shaw, 2006). Inspired by the Roman concept of *lex*, Arendt perceives that law emerges for protecting political activities between men who are part of the community, and associates this with the concept of promise as guaranteeing

the orderly emergence of the 'new' in politics, whereas the Greek legal concept of *nomos*, or borderline, separates outsiders and insiders, which appears in Schmitt's thought, does not impress her.

Schmitt's conception of law, however, makes use of *nomos* as a crucial category in terms of the idea of what he describes as the concrete order (the appropriation, distribution and production from land to sea and to space or a global image of spatial order). This, I argue, is not only bound to Schmitt's understanding of international law, but also the law of each state. Accordingly, I examine the distinction that he draws between a concrete order and one based on legal norms (i.e. legal positivism and normativism). Schmitt also utilises the Roman idea of *ius* to support an extra-legal power during an anomalous situation. For Schmitt, Roman *ius* becomes fundamental to his modern legal theory of decisionism,

Moreover, I pay attention to Arendt's account of the debate between natural and artificial law by tracking back to the root of this debate in the ancients, which has not been explored in other studies of Arendt's thought. I situate Arendt as a supporter of artificial law supported by the Roman background of law as a political activity between men, crucial to the foundation of political community and constitutional power. Schmitt's conception of law, on the other hand, tracks another type of natural law tradition, namely divine law.

Lastly, by searching for a relationship between politics and other relevant concepts (i.e. sovereignty, law, violence) in the writings of Arendt and Schmitt, we see how law is a central fulcrum on which the political thought of both turns. I claim that their different conceptions of law and their different relationships to the ancients both serve and strengthen their divergent concept of politics. For Arendt, the Roman *lex* is a consequence and also the redemption of the activity of action and speech. It initially emerges from the original intention to protect politics, marking the *necessity* of the coexistence of living beings in the political sphere, and ensuring some distance from the practice of violence, which finally supports the continuity of politics. Law should not be described as a border which impedes negotiation between various alliances, as appears to be the case in the Greeks' understanding of

law. For Schmitt, the *nomos* conception of law from ancient Greece serves politics during the normal situation by manifesting the difference between *us* and *others*, by aiding definitions (i.e. of friend and enemy). The Roman notion of *ius*, on the other hand, supports the extra-legal power of sovereign decision-making during the exception. Both sides of Schmitt's conception of law shed light on the contingent character of politics by making the occurrence of war normatively possible in politics (a theme developed further in chapter 6).

In the first part of the chapter, I examine Arendt's conception of law and the relationship to the discussion between natural and artificial law, Greek *nomos* and Roman *lex*. The second part shows the concept of law in Schmitt's legal thought, with reference to his support of a divine law, and the compatibility of his legal thought with Greek *nomos* and Roman *ius*. This thesis does not focus on the demarcation between domestic and international laws, since politics for both Schmitt and Arendt are beyond the issue of boundaries; Schmitt defines state as a political entity which should not be restricted by a territorial state, similar to Arendt when she criticises the Greek *polis* and *nomos* for excluding people outside the *polis* from politics. The comparisons between these two political thinkers and the relationship to their conception of politics are presented throughout the chapter.

5.2 Part I: Arendt's Conception of Law

5.2.1 Arendt's Understanding of Law

It is not surprising that many scholars concur that Arendt does not present a systematic theory of the essence of law (e.g. Volk, 2010; Luban, 2011). Arendt had no legal training, and her legal thought is diffused and intermingled with her broader reflections on politics and the 'non-political' ideas of fabrication and the social. Her episodic and sporadic engagements with law give us access to what is in the end a disjointed unfolding of her understanding of law. For example, her writing before 1960 shows little interest in law, and the large numbers of passages and the word 'law' in her greatest work, *The Human Condition*, are still undeveloped (Luban, 2011: 1). I suggest that Arendt's engagement with the concept of law was not intended

to grasp the idea of law itself in a comprehensive way, but rather to supplement her suggestions about politics. Nonetheless, although Arendt's conception of law is neither explicit not comprehensive, we can recognise it as educated and reflective, and crucial in fact to her political theory.

To begin with, Arendt understands the law/legislation as the protector of political life. She firstly elaborates law of the domestic or city-state as the wall or the boundary that preserves the public sphere (Arendt, 2006a: 64). She confirms that the wall character of legislation is inherent in ancient Greece, called *nomos* (as elaborated in the next section), not other traditions. Such walls were sacred, showing the separation between the activities of political life and the private sphere of the household. She affirms that without law there is still the agglomeration of house and town to protect the biological life processes of the private sphere, but the ability to act equally and freely in the political arena will cease to exist.

Law for the Greek is then the fabrication – represented by the wall as a creation of human artefacts – and such a law is constructed (made) for something; that is, it is the instrument for politics, making possible plurality between men. The man who creates law (*homo faber*) performs the human condition of work (making). As Burns said: "Constitutional and legal fabrication creates the conventional public identities or masks that are discontinuous with the truly unique and differentiated self... not to the formal, constructed equality of the *nomoi*" (Burns, 1990: 141).

However, the problem of defining law as a wall of a city/state (like Greek *nomos*) is that, when considering politics to be wider than merely a state, non-residents and non-citizens of the *polis* did not receive the full protection of the law (see also chapter 2). This contradicts her conception of politics as the space of speech and action without the limit of territory, and law must protect the political activities beyond border of states. I raise the case of refugees in the modern nation-state as the complicated situation if the law is only referred to as a wall of a state. While the nation-state model was intended to balance the different interests of diverse groups in the 'spirit of unorganised solidarity and agreement', with respect to the sovereignty of

other states in a functioning international political order (Volk, 2010: 765), this sovereignty increased the capacity of the sovereign state to allow some groups to maximise their territorial and other rights, while excluding others who are not citizens of any states or who live marginally within or alongside states, resulting in unprecedented migrations and refugees treated as aliens because they were not 'juridical persons', standing outside any legal level, which endangered the laws and constitutions of the nation-states themselves. The state then enacted 'the legislation of denationalisation' giving authority to the police to expel these 'undesirable aliens' (Volk, 2010: 767).

The way out of this problem is to promote Arendt's appropriation of the Roman concept of *lex* that refers to the relationships and agreements borne from the freedom and interactions between people (I elaborate the notion of Roman *lex* in the following section). In *The Origins of Totalitarianism* (1976: 301) Arendt states that humans were born unequal, but become equal when accorded the freedom to participate in a group or community that guarantees mutually equal rights. This is the result of being a part of human organisation when people become members of the group, producing equality through organisation. This for Arendt is the character of political life that people can act in and change to build a common world equally, while life outside political sphere is unchangeable and limited, following in the steps of nature; people are different in the private sphere due to their different natures, but they are naturally indifferent in the political sphere where equality is obtainable.

While Greek law was pre-political, Roman law was a decidedly political activity. Arendt admires the Roman concept of *lex* as a protector/redeemer of politics, because law as the protector of politics should not be limited to an action in respect of its own borders/realm; people are free to act and move outside the wall. Arendt's notion of law then is not the protector of politics inside a city-state in the limited sense (physical location); rather, it protects the political activities as a whole, *polis* as the presence of people who are together in the activity of speech and action, which Arendt called 'the space of appearance' (Arendt, 1958: 199). For Arendt, the reality of the world is

bound by the presence of others, not that of space, so that the space of appearance in the widest sense can appear anytime and anywhere when men make an appearance to others (Arendt, 1958: 198–199).

The making of a new law within the framework of an already existing constitution offers rich material for legal studies. However, this thesis is concerned with their attributions of the legislative perspective to a political insight, as law in this thesis is perceived in terms of political and not legal theory. Some salient features of the perspectives of Schmitt and Arendt on law include: Schmitt's conception of legal sovereignty and constituent power; Arendt's perceptions of law as a protection of the political purpose, which maintains the stability of law to ensure the stability of politics; Arendt's acceptance of a lasting federal republican constitution of councils that allows for the continuing practices of political participations, regulated contests, and public deliberation in the political process (Kalyvas, 2009: 15).

In this respect, the thesis focuses on the framework of law, organic law and constitution in association with the political thought instead of ancillary laws or laws required by the constitution which is the legal issues.

As referred to above, Arendt perceives law as the protector of political activities between men who are part of the community. She associates this with the concept of promise as guaranteeing the orderly emergence of the 'new' in politics, and suggests that it has roots in the Roman tradition. Arendt sees the idea of promise as an appropriate way to think about a new legal and political order, because the unpredictable and discontinuous deeds that might proceed from a political action may defy established orders, challenge the scope and content of institutionalized politics, and transgress the limits of the possible and the accepted (Kalyvas, 2008: 292).

The notion of promise is accompanied by the idea of natality which is referred to the ability of beginning something new. In this regard, natality projects a picture of a very notion of freedom of action, showing unexpected actions that cannot be ruled or locked out by previous actions of ancestors and any other chains (see sections 3.2.1.2 and 3.2.2.2).

Next, I examine Arendt's notion of law that was designed to ensure stability and to promote the divergent opinions of people (the next section shows that this idea is compatible with artificial law in the classical traditions). Likewise, the stability of law does not mean that it cannot change, but this change belongs to political action, which she calls 'extra-legal action' (Arendt, 1972: 80). As stated in the next section, Arendt criticises natural law understood as a universal code whereby human beings are subjected to a superhuman (i.e. divine) power, as she asserts that only a natural law is unchangeable. Here, Arendt elucidates the problem of ethnic discrimination in many countries, since the 'background' formed by the unchangeable and unique nature of biological life in a private sphere (e.g. race and ethnicity) trespasses onto the political scene, whereby nature becomes master over the equality of people in the political sphere. Life in the political space, on the other hand, eliminates the natural differentiations that maintain the limitations of action and change, arousing dumb hatred, mistrust and discrimination (Arendt, 1976: 301).

5.2.2 Arendt and the Relationship between the Concept of Law and Traditions

5.2.2.1 Natural and Artificial Law

This section links Arendt's suggestion on the traditions of law and their implications to the debate between natural and artificial law. In this respect, the import of both Greek and Roman ideas, as Arendt appropriates them for her purposes, does not reside in the law of nature or of the divine; rather, law in her reading is the activity of human beings, and law properly conceived is man-made and artificial.

For Arendt, pre-Socratic philosophy distinguished all things by means of two terms: *nomos* and *physis*. Literally, as Long (2005: 412) points out, the words *nomos* and *physis* have overlapping semantic connotations and both were used differently in different historical contexts. The Greek *nomos* in the sense of divine was not frequently used in contrast with *physis* until the 5th Century BCE (e.g. Sophocles in *Antigone* contrasted 'divine' or 'unwritten'

laws with human enactments, but did not call these higher laws ‘natural’) (Long, 2005: 414).

In the general understanding of legal theory, the word *physis* itself expresses different meanings: natural law or the law of nature or divine law. Zeno of Citium, the founder of Stoicism, promoted a powerful idea of natural law which identifies nature as God, ‘the perfectly rational and all-pervasive cause of the universe’, and this natural law is the rightness of reason that men can follow and achieve (Long, 2005: 424). In this sense, divine law is identical to natural law. Hesiod addressed the essence of laws and the concept of justice by binding them together and connecting their origins to the gods, Kronos and Zeus (Lane, 2014: 41). Heraclitus showed the relationship between the divine law and the human laws, and suggested that law is reason and it is the general and the universal, because its knowledge is derived from the divine law of nature. In this regard, the divine law is the truth of the universal and man must follow it by learning and obeying laws (Bel, 1949: 21; see chapter 2 for the other examples of Greek idea of divine law).

The Athenian character Callicles in Plato’s dialogue *Gorgias*, on the other hand, claims that justice has been decided by (biological) nature: the superior (strong person) rules the inferior (weak person). Callicles’s derivation of nature marks a departure from signifying a universal moral standard as in the Stoic tradition, or a divine and universal norm as in Heraclitus’s proposal of a community law (Long, 2005: 420). The interpretation of this case is close to the Melian Dialogue in Thucydides’s *History of the Peloponnesian War* that if the *nomos* means man-made law, it was made by some men for compulsion upon others, by which the natural advantage of the strong ensures their dominance; thus “it was natural for the strong to pursue their ends with impunity, making prey of the weak to suit their own desires” (Lane, 2014: 50).

Arendt never paid attention to these debates since she had already taken sides by embracing man-made, artificial law. She doubtless underlines the distinction between *nomos* (law; singular) and *physis* (*phusis* or nature) in the Greek tradition in order to refuse the intrusion of divine law into the

sphere of *nomos*. In doing so, we can see the method she uses to deconstruct the tradition, by overlooking controversial debates about the overlap between these two terms which have been implicit since ancient times. Arendt used the first word as the meaning of things that owe their origin, the world of human affairs that lays down orders made by men. The second one refers to the *kosmos* of natural things that are through themselves what they are, the order of the universe (Arendt, 2007: 717). According to Arendt, this distinction was also applied to the concept of law that later transforms *nomô* (*nomos*) and *physei* (*physis/phusis*) into the distinction between 'positive law' and 'natural law', respectively.

Most importantly, Arendt intends to devalue the concept of law inherited from *physis* (nature). Arendt criticises the concept of natural law that attempts to apply to all things ("to every man in every situation and condition of life") in relation to the universal (Arendt, 2007: 718). This kind of law, she wrote, appears for the first time in Heraclitus. Arendt quotes him: "All human laws are nourished by the one divine law; for this holds sway as far as it will, and suffices for all, and prevails in everything" (Arendt, 2007: 719). The point is that the notion of natural law attempts to combine power and law together. That is to say, it combines everything natural and man-made in terms of the universal, which means, Arendt argues, that the character of natural law is a contradiction in its own terms.

Natural law in terms of universal law also requires the notion of 'prohibition' rather than 'prescription'. Arendt goes on to narrate how the universal law in terms of the social contract – which traditionally abstracts men from time – prohibits humans from realising their nature in terms of the necessity of political life in the theory of Hobbes, and how man elevates *himself* into a universal law in the theory of Kant. She argues that in these cases people are subjected to the universal law without free decision, and the distinction between the private and public realms is blurred (Arendt, 2007: 719).

Another critique that Arendt makes of natural law is that it requires divine command, which assumes that all positive man-made law depends on the one universally valid law, deriving from the ultimate source of authority. All

positive man-made laws receive their relative permanence from universal law through which the ever-changing affairs of men become stable, and the distinction between universal and positive law is no longer upheld (Arendt, 2007: 719).

Arendt also stated that the very meaning of divine legislation gives a special importance to the divine legislator, who resides *outside of* and *above* His own law, but in ancient times this was the characteristic of the tyrant, not the gods who imposed laws on the people without any burden to be bound by that same law as well (Arendt, 2006b: 178). In pre-Christian Rome, even though the act of legislation needed help from the gods, these acts of the gods were no more important than other important political acts (Arendt, 2006b: 179). In ancient Greece, although the lawgiver came from outside the community (as explained below), it was necessary just that he was a stranger, from outside to the *polis,* not that he be regarded as divine and therefore above the *polis*.

What Arendt misses out from this point is that natural law as a matter of divine command applies only to some strands of natural law thinking, such as the voluntarist natural law tradition, but not in the rationalist and intellectualist natural law tradition (e.g. Aristotle, Cicero and Grotius). Nor can it be found, straightforwardly, in that third natural law tradition which seeks to compromise, or steer a *via media*, between these two opposed schools of thought (e.g. Aquinas and Suarez). By refusing natural law, I suggest that Arendt's understanding of law is grounded in its artificial version. Arendt distinguishes the artificial from *physis* by affirming that these two legal concepts cannot be reconciled. It must be impossible to bind law with politics if law refers to a higher or divine order, because politics is the activity that takes places between people, and includes speaking and acting in terms of 'acting in concert'. Neither divine nor absolute power plays a role in her conception of politics, rather all the roles are played by the plurality of people who share and exchange different opinions, ideas, or conversations.

Accordingly, Arendt understands the Greek *nomos* as the work of *homo faber* in the sense of fences and boundaries, protecting, hedging in and

establishing the various common worlds of the Greek city-states. For Arendt, it originally means the "artificial, conventional, man-made nature of the laws" (Arendt, 2006b: 178). The next section elaborates this type of artificial law, whereby I suggest that Arendt accepts *nomos* only for domestic affairs, since it is restricted only for protecting political activities of citizens inside the city-state (a physical location). To this end, Arendt appeals to the Roman concept of *lex*, which does not share its characteristics with the key attributes of natural law; rather, it is man-made law stemming from the promise of people in order to preserve all of political life without sticking to a state/city (Arendt, 2005: 180).

In *The Great Tradition: Law and Power* (2007: 720), Arendt chooses the term *ius* instead of *lex* in her discussion of Roman law, to point out the idea of one universal (natural) law. For her, the basic concepts of natural law are rooted in, but separated from, the Roman law of peoples (*ius gentium*), which did not spring from above and rule supreme over everything in the universe, but from specific channels of the interconnection between different peoples who resided in different cities, each of which had its own different codes of domestic law.[29] Arendt confirms that even though this kind of law is the natural law (because it is a customary law that partly extrapolates from cross-cultural norms, which are therefore posited as innate in all human beings), it should not be understood in the sense of the supreme rule over and above all things in the universe; rather, *ius gentium* presents the specific channels of communication between city and city. It was recognised as the law of nations, because it comprehended what Roman law had in common with other legal systems (Mousourakis, 2003: 23). This again shows the semantic reconstruction of the term 'law' when the notion of natural law was selected rigorously for her own purpose.

[29] With regard to the term *ius*, the idea of natural law is denoted as *ius naturale* or as *ius gentium*. The connection between natural law and the term *ius gentium* was found in the Institutes of Gaius and other unknown jurists of the 2nd Century BCE, but linked to Stoic cosmopolitanism. In Justinian's *Digest* the term *ius gentium* was used as the intermediate term between *ius civile* and *ius naturale*, implying a legal order of human beings in opposition to animals. The term *ius gentium* is also analogous to the modern concepts of international law and the 'law of nations' (Winkel, 2013; see also chapter 2).

Turning to consider the securing of obedience to law, Arendt also thinks that it must arise from consensus or agreement. As a critic of divinely ordained law, Arendt views divine law as a law of commandment “to which men owe obedience regardless of their consent and mutual agreements... beyond human power” (Arendt, 2006a: 189). In this regard, we can say that although people have to obey law, law is a political activity that exists to protect consents and mutual agreements in politics and society in general. Consequently, politics must be open to development, with some scope for defiance and disobedience (Arendt, 2006a: 42), thus the law used to protect politics must not be divine law (the law that compels absolute obedience), but ‘man-made, artificial, conventional’ law. This is the reason why Arendt thinks that politics steers a course between the unpredictability of the outcomes of free acts, and the irreversibility of the process of action (Arendt, 1958: 254).

5.2.2.2 Greek Nomos and Arendt’s Idea of Law

In this section, I put forward the claim that the distinction between the law of domestic affairs and international law is necessary for the understanding of Arendt’s conception of law. Arendt discusses two kinds of law standing in two different traditions, the Greek idea of *nomos* and the Roman concept of *lex*; she engages in a critique of natural law – all of this is essential in her account of politics. These two kinds of law stand in different traditions. For her, domestic law is the consequence of the ancient Greek tradition of theory and practice, for it refers before anything else to the wall that protects the political life that subsists within the city-state. International law, on the other hand, derives from Roman antiquity, whose primary politico-legal concerns were in respect of the foundation of political community and alliances between these, rather than protecting an already existing political community from its enemies and from violence. For Arendt, Roman *lex* guarantees a future for politics in the political community thanks to its alliances.

Arendt uses Greek and Roman understandings of the law in many of her writings, e.g. *The Human Condition*, *The Great Tradition: Law and Power* (2007) and *Introduction into Politics*. Along with Schmitt, Arendt noted that

the Greek legal term, *nomos*, derives from *nemein*, which means variously "to distribute, to possess, and to dwell" (Arendt, 1958: 63). To this end, the Greeks understand law (*nomos*) by analogy with the walls of a city, which law becomes a border to include and exclude some people from others (Arendt, 1958: 194, 2005: 180). Although Arendt had never made a detailed analysis of the wall itself, her analysis of *nomos* points out three main characteristics of ancient Greek law (the Greek concept of *nomos* was discussed in detail in chapter 2).

First of all, Arendt suggests that the lawmaker in ancient Greece was a man called in from the outside, someone "like Solon, someone who after laying down the law retired from public political life, at least for a time" (Arendt, 2007: 717). The lawmaker was comparable to the builder of the city wall, who was treated like other kinds of craftsman and architect. She wrote that the lawmaker was the builder of the city wall, and he "had to do and finish his work before political activity could begin", preparing the substantive structure for the security of the political action and the freedom of citizens (Arendt, 1958: 194; 2007: 717). Arendt argues that this is not an activity of citizenship, differentiating it from the political activities of citizens in the *polis*. In contrast to the activities and work of craftsmen, architects and lawmakers, the ancient Greek verb *politeuesthai* (the doing or acting of politics) was used to describe an action which engaged in numerous political activities, and was restricted only to activities by Greek citizens within the *polis* (as explained in chapter 3).

