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Beyond political theology: Marx's materialist theorization of democracy and constituent power

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ABSTRACT

This article recovers and develops Marx's highly original materialist theorization of democracy and constituent power in *Critique of Hegel's Doctrine of State*. Through close textual analysis and theoretical recontextualization, I reconstruct Marx's development and deployment of these concepts as a central part of his critique of political theology, that is, the idea of the state as a sovereign subject transcending and exercising absolute power over society. Marx conceptualized democracy as the social basis of all constitutional forms of the state, which simultaneously revealed the inherent possibility of overthrowing it and capitalism in order to institute a continuous and collective non-sovereign form of self-determination described as 'true democracy.'

KEYWORDS

Karl Marx; democracy; constituent power; sovereignty; political theology; Aristotle; G.W.F. Hegel; Emmanuel Sieyès

> All forms of the state have democracy for their truth and […] they are untrue to the extent that they are not democracy. –Marx (1975a, 89 (32))[1]

This article reconstructs and develops Marx's materialist theorization of the twin concepts of democracy and constituent power in a few extremely dense passages in his 1843 manuscript *Critique of Hegel's Doctrine of State* (henceforth *Critique*) that nonetheless structure and sustain its argument. Through close textual analysis and theoretical recontextualization, I reconstruct his development and deployment of these concepts as a central part of his materialist critique of political theology, identified with the notion of the modern state as a sovereign subject transcending and exercising absolute power over society. I show how Marx drew on Ancient Greek and French Revolutionary thought in developing his own, highly original, materialist reconceptualization of democracy, which he conceived not as a constitutional form, but as the social and material foundation of all constitutional forms of the modern seemingly sovereign state and the system of private property that it was structurally integrated within. Democracy in this sense, according to Marx, revealed the immanent possibility of overthrowing both and constituting a continuous and collective form of decidedly non-sovereign self-determination that he conceptualized in terms of 'true democracy.'

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The article departs from and develops recent research, which has shown that Marx's *Critique* and the concomitant 'Contribution to the Critique of Hegel's Philosophy of Right, Introduction' (henceforth 'Introduction') constitute an important and hitherto overlooked materialist critique of political theology (Flohr 2021; 2024b; Abensour 2011, 31–3; Kouvelakis 2003, 289–290; Breckman 1999, 63–4, 296, 301).[2] Marx's research notebooks from this period in Kreuznach reveal that he conceived and criticized G.W.F. Hegel's 1821 *Elements of the Philosophy of Right* (henceforth *Philosophy of Right*) as representative of a much broader and influential tradition of political theology that remains with us today (Marx 1981b, 181; see also 1975a, 189, 89 (129, 32–3)). Historically the idea of the sovereign state emerged from the transfer and transformation of the (Christian) theological conception of a transcendent and omnipotent God into modern political thought after the Reformation, where it was secularized and vested in the emerging absolutist state apparatuses. This idea retained the theological (transcendent) conceptual structure of its religious precursor independently of its content, thus constituting a distinct *political theology*. The concept of (state) sovereignty found its initial formulation in Jean Bodin's *Six Books of the Republic*, from whence it quickly proliferated and developed into one of the most central concepts of modern political theory and practice, which continues to shape our idea of the modern state and associated practices to this day (e.g. Schmitt 2006, 36ff; Kantorowicz 1997; Brown 2014, 54, 58–9, 26; Elshtain 2008; Flohr 2023a; Hudson 2008).

Marx critique of this political theology was constructed on the model of Ludwig Feuerbach's reformatory critique of religion, as a (re-)inversion and sublation [*Aufhebung*] of Hegel's inverted conception of the state as a sovereign subject ('objective spirit') transcending and determining society, which simultaneously overcame the inconsistencies of Feuerbach's abstract materialism.[3] Marx's inversion of Hegel's political theology showed that the state neither transcends nor exercises absolute power over society; rather, it is the collective but differentiated participation of the members of society that constitutes the state. However, the inherent competition and (class) conflict over private property in civil society [*bürgerliche Gesellschaft*] divides its members from one another and leaves them incapable of recognizing their collective agency in and as the basis of the state. As a result, the state appears as a transcendent and sovereign subject, and, insofar as the members of society accept and act in accordance with this appearance, participating in and subordinating themselves to the institutions of the seemingly sovereign state, they end up conferring a social and material reality on it, allowing it to continue to function as if it actually was a transcendent and sovereign subject. Marx's reformatory critique thereby sublated Hegel's political theology, inscribing and interpreting its account of state sovereignty within a materialist perspective that explained its appearance and efficacy in terms of the social and material contradictions that animate and sustain the functional fiction of the sovereign state.