Secondly, Greek law was not, according to Arendt, the result of action (praxis) in the political sphere, but the product of making (*poiēsis*) in the private sphere, producing its tangible product in the same way that the city wall was a product of fabrication (Arendt, 2005: 181). Regarding the aspects of the human condition outlined by Arendt in her work of the same name, the lawmaker represents the second aspect of that condition, which is *work* (not the *action* of politics). Greek law is, then, a product of man, representing the reliable and stable production of work. It is important to note that neither is an agreement or contract, which in Arendt's view involves the exchange of

words and the reciprocity of action in the political realm (Arendt, 2005: 181). This thesis argues that Arendt seems to overlook the fact that not all law-making in ancient Greece is law-giving, or 'constitution building'. She does not acknowledge the existence of legislation on a day-to-day basis within the ancient Greek *polis*. Moreover, even if we are thinking about the creation or construction of a political constitution entirely *de novo*, it does not take place as a consequence of the work that is carried out by a law-giver.

Lastly, the *polis*, the organisation of remembrance and immortality, needs law to guarantee its physical security and perpetuity. For Arendt, since "politics is never for the sake of life" (Arendt, 1958: 37, 206), the end (*telos*) lies in the activity itself; politics is an end in itself, as shown in chapter 3. Legal processes, on the other hand, are necessary for the accomplishment of the good life in the political sphere, existing before politics and serving as instruments supporting political life. In other words, law is a condition of political life even if law-making was not considered to be a political activity.

Arendt's elaboration of the Greek *nomos* in her understanding of politics is perplexing. One explanation is that of Keedus (2015), who notes that *nomos* was regarded as an object of *vita activa* in distinction to a contemplative life of *physis*. Since Greek *nomos* referred to wall-building, a man-made activity to produce an artificial thing (i.e. wall), the essence of political life became another form of artifice (Keedus, 2015: 714). This chapter strongly argues that, for Arendt, Greek *nomos* characterises a feature of artefact which is not compatible with a political life, because politics belongs to the human activity of action, whereas artefact involves the human activity of work in terms of a production. Rather than *nomos*, this chapter suggests that the idea of Roman *lex* shed light on her understanding of politics.

For Arendt, action always extends its own act, issuing forth into a web of contextual relationships; the interconnection between each line of action produces scenarios is different from their initial stages. The danger of this kind of human capacity is the lack of moderation, or 'insatiability' as described by Aeschylus, who is quoted approvingly by Arendt. The Greek *nomos* encloses the border of politics by limiting the insatiability of action:

“The Greeks countered this thrust toward limitlessness with the *nomos*, limiting action to what happens between men within a *polis*” (Arendt, 2005: 187). Greek law-making became the pre-political and preliminary building of the limited space of a city-state (Taminiaux, 2006: 172). The limitation gives the action its enduring form by “turning each action into a deed that in its greatness… can be remembered and preserved” (Arendt, 2005: 287).

By supporting the idea that the Greeks differentiated the arenas of politics from law, Arendt disagrees with the classical Greek ideas that consolidate politics and law into the sphere of production (making). She criticises the Socratic school for turning legislative activities into political activities, because they took into account that all men act like craftsmen. Arendt asserts that Plato does not enlarge the activity of law through “the fundamental Greek experience of action and politics”, as in Roman antiquity; rather he downgrades law as an activity of work where the political activity of speaking and acting is obsolete (Arendt, 1958: 195).

Arendt shares the project of elaborating upon the concept of *nomos* as the boundary with Schmitt (as discussed in detail in the next section). Jurkevics (2015) supports my argument by pointing to evidence from Arendt’s marginalia in her copy of Schmitt’s *Nomos of the Earth*. An understanding of what Arendt thinks about Schmitt leads to the better understanding not only of Schmitt, but of Arendt herself. Jurkevics suggests that Arendt understands Schmitt’s thinking as imperialistic, in contrast to her own. According to Jurkevics, Arendt’s own understanding of *nomos* embraces a contract and promise-making interpretation in order to construct a world-building paradigm rather than the conquest of soil in Schmitt’s geopolitics. I disagree with Jurkevics that Arendt sharply differentiates her own understanding of *nomos* from that of Schmitt. I suggest that Arendt interprets the concept of *nomos* in a similar way as Schmitt; that is to say, the concept of nomos as a wall or territorial (state) border, and it was the Roman, not Greek law that Arendt associates with a contract and promise. However, while the concept of *nomos* strengthens Schmitt’s understanding of politics as turning on a distinction between friend and enemy, making war and violence an ever-

present possibility in this sphere, for Arendt it detaches non-residents of the *polis* and their action and speech from the political sphere and also from the protection of Greek laws.

As stated in chapter 2, the definition and usage of Greek *nomos* (*νόμος*) varied from the period of Hesiod to Plato, from 'custom', 'norm', 'order', 'convention' to 'way of life' and 'statute' (Ostwald, 1969: 1; MacDowell, 1979: 44). Moreover, early Greek political thought associates conventional law with custom. For example, there are a number of passages in the writings of Aristotle in which *nomos* refers broadly to convention, both in customary and legal senses. Contrasting slavery from nature with slavery from convention, Aristotle uses *nomos* to include custom, projecting a picture of conventional slavery by reference to the custom of war that everything in war belongs to victors (Aristotle, *Politics*: 1255a; Murphy, 2007: 63). The idea of 'contract', on the other hand, is associated with modern concepts of sovereign and state that is discussed by Bodin and Hobbes, which came into being historically only in the 16th-17th Centuries.

Regarding the debate about the origins and/or justification of the state in social contract theories, although the idea of social contract theories of late medieval and early modern Europe are self-consciously based on Aristotle's political thought of political associations within a state, they were developed and modified with regard to modern states by later thinkers. This thesis does not situate Aristotle and the Greek tradition in affiliation with the idea of the social contract, because the social unit of small community state for Aristotle is an association of men for the sake of good life (the best moral life), which is natural, whereas social contract theories refer to the contract of a state in the sense of a social construct/ arrangement which is unnatural (Das, 1975: 63).

In addition, Bodin, a modern social theorist, agreed with Aristotle on an association by nature, and in distinguishing between the *potestas* and *imperium* of the ruler, and the *dominium* of the father as head of the house (Ross, 1946: 270). However, for Bodin, there was originally no organized state, but men lived in families in a harmonious state of nature. The state, for

Bodin, is "an association of families and their common possessions, governed by a supreme power and by reason" (*The Six Books of a Commonwealth*, Book I, Chapter 1). The association in the form of family is later developed to the division of labour, colleges of the small work groups, a union of corporations and a commune/state (Ross, 1946: 268).

In my view, there is an exception only in a pre-modern strand of modern contract theory, such as Althusius, who resonates with Aristotle that civil society or a commonwealth is as natural and fundamental as individuals. This political association is associated with the notions of the sovereignty of the law and popular sovereignty for the purpose of happiness and justice amongst people (Malan, 2017: 19–21). In this respect, social contract theories, except a traditional strand of contract theory like Althusis, are associated with the modern perspective and distinguished from the Greek tradition in terms of the different views of the nature of a state.

Nevertheless, without concerning the etymology of the word *nomos*, Arendt binds the idea of *nomos* with artificial law. Arendt has never differentiated between ‘customary law’ and ‘contract’ on her understanding of conventional law. This point is interesting because in *Introduction into Politics*, Arendt said Greek *nomos* was ‘neither an agreement nor a contract’ (Arendt, 2005: 180). I think what Arendt means by agreement and contract is different from the common understanding of agreement and contract as a feature of conventional law. For Arendt, Greek *nomos* is not counted as contract because it comes from only one legislator, not the mutual agreement, even it is a conventional agreement in the common legal sense (i.e. a law that was created, not discovered). In this regard, when she said Greek *nomos* is not a customary law or contract, it is actually a common understanding of custom and contract.

I argue that Arendt seems to understand Greek *nomos* in the sense of ‘contract’ and ‘conventional agreement’ rather than ‘customary law’ because it was essentially conceived by a lawgiver and must first exist before it can ever enter into the political realm. In *On Revolution* (2006b: 178), Arendt refers to *nomos* as a wall built by a lawgiver prior to and around the city-state

(*polis*), which she describes as an "artificial, conventional, man-made nature of law". Accordingly, *nomos* for Arendt existed before Greek politics, so it was a contract of society that was created before the *polis*. In this regard, Arendt could be criticised as a modern scholar who see the Greeks' conventional law from the traditional perspective, but neglects the etymology of *nomos* that conventional agreement from Greek tradition.

5.2.2.3 Roman Lex and Arendt's Idea of Law

While Arendt's notion of law is crucially disconnected from the Greek *nomos*, it is associated with the legislative activity of the Romans, and the Roman law for Arendt is political activity. According to Arendt, Roman law is associated with the beginning of Rome after Aeneas and his warriors arrived from Troy. In the beginning of Rome, laws are essentially means to re-establish peace, with treaties and agreements constituting new alliances, and bringing unity and concord between different entities that had been torn by war, which could enter into partnerships by law (Arendt, 2006a: 187). Roman *lex* has an entirely different meaning from Greek *nomos* because it referred to a formal relationship between (i.e. bridging) people, rather than a divisive wall.

In Arendt's view, the existence of law as an aspect of Roman politics is (literally) enshrined in the *Twelve Tables*, which consolidated the legal and political contract between the patricians and the plebeians (Arendt, 2005: 180). Arendt holds that the basic role of the laws was not to bring about the unity of these two different groups, but rather to consolidate the arrangement of their dual existence as different strata, institutionalised within the politics of the Roman Republic. Thus, it is an aspect of the life of public affairs (*res publica*) of the Romans, whose space was located in between hostile partners in the same way as the relationship between patricians and plebeians: "Law first emerges because a treaty must now be arranged between the native inhabitants and the newcomers" (Arendt, 2005: 183). Hence, Roman *lex* represents the establishing of new relationships between human beings in the sense of "an agreement between contractual partners",

in such a way that both parties were taken into account (Arendt, 2005: 180) (see chapter 2).[30]

I suggest that Arendt's idea of Roman *lex* is associated with the foundation of Rome and Roman's *Twelve Tables*, and the years of the Roman Republic where the practice of legislation was close to the notion of discussion, deliberation, and debate. According to Arendt, the misunderstanding of the Roman *lex* as commandment, entailing unconditional obedience from the people without mutual agreement, arose during the medieval period and was consequently transmitted into the modern legal system. The absolute understanding of law was characterised as being of Hebrew origin by Arent, represented by the Torah (i.e. the Divine Commandments, particularly the Decalogue), which subsequently percolated into later Christian understandings, and she does not view this paradigm as essentially Roman in origin (Arendt, 2006a: 190). In this position she ignores the historicity of Roman law, which was viewed as consecrated and sacred from the earliest pagan period, and she openly rejects the influence of later Roman law from the time of Augustus onwards, an early version of the leviathan state of Hobbes and Schmitt, because this type of 'Roman' law contradicts her understanding of politics as freedom of speech and action.

Because of the notion of a political order that extends beyond the borders of one city, Arendt argues that the character of Roman law contained the original concept of foreign policy. Law in this sense does not create the space of one's own city, whose purpose demands rule and obedience without consensus, but provides for the creation of a world which has the spatial character making for a human community in which people can move with freedom. The war of annihilation that can be prevented by the law of political action not only destroys the vanquished foe, but leads to a war between parties, peoples and their territories that destroys the space

[30] The republican view provided another aspect of the Roman law which I do not mainly discuss in this thesis. With regard to republicanism, Pettit (1997: 36) points out that freedom as non–domination is seen in the republican tradition of the Roman Republic. Roman laws create the freedom in respect of people's common interests. This is a main feature of the *civitas* (citizenship) that conforms to the concept of the rule of law in opposition to an arbitrary will.

between human beings. Life outside this world made fit for human beings by a framework providing for the connectivity of communities is a "desert":[31] "What lies outside this space is without law and, even more precisely, without world" (Arendt, 2005: 190).

Wilkinson (2011) stresses the association between Arendt's concept of freedom and juridical speculation. He suggests that the common understandings of the juridical imagination as turning on command, and of constitutionalism as turning on process, are modern conceptions of law, which neglect the significance of the Greek notion of *nomos* and the Roman notion of *lex*. Wilkinson maintains that this way of understanding leads to the acceptance of constitutional foundations with respect to sovereign absolutes, and the way out of this situation is to go back to the Roman *lex* that conceives of law as tied-into politics, captured by the metaphor of 'political grammar' or 'syntax'. He thinks that since the Greek *nomos* is conceived as a pre-political fabrication, it is the anti-politics. *Lex* on the other hand is conducted in accordance with political freedom, combining the collective acts of pledges and promises (the basic principles of *pacta sunt servanda*, 'pacts must be served') (Wilkinson, 2011: 18).

Similarly, Volk (2010) refers to Arendt's understanding of the history of the European inter-war engagement of law with the significant intellectual traditions. He argues that the Greek concept of *nomos* stands for the idea of demarcation and territory, which embraces the conception of sovereignty. The Roman *lex*, on the other hand, expresses the notions of relationship and agreement, and is thereby compatible with Arendt's concept of law. Volk confirms that Arendt shifted from advocating the Greek conception over the Roman because she did not see the law as an expression of command or the legal view of sovereignty inherited from Greek law, but rather as the arrangement of relationships between political communities in the sense of Roman law.

[31] The use of this terminology is probably intended as a rebuttal to Tacitus's famous epigram attributed to a tribal leader in Britain who resisted the Romans: 'they make a desert and call it peace'.

Although I agree with both Wilkinson and Volk that, for Arendt, Roman *lex* is in clearer harmony with the tenets of Arendt's political theory more than the Greek *nomos*, I argue that each of the traditions reflects to its own angle of law, which cannot be reconciled with one another. My main point of disjunction with Wilkinson and Volk is that both situate Arendt's critique of the traditional conception of law in respect of her thinking on sovereignty, whereas I argue that the disjunction rises more from Arendt's conception of politics.

The Greek *nomos* supports Arendt's general argument that violence is antithetical to politics within the political sphere of domestic affairs. Greek law preserves the identity of the Greek citizens by legally establishing a borderline between free Greek citizens and others (Birmingham, 2011b: 113). This leads to the distinction between politics and violence, and between citizens and outsiders (i.e. barbarians, slaves and foreigners). However, Arendt's theory of politics as the space of the activity of speaking and the exchange *of doxa* (opinion) transcends boundaries of nation states. The Greek contribution to law as signifying the wall of the *polis* in the sense of the physical location reduces the meaning of politics from taking place in a space of acting and speaking, which Arendt called 'the space of appearance', to be merely a geographical location (e.g. city, state) that can be collapsed anytime: "where men exist not merely like other living or inanimate things but making their appearance explicitly" (Arendt, 1958: 198-199; see also chapter 3). In this respect, politics is reserved only for citizens, while the outsiders of the city, who also have a natural capacity of deed and word, are not counted in it (Arendt, 1958: 199). The space of human freedom is limited by a fabricated product, and thus freedom is brought to an end by work.

Arendt is seeking after a theory of law that supports her conception of politics and does not detract from it. This brings her to support a Roman conception of law as better fitting with politics properly conceived than the Greek conception. In *Introduction into Politics*, Arendt shows the contradiction between ancient Greek and Roman legal affairs by arguing that classical

Roman law has a semantic affinity with politics, whereas they are disconnected in the Greek:

> The crucial distinction... is that only for the Romans does legislative activity, and with it the laws themselves, belong to the realm of politics, whereas according to the Greeks, the legislator's activity was so radically disconnected from the truly political activities and affairs of the citizens within the polis (Arendt, 2005: 179).

The thesis argues that Arendt overlooks a routine day-to-day basis of legislation within the ancient Greek *polis*. Solon, for example, created many family (e.g. marriage and adoption) and public laws (e.g. laws that forbade the export of agriculture product, and restrictions on land ownership) in order to conduct family and public functions. By ignoring these existing laws in Greek history, Arendt aims to differentiate Greek and Roman law, emphasising the former as a product of making that goes against politics outside a state, whereas the latter is connected with political affairs in the sense of action by means of the concept of promise. The Romans did not overlook this discursive and relational aspect of law. They kept the relationship between people by enlarging the experience of action to incorporate the creation of treaties and alliances. Roman law, in this Arendtian interpretation, did not arise from sovereignty, domination, command or any external standard; it was solely the political praxis of promise that allowed the emergence of a new world without hostility and violence (Birmingham, 2011b: 114).

The existence of action originates in irreversibility and unpredictability, so it requires the redemption that can be ascertained only by action itself, namely the faculty of forgiveness and keeping promises (Burns, 1990: 141). Promise, as shown in chapter 3, is a solution for the unreliability of freedom of action/speech, binding people together even though they physically depart from each other. Since the freedom of politics is unlimited, leading to the incalculability of political power, what matters in promising is not the making of a promise but the keeping of it (Waldron, 2006: 212-213). The Roman

term *societas* translates as ‘alliance’, which means gathering together the isolated strength of the allied partners and binding them into a new power structure through ‘free and sincere promises’, without ruler and ruled. I conclude that Arendt refers to Roman *lex* as a promise in the sense of a political process that manifests in a form of treaty or alliance in order to supply the nourishment of politics to the future.

To summarise, Arendt understands law as being the protector or the promise of politics in opposition to the idea of natural law. In this respect, Roman *lex* is compatible with her conception of law more than Greek *nomos*. Greek *nomos* for Arendt is not politics, but Roman *lex* is essential politics. The next section puts forward Schmitt’s conception of law, showing how the Greek concept of *nomos* and Roman one of *ius* in means that Schmitt’s theory of law diverges from Arendt’s in crucial ways.

5.3 Part II: Schmitt’s Conception of Law

5.3.1 Schmitt’s Understanding of Law

5.3.1.1 Schmitt as a Critic of Legal Positivism and Normativism

The legal theory of Schmitt is directed to a counter-offensive against legal positivism and normativism (Bendersky, 2004: 7). During his early academic life, Schmitt wrote *Gesetz und Urteil* (Law and Judgement) (1912; cited in Kennedy, 2004: 55) in which he emerged as a critic of the concept ‘in accordance with the law’ (*gesetzmäßig*), which is the criterion of contemporary jurisprudence that is grounded in positive law. The idea of legal positivism, according to Schmitt, began with the founding of the Bismarckian Reich, and then it became the prevailing legal form of German thought in the late 19th Century. It is the result of the general scientific empiricism of the materialistic and positivistic period, existing under the assumption that law must be based on observation and analysis rather than on idealist or philosophical speculation. Its features turned away from the universalism of natural law towards the level of the individual sovereign state (Bendersky, 2004: 8).

Positivism in the shadow of Hans Kelsen suggested that all forms of law were norms and originally emerged from the fundamental norm (*Grundnorm*), and jurists have an obligation to exclude any contaminating factors such as history, politics, morality and sociology that might later taint the legal order from the juristic procedure in order to preserve the value-neutral and purity of law. In this regard, law became another name for statute, and legal positivism is statute positivism that represents a judgment in accordance with the legal statute, whereas legislators, called 'decision-automatons', merely follow this statute without their own decision power (Koskenniemi, 2016: 595).

In an essay published during Schmitt's dark period (the rise of Nazi party), namely *On the Three Types of Juristic Thought* (1934/2004), he not only criticised the promotion of freedom and equality by legal positivism that brings light to the ideology of liberal state, but also devoted his effort to develop the concept of law by overcoming the limitations of normativism (Croce and Salvatore, 2013: 33). According to normativism, a norm is perceived as an absolute and created order which elevates itself above the individual case and the concrete situation. This theory is wrong in Schmitt's eyes, because it ignores the concrete persons who apply it.

Schmitt also argues against Kelsen and legal positivist theorists by showing the problematic connection to the legislative procedure or law-making process of positivism and normativism. In the view of normativists, the political was separated from the legal system, since 'the political' is the matter of 'what ought to be' (*Sein*) while the legal issue resides in the norm, the matter of 'what must be' (*Sollen*), existing in the closed system without right or wrong. Schmitt argues that in the process of law-making there is a case whereby lawmakers take advantage for a self-intended purpose in such a way that the process of law-making always creates 'right' things. The problem of positivism and normativism in Schmitt's viewpoint is that if the relation between law-making and law are changed, it will open to "an absolutely 'neutral', value and quality-free, formal-functional concept of legality without content" (Schmitt, 2004: 23).

By increasing neutrality, positivism cannot answer the question about the correct legal decision (Bendersky, 2004: 9; Kennedy, 2004). Moreover, Schmitt argues that normativism neglected inevitable political and sociological realities that include the element of historical change. For Schmitt, norms and decisions must be regarded as social structures, while law is not mainly a creator but a selective device that chooses some practices and models in the social realm, and cuts out harmful things (Croce and Salvatore, 2013: 10). To this end, protection and security should depend on the lawmaker rather than legal statute.

In *Legality and Legitimacy* (1932/2004) Schmitt refers to the legislative state as another angle of the misconception of what law entails. In European states of the 19th Century the decision of a parliamentary legislative state was made with the consent of the representative assembly, or 'the present decision of the momentary parliamentary majority', whereby law is involved with norms and law-making relates to the establishing of those norms (Schmitt, 2004: 18). This comes out of a formal concept of constitutional law (a valid law in the formal sense) in such a way that law appears in the form of statutes, residing in the essence of statutory law. By this point, the legislative state attempts to equate legitimacy with legality, which Schmitt argues is an impotent account of legitimacy since legitimacy does not depend on legal statutes, but a social norm of a community (Posner and Vermeule, 2016: 614). Moreover, Schmitt argues that the legislative state in the sense of the substantive statutes and legal principles refuses command and obedience, and remains merely the character of norm that interferes in the freedom and property of citizens (Schmitt, 2004: 22).

5.3.1.2 Law as a Concrete Order and Decisionism

While Arendt referred to law as the support of the political activity of speaking and acting in opposition to natural law, Schmitt presented his concept of law as a 'concrete order' and a decisionism, where the natural law endowed by God was paralleled to his understanding of the rule of law, without holding a natural law of morality (the detail about Schmitt's support of divine law is presented in the next section). In *On the Three Types of Juristic*

Thought, Schmitt refers to the theory of the concrete order that norms as the source of law stems from the already existing social order, reflecting the justice and values of social groups, associations, communities and institutions that has already existed (Marchi, 2013: 190). Schmitt seems to defend this law in terms of normality.

A concrete order, for Schmitt, is a historically, culturally and geographical embedded institutional basic for juridical order, received from constitutional sources of legitimacy beyond a constitutional framework of state form (Croce, 2011: 45; Minca and Rowan, 2016: 135). It promotes and maintains a common criterion of normality by providing social norms of conduct (not legal norms) in various normal situations in the relation to a social reality. In this regard, an order must be reliant on a concrete form of culture, geography and history, which he later elaborated in *The Nomos of the Earth* as a 'land appropriation'.

Seitzer (1998: 287–292) suggested that Schmitt's legal system affords to become 'ahistorical'. I, however, do not agree that Schmitt contrasts law with history. I think that Schmitt refers to the unified will in the sense of the historical existence of the people. This unveils the notion of *nomos*, which is associated with the historical facts, called a 'concrete order'. It also shows that law cannot be extracted from the particular practices of politics.

Decisionism, the new type of legal thought in *On the Three Types of Juristic Thought*, is the authority or sovereignty of an ultimate decision during the state of exception, where the normal order is destroyed and replaced by the command given as the source of all *Recht* (law/right); it is the extra power of sovereignty during the state of emergency when the normal situation collapses and the concrete order of normality cannot be applied to states. According to decisionism, law should be under the decision of a sovereign, depending on his personality, qualities and experience, although it might be contradictory to the legal statute (Bendersky, 2004: 10; Kennedy, 2004: 71). The creation or reconstruction of any order and security resides in the prerequisite of any legal systems during the exception.

Schmitt repeats the notion of decisionism in *Political Theology*, noting that the concept of the legal order is based on a decision, not legal norms (the idea of legal positivism), and a sovereign who takes this decision remains "the highest, legally independent, underived power" (Schmitt, 2005; Kalyvas, 2008: 94). This writing elaborated the notion of decisionism from the source of law to a sovereign power of decision outside law. For Schmitt, legal norms apply only in normal situations, but the survival of the political system during the exception cannot be effected by this norm – the norm is disordered, unable to predict and respond to the political system. In Schmitt's mind, law must be related to actual political and societal circumstances and force – under the 'concrete situation' – instead of depending on the legal statute.

He equates the fundamental lawgivers who create a constitutional order with the decision-makers or sovereign decisionists whose actions were directed toward political and legal order within a crucial state of exception (Bendersky, 2004: 12). The legal system will not definitely be complete because individuals who apply laws (i.e. jurists) can never be perfectly logical and gifted with perfect knowledge. During the economic crisis in the 1930s, Schmitt advocated a solution by suggesting the extraordinary accrual of presidential power under Article 48 of the Weimar Constitution for the restoration of order and security; in other words, for Schmitt, the Nazis should have exercised extraordinary power not by law, but by the sovereign power of exceptionalism.

Schmitt's fondness for decisionism does not mean that decision is independent from statutes or legal texts; rather, it means that these statutes, texts or other references could not be determined entirely in advance without the consideration of legal decision. These features show two main roles of the legal order: it is the filter of a society to select institutions that are compatible with each other, and constrain those that may lead to the danger of social consolidation, bringing about the relation between the development of normal social practices in everyday life on the one hand and "the constitution of a concrete community in the political domain" on the other (Croce and Salvatore, 2013: 5-6). Law is not conceived as a mere instrument

of selection and control, but the ‘genuine voice’ of a leader (e.g. supreme regulatory, dictator, parliament or supreme court), opening to the efficiency of a leader in order to decide how a society should be. This idea allows Schmitt to assert the idea of the sovereign who can define the dichotomy of friend and enemy.

5.3.2 Schmitt and the Relationship between the Concept of Law and Traditions

5.3.2.1 Schmitt and Divine Law

Significant work over recent decades analysing Schmitt’s theory of law has resulted in some valuable publications, but despite exploring different angles on issues such as constitutional power, the concept of law in political perspective and international legal thought (e.g., Dyzenhaus, 1997, 1998; Teschke, 2011; Salter, 2012; Croce and Salvatore, 2013), these studies have overlooked the influence of the backgrounds in the ancient traditions on Schmitt’s political theory. Perhaps because Schmitt’s thought alters in crucial ways between different periods of his life, from the young Schmitt of the Weimar writings, through Schmitt the ‘crown jurist’ of the Reich, to the jaded Schmitt of the Cold War, there has been no systematic analysis of the appropriation of the ideas of Greek and Roman antiquity in his legal thought. However, this section suggests that Schmitt’s conception of law has a root in a natural, divine law elaborated upon in ancient times.

Colliot-Thélène (1999: 139) suggested that Schmitt’s concept of law was moved away from the antithesis between positive law and natural law to the relationship between legality and legitimacy. Schmitt, on the one hand, rejected Kelsen’s conception of legal positivism that attempted to construct ‘the Pure Theory of law’ by refusing other considerations (e.g. social, cultural and historical dimensions). On the other hand, his idea of decisionism was against the concept of natural law adhered to on moral grounds. The moral framework of natural law, for Schmitt, changes the notion of law to be the protector of the criminal procedure – a war that does not follow the international law becomes criminal, which Schmitt argues is the discriminatory concept applied to war (see chapter 6).

Nevertheless, this thesis argues that Schmitt's principle of jurisprudence remained rooted in natural law as derived (ultimately) from Greek tradition. Considering its principle, the idea of natural law is close to cosmopolitanism and utopianism. In this respect, cosmopolitanism relies on the collective judgements of community, and utopianism seeks for certain conditions that meets the satisfaction of human needs (see Sargent, 2010). The brotherhood of cosmopolitanism, utopianism, the shared city of gods and humans of the divine law, and natural law serves as the benefit of all life in consistency with each own constitution and nature to all humankind (Hayes, 2017: 61). Given the closeness of natural law, cosmopolitanism, universalism and utopianism, the thesis suggests that the implication of the natural law of God to Schmitt's conception of law does not contradict the fact that Schmitt is a critic of liberal cosmopolitanism and liberal utopianism.

Firstly, Schmitt refers to a divine law in the sense of the general and common understanding of the divine source of power, but this is not in a straightforward way. The dictates of universal principles of divine power should be reconciled with the authority of the state/sovereignty; the universalist character of divine law and the absolute, sovereign power of the state should be harmoniously integrated. It can be said that Schmitt's political theology is the integral process of natural law and a secularised theological theory of sovereign state, as opposed to the natural rights of the moral universalism of liberal ideology (e.g. with regard to crimes against humanity, peace, and pacifism as the protection of human life).

Secondly, Schmitt does not criticise the universalism of divine law, but universalism as a characteristic of liberalism. For Schmitt, the universal orientation of natural law constituted the general framework from which particular legal systems actually developed. In this regard, the sovereign power of states is the incontestable value, because it is a worldly phenomenon that comes from the relationship to a higher (i.e. divine) law; a universal power in a particular decision making of state exists in this case is in accordance with the divine law. Accordingly, on the one hand, Schmitt launches an attack on the main principles of the cosmopolitan, universal, and

utopian idea of natural law that endorses the application of law to all human beings (i.e. the idea of universal peace and pacifism that is inherit to the universalist nature of liberalism). On the other hand, he still supports natural law as the idea of the absolute power of sovereignty receiving from the image of the power of sovereign God, and this absolute power must belong to each own sovereign, not an international organisation, such as the League of Nations.

This integral relationship between universalist divine law and sovereign decisionism can be seen in his contribution to the idea of *Großraum*, which supports a global order between groups of states based on mutual respect of each nation's sovereignty (see chapter 3, section 3.3.1.3). In contrast to the discussion of the concept of artificial law in the section of Arendt, the term natural law in ancient Greek refers to the framework of the divine law and the law of nature. According to Greek culture (e.g. as manifest in the *Iliad* and *Odyssey*), the origin of law was derived from God and the gods (e.g. Kronos and Zeus) (see chapter 2). One example of Greek thought about divine law is the dramatic play namely *Phoinissai* (The Phoenician Woman). It tells of two brothers (Eteocles and Polyneices) who killed one another for the throne after their father, Oedipus, who unwittingly discovered that his wife was his mother, blinded himself and exiled himself from his kingdom. When Creon, a new ruler, forbade one of the brothers (Polyneices) from being buried with full honours in the dust, Antigone violated the law due to the holy and inviolable obligation to bury one's kin – the unwritten but universally acknowledged law of the gods. In *Antigone*, Sophocles contrasts divine or unwritten laws with human enactments in a scene wherein the eponymous hero follows the divine law rather than the human law of the king. By reinforcing faith in a divine order of justice, Antigone describes divine laws as unwritten laws, which is an essential component of the understanding of natural law (Lane, 2014: 47).

Plato's *Laws* offered a picture of a modified Greek society wherein citizens governed themselves instead of being governed by godlike philosophical guardians, but still kept in line with a strict law in order to assure divine

assistance and conformity with the divine blueprint by which the world was constructed. In addition, for Cicero, human beings share reason and fundamental law with the gods in such a way that this whole world is a common political community of gods and humans. For Cicero, a Roman jurist and philosopher, law is the ultimate reason, which is rooted in nature or in God, and commands what ought or ought not to be done. Since the mind of God cannot exist without reason, and divine reason holds the power to establish right and wrong, God is "the inventor, interpreter and sponsor of natural law" which is the only one true and supreme law (Levy, 1949: 45). The law is therefore universal, and rules the whole universe above space and time by its wisdom and by means of command and forbearance, so that no one can take leave of this obligation. This concept is similar to the insistence of Marcus that law is the embodiment of reason; in order to understand that true reason, we must move beyond particular written laws and seek the roots of justice in nature (Lane, 2014: 276).

One might suggest that the idea of law as command and forbearance does not go along with law as the embodiment of reason; the former is involved with the idea of 'will' and the latter is about 'reason'. This is accompanied by a clear distinction between the legal consideration of reasonable rationalism in the normativist conception of law and the idea of will/command in pragmatism, which Schmitt raises in *Legality and Legitimacy* (Schmitt, 2004: 10–11). The belief in the rationality of normativism, for Schmitt, is problematic and contradicts to his conception of decisionism because it creates a legal standard (norm) for judgment and evaluation which presupposes both the order founded by a decision of a personal authority and the institutionalisation of that order (Schmitt, 2004: 11; Demiray, 2010: 115).

However, I argue that 'reason' in terms of the natural law of God does not contradict to the idea of will of command and forbearance, and also Schmitt's conception of decisionism. Reason in this regard is not a normative knowledge or cognition of the reasonable rationality in normativism that Schmitt criticises in *Legal and Legitimacy*; rather, it is the ultimate

knowledge/wisdom of omnipotent God, who has an absolute power in command and forbearance, to distinguish right from wrong. It also refers to an innate ability of human beings to make possible understanding the *will* of God by receiving law grounded in the nature as the image of God.

William of Ockham contributes to the idea of natural law that the ultimate priority of law lies with the divine will. In this regard, natural law is absolute, immutable, and admitting of no dispensation because it is completely dependent upon the will of a divine sovereign (Oakley, 1961: 71). Ockham does not refuse the existence of right reason in divine law, because the right reason is dictated by the will of God. He goes further by suggesting that the act that elicits against right reason is the act that elicits against divine precept and against divine will. According to this point, the ultimate reason which is rooted in God is bound God's omnipotence which affiliates to Schmitt's decisionist mindset.

In this regard, the voluntarist idea of Hobbes helps us gain an understanding of Schmit's idea of absolute power of sovereignty in the light of divine law. Hobbes is often recognised as a voluntarist in his treatment of natural law and voluntarism, but sometimes is considered to be a forerunner of legal positivism (Zagorin, 2009: 9). Regarding Hobbes as a voluntarist, his political theory springs from the law of nature, which incorporates the precepts leading to the creation and preservation of commonwealth and peace. For Hobbes, the law of nature delivered in the word of God who has the absolute power to command all things. By following the law of nature to the desire for self-preservation as the command of God, human beings place themselves a moral voluntarily obligation to renounce their unlimited natural rights to be subjected to the civil law of the sovereign, as long as the latter can protect them (Hobbes, *Leviathan*; Zagorin, 2009: 65). In this regard, the state is considered as a 'mortal god' with a duty derived from the omnipotent will of God – the author and promulgator of natural law – to promulgate civil laws in order to command all people in the commonwealth and avert any wrongdoing by its prohibitions.

Hobbes's views that the law of nature and law of obligation come from the authority of God and His absolute power eventually can be parallel to Schmitt's idea of the legal power of sovereignty in dominating over others. Nevertheless, it should be noted that the absolute power of sovereignty in the same way as divine power does not mean that state power is unlimited. Schmitt noted that law is not the basis of the supreme power of the state, rather law is one instrument and affirmation of state power. Moreover, law is legitimate only because of its necessity for the state. Misunderstanding of the precedence of state or sovereign power over the law leads to state of violence and disorder, called the state of exception, because the majority can use the state power to impose its own law to annihilate the minority (Zarmanian, 2006: 42). Again, the occurrence of a state of exception breaks down the legal legitimacy of the state, which can be solved by the contribution of decisionism of Schmitt's political theory.

5.3.2.2 Greek Nomos and Schmitt's Idea of a Concrete Order

There is a striking lack of relevant discussions about the influence of classical thinking of divine law on Schmitt's conception of law, and many studies of Schmitt also make dismissive remarks about the ideas of *nomos* and *ius* as they feature in his writings. By contrast, I suggest an interpretation of Schmitt's legal thought which takes seriously the term *nomos* in light of the classical background from which Schmitt drew it, as well as supplementing the discussion with that of another substantive word, *ius*, which takes on significance when comparing it to Arendt's distinction between *nomos* and *lex*. In respect of the concept of *nomos*, previous literature has extracted this idea from the concept of law, and read into it only a peculiar sense of spatiality and geographical context, such as similar suggestions about the geographic and spatial sense of *nomos* (Elden, 2011; Legg, 2011; Rowan, 2011). Schmitt's use of the word *ius*, as far as I know, has not been examined at all by commentators.

To challenge the previous suggestion, this study aims at gaining mileage in the analysis of the concepts of *nomos* and *ius* by linking them with the concept of law. I argue that the concept of *nomos* cannot be equated to

'norm', as it is, for example, in the interpretation offered by Augsberg (2010). Schmitt, as is evident from his writing, connects the concept of Greek *nomos* to his conception of law as a concrete order, which is distinguished from legal norm and statute (details are presented below). In so doing, I will explore the meanings of these two words – *nomos* and *ius* – from the classical traditions, and investigate how Schmitt appropriates them in order to formulate his own theory about the essence of law.

Schmitt firstly set himself aside from thinkers like Arendt who translate *nomos* as law, or bind it to a traditional or customary law in opposition to a written law (Schmitt, 2003: 325). Rather, Schmitt perceives *nomos* as the determination of the structure of social order and doctrines in all specialised disciplines in relation to the core of ethics, the social problem or the view of history. This idea can be traced back to the Greek concept of *nomos*. Schmitt argues that the Greek word *nomos* comes from the verb *nemein*, whose noun is *nomen actionis*, having three main connotations: appropriation, distribution/division and production.

The first sense of *nemein* is *nehmen*, which means to take or to appropriate, indicates an action and process of appropriation whose content exists in a *nemein.* Schmitt examines the other twin words such as *legein* (to gather or to speak) – *logos* (speech, word or reason); tropos (a figure of speech phrase or turn of phrase) – trepein (to turn); and *sprechen* (to speak) – *sprache* (language). The second meaning is *teilen*, which means to divide or distribute, and relates to law and property. Schmitt points out that law in the sense of sharing or dividing into parts belongs to the second meaning of *nomos*; *nomos* is the distribution of property and the sharing of goods (Schmitt, 2003: 327). The third meaning is *weiden*, which means to pasture, to run a household, to use or to produce. Schmitt clarifies that this is the productive work of ownership, referring to "the commutative right of buying and selling in the market presupposes ownership as well as production deriving from the primary division" of the type and means of production (Schmitt, 2003: 327).

Each of these three *nomos* is part and parcel of every period of legal history, and every stage of economic order and social life (e.g. Homer used the term *nomós* to indicate a pasture, a parcel of land or a dwelling place). He also noted that land-appropriation is the primary substantive acquisition and foundation of all distribution and production (Schmitt, 2003: 330). There is the appropriation in the initial stage before distribution and production, because there has to be initial thing before the stage of division, distribution and production, and this initial thing only comes from the stage of appropriation: ‘’no man can give, divide and distribute without taking”, which is the prerogative of God (Schmitt, 2003: 345).

In other words, the appropriation of land, especially of free land, exists before the establishment of any law or divided territory (division and distribution) or any claim to ownership (production). The priority of appropriation can also be seen in European imperialism, as land was appropriated in the rest of the world before it was distributed/redistributed (for example, distribution to colonial companies on the basis of charter and redistribution between colonial powers through purchase or conquest) and production from the land came after the plunder of imperialism (Schmitt, 2003: 333). Schmitt also claimed that modern period shows the development from land appropriation since ancient Greece to sea appropriation, and finally to air and space appropriation (Schmitt, 2003: 348).

The point is that, for Schmitt, all concrete orders and legal relations of individual clans, families or groups are firstly derived from distribution, which is presupposed by land-appropriation. In other words, the process of distribution backed up by appropriation is the origin of law. Schmitt maintains that the original conceptual relation between *nomos*, appropriation and distribution has been evident since the time of the ancient Greece (Schmitt, 2003: 67). For example, Plato refers to the word *nomos* signified a *schedon* or a ‘mere rule’, and the word *nomoi* also contained the utopian plan-character of modern laws. Aristotle, for Schmitt, repeated the idea of Plato by referring to *nomos* in the sense of the rule of medium-sized, clearly distributed landed property, used in the sense of the rule of the middle

classes as opposed to the rule of the rich, and the rule of the masses or the poor (i.e. the proletariat), called today the 'rule of law' (Schmitt, 2003: 68). By looking through the ideas of Plato and Aristotle, *nomos* appeared signifying an original distribution of land, which Schmitt confirms is the real meaning of *nomos*, and is synonymous with the sense of concrete order, a measure, order and form which constitutes a spatially concrete unity.

In the earliest stages of human history, Schmitt points to the congruence of the concept of the earth and law: "In mythical language, the earth became known as the mother of law" (Schmitt, 2003: 42). These two concepts – nomos (law) and land (earth) – are interrelated in three ways according to Schmitt.[32] Firstly, the earth contains law within herself, because the earth is the womb of fecundity. The 'fertile earth' belongs to her own inner measure in such a way that fruitful growth and harvest are the rewards of human toil in planting and cultivation. This inner measure is the law and this can be conceived as the concept of justice, since those who act on the earth by cultivating it should then receive the plants and fruits from the harvest. It is notable that Schmitt later used the terminology of 'measure' as indicating a 'concrete order'.

Secondly, any work on the land naturally gives rise to fixed boundaries, for example the demarcation of fields, pastures and forests. Schmitt explains that only crops within the boundaries that a person considers as 'his' will be nurtured and planted. Consequently, the standards and rules of human cultivation on the earth appear to legitimate and protect private property which is the reward for a person's physical exertion.

Lastly, the laws are sustained by delineating the solid ground of the earth with fences, enclosures, boundaries, walls, houses and other constructions. By these means, the orders and orientations of human beings become visible, and forms of power and domination (e.g. families, clans, tribes and estates) become apparent.

[32] It is also interesting that the feminine pronoun is used to substitute for the word 'earth'. This may be because in many instances Schmitt refers to the earth and *nomos* in the sense of something fecund (e.g. the land yields fruits and harvests), like a mother who gives birth to a child (i.e. impregnated by the male farmer).

Schmitt concludes that land appropriation is always associated with some measurable quantity of soil and solid ground, which is the primeval act in founding law (Schmitt, 2003: 44-45). Also, measureable land produces a primary criterion, continuing with all subsequent criteria, such as city-building, fortifications, wars, captivity, treaties, armistice, the prohibition of marriage with foreigners, etc. In other words, all subsequent law is embodied by a primary measurement and distribution of land to such an extent that land-appropriation first takes place in law, then subsequent legality relates to the soil, the origins of division and distribution among the appropriating tribe or people.

This interpretation of law can be compared with Arendt's, who accepts the notion of law as signifying a wall of the city-state subsisting in the Greek concept of *nomos*. With regard to the appropriation and distribution, Schmitt noted that *nomos* can also be described as a wall because both *nomos* and wall are based on 'sacred orientations' (Schmitt, 2003: 70). However, while Arendt understands wall as the protection of the land inside the wall (not the *polis* in the wider sense – the space of appearance), wall for Schmitt signifies the appropriation and division of land, implying a land that belongs to a group or individual is known by a borderline, and they have a duty to nourish their land as distinct from the lands of others. The idea of land appropriation implies that *nomos* not only limits the hand of the human being – e.g. fixed boundaries which later became the standard of rule and law among those humans – but the concept of the earth as nature also holds the law within itself (and by its own inner measure) – e.g. the division of land by rivers, seas or mountains.

Schmitt argues that the original meaning of *nomos* as appropriation was destroyed when *nomos* was understood as *thesmos* or law and legislation, *psephisma* or plebiscite and *rhema* command based on a twofold argument (Schmitt, 2003: 69). Firstly, *nomos* was interpreted as customs and traditions in the antithesis of *physis*, where *nomos* was indicated as an imposed *ought* in opposition to *is*, as appeared in the works of Democritus (Schmitt, 2003: 342). This is not to say that Schmitt is unconcerned about whether law

belongs to the natural or the human, or whether the human gets in on the act of God, but it is undeniable that he excluded both of them in his homogeneous concept of *nomos*. The second misconception is that *nomos* became connected to statutes and written laws, as can be seen in the Greek translation of the law of the Old Testament. To this end, *nomos* became "the legalitarian enactment of acts with the chance to compel obedience" and the fundamental law as concrete order was no longer distinguished from "the sundry acts, statutes, orders, measures, and decrees" (Schmitt, 2003: 69).

Inspired by Greek tradition, it can be concluded that Schmitt's concept of law in the sense of *nomos* is a law that man inside the system must execute, while outsiders are excluded (Augsberg, 2010: 746). *Nomos* as the new kind of international order broke down the 19th-century understandings of international law. Whether the previous understandings of international law were on a state-centric view that perceived international law as a part of the public law of the state, or an external view that saw international law as an independent legal order outside the state, they both decided which lands should and should not be peaceful (Koskenniemi, 2016: 599-601). Law as *nomos* possesses the notion of concrete order that gives precedence to historical (and political) facts in the relationship between men in social communication over statutory law. The law, *nomos*, in Schmitt's perspective is not rigid, nor does it have to be judged along with the statutory interpretation. Rather, *nomos* comprises the unified political will of society in the whole history, which is compatible with the concept of *Großraum* as the new concept of international order (as explained in chapter 3). If the system is broken, *nomos* can no longer apply in the community.

5.3.2.3 Roman Ius and Schmitt's Idea of Decisionism

As stated above, Schmitt understands law as the collective fact of norm (not legal norm), tradition, culture and history. Without consideration of statutes and norms, *nomos* opens the space to another kind of law in a special historical case, as Schmitt notes in *Dictatorship*: the idea of *ius*. This idea is compatible with the use of an extra-legal/right in case of emergency. For Schmitt, the right of exception is contrasted with the normal right of

sovereignty, and is superior to all other legal limitations (Schmitt, 2014: 13). Under the exceptional circumstance, the use of violence can be legitimate according to extra-legal sovereign prerogatives.

While Arendt advocates the Roman concept of *lex* as a political activity helpful for contemporary political and legal theory, Schmitt makes use of the Roman concept of *ius* when referring to decisionism as an extra-legal power during the exceptional situation. In the Roman juristic language, *ius* (plural *iura*) has many different meanings. It means the laws in the broadest sense, in relation to the term *iure* (legally, in conformity with the law) and *ipso iure* (by virtue of the law itself). During the earliest phase of Roman history, *ius* signified the man-made norms of social conduct governing human relations, which conform with human behaviour that caused no harm to others (Mousourakis, 2003: 17; see also chapter 2). *Ius* became known as law after the gradual increase of the differentiation between human and divine. It was denoted in the sense of the right or "the power of a human being to act with reference to other human beings", as distinct from the power of gods (Mousourakis, 2003: 17).

By keeping distance from the word *fas*, which was associated with the divine origin of norms, *ius* presents the character of the rights and powers of human beings in order to define, protect and enforce laws whether they are written or unwritten. However, in the following century, the term *ius* was interpreted in more than one way (e.g. the public or private right or power granted to an individual, the legal status of a person), and there is evidence that it was also used in the divine sense. This is because, during the regal era, any performances of human beings (both kings and citizens) were assumed to depend on the determination of the divine will, making the term *fas* and *ius* overlap (Mousourakis, 2003: 18). Moreover, *ius* was used to indicate the personal status of person whether be under the power of another or legally independent. When it connects to landed property, it refers to the legal situation thereof, including servitudes and liens, or to the place where the magistrate (praetor) administers the law (Berger, 1991: 523).

In *Dictatorship*, Schmitt referred to the two types of *ius*: the *iura imperii*, which means rights/legal prerogatives of power/of the state; and the *iura dominationis*, which means the rights/legal prerogatives of rulership (Schmitt, 2014: 12). For Schmitt, the first kind of *ius* pertains to the rights of sovereignty to pass laws. The *iura dominationis* is the public right of sovereign exception during an emergency situation. This type of right is derived from the common law (*ius commune*) in order to maintain the state and public order and security. Schmitt notes that the second type of right is the *ius special* (special right) which is opposite to the normal right of sovereignty (*ius generale*, general right), but still be legitimate in terms of the power of dictatorship. It is also subjected only to the *ius divinum* (divine right), which is superior to all other legal limitations (Schmitt, 2014: 13)

These two kinds of *ius* are opposed to the concept of *arcanum*, which for Schmitt means 'state secret'. The idea of state secret is referred to the power of secular state rather than the power of the king, emperor or dictatorship deriving from the divine power. Schmitt uses the term *arcanum* to analyse the exhausted power of theology during the 15th Century, when the patriarchal understanding of the origin of kingship no longer satisfied the appetite of people for science. At this time, a kind of secret teaching in the sense of a scientific enquiry was interwoven with the development of political understanding. Schmitt refers to a book by Arnold Clapmar which mentions the manuscript of *Annals*, written by Tacitus, in which the phrase *arcana imperii* was used to describe the clever politics of Tiberius, who used an appeal to science in order to trick people. The author believed that every scientific discipline has its *arcana* as "they employ even cunning and betrayal in order to achieve their goal" (Schmitt, 2014: 11). Schmitt confirms that the character of *arcana imperii* conforms to the different forms of political government, and involves the actual and factual existing conditions of state powers in normal situations. Schmitt moves forward to another relevant term: *arcana dominationis* (secret of rulership). He explains that this term is "concerned with the security and defence of rulers in extraordinary events" (Schmitt, 2014: 12).

In this regard, Schmitt posits a divine origin of the concept of *ius* in opposition to the secular power of *arcanum*. His understanding of *ius* is linked to the idea of divine law discussed in section 5.3.2.1. Schmitt believes that the law of exception, called *iura dominationis*, is only understood in the sense of *ius divinum*, the divine right above all others. The implication of this point confirms the importance of natural law of gods in the classical concept of law as the original power of the right/law of extraordinary events in Schmitt's viewpoint. It shows the necessity of the superior power and its superior law over any other laws, which are limited during the period of exception.

The eventual pictures of Schmitt's and Arendt's concepts of law go to show the differentiation of their fundamental ideas about politics. Arendt and Schmitt no doubt focused on the different types of Roman law in order to serve their own purposes. Both Schmitt and Arendt's concepts of law illuminate their own concepts of 'the political'. For Schmitt, the 'political' connects with the decision about the critical situation. His position on an extraordinary state constructs the law's perception of *nomos* in the sense of concrete order, not the statutory. Schmitt's thought about *nomos* is that the law should not be judged from the expression of legislative enactment; rather it relates to historical facts which enable the extraordinary sovereign to emerge out of the extra-legal power. This raises the idea of *ius* to support the existence of an extra-legal entity during the exceptional situation. Conversely, Arendt understands politics in the sense of an area opened for speaking, the communication of community's life. As cited above, by use of the term *nomos*, Arendt refers to a man-made artificial law *outside* the city-state, which is pre-political. According to Arendt, law always refers to the conformity between people that cannot be hindered by the boundaries of states, so the character of *lex* gives the picture of the formal enactment to build and preserve alliances and to construct the foundation of a political community that encourage the speaking activity of people, which guarantees the continuity of politics in the public sphere.

As stated in chapter 2, Strauss translated Greek *nomos* to *ius* and used it in the sense of 'right', not 'law'. The etymological history of this term leads to the assumption that *ius* and *lex* could not used interchangeably, as they are subtly different: *ius* is used in the sense of living with just and fair customary law, based on 'intrinsic rightness', which is flexible and adaptable to particular circumstances; whereas *lex* refers to statutes, and law enacted by a 'competent legislative organ' as the source of *ius*, dealing with purely formal criteria (or the formal legislative enactment) according to the letter of the law, without referring to any particular cases (Berger, 1991: 523; Mousourakis, 2003: 18–20). It could be argued that Schmitt uses the term *ius* instead of *lex* because he want to combine his extraordinary power with the rightness of this absolute power, while Arendt uses the term *lex* because she draws a picture of agreement and contract for preserving a political community. This way of analysis shows their original intention in the selection of the word choices that is compatible to their conceptions of politics.

Moreover, it is also interesting that while Schmitt emphasises Roman law with the term *ius*, Arendt mostly refers to Roman law in terms of *lex*. Moreover, we can see that both Arendt and Schmitt also shape the term *ius* in different ways; while Schmitt binds *ius* with the divine power of law, Arendt sets this term as the natural law as distinct from the divine law. Arendt evokes the term *ius* in her discussion of the Roman law of peoples, the *ius gentium*, which means "a law erected between different peoples whose cities prescribed different civil laws" (Arendt, 2007: 720). Although the Roman *ius gentium* is derived from natural law, its character is far from an absolute feature and the limitation beyond the power and the competence of humans. Arendt's concepts of law, both *nomos* and *lex*, play a crucial role in the protection of speech in political life rather than opening extra power over human activity of speaking, as can be seen in Schmitt's concept of law.

5.4 Conclusion

The chapter challenges previous understandings about the ideas of Arendt and Schmitt on the concept of law. The tension between Arendt and

Schmitt's understandings of the Greek term *nomos* and Roman term *ius* and *lex* apparently show how this term was contested and reconstructed by the two thinkers for their own purposes. Arendt's understanding of the concepts of law shows her engagement with an understanding of Greek *nomos* and Roman *lex*. The Greek use of the term *nomos* puts the concept of law external to politics, while the Roman term *lex* is compatible with politics; Roman lex is a political activity. This chapter shows that Arendt prefers to use the term Roman *lex* rather than Greek *nomos* to explain the idea of foundation of politics and constitutional power, and to support the illegitimacy of higher law and divine law.

By reading Greek *nomos* from this perception, this thesis argues that Arendt neglects the etymology of Greek *nomos* that contribute to both a conventional agreement and a contract. She also overlooks the existence of legislation on a day-to-day basis within the ancient Greek *polis*, and not all law-making in ancient Greece is law-giving, or 'constitution building'. In this regard, the construction of a political constitution does not take place as a consequence of the work that is carried out by a law-giver.

Schmitt, on the other hand, provides various understandings of *nomos* and *ius*, from Greek thought to his legal thinking in association with the idea of divine law. The ancient concept of *nomos* is the idea of the appropriation, distribution and production from land to space, which shed light on the concept of law as a concrete order in a normal situation (*nomos* = appropriation = concrete order = law). Schmitt's focus on the extra-legal during an anomalous case is also compatible with the individual character of Roman *ius*.

With respect to the classical traditions, Arendt conceives law as the protector of politics, preventing the activities of all political life from any danger. Conversely, Schmitt's law is the idea of concrete order that brings about the particular matters of politics presupposing law, binding the legal power to the historical, cultural and traditional significances of the society, and presenting in the critique of positivism and normativism. The use of extra-legal power during the calamity that elaborates the notion of decisionism is

understandable under the decision of these particular cases. In this respect, the sovereign can encompass the lawmaker within himself.

In the next chapter, I present Arendt and Schmitt's conceptions of war, showing how the ideas of justification and legitimacy serve this concept. The chapter links to the Roman experience of the Trojan War in the case of Arendt, and the ancients' understandings of *agon* and Roman *imperium* in the case of Schmitt. These experiences finally reveal their relationships to the concept of politics.

CHAPTER 6

THE CONCEPT OF WAR

6.1 Introduction

Arendt and Schmitt made seminal contributions to theorising the concept of violence, a concept which has occupied a growing number of philosophers during the 20th and 21st Centuries. These two thinkers have retained their fascination and conceptual force for many modern discussions of political violence, for example, the analyses of Walter Benjamin in the mid-20th Century and Slavoj Žižek today. However, the different understandings on their theories of violence require further consideration, since most analysis is limited only to relating their ideas to the understanding of political violence as manifest today, without considering the Greek and Roman historical backgrounds that were so crucial to forming the worldviews of Arendt and Schmitt and to forming their own theories of violence.

This chapter analyses Arendt and Schmitt on violence at its most intense, namely war. Other kinds of violence (e.g. interpersonal violence, crimes against individuals and trauma) are not included in the analysis. War in this point is defined as violent conflict between groups of people at the state level. It suggests that the study of the ancient intellectuals discloses a different context in which to situate the ideas of Arendt and Schmitt on war, and helps to provide for a better understanding of their concepts of politics and related issues. It makes two significant contributions to the understanding of the concept of war in the thought of Arendt and Schmitt in respect of their appropriations of ancient Greek and Roman concepts.

Firstly, it suggests that the reflections of Arendt and Schmitt reflections on the concept of war can be productively read with the concept of ‘the political’, which cannot be dissociated from theoretical presuppositions about sovereignty and law. These reflections confirm the argument that distinguishes between the continuity of politics in Arendt’s sense from the possible contingency of war in Schmitt’s paradigm of politics.

Much of the secondary literature considers Arendt's conception of war and its relationship to politics in the text *On Violence* and supplements this with further discussion of key passages from *The Human Condition*, whether by comparing her to other thinkers, or by seeking explanations that make sense to modern politics (e.g. Breen, 2007; Frazer and Hutchings, 2008; Finlay, 2009; Ayyash, 2013).[33] However, these previous analyses all orientate themselves around a disconnection, divergence and inconsistency between war and politics in Arendt's thought, which I argue is insufficient as a way of approaching Arendt's reflections on war in their full complexity a nuance. I rather suggest that although war is 'non-political', it plays an important role in the gap between an end of the old politics and a beginning of new politics.

For Schmitt, a sovereign political entity, the existence of which defies normal laws and conventions, is the sole repository of legitimate collective violence, reclaiming the close connection between politics and war in his political though. War, or civil war, emerges when the distinction between friend and enemy (in terms of perceived differences in ways of life) leads to the ultimate intensity of the conflict (see chapter 3). The consequent perception of binary friend-enemy opposition precipitates the possibility of war. Schmitt provides a conception of war as playing a legitimate role in politics and of accepting the unavoidable consequences of violent action in the political sphere, even though he dismissed the justificatory linkage between politics and war in instrumental terms (Frazer and Hutchings, 2007: 195).

Secondly, the chapter engages with the Greek and Roman intellectual legacies, which shed light on the meaning of war in the thought of Arendt and Schmitt, and their philosophical and practical perspectives on politics. By conceiving the concept of politics and its relationship to war in *On Violence*

[33] The issue of war in Arendt's work has been investigated by many scholars, some of whom have expounded on the relationship between politics and violence (see for example Barder and Debrix, 2001; Breen, 2007; Hirsch, 2012; Swift, 2013). Some secondary literature has come to an understanding of her thought on war through the lens of tragedy; other commentaries have focused more on the historical background of the Nazi holocaust as a great influence on her thinking (e.g. Pirro, 2001; Euben, 2003; Klusmeyer, 2009). A number of scholars have raised the issue of biopolitics as the problem of political violence (e.g. Vatter, 2006; Duarte, 2007) or tied the concept of war to analysis of modern society (e.g. the idea of refugee and stateless persons) (see Passerin d'Entrèves, 1994; Benhabib, 1996; Bernstein, 2006).

and *The Human Condition*, most commentators in the secondary literature on Arendt draw attention to her reliance on the Greek intellectual inheritance on this matter (e.g. Canovan, 1977: 101; Villa, 2000: 9; and Benhabib, 2003). However, this chapter suggests that the relationship between politics and war in the work of Arendt is much better considered not only from the conventional 'Greek' angle but also from the perspective of her analysis of Roman thought, on which the text *Introduction into Politics* is key.

Arendt's position towards the Roman way of thinking about war, when used to supplement her more obviously Greek influences, provides a richer and more accurate account of her theory of war. While the ancient Greek tradition harboured ideas about the instrumental character of war which Arendt would adopt in order to posit the antithetical character of war to politics, I argue that for Arendt this opposition between politics and war did not apply when politics had become defunct, when in fact she appreciated that war was often essential for beginning politics anew. I put forward the idea that, drawing on the Roman experience, Arendt came to understand politics and power to be defined not only by their opposition to war, but also as the solution for the powerless of an old and defunct politics. While Arendt does indeed express a strong view about the incompatibility between politics and the occurrence of war, war nonetheless plays an important role as the alternative solution for the deadlock of the old politics, and thus it plays a significant role in instituting a new beginning for politics. However, Arendt confirms that it is not war *per se*, but law that stems from a promise (chapter 5) and forgiveness that convey the redemption of a new politics after war and violent conflict. To make this point, she drew on the Roman tradition.

Schmitt, on the other hand, binds the concept of 'the political' to the real possibility of war, with regard to which I suggested that the ancient intellectualism behind Schmitt's conception is not only Roman activities of political community that appeared in the study of Arendt, but the intensity in distinction between friend and enemy in the Roman history that resided in both in ancient Greece and Rome. To the best of my knowledge, although the concept of antagonism in Schmitt's political thought can be found in the

studies of the relationship between agonistic and antagonistic politics, and republicanism (e.g. Mouffe, 1999a, 1999b), the relationship between his conception of war and the ancient perspectives has not been explored in modern literature. I suggest that the Greek concept of the *agon* is evoked by Schmitt as he develops his theory of antagonism, and Roman experiences of war (e.g. the concept of *imperium* in the Republic and the expansion of the Roman Empire) is used to develop an account of war in the realm of politics.

The chapter proceeds by first considering Arendt's conception of war as it relates to the concepts of politics and power. It then traces the appropriations from the Greek and Roman traditions, many of which have not be taken account of in previous studies of Arendt's ideas about war. The second part of the chapter engages with the key strands in Schmitt's conception of war as the representational element of the political violence, where the ancient concepts of *agonistic/antagonistic* politics and Roman experiences of war are shown to be essential to an understanding of his theory. To this end, I suggest reading Arendt's conception of war alongside the Roman tradition, and Schmitt's alongside the Greeks and the Romans, which demonstrates their divergent understandings of war in terms of politics, legitimacy and the concepts of war.

6.2 Part I: Arendt's Conception of War

6.2.1 Arendt and the Concept of War: Violence, War and Politics

This section starts by exploring Arendt's character of violence, and then examines its contribution to her idea of war. For Arendt, violence characterises a mute activity, a contextual instrumentality, which exists without argument or speech, and without counting the consequences (Arendt, 1969: 64; Duarte, 2007: 192). She wrote: "weapons and fighting belong in the realm of violence, and violence, as distinguished from power, is mute; violence begins where speech ends" (Arendt, 1994: 308). Words in the sphere of violence are commands rather than vehicles of persuasion or meaningful performances, therefore they are bound to the monopoly of government rather than to freedom (Arendt, 1958: 179). Violence always promotes dramatic grievances and brings them to public attention. Besides,

the use of violence can be successful only toward a short-term goal; if goals cannot be achieved rapidly, the practice of violence will be introduced into the collapse of the whole body politic as a result. For example, a case of student rebellion in the US did not lead to the limited educational reform for which it was instituted, but to whole structural change (Arendt, 1969: 80), which finally results in the impotence of violence, because for Arendt no government can be stable relying only on violence.

Power as the character of politics and violence are distinct phenomena (Arendt, 1958: 179, 180; 1970: 47; 1994: 308; 2005: 153). When power has been lost, violence comes into play (Arendt, 1969: 53). In her view, politics is the freedom that is inherent in the ability of action, emerging when people share each other's experiences about their reality of the world with others by talking with or against others, leading to the beginning of something new. Violence, on the other hand, exists outside of political power when the community is mute and silent.

From this part of Arendt's understanding of politics and violence, many studies refuse the connection between these two distinctive issues. For example, McGowan (1997: 293) suggests that the separation between politics and violence in the eyes of Arendt shows the notions of idealism and utopia in her conception of politics. Breen (2007: 351) also agrees that Arendt's reflections on violence rejected political realism. However, I claim instead that political power and violence are actually interwoven phenomena in Arendt's analysis. Although her conception of politics is distinct from and in many ways antithetical to her conception of violence, her understanding of the experience of the Trojan War, as described in the next section, shows that the occurrence of war might play an important role in the beginning of politics, not in a merely 'ideal' way but concretely, in the real political arena, as she illustrates with a concrete example. Arendt suggests in *Introduction into Politics* that war is connected to the beginning of politics: "The encounter itself occurs as war [but] this war is not the end but rather the beginning of politics, or of a new political sphere arising out of peace treaties and alliances" (Arendt, 2005: 183). She confirms that even though power and

violence are distinct phenomena and opposites, when looking through the lens of war they may appear together in such a way that the former is a primary and predominant aspect of the latter (Arendt, 1969: 52).

Hirsch (2012) points to a paradox in Arendt's perceptions of violence. He argues that on one hand, according to Arendt, violence is inherent in powerlessness (anti-politics); on the other, Arendt portrays the idea of beginning, which is the character of political power, as closely connected to the idea of violence. For Hirsch, Arendt's concept of violence is paradoxical, because power and violence are both opposing and overlapping. I disagree with this critique. Arendt's understanding of the relationships between power and violence are not paradoxical; rather, they can be explained systematically, not in the 'spatial' manner of their overlapping, but in the temporal manner of war to the concerning of new beginnings (natality and creation). A more nuanced interpretation of the connection between politics and war is required.

Arendt suggests that although war is 'non-political', it conventionally performs certain functions after the consensus of people in political community has broken down, fighting against any individuals who refuse the people's consensus, showing that the use of power is no longer effective: "in domestic affairs, violence functions as the last resort of power against criminals or rebels – that is, against single individuals who, as it were, refuse to be overpowered by the consensus of the majority" (Arendt, 1969: 51). Under a circumstance where acting with argument and speech does not work, an antipolitical character of violence is the only way to set up a new system of justice, which is also a new political system in my interpretation (Arendt, 1969: 64).

However, this does not mean that Arendt agrees with such a functionalist and consequentialist legitimacy. As I stated above, Arendt agrees that political power and war (and violence) are distinct and cannot be reconciled. Arendt reaffirmed in the interview *On Hannah Arendt* (1979) that power as the actual political deed and the space of actual politics can decay by the means of war (Arendt, 1958: 200). Consequently, I suggest that Arendt

perceives war as a kind of function of the reconstruction of a new politics. In my view, the kind of war she has in mind here was that which always remained secondary and instrumental, and in her discussion of it Arendt expressed her denial of the glorification of violence and war in the political-public sphere. This is because it can cause both positive and negative consequences – the beginnings of a new thing, and the death pangs of that faculty most appropriate to human and political life since it weakens the political power of speaking and acting (Arendt, 1969: 83). For Arendt, no political arena can survive forever, but the ideal of politics that is purified from violence has never been destroyed (Arendt, 1958: 200).

The idea of reconstruction is inherent in the human condition of work, in accordance with which, as we have seen, man has the ability to produce or create an artificial thing (fabrication), and war as the most intense manifestation of violence resides in the condition of work, referring to the ability to create a new political arena (Arendt, 1969: 53). Arendt argues critically that only in the modern age is the human capacity of making (work) considered as 'higher' than the other capacities of man, showing the glorification of war and violence as a means for making (e.g. the violence involved in chopping down a tree in the process of making) (Arendt, 1958: 228).

Conversely, the human activity of action (politics) has the closest connection to natality (the idea derived from Augustine), because it is the capacity of a new beginning, showing the potentiality for freedom in the political sphere (as discussed in chapter 4). Accordingly, peace and power are in the same category, which are an absolute or 'end in itself', whereas war is merely instrumental; that is to say, war is an instrumentality the end of which is to find peace or victory (Arendt, 1969: 51). Arendt uses the term the *ultima ratio* of negotiations, which means that the goals of war were decided after negotiations broke off (Arendt, 2005: 159). In this respect, peace does not derive directly from war, but from the construction of a new politics after the end of war.

After the degeneration of politics into war, the most important question is how the subsequent politics can be managed without a recurrence of war. As Bates (2010: 116) has written, Arendt does not propose to recover politics by going backwards to the past, but by beginning it anew. Arendt's point is that the redemption of action from violence and war could not be from the violence as a form of making, but comes from action itself; that is, the faculty of forgiveness concerned with the past (in opposition to revenge), and the faculty of keeping promises that concerns the future (the concept of promise is connected to the concept of law in chapter 5, where I suggested that Arendt identified law as the practical form of promise). The 'redemption' of politics begins politics anew, but only with reference to the old. As we live in between past and future, learning from the experience of the past is the precious thing that we can do in the present. These two faculties guarantee the continuity of politics at stake and the potentialities that link to speech and plurality (Taminiaux, 2006: 170).

6.2.2 Arendt's Conception of War in the Ancient World

6.2.2.1 Arendt and the Greek Concept of War: War of Annihilation

Arendt's political thinking cannot be completely or authentically understood without historical and conceptual legacies. In this section, I investigate the Greek traditions as the fundamental building blocks of Arendt's competing articulation of the relationships between politics and war, whereby I claim that Greek thought alone is not enough to provide a resource for understanding the background of Arendt's scrutiny of the concept of war.

In *On Revolution*, Arendt affirms that the Greeks were convinced that their *polis* was guided by the political way of persuasion, not violent action, while their use of violence was for slaves in private affairs, and of war in the conduct of foreign affairs. Arendt quoted Thucydides to observe that "outside the realm of politics in the Greek sense of the word, 'the strong did what they could, and the weak suffered what they must'" (Arendt, 2006b: 2). Arendt confirms this statement again in *Introduction into Politics*. For Arendt, strength of the great deed outside politics and power of the great word in the political sphere are not different in the eyes of Homer. The former refers to

the athletic contests in which the Greeks come together to play and compete with nonviolent strength, while the second includes verbal display in oratorical contests, the never-ending verbal combat between two sides within the realm of speech, when referring to the Trojan War. Homer demonstrates the understanding of the Greeks toward the public-political space, where the citizens assembled and expressed various perspectives on the same topic, and Greek political life consisted of the ability to see the same thing from two opposite sides and from all sides (Arendt, 2005: 167). This also expresses the ability of man to persuade and influence others from their own view. The exchange of various viewpoints resulted in the freedom of movement in the mental world that can be equal to freedom of movement in the physical world (Arendt, 2005: 168).

In her viewpoint, since the Greeks defined the term '*polis*' as the place where free men came together to assemble and converse, they preserved pure politics only for Greek citizens and denied that it was a term relevant to the doings of slaves, barbarians and other unfree people. In Arendt's view, when the Greeks defined politics as a public matter, war and violence that was excluded from politics remained in other spaces, such as the private sphere and outside the *polis* (Arendt, 2005: 129; Birmingham, 2011b: 113). Consequently, war and violence were excluded from this purely political zone, and were used to deal with household matters in the private sphere (violence), or with other states (war). Freedom was inherent in the sphere of politics, and thus was exclusive to Greek citizens (Arendt, 2005: 170).

For Arendt, the reality of the world is bound by the presence of others, not that of space as in the Greek definition of the *polis*, so that the space of appearance in the widest sense can appear anytime and anywhere when men make an appearance to others (Arendt, 1958: 198-199). This shows that Arendt's conception of the criterion of greatness does not refer to the capacity of performance alone in an everlasting remembrance, but the affirmation of action as the full meaning of performance itself (Kampowski, 2008: 31).

In the transcript of the conference *The Work of Hannah Arendt* in 1972, Mary McCarthy put to Arendt the point that making war in Greek history was literally a scene for the political man, which was incompatible with Arendt's suggestion that politics and violence are opposed. Arendt answered: "You are absolutely right, and I may admit that I ask myself this question" (Arendt, 1969: 316). The implication seems to me that Arendt is concerned that the relationship between politics and war is not simple, but varies according to historical contexts. Arendt answered McCarthy more affirmatively by arguing that the Greek definition of politics limited only to the *polis* resulted in two misconceptions of Greek political thinking.

Firstly, there was a misunderstanding of political action in the thought of Plato that substituted labour for action: the relationship between master and slave in the private sphere of the household was imitated in the relationship between ruler and ruled in the space of politics in such a way that "all beginning was understood as the legitimation for rulership" (Arendt, 1958: 224–225). She confirms that Plato's idea of rulership in politics (the idea of the philosopher-king and cave dwellers) analogises to the relationship between master and slave in household life. In *Introduction into Politics*, Arendt adds that the decline of force and violence in the private sphere of the household was displaced by the manipulation of brute force in the public hand (state), which claims to use force under its control for the greater end of each life in the society (Arendt, 2005: 149).

Secondly, with regard to the boundary of the *polis*, the Greek separation between politics and foreign affairs and military war results in the Greeks' perception of their enemies as inferior people to themselves, and thus brute force on the battlefield was something that could be ethically justified for the end of the total defeat and annihilation of inherently lesser/ evil enemies (Arendt, 2005: 171; Bates, 2010: 117). As a consequence, Arendt argues that the ancient Greeks had to deal with the annihilating element of brutal war, which completely destroyed all forms of politics in the sense that the new beginning of politics could not be constructed after the war. Moreover, since the Greeks conceived their enemies as alien, others who were not

equal to them, the formation of a new treaty or alliance after a war (as in the ancient Rome), based on the acceptance of the other as different but equal, could not happen.

In order to further investigate the concept of war in ancient Greece, Arendt went back to the writing of Homer on the Trojan War, the *Iliad* and *Odyssey*. As referred to above, the Greeks posited a serious inconsistency between the *polis* (the space of politics) and war, according to Arendt, which made for the divergence between the military world of war (brute force) and the struggles characteristic of politics (Arendt, 2005: 171-172). Arendt argues that Homer perceived the Greeks' war against Troy as the brute force which is the prototype of 'the example of a war of annihilation' (Arendt, 2005: 163). This war devastated all enemies who were in the opposite side in such a way that there can no longer be politics and political activities.

For Arendt, the situation in the case of Homer is more complicated when he attempted to transform the war of annihilation to the political war, integrating to the *polis* and the political sphere. This transformation was not only unsuccessful, but finally also led to the ruin of the city states of Greece (Arendt, 2005: 164; Owens, 2012: 258).

> The Greek effort to transform wars of annihilation into political wars never went any further than Homer's historical recollection and decidedly poetical rescue of those who were defeated and destroyed, and ultimately it was the inability to make such a transformation that led to the ruin of the Greek city-states (Arendt, 2005: 164).

In the first stage, the war was excluded from the *polis* to be dealt with other states or city-states in terms of un-political force. Arendt reversed Clausewitz's Prussian definition of war (i.e. war is the continuation of politics by other means, a view implicitly endorsed by Schmitt, as discussed below), by stating that Greek war as manifest in the Trojan War was not the continuation of politics by other means, but a negation of politics, inherently antithetical to it (Arendt, 2005: 165). In this regard, while Arendt agrees with

the Romans who understood treaties and negotiation as the continuation and stability of politics (as presented in detail in the next section), she criticises the Greeks who perceived treaties and negotiation as a continuation of war by the means of cunning and deception.

The transformation is not directly expressed in political effects, but in poetry and memory, and the political sphere in this case was considered only as an instrument to preserve the immortality of poetry and the memory of mortal man (Arendt, 2005: 177). In the poet's depiction of the Trojan War, Homer painted a picture of the war in terms of a quarrel among the gods, in which elements of divinity were thereby attributed to the adversaries, Athens and Troy. Accordingly, the war became as in the statement of Heraclitus 'the father of all things'. It expressed the strengths and energies of men backed up by gods against things or people opposed them (Arendt, 2005: 165). In the final battle, it resulted in the massive annihilation and defeat of the city of Troy, and the collapse of its kingdom, while the Greeks' inability to found a new *polis* after the Great War leads ultimately to the annihilation of the Greeks themselves.

Arendt also saw that in the Greek mind, Homer's *agora* was perceived as a *polis* or political space in which great words and deeds of many free and equal men are offered to the eyes and ears of others, but at the same time a space filled with a desire that the men who inhabit it will be granted a kind of immortality, the same as the gods, by virtue of their words and deeds (Arendt, 2005: 172). I think that there are covert arguments that Arendt attempts to convey here. Arendt perceives that this assembly is not the sphere of human action and politics, but the sphere of work, where free men come to conduct an enterprise in order to gain individual glory for themselves. In addition, the *polis* did not exhibit the full meaning of politics in itself, but became an instrument that manifested an effort to gain immortal glory from the great words and deeds that cannot be so exhibited in the sphere of the household. Arendt confirms this point by citing the speech of Pericles narrated by Thucydides, in which the *polis* is said to be a means for mortal man to achieve immortal life (Arendt, 2005: 172). In addition to

immortality, politics was used as a means of war and as its end. The *agora* became an instrument of agreement in the campaign against Troy for the purpose of mortal men becoming immortal, and leading to the war of annihilation destroying the whole political system.

6.2.2.2 Arendt and the Roman Concept of War: The Beginning of Political Anew

As stated in the introduction section of this chapter, Arendtian scholars affirm her grecophile tendencies (e.g. Canovan, 1977: 101–102; Villa, 2000: 9; and Benhabib, 2003). Some analyses challenge this idea by suggesting Arendt's criticism of the fundamental Greek experience of power and *polis* (e.g. Tsao, 2002: 99; Taminiaux, 2006; Birmingham, 2011a: 20-22). In my view, both sides place their heavy reliance on her essay *On Violence* and her famous writing *The Human Condition* which have tended to reinforce the unwarranted consensus that Arendt had a polarised view of politics and war, seeing war as utterly antithetical to the speaking activity of politics. I argue that these scholars dismiss Arendt's account of the relationship between war and politics in ancient Rome. I suggest that Arendt's analysis of the Roman experience of the Trojan War is integral to, and eventually nuances, her understanding of war and politics. Moreover, her strong graecophilia should not distract from the engagement of her work with reference to the Roman tradition, which can be found particularly in the essay 'Introduction into Politics'[34] in *The Promise of Politics* (1993/2005). The importance of this work is not to be underestimated, as it provides an insight into the complexities of Arendt's notions of politics and war.

Arendt fundamentally views the Romans as a twin people of the Greeks, due to the traditional belief that the Romans originated from the Trojan War (Arendt, 2005: 173). While the Greeks considered themselves to be the descendants of the Achaeans, the Romans considered themselves to be the descendants of Aeneas, the Trojan hero, not of Romulus (his descendant). The Romans reconstructed the story of the Trojan War such that the true

[34] Arendt planned to write this article after a visit to Karl Jaspers in Basel in 1955; however, it had first published in the title *Einfűhrung in die Politik* as a part of the book *Was ist Politik?* in 1993.

hero was not Achilles, but Aeneas. In Homer's story, Aeneas was rescued by the gods Aphrodite and Apollo before fleeing to find a new city, Latium. Arendt states that Aeneas's founding of a new city was not conceived as the founding of a new soil, but it was the renewing of founding something old, a new homeland for the "gods of Troy's royal hearth" (Arendt, 2005: 173). Nevertheless, the new politics in this sense is not the old flame returned to the old outcome (the war of annihilation as in ancient Greece), but rather the invention of the new outcome for war's conflagration (Arendt, 2005: 176). Arendt continues that the story of the battle between Aeneas and Turnus in Latium was the restaging of the story of the Trojan War, caused by a woman, Lavinia (the reiteration of the archetypal Helen). However, this time Aeneas (the representative of Hector) won and Turnus (the representative of Achilles) lost. Although Aeneas was not pleased with this victory, since he had to forsake Dido (inciting the ancestral hatred between Rome and Carthage), but he was glorified as the hero who guaranteed the immortality of the Romans (Arendt, 2005: 173-174).

As referred to in the previous section, the Greeks fundamentally separated the *polis* (politics) and foreign affairs (non-politics), and the military sphere of war with foreign powers being in the realm of non-politics gave a fillip to the Greeks' perception of their enemies as inferior people to themselves, thus brute force on the battlefield was something that could be ethically justified for the end of the total defeat and annihilation of inherently lesser/ evil enemies (Arendt, 2005: 171; Bates, 2010: 117). As a consequence, Arendt argues that the ancient Greeks had to deal with the annihilating element of brutal war, which completely destroyed all forms of politics in the sense that the new beginning of politics could not be constructed after the war. Conversely, the Roman perspective on war leads to the beginning of a new politics (from the city of Troy to Latium). For Arendt, the experience of the founding of Rome was passed down among the Romans:

> What happened when the descendants of Troy arrived on Italian soil was no more and no less than the growth of politics

> in the very place where it had reached its limits and come to an end among the Greeks (Arendt, 2005: 178).

Generally, the idea of beginning in a context of politics lies in the problem of the archives of tradition with an appeal to the past for the future guidance; in other words, the problem of beginning is the gap between liberation from an older order and the establishment of freedom through the constituting of a new order, in what she calls 'foundation legends' (Young-Bruehl, 1982: 290; Hammer, 2002: 128; Arendt, 2006b: 205). In this respect, the *Aeneid* did not dodge the problem of beginning, but became remarkably a continuing narrative of liberation from the destruction of Troy and freedom in establishing Rome. Consequently, freedom was not the automatic result of liberation, but "the process by which a yet-constituted people prepares for a new beginning", and the end of the war did not result in the ultimate destruction, but a new body politic in which equality and mutual promise had been formed (Arendt, 1971: 204; Hammer, 2002: 129).

For Arendt, history shows that the Romans were very familiar with the feeling of continuity, since the foundation of Rome emerges from the breakdown of the ancient Greek polities. Arendt indicates that war and violence, which represents the destruction of things, eventually manifests the beginning of a new politics: "deeds and suffering brought forth one and the same thing" (Arendt, 2005: 178). While war as the beginning of politics in the Greek view exists only to preserve their own nature (the immortality of mortal man), war as the founding of a new politics of Rome is nothing more than the space where the Romans can recognise both themselves and others, which guarantees the continuity and immortality of a political life, while individual lives remain mortal:

> It is true that... struggle, and with it war, marked the beginning of political existence for the Greeks as well, but only insofar as they became themselves through conflict and then came together to preserve their own nature. For the Romans, this same struggle became the means by which they recognised both themselves and their opponents (Arendt, 2005: 178).

War in this case can be justified since it is the mediator between the old and new politics; war does not result in the utter destruction for the vanquished, but leads to the sign of the equal mutual promise (i.e. alliance and treaty), constructing the new political arena, and results in the continuity and the future of politics. Arendt wrote: “politics is not so much about human beings as it is about the world that comes into being between them and endures beyond them” (Arendt, 2005: 175).

The Roman experience reveals the concept of politics at two different levels: the actual space where people act and speak together; and the public realm, the theoretical form of this space. The first is actual political communities that can be undermined if power loses its potential, destroyed by war. Arendt accepts that the space of appearance will always rise and fall, just as all civilisations and great empires inevitably do, for nothing can exist forever (Arendt, 1958: 199). The second is the hypothetical concept of politics that resides in the public sphere; according to Arendt, the public realm has never lost its potential character of action and speech.[35] In the process of destruction, what is destroyed is not the hypothetical concept of politics in the public space, but only a structure produced by hands, and what man can destroy can be rebuilt: “nothing could be *made* without using violence, without violating” (Arendt, 2006b: 10; my italics). War that at first hand destroys the arena of action and politics opens the opportunity for the construction of the new political entity, continuing the ideal type of politics that confirms the character of action and speech in the public sphere.

This also manifests the original meaning of action associated with freedom and linked to the Greek word *archein*; that is to say, the freedom of action in starting and beginning a new thing (Arendt, 2005: 126). For Arendt, the concept of the beginning shows a problem of the existence of freedom; freedom cannot exist in this stage because there is nothing to hold on in the beginning (Arendt, 1971: 207, 211). However, Virgil’s story of Aeneas, the

[35] The character of the Republic is different from the Roman family which implied ‘servitude’, the space where members of a family was under the command of a father, who as paterfamilias was the only family member who has freedom and superiority to rule over the household without allowance of various standpoints, speech and action, in order to form unity (Arendt, 2005: 170-171).

founder of the Roman race 'who had brought Ilium and her conquered household gods' from Troy into Italy, expresses the 'purest form' of a 'lesson in the art of foundation', by providing a solution to the perplexities of freedom (Arendt, 1971: 207, 210). Arendt has never explained how the Roman foundation is the purest form of foundation, but I assume what she meant by this is that the beginning for Rome did not arise from out of nothing; rather it created its own experience of action (i.e. the creation of treaties and alliances) from the lesson of the decline of ancient Greece. After the war, the Greeks came home and built a city in remembrance of their glorious win, but still distinguished citizens from others (e.g. slaves and foreigners) and allocated freedom and preserved this glorification only to the former which finally led to the decline of the state.[36]

The foundation of Rome was not from the defeat, but from the lesson given by Greece.[37] Arendt wrote that the Romans learnt from the Greeks and found a way to protect their politics by founding treaties and alliances. In this

[36] According to Arendt, Greek *polis* is the space where a citizen was under the command of a ruler in the same way as a slave under his master. In other words, this space left only one man – the only one who has freedom and who is superior to the other members – to rule over the ruled without allowance of various standpoints, speech and action, in order to form unity. Arendt did not declare which of Plato's writings yielded her this idea, but I found a similar concept in his *Statesman* (also known as *Politicus*), when he said there is no other difference between slave-owning despots (259b 7) and kings (259c 2) other than the size of their respective establishments. This underlines the practical idea that Plato used the same principle to interpret between political authority and the master's right to govern the slave, and between the political obligation of citizens and the slave's duty to obey his master (Vlastos, 1941: 294).

[37] The American Revolution, in Arendt's point of view, resonates with an image of the founding in Virgil's poetry, but in the sense of a 'new Rome' rather than 'Rome anew' (Arendt, 2006b: 205). In the foundation of Rome, the Romans re-established a new city by looking through the experience of the old city, Troy, and making sense of new and different experiences that the Roman founders were encountering. In the American Revolution, on the other hand, the thread of continuity which bound Occidental politics back to the foundation of the eternal city and the pre-historical memories of Greece and Troy had been broken. Nevertheless, by following the Roman spirit of the beginning, the American Revolution not only formed a new body politic, but also a specific national history that broke down the European colonial system (Arendt, 2006b: 206). In addition, Arendt refers to the American Revolution as a war of liberation; it the application and elaboration of Montesquieu's theory of a division of powers within the body politic, fighting for independence by rejecting undivided centralised power, the absolute power of kingship (Arendt, 2006b: 17–18). It also did not raise the social question of the terrifying predicament of mass poverty, which appeared in the French Revolution and which became a preoccupying fear among subsequent analysts of modernity and industrial society. Unlike the founders of the French Revolution, who understood power outside the realm of politics, the men of the American Revolution differentiated power from pre-political natural violence. Power, in their eyes, emerged "when and where people would get together and bind themselves through promises, covenants and mutual pledges" (Arendt, 2006b: 174–175).

regard, the founding of Rome is implied the freedom of the Romans. The Romans placed their constitution as an identifiable community entirely within the realm of human affairs instead of standing outside history (Arendt, 1971: 207–211; Hammer, 2002: 128). In this sense, the founding of Rome re-established a thread of continuity, binding political space back to authority, and endowing durability, continuity and permanence of political structure: "a lack of freedom was the prerequisite for the undivided unity that was as essential for living together in the family as freedom" (Arendt, 2005: 171). Within this communal life, the principle of brute force and coercion was excluded from human relations (Arendt, 2005: 171).

In the first step, war was a pre-condition of the formation of a new Rome after the hopelessness of maintaining the structure of the old politics. Arendt continued that in the redemption of (the new) politics from war, the power of forgiveness and promise, as the elements of action, were necessary. The term *parcere subiectis* appeared in the speech of Anchises, the dead father of Aeneas, to the future of Rome (Aeneid: 6.850). *Parcere subiectis et debellare superbos* was the art of rule by command, but imposed the foundation of peace, in order to spare the vanquished and subdue the arrogant. For Virgil, the scholar and poet who wrote the *Aeneid*, the mission of Rome was essentially sublime and beyond the baseness of mere military conquest; it was a hopeful wish to settle down to a civilised life, leaving the century of war behind (Lind, 1962: xviii–xix). The term *arcere subiectis* (to spare the vanquished) invoked the Romans to forgive the past in order to construct Rome anew to be the land of peace. This is the idea of forgiveness that, for Arendt, is the key point to the peaceful way of the ancient Roman civilisation, which could not be seen in ancient Greek politics.[38]

Although Arendt never explicitly pointed to the origin of the term 'forgiveness', it could be supposed that this word was from the term *aphesis*, which stands for God's forgiveness of human sin in light of Jesus' sacrifice

[38] Apart from the idea of Rome anew, Arendt also referred to forgiveness in the New Testament as the action of men in the public scene. The role to forgive which showed in the context of Jesus of Nazareth is not solely the power of God, but "must be mobilized by men toward each other before they can hope to be forgiven by God" (Arendt, 1958: 239).

for human sin, referred to in her footnote 76-77 of *The Human Condition* (see Arendt, 1958: 239). It is also interesting that writers of the New Testament often translated this word from the Septuagint version of the Bible, the Greek translation of the Old Testament, instead of the original Hebrew.[39] The idea of receiving forgiveness in the New Testament reported in Arendt's *The Human Condition* shows her close relationship to the Greek tradition in this respect.[40]

In terms of the concept of promise, Arendt praises the formation of alliances in Roman politics. The concept of the Republic not only involves politics inside a delimited territory, but also the acceptance of its alliances as a part of Rome; the relationships which Rome enters into through treaty are incorporated as a part of Rome's identity, called 'Italian soil', so that its identity is outward-facing as same as entirely inward-facing (see also chapter 2).[41] On one hand, Arendt saw that in the Roman mind, war could be avoided if the opponents accepted the demands of the adversary, which changed enemies into allies (Arendt, 2005: 146). On the other hand, in the struggle with opponents, wars were justified when they were considered necessities, without drawing the line between aggressive and defensive warfare, and without being concerned with freedom (Arendt, 2006b: 3).

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[39] Despite not being a Christian herself, Arendt refused to equate the term forgiveness to *metanoein* (change of mind), which derived from the Hebrew *shuv* (return), and also the other two words of the New Testament, *aphienai* and *hamartanein*, which are similar to Greek terminology of forgiveness.

[40] It is interesting that Jews traditionally understood 'Greek' thought to be the worldly, materialistic counterpart to their own spiritual, holy role in keeping the Torah (the essence of Abrahamic religion is to imbue the worldly with spiritual significance by actualizing Revelation). The Jews existed contemporaneous with the Greeks and Romans and they survived as a living culture despite their state having been destroyed in the 1st Century CE. Arendt was an assimilated Jew in the very progressive Prussian region of Germany, and a general sense of her alienation from the mainstream Jewish community, including the secular, can be seen in the Eichmann controversy (see Arendt, 1963/2006c).

[41] After the expansion of Rome to Italy and to the other parts of Europe, anyone who lived in communities under the governing of Rome was counted to be a part of Roman *civitas*, and had some rights of Roman citizenship, excluding the right to vote. Roman *civitas* was also extended to Latin *socii* (allies) who moved to Rome to get permanent full citizenship. The *socii* who lived outside the city of Rome were also bound to Rome by treaty, obliging them to give military service and pay taxes to Rome, although they did not have full rights of Roman citizens. After the Social War during 90–88 BCE full citizenship was expanded to all of southern of Italy and the Po River. From the reign of Julius Caesar (c. 48 BCE), the status of Roman *civitas* was extended to *colonies* and *municipia* established outside the Italian peninsula. The extension of *civitas* declined in the Empire when military service was no longer compulsory and after Republican government was abolished (see Lomas, 2014).

Although actual Roman citizenship was always a coveted privilege, Roman allies were conceived of as honorary Romans themselves, and adversaries were opponents. After the battle was over, the Romans did not rest on their laurels within their walls; rather, they gained a new political arena and secured their lands by peace treaties, whereby "yesterday's enemies became tomorrow's allies" (Arendt, 2005: 178). For Arendt, the justifications of wars originate from this period of time, not in ancient Greece.

The decline and fall of the Roman Republic does not reduce the reliability of Arendt's implication of the Roman politics. For Arendt, here treading a long interpretive path proffered by 'republicans' from Gibbon to Pocock, it was the result of the corruption of the imperial phase. The unlimited expansion of the Roman land led to the incapacity of the Roman leaders to hold the alliances together, the difficulty of converting enemies into friends, and of legally augmenting of the Roman order (Bates, 2010: 119). Moreover, the Punic Wars and the ultimate annihilation of Carthaginian civilization (analogous to the sack of Troy by the Greeks), contrary to the general Roman pattern explained earlier as distinct from the Greek, and Carthage (archetypally, Dido) was a case that showed the limits of Roman peacemaking.

Rome's failure to construct a treaty with Carthage was due to the fact that Carthage stood in opposition to the concept of war and peace which was grounded in Roman thought (Arendt, 2005: 186; Bates, 2010: 119). That is to say, Carthage's armies were the enemies that could not be converted to friendship because they were willing to fight unto the death. As Arendt wrote: "Rome's failure in the case of Carthage was that in this case it would only have been possible to enter into a treaty between equals... but such a modern sort of treaty lay beyond the possibilities of Roman thought" (Arendt, 2005: 186).

When looking back to Arendt's thinking in *Introduction into Politics*, we can see a theory of the relationship between politics and war the likes of which is not to be found in those of her writings actually published during her lifetime, particularly *On Violence*. The experiences of ancient Greece and Rome support Arendt's understanding of war and its relationship to politics in

Introduction. Firstly, it shows the ultimate distinction between the human conditions of labour, work and action. In the case of the Greeks, the assembly – the *agora* – which should be the space of action, was infiltrated by the content of work, making for a conversation for the sake of immortality rather than for the end of conversation itself. In Roman politics, on the other hand, annihilation was transformed into a new order of politics. Thus, politics embodies plurality, guaranteeing immortality not in the sense of man-made production but human action or political process.

Secondly, war is non-politics not in the sense of the Greek idea of the *polis*, in which both war and politics appear at the same time, in terms of the borderline which demarcates the distinction between them. Rather, they relate to each other in the sense of equilibration, whereby war refers to destruction and politics refers to the new beginning, which is clear in the idea of the foundation of Rome (the concept derived from Augustine; see chapter 3).

Thirdly, the ancient histories manifest Arendt's understanding of politics and war as mutually implicated in the idea of the new beginning: the concept of natality in politics and of reconstruction of war. The Trojan War implies the use of violence as an important stage in order to begin the Roman Republic, which confirms the function of war as a means to a new political appearance/arena, which is the beginning of politics in the broader sense. Although Arendt seems not to accept this kind of relationship, war becomes a guarantee of the continuity of politics in the sense that the end of war did not make another annihilation, but the redemption of politics by forgiveness and promise (an alliance and a treaty) wherein politics resides. Conversely, in the case of ancient Greece, the Trojan War was combined into political matters and became a war of annihilation that eventually destroyed the belligerents themselves.

Lastly, both Greek and Roman histories confirm Arendt's main argument that politics and war are opposite. War as a manifest of violence may be necessary for the powerless political system, but it must cease to exist after the construction of a new powerful politics. Arendt refers to the flourishing

politics of Athens that came between the Persian War and the Peloponnesian War, and the Romans' formation of alliances and treaties to end wars between states during their era.

As I referred to above, the foundation of Rome sheds light on Arendt's support of the function of war, though never legitimate, as an instrument used to political ends, but politics is an end in itself; even though war is 'unpolitical', it may have a function to start a new political arena, since the destruction from war can lead to the new settlement of all political actions. In the next section, I turn to explore where Schmitt places himself regarding the concepts of war, whereby I suggest that the Greek concept of *agon* and the Roman concepts of *imperium* play a significant role in his contribution to the concept of war and the relationship to politics.

6.3 Part II: Carl Schmitt's Conception of Violence and War

6.3.1 Schmitt and the Concept of War: Total War and the Legitimacy of War

While Arendt refers to war as the last stage of the old politics, Schmitt presents war as a contingent category of politics that reflects the public relationship between a collectivity of a way of life of men, between whom there is a continual possibility of war, which would involve killing and dying in defence of the validity of dividing people into groups defined as friends and enemies. In his most famous aphorism, Schmitt noted that "The specific political distinction to which political actions and motives can be reduced is that between friend and enemy" (Schmitt, 2007a: 26). The friend and enemy distinction cannot be considered as a metaphor; rather, it is a concrete existential reality, connected to the possibility of real killing (Kahn, 2003: 73; Meier, 2006: 19-20; see chapter 3). There is no permanent friend and enemy; a current friend can become a future enemy (Slomp, 2009: 120). It also deals with a public conflict between public enemies that cannot be a private issue between private enemies. This is a purely existential meaning, wherein moral and other categories are not counted (Meier, 2006: 19; 2011: 33).

For Schmitt, war is directed outward, as the action against the enemy. War as the manifestation of violence is the most extreme manifestation of politics, whereby the dichotomy of friend and enemy appears, and it is possible for as long as the concept of 'the political' remains valid (Schmitt, 2007a: 33). It is not an instrument or target of politics; rather war has its own contents, strategies, tactics and rules that carry over into politics. His view of war is distilled in the following quote:

> War is neither the aim nor the purpose nor even the very content of politics. But as an ever-present possibility it is the leading presupposition which determines in a characteristic way human action and thinking and thereby creates a specifically political behaviour (Schmitt, 2007a: 33–34).

According to this view, for Schmitt, war is not the content of politics, but this does not mean that war is not political. It rather shows the distinction between the essence of politics that this thesis refers to as the intrinsic and indispensable quality of politics, and the existential character of politics that Schmitt referred to as the aim, purpose, and very content of politics. In terms of the essence of politics, war is 'political' because the very notion of politics as the decisive distinction between political factions always remains in the process of war, and the beginning of politics does not mean that war has ceased to exist; rather, as noted previously, the obverse of the classical Prussian/ German view of war being a continuation of politics by other means, as articulated by Clausewitz, is that politics is a continuation of war by other means.

In this regard, politics has not lost the meaning of war, regardless of whether actual violence occurs, because its essence rests on the ultimate distinction between friend and enemy, which entails the 'ever-present possibility' of war. In terms of the existential nature of politics, on the other hand, war might not always present in the content of politics because, given the possibility of war, the distinction between friend and enemy in politics does not always materialise the occurrence of war as violent conflict. According to Schmitt's conception of the essential nature of war, it is not prior nor subsequent to

‘politics’, rather war is inherent in politics, and determines human action and thinking, creating and conditioning political behaviour.

The original meaning of war is not actual competition or pure intellectual controversy, or a symbolic wrestling over the meaning of human or social life that appears in other issues such as economic or social struggle; rather, war comprises the most extreme combat premised on the friend and enemy distinction and the battle between friend and enemy, with the real possibility of physical killing (Frazer and Hutchings, 2007: 194; Dusenbury, 2015: 434; see chapter 3).

Unlike Arendt, Schmitt suggests that the possibility of war between two opponents should not be extirpated on any decent account of politics. States cannot preserve only the concept of friend and dispel the concept of enemy, for the antithesis between friendship and enmity is, according to Schmitt, defining the very concept of friendship. The idea of a global unity of friendship that adheres to the ideas of universalism and pacifism is the problem of homogeneity that negates politics, because it effaces the real possibility of war and violent conflict between enemies, which is the definition of politics. The stability of politics depends on the equilibrium between alliances (i.e. friends and enemies), such that wars between enemies do not lead to the war of annihilation.

Similar to Arendt, Schmitt neither appreciates war of annihilation nor believes that ‘annihilation’ properly characterises a posture of enmity. For Schmitt, war of annihilation is the characteristics of the war of absolute enmity. In this regard, the absolute enmity claims to be the last war of mankind which totally destroys all political actors; war no longer presumes the coexistence of hostile parties, and ‘the political’ no longer exists without the distinction between friend and enemy. While absolute enmity is offensive, Schmitt supports conventional and real enmity as they are defensive rather than offensive (details about conventional, real and absolute enmity are presented in chapter 3).

In contrast to Arendt, who does not agree with the legitimacy of violence and war, Schmitt perceives that war and violence are legitimate activities undertaken for the sake of the existence of the state. Where the friend and enemy antithesis cannot be managed by other means, it resorts to war in this political realm. War within this political realm is something removed from the bellicose and pacific, because both bellicism, which implies the annihilation of all enemies, and pacifism, which abandons all conventions of war, are impossible (Slomp, 2006: 439). If bellicism and pacifism are the criteria to measure whether war is justified, war cannot be justifiable in any case; and anyone who attempts to justify war amongst partisans and enemies is discriminating the concept of war (Ulmen, 1996a).

The occurrence of war is not a criminal activity; rather, it is a legitimate state activity, regulated by means of the conventions of war (*jus in bello*).[42] In his eyes, the state has the ability to decide its enemy in a concrete situation, and to fight it with power (Schmitt, 2007a: 45). As a supporter of the legitimacy of war, Schmitt conceives that the state has authority to decide its friends and enemies, with the possibility to start war against enemies and undertake violence, destruction of property and killing. For both civil war and international war, only the *hostis* (public enemy), the concept derived from ancient intellectuals (see chapter 3), possesses the principle of *jus belli* – the right to wage war – and such a status necessarily resides only with a state (Schmitt, 2007a: 47).

In *Legality and Legitimacy*, Schmitt associates the legitimacy of the state neither with the parliamentary legislative state system of legality nor the system of plebiscite (direct democracy through referenda); rather, he associates such legitimacy for violence with legal mechanisms for the exercise of power that confer a substantive scope for intervention on the state, which can reach a decision on the questions of political power not from legal means but from its *auctoritas*. Nevertheless, Schmitt puts forward the

[42] Schmitt perceives the concept of *jus in bello* as the war that is not motivated by moral concern, but by the utilitarian calculation between equally powerful political actors (Slomp, 2006: 441). Only the *hostis* (public enemy) possesses the principle of *jus belli* – the real possibility to wage war – and resides only in a state (Schmitt, 2007a: 47).

claim that violence and killing in war are legitimate on non-justificatory grounds. In *The Concept of the Political* Schmitt supports the legitimacy of the state to wage war, but this claim will be unacceptable, in its own terms, if such legitimacy rests on any justification. Schmitt refuses the justification of violence, because in his view violence and war cannot be conceived as a means or goal of politics; rather, they belong centrally to the very concept of politics, and the state has legitimacy to use violence, but cannot be judged by any criterion.

While war cannot be justified on the basis of any moral or legal ideals, it can be justified in the context of the readiness of combatants to die and to carry out physical killing of an enemy who is an existential threat, “to repel and fight them physically” (Schmitt, 2007a: 48-49). By refusing moral or legal concerns, Schmitt notes that any weak people who lose their willingness to maintain themselves in the political sphere will vanish from the world. Moreover, the state has an independent existence, reserving its self-defence by declaring the friend and enemy distinction. Schmitt wrote “The friend and enemy concepts are to be understood in their concrete and existential sense” (Schmitt, 2007a: 27). To put it simply, Schmitt accepts violent action in its existence, not in its essence.

For Schmitt, war cannot be perceived as just or unjust (Schmitt, 2007a: 64). In his eyes, the decision on the justice or injustice of war, and the possibility of neutral and non-partisan third states, does not make sense. Any pretences to the justice of war manifest the discrimination concept of war, which devalues the act of third states who do not assent to the international law by claiming to be unjustified and eventually opposed to the law, whereas the act of states who assent to the law is claimed to be justified (Schmitt, 2007a: 66). Schmitt explains that after President Wilson’s declaration of war against Germany in 1917, the concept of war became problematic. Schmitt argues that from the moral convictions of legal and ethical positivism, this war was claimed to be a just war, and the League of Nations, which was constructed from Wilson’s endeavour in the Paris Peace Conference and attached to the Treaty of Versailles, was also claimed to be a system of

legalisation that monopolised judgment on the justice of any war (Schmitt, 2011c: 31).

6.3.2 Schmitt's Conception of War in the Ancient World

6.3.2.1 Schmitt and the Ancient Conceptions of Agon and Antagonism

The concept of *agon* originated in ancient Greece to describe games with great solemnity celebrated at most festivals, implying any dispute or contest in poetry, music, painting and athletics (Nuttall, 1840: 10). It was used in combination with other words, such as *Agon Gymnicus*, *Agon Nemeus* and *Agon Olympius*. It was also the root word of terms such as *agonism*, which referred to the name of a prize given to a victor; a person who was the president of the games and judged the question of victory was called the *agonistareha* or *agonatheta*; the name of the place where the games were celebrated was the *agonium*. *Agon* as a competition was conceived as a game that was a part of the educational system, improving citizens' skills and values and thereby increasing their capacity to contribute to society, and the participants were thus always recognised as free men.

The Greeks' idea of competition and games is also bound up with religion, which permeated the political formulations of ancient Greece (Levi, 1968: 55). It was referenced overtly in collective religious ceremonies, bridging the distance between gods and men in the sense of cultural and racial unity; the honour value of winning competitions was held to symbolise the merits of each city and its patron deity, as well as expressing the national (i.e. cultural) unity of the Greeks. Thus, participation in games was limited to citizens, which essentially meant ethnic, political and religious qualifications. Furthermore, it was a feature of the aristocratic society of ancient Greece that the physical excellence, athletic ability, beauty and intellectual superiority of victors were gifts from the gods, and belonged to the privileged few over the masses (Levi, 1968: 55).

The concept of the Greek *agon* found little expression in ancient Rome; while the term *agones* was widespread in ancient Greece, the Romans used the term *certamen* to refer to a contest rather than *agon*. This term was used in the sense of a competition or battle in a physical confrontation between

bodies, and in the end it began to relate to a part of violent confrontation and war (Isidori, Frías and Echazarreta, 2015: 102). The Roman *certamen* also differs from the Greek *agon* in that the former is the battle of individuals in the realm of individual excellence, whereas the latter was linked to communitarian values and principles, preparing citizens for the practical realm of associating with other people in society.

Moreover, Isidori, Frías and Echazarreta (2015: 102) point out that Roman sporting contests were part of a superficial culture of spectacle and violence, and a participant was a slave rather than a free man. The Romans self-consciously aspired to imitate the elevated Greek tradition, using the term *agon* in sporting contests, such as the *Agon Capitolinus* instituted by Diocletian, referring to the celebration of the restoration of the Capitoline Hill (temple) in 86 CE by organising athletic games, and the official stadium for athletic competitions was called a 'square *in agone*'. The prize was given to the most distinguished contestant in terms of agility and strength (Nuttall, 1840: 10; Duff, 1971: 241). However, the athletic contest in ancient Rome was not conceived as being part of the civic culture as it was in Greek times, and there is evidence to suggest that competitors were considered as performer–actors who performed a role in a play rather than them being athletes in the strict sense of athletic excellence and mastery. Indeed, such performers were often convicted criminals.

Less nefariously, many Roman intellectuals, such as Cicero, also used the term *agon* to relate to philosophical contests, although the Roman intelligentsia generally believed that the decline of ancient Greek politics was a consequence of the agonistic element in Greek culture, which prioritised bacchanalian contests and festivals rather than genuine philosophical debate, particularly in Stoicism (Isidori, Frías and Echazarreta, 2015: 103). Physical exercise and sensationalist voyeurism (i.e. spectating) were held to exhaust the mind, making citizens unable to engage with more serious studies, famously satirised in the maxim *panem et circenses* ('bread and circuses') by Juvenal, alluding to the cynical methods of crowd control available to Roman elites by satiating physical and low-brow appetites.

Schmitt takes up the notion of *agon* in order to oppose it from the perspective of his concept of politics and his feature of war. In the revised version of *The Concept of the Political*, Schmitt distinguishes two fundamental attitudes towards war: the 'agonal' and the 'political'. While the political turns on the genuine opposition between friend and enemy, the agonal concept of war refers to the 'unpolitical, agonal contest'. The concept of *agonistic democracy* demonstrates the notion of conflict and contest represented by the Greek *agon*. The struggle of *agonistic democracy* does not aim to the possibility of war between opposite sides. Rather, like the Greeks' competition in games, it stresses the process of battle between adversaries to find an alternative way in political issues.

The opponent in the person of the 'agon' is not a real enemy even when the two sides engage in a bloody contest war. Rather, as Meier (2006: 62) suggests, Schmitt couches his discussion of the concept of war as involving its real possibility for eternity. This shows the systematic engagement of the concept of politics with the metaphysical core that guarantees the inescapability and unavoidability of political oppositions. Meier continues to observe that Schmitt's perception of the agonal battle is that its purpose is merely artful. For Schmitt, this aesthetic worldview is not accompanied by and is insufficient to emphasise the genuine concepts of politics and war (Meier, 2006: 66, 2011: 38).

Rather than reflecting war as a physical, bloody conflict, the concept of *agon* in the Greek tradition is related to games and plays in a religious festival, referring to entertainment. Schmitt's political theory, on the other hand, deprived of every kind of entertainment, is unacceptable in the recognition of a*gonistic politics.* As Strauss pointed out, the word 'entertainment' is used to refer to the disappearance of serious human pursuits of politics. Play and entertainment in the apolitical world expresses the pacifists' ideal of a state of affairs that embodies the capacity of entertainment, whereas the existence of an enemy guarantees the seriousness of human life:

> What the opponents of the political want is ultimately tantamount to the establishment of a world of entertainment, a

> world of amusement, a world without seriousness (Strauss, 2007: 116).

For Mouffe, Schmitt leaves no place for *agonistic* pluralism, and expresses it only in the mode of antagonism that distinguishes completely the two opposite sides without a common symbolic core linking them (Mouffe, 1999a: 5). Mouffe believes that Schmitt's idea of the friend and enemy distinction as *antagonistic politics* is actually the pre-condition to *agonistic democracy* (Mouffe, 2013: 16-17). The transformation of antagonism (struggle between enemies) to agonism (struggle between adversaries) is the only way that the democratic logic of popular sovereignty can meet the liberal logic of individual rights without destroying the basic construction of political unity.

However, I argue that the word antagonism is the antonym of agonism, and Schmitt's political thought shows the impossibility to transform antagonism to agonism. The concept of 'the political', for Schmitt, refers to a free, unlimited and boundless sovereign decision that turns politics into a space of terror and horror, threatening the way of life by transmuting the necessity of an enemy into a never-ending process of war-making, which possibly leads to totally destructive deeds and death (Barder and Debrix, 2011: 8-13). In this respect, Mouffe's conception of the adversary in *agonistic politics* cannot be accompanied with Schmitt's idea of the political enemy.

The origin of the term 'antagonism' serves to prove my contention. According to the *Oxford Dictionary*, the term 'antagonism' is a modern term, which first appeared in the early 19th Century, derived from French *antagonisme* as a translation of the Greek term *antagonizesthai* (ανταγωνισμός), which means to struggle against, oppose, to be a rival, whereas the term 'antagonist' began slightly earlier in the late 16th Century, derived from French *antagoniste* or Greek *antagōnistēs* (ανταγωνιστής) and Late Latin *antagonista*, which mean competitor, opponent or rival. The point is that when looking to the root of these words, they are the combination between 'anti-' (or against) and the root word 'agon' (struggle, battle, sport or contest). In this regard, antagonist or antagonism is the anti-agonism or anti-agonist, showing the opposition between agonist and antagonist.

As Wenmen (2013, 59-68) points out, Arendt refers to the concept of constituent power in two ways: revolution and augmentation. While the first is close to Schmitt's constituent power as a sovereign power which refers to the antagonistic relationship between friend and enemy, the latter is agonistic democracy derived from the experience of the foundation of Rome. However, as I will discuss in the following section, this chapter suggests that we can also find the relationship between Schmitt's antagonism and Roman history in the Late Republic and the Roman Empire.

6.3.2.2 Schmitt and the Roman Legacy

In the addition to the opposition between agonism and antagonism, this chapter suggests the significance of Roman heritages toward Schmitt's conception of war. Although in his writing Schmitt never consciously alludes to Roman history in any substantive way, I argue that the Roman idea of *imperium* and the history of Roman Empire (e.g. the Sack of Rome) give the picture of his idea about war and its relationship to politics.

As referred to above, Schmitt, unlike Arendt, ties the concept of politics to the public friend and public enemy distinction in public sphere, showing the possibility to wage war against the enemies. I suggest that the ancient intellectual tradition behind Schmitt's conception is not the ancients' activities of political community that appeared in the writing of Arendt, but the intensity in distinction between friend and enemy in the Roman history. The term *auctoritas* as the authority of a commander is derived from the term *imperium* or the principle of the coercive military power in the history of Rome, which sheds light on the idea of war in Schmitt's political thought. Unlike the term *potestas*, used to describe all power and authority of Roman magistrates of those who were consuls, praetors, dictators, tribunes, and aediles during the Republic, and the Emperor to perform the duties of their offices, such as judgments, giving orders, administration, summons and punishment, the *imperium* was an extra power of military commander as the hallmark of the highest magisterial power in the state, granted to certain magistrates who held *potestas* (Drogula, 2007: 426).

Imperium as an occasional power to command civics and militaries was equated with the imperial power. This is because the Roman emperors always treated the prorogations of both military and civil *imperium* in the relation to the imperial power as a whole (see chapter 2). Although *imperium* had a powerful military command element in terms of magistracies exercising their jurisdiction, *imperium* itself did not confer jurisdiction in Rome; magistrates like consuls and praetors possessed *imperium*, or *imperium* in itself could define a man who possessed *imperium* as a magistrate (Drogula, 2007: 428–435).

In the late Republic, *imperium* extended to the power of individual in military duty outside the city of Rome, and in the period of Empire it referred to the supreme power of Rome to control over other states in terms of physical entity, the *Imperium Romanum*. A magistrate received *imperium* by appointment, whereby a general or fixed term election could be avoided (Richardson, 1991: 2). From the reign of Augustus the appointment of *imperium* for a specified short period was changed to be every ten years, and was made renewable by subsequent emperors (Cotton and Yakobson, 2002: 194).

Roman *imperium* demonstrated Schmitt's conception of the state as the absolute political entity that provides a function of decision during conflict. As referred to in chapter 2, both ancient Greece and Rome frequently waged wars against other states. However, while the Greeks did not have a central city-state, the Romans, by using the principle of *imperium*, took over the command of the combined forces over the Latins and other members of the League (Levi, 1968: 153). Roman leaders such as Caesar and Pompey had professional armies, wherein soldiering was a long-term career rather than an expedient civic duty (Finley, 1986: 83; Levi, 1968: 158).

In terms of the professional armies, the armed community played an important role in the political and military development of the Roman state, to expand the League and control over its enemy states. The Romans efficiently made wars to crush all potential rivals in the Mediterranean World, and ensured obedience and ultimately love among conquered peoples, who

desired assimilation in the *imperium*, in marked distinction to ancient Greece where the central state power and standing armies were absent.

Moreover, the concept of treaty and alliance showed how the Romans behaved nicely to their friends, as distinct from attacking their enemies. While the historical reality was not as clear cut as a superficial analysis implies, the Greeks generally remained separated from the states they conquered; for instance, despite the existence of powerful and sophisticated local elites, the Ptolemies in Egypt (305-30 BCE) resorted to inter-breeding to maintain their archetypal Greek lineage rather than intermarrying with the local population. Conversely, the Romans enlarged their land to many states from the Latins to the rest of Italy and later to the Empire as a whole by annexing the people of those states to become their own side, giving them partial or full rights akin to the status of Roman citizens (Levi, 1968: 171). Rome imposed treaties of alliance to guarantee permanent relationships between allies (friends), ending the wars of expansion in those allied states; as long as they were still in alliance (friends), permanent peace was still preserved in the colonial form (and later of the Empire), making a resurgence of hostility to Rome impossible.

The concept of Roman treaties of alliance that I suggest as the support of Schmitt's dichotomy between friends and enemy and of the idea of war also appeared in the writing of Arendt, but in the attempt to avoid war in political sphere (as explained above). While Arendt supports the politics of plurality, Schmitt's presence of an enmity reveals the governed entity, showing the sovereignty of such an entity and the extra power of authority in decision during wars (see chapter 4 for more details).

Roman tradition also presents the bedrock of Schmitt's concept of the 'conventional enmity' (see Slomp, 2005; see also chapter 3), which can be seen normally in the pre-modern period. Schmitt claims that this period remained imbued with mythological symbolism related to boundaries - for example, the Roman designation of *Mare Nostrum* extended its boundaries throughout the Mediterranean to the North African shore and the Pillars of Hercules divided the Roman *imperium* from the Atlantic; the Midgard Serpent

in Norse mythology presents a similar concept. When these sacrosanct boundaries became blurred, exclusionary defensive structures were invoked to divide a state from its enemies.[43] Such distinctions define the boundaries that separate "a pacified order from a quarrelsome disorder, a cosmos from a chaos, a house from a non-house, an enclosure from the wilderness" (Schmitt, 2003: 52). In terms of the sovereign territory, Roman law recognised a variety of wars between lands; wars in the name of primitive relations amongst clans, extended families, tribes, cities, vassalages, leagues, counter-leagues, federations and foreign territories (Schmitt, 2003: 51, 54). As Schmitt observed, "The border between two territorial states of modern European international law did not constitute an exclusion, but rather mutual recognition, above all of the fact that neighbouring soil beyond the border was sovereign territory" (Schmitt, 2003: 52).

Apart from the *imperium*, I suggest that we can still find the relationship between Schmitt's antagonism and Roman history in the work of Cicero. In his *Republic*, Cicero presented the dialogue of the villa of Scipio Aemilianus, a leading politician and emblem of Roman imperial violence, recounting a narrative of the historical formation of the Roman constitution. By "representing Rome as a machine of conflict and reconstitution through the struggle between the haves and the have-nots, makes antagonism the normative frame of republican politics" (Connolly, 2015: 39). This presents a more prosaic view of Roman politics as a sordid struggle for material resources.

In the early stage of Rome, the city was framed to respect other states and communities where it had contacts, and *ius fetiale* (fetial law) was the main instrument used to control this character (Billows, 2007: 313). The concept of fetial law was associated with the idea of just war (*bellum iustum*) as a morality in waging war, and referred to a war in defence of allies, on which basis it was regarded as inherently just and approved by the gods (Billows, 2007: 314; Black, 2009: 13).

[43] This concept is manifest in the concept of Christendom in medieval Europe and the 'abode of peace' and 'abode of war' in medieval Islamic jurisprudence.

Billows (2007: 317) demonstrates that after recovering from the devastating shock of the Gallic Sack of Rome by the second half of the 4th Century, the Romans began a process of expanding in their near neighbourhood and eventually to dominate Italian land. In the bilateral alliances that it established, Rome and other communities were unequal in the sense that the former subordinated the latter. The treaties constituting these unequal alliances made Rome the clear master of the Italian Peninsula, and the partners of Rome thereafter had an obligation to service troops or military manpower to Rome in various wars after the sack of Rome by the Gauls.

By competition with other Latin towns, Rome became the largest of the Latin communities in the second half of the 6th Century, seeking to dominate the Latin League. The picture of Rome in this stage on one hand confirmed the idea of Arendt in supporting the foundation of Rome as a beginning of politics, manifesting agreement and alliance as the way to live together with action and speech and without violence. On the other hand, it shares the idea of antagonism with Schmitt and confirms the antagonist relationship between political organisations in such a way that each of them has a legitimacy to wage war which cannot be justified by any moral grounds.

As was the case with ancient Rome, the formation of alliances had an influence on Schmitt's thinking. Schmitt detached his support of alliances from liberal ideology, which, he claimed, perceives the state to somewhat like an individual in the realm of the private sphere, but intrudes into the political sphere in such a way that the collaboration between individual states aims to avoid political conflict. In terms of alliance, Schmitt's concept of friend, as well as enemy, is essential to 'the political', alluding to a political agent who is prepared to die and to kill others, assuming a non-individualistic definition of a person (Slomp, 2007: 210). Schmitt supplied two features of the idea of friend, both of which in the 20th Century were manifest in nation-states. The first type, the ally, refers to an external friend of one's own group or party. Another is the friend who belongs to one's own group or party, namely *camerata* or *compagno*. While the first is a state agent who

recognises the partisan's identity, the second is a part of this identity (see chapter 3).

Moreover, with the term *Großraum*, as stated in chapter 3, Schmitt refers to an organisation or achievement space as an alliance with respect to the non–interventionist ideology of members and the existence of individual states. The *Reich* in this case is a predominant forceful power that can be traced back to the city-state of Rome. In contrast to Arendt's concept of politics, the existence of the *Großraum* does not mean that the world is overwhelmed with peace; there is still war between states, but it occurs as a result of a battle between equal alliances of states, and cannot be justified by either side. This puts us in mind of a parallel to Rome in the second half of the fourth century, when Rome and its neighbours bound themselves into a network of alliances. However, in opposition to the concept of *Großraum*, the enemies of Rome did not appear in the form of an equal pact with the Roman Republic (Billows, 2007: 317). This shows that, while Arendt sees the history of Roman alliances as the protector of the peace of the city-state, making for the continuity of political matters, Schmitt uses the concept of alliance to strengthen the power to fight against enemies in wars.

Nevertheless, it can be argued that the experience of the Roman Empire from the 8th Century is far from Schmitt's political theory. Although the Empire implied the notion of *Großraum*, the papal state later claimed sovereignty over many islands – such as Sicily, Sardinia, Corsica and England – not as divisions of the earth based on the realms of land and sea, but as components of the (forged) Donation of Constantine. In this regard, the Empire manifested the idea of political universalism, which means to the establishment of a world-view that formed its coalitions with many disparate groups (Schmitt, 1996: 5). This revealed three types of the Empire's relations: relations amongst empires; relations between peoples within an empire; and relations between an empire and external tribes and peoples (Schmitt, 2003: 54). Schmitt criticises the universalistic structure of the world order as applied in the Roman Empire. I argue that the *Großraum* in the Roman Empire from this period was developed as close to the concept of

absolute enmity. However, the difference between the idea of absolute enmity and the Roman Empire is that Schmitt's idea of absolute enmity criticises the absolute devastation of liberal ideologies by modern effective technologies, focusing on the annihilation of all ideologies in modern times where the distinction between friend and enemy and the occurrence of war no longer exist, whereas I saw that in case of the Roman Empire the attempt to expand the Empire destroyed the enmity (by military force or by treaties) in terms of universalism.

As discussed above, Roman intellectualism incorporates Schmitt's idea of enemy in the notion of territory, but Schmitt argues that this idea is insufficient to understand the concept of politics, since the concept of the state is not limited only by a territory. In *Theory of the Partisan*, Schmitt affirms that in the 20th Century the state as territory lost its monopoly in political decisions, and the enmity associated with the state thus underwent a transformation (Slomp, 2005: 507). The partisan groups and notions of real enmity, global revolutionary party and absolute enmity were bound together in this century. Their friends and enemies were produced in various ways related to commerce, marriage (especially amongst the ruling groups), alliances or negotiations. The absolute enmity reveals the idea of the new type of enemy that can be traced back to the idea of the third *nomos*, namely space appropriation (see chapter 5 on the idea of *nomos* as the root in Greek tradition). This enmity absolutely destroys the promotion of liberalism in modernity and all ideology, since air and space appropriation can enable the annihilation of enemies more comprehensively than the appropriation of land and sea (e.g. guiding or launching weapons of mass destruction from space).

6.4 Conclusion

This chapter concludes that the considerations of the theories of war of Arendt and Schmitt in the light of their selective appropriation from Greek and Roman antiquity not only give us a better understanding of their conceptions of war itself, but also offer some insight into their conceptualisations of politics. This chapter suggests that taking seriously

Arendt's posthumously published work on the dimension of Roman wars gives a new picture of the place of war in her political theory: war is not only the opposite of politics, the activity in which speaking is elevated, but war can function as the beginning of a new politics when the old politics can no longer recover itself. However, Arendt seems not to agree with this relationship. On the other hand, the conceptualisation of agon/antagonistic politics and the experiences of war drawn from Graeco-Roman heritage are used by Schmitt to affirm his argument that war is 'political' and legitimate in the political stage.

This argument supports the main argument of the thesis: that the understanding of how Arendt and Schmitt rely on the Greek and Roman traditions leads to the better understanding of their political thought, in this case with respect to the roles that war play. For Schmitt the real possibility of war between friend and enemy defines politics, whereas for Arendt war is fundamentally anti-political. However, Arendt's evocative account of the Trojan War shows that the separation between politics and war was not so clearly marked as in the work she published during her lifetime. It confirms the function of war to set up a new beginning of politics reaffirmed by the redemption of politics by the way of promise and forgiveness, and therefore the old politics has become defunct and the new politics cannot be collapsed by any further violent actions.

This argument connects to the arguments in the previous chapters. Since Arendt repels war from the political-public sphere, sovereign power, the idea that this thesis links to the Christine doctrine of Trinity, must not be presented in the political sphere, and law at this point should protect the continuation of conversations/speaking in politics rather than the exclusion of marginalised people who live in the political sphere (as in case of Greek *polis*). Schmitt, on the other hand, sees the possibility of the occurrence of war as defining the very content of politics. In this respect, sovereign power, the idea that this thesis links to the power of deism and absolute God, may legitimately employ war and violent action as an instrument during an emergency aside from a normal legal order.

The next chapter concludes the thesis, showing how the four key political concepts are related to each other in the work of Arendt and Schmitt, and summarises the key contributions of the ancient traditions of political enquiry in each thinker's work. It also presents my final reflections on the two political thinkers.

CHAPTER 7

CONCLUSION

I

The comparison between Arendt and Schmitt is of great significance to the study of political theory. This thesis has demonstrated the political theories of Hannah Arendt and Carl Schmitt from comparative perspectives by means of seeing how each mined the rich seams of ancient political thought in varying ways, using different historical resources for their separate contemporary purposes. Firstly, the process of comparison has been explored in regard to four core political concepts: politics per se, sovereignty, law and war. Of these, I have suggested that the idea of politics is central, analysed as a concept itself and also in relationship to the other concepts, i.e. sovereignty, law and war.

Secondly, while most previous comparisons of these two 20th-century giants of political theory ignore the relationship that each of them developed to the resources of ancient political thought, I have suggested that the study of the political thought of Arendt and Schmitt, in light of the traditions of political enquiry in ancient Greece and Rome, provides another way of understanding these two political thinkers. Instead of providing a contextual enquiry into the political language games at the time of these two political philosophers,[44] in order to see the prevalent 'language games' in which they took a part, whether as followers or innovators, this study has sought out the Greek and Roman intellectual influences in order to shed light on the political theories of Arendt and Schmitt. I have shown the meaning of the Greek and Roman traditions – both in respect to philosophy and social life – as formative for the

[44] Skinner (2002) and Pocock (2011) are two of the key texts to mention this approach to the history of political thought. The work of Skinner, Pocock and the 'Cambridge School' is associated with the contextual enquiry of political language. Cambridge School scholars place an author's ideas within the wider historical context of debate in their time in order to gauge what thinkers were doing in their texts in this historical context and to reconstruct the prevalent language games in which the concepts were deployed (see Skinner, 2002: 103 – 127).

intellectual histories of Arendt and Schmitt as evidenced in the full panoply of their texts. I also have demonstrated how these 20th-century authors reconstructed these intellectual traditions given their particular contexts.

The next section provides a summative overview of the arguments presented and conclusions drawn. I summarise the main points of the concepts of politics, sovereignty, law and war in the light of Greek and Roman traditions, which are discussed in chapters 2 to 6, and outlines the achievements of this thesis in relation to the main arguments propounded in chapter 1, and suggests a wider analysis of the political theory of Arendt and Schmitt, including my own reflections on their political theory and my suggestions for further researches.

II

In response to the aims of this thesis in chapter 1, I suggest two main achievements of the thesis. First of all, the comparative study undertaken to analyse Arendt and Schmitt has far-reaching implications for a wider understanding of the concept of politics per se, sovereignty, law, and war, which is relevant to broader topics of political theory (e.g. state and power, political order, the legitimacy of political authority, identity politics and the concept of democracy).

As argued in chapter 3, the question of ‘what politics is’ is settled in a different stance; Arendt aims at promoting diverse opinions that lead to mutual discussions, whereas Schmitt appeals to ‘unspeaking’ unity of homogeneity, namely ‘friend’, and draws a sharpness of the line between friend and enemy that is intrinsically linked to the existential nature of war in his view. Given the question of what politics is, the comparative study of the political theories of Arendt and Schmitt in light of classical traditions and archetypal analyses of politics addresses two main underlying images of politics that have significant presences in political thought, and cannot be reconciled with each other.

From Arendt’s perspective, politics is based on the feature of non-domination in relation to the activity of speech and action. This enables the development

of the politics of self-governing and self-determination, which establishes the internal autonomy of people and modern civil society, whereby citizens have authority in setting political debates (chapter 3). Schmitt, on the other hand, provides a picture of the politics as the centralised, absolute, unified, and omnipotent power of sovereign rules over people, which is particularly expedient in protecting friends and destroying enemies (as explained in chapters 3 and 4).

These two political frameworks are different in their presuppositions and implications for fundamental political questions. Both arise from the question of the presence of sovereign power, law, and war in the political area. By looking through the lens of Arendt, law is necessary for protection of politics, and the existence of monopolised power of state and sovereignty in the political sphere is an interference in politics, since this prevents people from acting freely (chapters 3 and 4). Arendt opposed the common political idea that places sovereignty as a part of political issues.

Conversely, for Schmitt, politics is presented under the model of the decisionism, whereby all political power is limited to the decision of sovereign will. This gives extra-legal power of sovereignty to the sovereign to make decisions during crises. Politics becomes problematic not when the sovereign power is centralised, but when it is polluted by ideologies of liberalism and pacifism, which are anathema to the absolute power of sovereign in differentiating the distinctive features of friend and enemy (chapters 3 and 4). As discussed in chapter 6, both Arendt and Schmitt remind us that the purpose of politics is not specifically to prevent war and violence, as both admit to the futility of endeavours to eliminate war through politics. As opposed to Frazer and Hutchings (2007; see chapter 1) who extract politics from violence, this thesis affirms that an occurrence of war is always implicit in political issues in the views of both Arendt and Schmitt.

While there are fundamental and important differences between Arendt and Schmitt in their views of what politics is, both affirm the implicit existence of conflict, actual or possible disagreement in human relationships and view politics as something that can prevent this conflict and secure peace and

order. In both cases politics is associated with a process that has to do with ‘decision making,’ or with the making of laws. Nevertheless, Arendt and Schmitt offer different ways to solve political disagreement and conflict.

The essential nature of politics for Arendt is based on freedom of action and speech in a pluralistic society, including ‘discussion’, ‘dialogue’, ‘deliberation’, and ‘conversation’, which are deeds that disclose and perform, and which are premised on and iterate freedom in the exchange of speech. According to Arendt, the legal solution of the political problem is to find a peaceful persuasion and argument, which begins with the idea of a promise, as manifested in Roman *lex* (chapter 5), and the freedom in beginning anew, inherited from the concept of natality (chapter 3). The idea of Greek *nomos*, on the other hand, is not the model for Arendt, because it excludes people who do not belong to the *polis* from the political activity of persuasion and argument.

Conversely, Schmitt views politics as something inherently arising from the existential nature of the possibility of conflict in human life (i.e. the friend and enemy distinction), thus the implicit prospect of force (e.g. fear of punishment) is instrumental in the political management of society and resolution of conflicts (chapter 3). Moreover, it is associated with a process that has to do with ‘decision making,’ and with making laws and securing obedience to them. Rather than addresses the power of the ‘sovereign exception’ outside laws that act upon biological life like Agamben (Agamben, 1998: 84; see chapter 1), Schmitt focuses on legal constitutionalist interpretations of the exceptional power. Schmitt refers to both the Greek *nomos* and Roman *ius* as his model of law, indicating the consistency in his legal thought, because the word *nomos* is literally the original term of the word *ius* (chapter 5).

Accordingly, the difference between the views of Arendt and Schmitt on politics contrast between consent and coercion, and between speaking (chapter 3) and violence (chapter 6), which leads to different perspectives on the question and solution of politics. In this regard, war is certainly the guiding thread in the analysis of an unsatisfied situation of Arendt and

Schmitt. For Arendt, politics and violence are incompatible: politics is a process the purpose of which is to *avoid* violent conflict and to seek peace or social order by non-violent, consensual means, while violence occurs due to the failure or breakdown of political institutions and processes, necessitating the formation of new political associations that enable people can act and speak freely in dealing with common issues with others (i.e. to cease conflict and conduct politics). In Arendt's view, actual or potential violence (violent conflict) is the fundamental problem that politics is instituted to negate, and the fundamental role of politics is to enable people to articulate and contest for their objectives within a space of free speech and dialogue.

According to Schmitt, on the other hand, politics is essentially instituted to better manage violence inherent in the human condition. Politics institutionalises the integral differences between friend and enemy, thus conflict is intrinsic rather than extrinsic to politics in his view. As a consequence, it is violence or the threat of the use of violence (causing physical injury) by the agents of the state, as explained by 'fear' in the case of Hobbes, which is the solution to the problem of the conflict between opponents; in this case, politics is not necessarily or essentially related to the notions of discussion, deliberation, debate, and consensual agreement, but to the fear of violence and retributive justice, which compels obedience to the state.

This relates to another contribution of this thesis, in the idea of politics playing a predominant role in shaping the desired associations, and remaining autonomous within these associations. In other words, politics resides in the public sphere, but not all issues in the public sphere might be called politics, if they cannot open a free space for public speaking for Arendt, and if they cannot lead to the ultimate distinction between friend and enemy for Schmitt (see chapter 3). Moreover, Arendt's conception of politics is designed to serve freedom, equality, and diversity in a public domain characterised by agonistic pluralism, while Schmitt's idea of politics is associated with union and integration in a homogeneous identity, with the exclusion of heterogeneity and the institutionalisation of antagonistic politics.

This analysis conforms with the work of Kalyvas (2008; see chapter 1), affirming the possibility of democracy during an extraordinary situation, whereby the argument between people sheds light on the idea of agonism in the perspective of Arendt, and antagonism in the perspective of Schmitt. Moreover, it corroborates Mouffe (2005, 2007; see chapter 1), who demarcated between agonistic and antagonistic democracy in the writings of Arendt and Schmitt. However, the study of political theory of Arendt and Schmitt in this thesis reaffirms that the aim of politics may not serve as a function of final agreement or non-agreement, as Mouffe opined, but it devotes much attention to the actual process of politics.

Secondly, this thesis offers new insights for framing the wider political thought in modern times. The study of the political theories of Arendt and Schmitt brings modern political philosophy back to the contribution of classical political thought, and confirms that modern political theorists do not completely break with the ancient traditions of political reflection. Accordingly, this thesis suggests that the frequent recourse of Arendt and Schmitt to political archetypes and analyses from ancient antiquity are not due to nostalgia or a desire to perpetuate ancient political models, rather they are used as empirical evidence as well as theoretical substance to support their conceptions of politics.

As stated in previous chapters, a number of studies of Arendt's indebtedness to classical traditions mainly allude to Athens, and omit any influence of the Romans (e.g. O'Sullivan, 1975; Beatty, 1976; Macauley, 1996; Villa, 1998; Hull, 2002; Benhabib, 2003; Swift, 2008; Morariu, 2011). This thesis makes an original contribution in this field by exploring the nuances of Arendt's continual intellectual engagement with both the Greeks and the Romans. Admittedly, Arendt cites classical political thought in her discussion of the modern, whereas even though Schmitt does not show explicitly the traditional model of political thought, his core ideas stand in light of the ancient enquiry.

Arendt and Schmitt also engage with religious thought, particularly with Christian doctrine, and refer back to and continue to make use of a number

of political vocabularies from the time of ancient Greece and Rome in order to strengthen their own arguments. Most importantly, it can be seen through my thesis that both Arendt and Schmitt criticise some aspects of modern political thought, such as the intervention of private matters in the political sphere. We can also see from the political reflections of these two thinkers that the fundamental concern of modern political theory, caught up as it is with conflict and disagreement, still remains, and these still come into sight to characterise our political experience in some way.

Modern political philosophy developed as a response to new political circumstances, from the political rupture of theological communities and the European Reformation to the current century. It might be recognised as a new kind of entity that has changed from the question of what a good life is, or the best regime to live by, or moral guidelines for human beings which is guided by classical political philosophy to the exercise of power in order to manage conflicts and disagreements that have occurred over time. Hobbes's *Leviathan* (1651), for instance, provided a defence of sovereignty by asserting the power of political authority, whereas Locke's *Two Treatises of Government* (1689) defended a limited form of constitutional government to protect individual rights.

Conversely, this thesis suggests that Arendt and Schmitt search for the 'good' political community in their own thoughts, as did the ancients, whereas conflict management is secondary to them. For Arendt, politics searches for the community that embraces the activity of speaking, and the political experience is intersubjective discourse: "the constant interchange of talk united citizens in a *polis*" (Arendt, 1958: 24). For Schmitt, a desired state of politics is the community where the concrete and real experience of politics revolves around the decision of friend and enemy distinction, whereas the character of neutrality and universality is abolished.

Moreover, if we draw a distinction between ancient and modern political thoughts in terms of human nature, we can find that ancient intellectuals such as Aristotle refer to man as a political animal by nature. Conversely, some modern political paradigms, such as Hobbes, Locke and Rousseau,

imagined the state of nature as a situation where no state and political power exist; politics is thus an artefact constructed by a communal *quid pro quo* agreement (see Wolff, 1996: 7). Although Arendt and Schmitt never explicitly engaged with this point, I suggested that they are closer to the ancient conception of politics than modern political theory. This is because Arendt's conception of politics belongs to the human capacity for action, one type of the human condition that is inherent from his birth, whereas for Schmitt the political distinction between friend and enemy and the real possibility of death seems to be in the nature of man (i.e. the inherent evil of man, when his personal interests come into conflict with those of others) in public life, distinct from the essentially good man in private life (see chapter 3).

Nevertheless, Arendt intentionally chose the term 'condition' rather than 'nature' when referring to the three fundamental human activities: labour, work, and action. This implies that man chooses to live under man-made conditions rather than the primordial conditions offered by nature, and the absence of one of these three essential characteristics does not mean that man has lost his human existence. Arendt states "the only statement we could make regarding their 'nature' is that they still are conditioned beings, even though their condition is new self-made to a considerable extent" (Arendt, 1958: 10).

Rather than drawing a distinction between man in nature and in politics, Arendt, with the experience of the Greek *polis*, and Schmitt, with the categories of *ἐχθρός* and *πολέμιος*, and *hostis and inimicus*, both make a strong demarcation between private and public life, where political matters exist. However, while Arendt refers to the concept of the Greek *polis* to support plurality in politics as an agonistic concept, Schmitt perceives plurality as a threat to politics, since it refuses the absolute power of sovereignty (see chapter 4), which has the authority to deal with the possibility of war after distinguishing the public enemy, namely *πολέμιος* and *hostis*, from the private one, *ἐχθρός* and *inimicus* (chapter 3). Arendt placed great emphasis on human plurality and a picture of a community that entirely contains a politics of difference, referring to the ability to see things from

multiple perspectives. Schmitt's concept of 'the political', on the other hand, leaves no place for pluralism, and expresses it only in the mode of antagonism that distinguishes completely the two opposite sides without a common symbolic core linking them.

I have also reflected on a slight difference between the perceptions of these two thinkers in placing Arendt in the category of an ideal notion of politics and Schmitt in realpolitik. This is because even though Arendt uses as her example the Greek *polis* as the form of political community still most appropriate to the real world, her conception of politics refers to the desirable community, where the activity of speaking is available. Schmitt, on the other hand, sees politics in the context of the latent potential for conflict and violence between opponents. It is true that Arendt refers to her concept of politics as 'practical politics' that cannot occur in theoretical consideration or the opinion or the thoughts of oneself, but has to be dealt with in the conversations between people who each share their own experience of their time. Arendt insists that politics is an end in itself; that is to say, a shift in the instrumentality of politics, where politics is conceived as a means to an end or a particular end of something, is a mistake (Arendt, 1959: 15). Thinking in terms of means-to-end is the domain of contemplation, not of political action. Man, in his freedom, shows the characteristic action of creativity and openness, interacting with others by speaking and persuading, confronting the opinions of the others and depending on their presence without any compulsion, force or rule (Arendt, 2005: 117).

Nevertheless, Arendt's conception of politics that comprises the conversation between actors in communities reflects the ideal type of politics in her mind. When Arendt refers to politics as the space of the association of human beings in conversation, she is not claiming what politics *is*, but what politics or the political community *should be*, and for her it resembles the politics of ancient Greece. From this point, the thing that Arendt called 'politics' might not happen in the real world, but it can be formed from her ideal type of politics, by giving a space wherein people can devote themselves to act and speak to others (the concept of plurality, discussed in chapter 3). More

importantly, it is difficult to find a consensus in her conception of politics in terms of a 'real politics', since everyone gives their own opinions from their own standpoints. Although Arendt attempts not to give a definition of politics because it is contradictory to her understanding of politics as the everyday experience of speaking, her conception of politics is not groundless; rather, it is grounded in the human condition of action, where freedom of speech is necessary.

I have suggested that Schmitt's conception of politics elucidates real politics rather than ideal type, as is the case for Arendt. This is better understood in light of ancient Rome, where conflict between opposing factions became institutionalised as a permanent feature of political life, embedding the possibility of war and death, following on from the most extreme combat between public friend and enemy. Politics, for Schmitt, is not the ideal type of battle between enemies, but happens in the physical sense when the distinction between friend and enemy is constructed. This is not the concept of real violent conflict, but the real possibility of violent conflict that springs from the distinction between these two opposite sides.

Schmitt (1933: 44) quotes the Latin lexicon "*Caesar dominus et supra grammaticam*: the emperor is ruler over grammar as well". This shows that he gives precedence to a social reality by affirming that the sovereign can use extraordinary power in exceptional cases in order to define and fight its enemy, which essentially confers legitimacy on political violence during the state of exception. By relating back to Christian monotheism in the time of Constantine, the sovereign power and extra-legal power that are used in political situations are not from the ideal types of politics, but from the reality of finding a solution to manage any chaos that might happen during the particular case. Even Schmitt holds the legitimate acts of state and other kinds of political entities in his conception of politics, where the comprehension of the state comes after the sovereign decision on the distinction between friend and enemy.

Turning to my own criticism of the political theories of Arendt and Schmitt in respect of traditions, Schmitt did not believe in the war of 'annihilation'

because it eventually eliminates the existence of all enmity (chapter 6). I have argued that a genuine enemy with the possibility of war might allow for the annihilation of the opponent. I suggested that Schmitt fails to present how the world after the annihilation can preserve 'the political' in the absence of any opponents. Moreover, when Schmitt identified the sovereign decision to be a decisive constituent subject or a constituent power which creates laws and constitutions outside any forms of legality, and one that totally holds a concrete decision of juridical and political existence (chapter 4), the sovereign power cannot be traced to anything prior or subsequent to itself, lacking the ability to predict, calculate and expect the ultimate goal, which finally results in the risks of instability, arbitrariness and uncertainty.

Similarly, Arendt's concept of politics does not provide enough clarification for decisions in areas of plurality; it is important to determine a space of inclusion and exclusion, but in this regard she mainly engages with the explanation of the political activity of speaking and conversation, ignoring other phenomena in real politics, such as the construction of hegemonic struggle, ending with the assumption that a consensus can be reached in every moment of negotiation or conversation in a public sphere, which in reality might need factors other than the mere existence of a public space. Moreover, it seems to me that Arendt overstates her demarcation between ancient Greece and Rome, neglecting the fact that there were lines of continuity between these civilizations, as well as discontinuities.

This thesis has endeavoured to analyse both scholars based on the intrinsic merits and insights offered by their works in purely academic terms, but clearly their views are heavily influenced by the context of their experiences of Nazi Germany. While this study has deliberately sought to avoid reducing the scholarship of Arendt and Schmitt to their experiences during the 1930s and 1940s, this contextual dimension no doubt affects the way in which readers appreciate the analysis presented here, and it should be noted that Arendt was persecuted by the politics of Nazism, which embodied the political paradigm expounded by Schmitt. Schmitt's paradigm can be illustrated by applying it to Arendt herself. She was constituted as an enemy

by the sovereign power of the Führer due to her ancestry, while Schmitt was a friend. This was due to racial policy and not their own ideologies per se; Arendt's mentor Heidegger and Schmitt himself had ambiguous relations with the Nazi Party (of which they were members), but they was certainly not persecuted like their secular Jewish colleagues, and when Schmitt supervised the burning of Jewish books (among other collaborations), he was instrumental in the state violence perpetrated against the Jews, other minorities, and political opponents of Nazism.

As referred to above, this thesis has examined the deep background of ancient political thought in the 20th-century political theories of Arendt and Schmitt without taking account of the contextual enquiry of political language or the conceptual shift through history. A comprehensive historical approach to these writers would also situate the ideas of Arendt and Schmitt within the historical context of their time, or would pursue a less punctilious conceptual history of the important terms herein (politics, sovereignty, law and war) in order to see how these political lexicons have changed over long spans of time and the contributions in this respect of Arendt and Schmitt. Further studies along these lines will provide another way to interpret the writings of Hannah Arendt and Carl Schmitt, who are recognised as key philosophers of modern political thought.

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