Marx conceptualized the political theological conception of the sovereign state in terms borrowed from Feuerbach (albeit fundamentally transformed), as an *abstraction* and an *alienation*. The idea of the sovereign state is an abstraction in the double sense that it separates the idea of the state from its social and material foundation, which is also an abstraction in the sense of being an illusion. However, it is an illusion with a social and material basis and effect within civil society as already indicated. The conception of the state as sovereign is not simply an illusion or a mistake but attains a

social and material reality in and through the belief and participation of the various members of society, which hinges on the institutional separation of the state and civil society that is in turn based on the internal divisions within the latter. The political theological tradition both reflects and actively contributes to the reproduction of this conception of the state and therefore cannot and should not be understood as separate from its enactment in and of civil society.

The sovereign state is not as it appears to be, separate from society, but a separation within society; it is an *alienation* of society in two closely entwined regards: it is the alienation of society from its own collective agency objectified in and as the state, which is in turn premised on the competition and class conflict over private property within civil society, which alienates its members from one another. This system of private property requires and legitimizes the sovereign state as an external guarantor and mediator of these contradictions. However, rather than overcoming the contradictions of civil society, the state forms a fundamental and structurally integrated part of them insofar as it constitutes and enforces the very legal system and property relations that produces and reproduces the competition and class contradiction within civil society, which in turn underpin and sustain the seemingly sovereign state, constituting separate but structurally integrated and mutually dependent parts within a single self-perpetuating and -sustaining (alienated) whole (Flohr 2021; 2024b).

However, this analysis does not explain what the idea of the sovereign state abstracts from and alienates apart from the rather generic description of the collective agency of (civil) society. It is clear from the 'Introduction' that while Marx occasionally defaults to Feuerbachian terminology in *Critique*, he is not referring to some abstract human species being (Marx 1975b, 244 (270); see also Flohr 2021, 545–7).[4] But in a few, extremely dense passages in the unfinished manuscript, Marx conceptualizes this collective agency in terms of democracy and constituent power. This article combines close textual analysis with extensive theoretical recontextualization in order to reconstruct and develop the content of these concepts.

I show that Marx in *Critique* conceptualized democracy, not as a specific constitutional or political form of the sovereign state, but as their foundation and content. Democracy in this sense is what constitutes, supports and may potentially transform them, i.e. an underlying constituent power. The basic argument is that all political forms of rule presuppose and rely on the continuous participation of the governed in one way or another. However, most of the time, these political forms appear to be sovereign over and against them because of the division of society against itself within the system of private property – allowing the sovereign state to appear to stand above and beyond them and their conflicts – producing the distinctly capitalist division of the political and the economic *qua* the abstraction of the sovereign state. Marx therefore argues that all these (non-democratic) political forms are in fact democracies in contradiction with themselves and suggest that it is possible to overcome these contradictions and institute a form of continuous, collective and deliberate self-determination expressing its democratic content, which he describes as 'true democracy.' True democracy cannot be predetermined in the abstract but presupposes the abolition of private property and, with it, class society alongside the division between the political and the economic, which maintains the abstraction of the various constitutional forms of the sovereign state from its (alienated) content. In order to make this argument, I start with the relevant

parts of Marx's *Critique* and corresponding passages of Hegel's *Philosophy of Right*, which forms the starting point of my exploration of Marx's interlinked conceptualizations of democracy, constituent power and true democracy.

1. Constitution and constitutional forms in Marx and Hegel

Marx's *Critique* addresses the initial part of section three on 'The State' of the third division ('Ethical Life') in Hegel's *Philosophy of Right*. This part is primarily concerned with the internal constitution of the state. Hegel does not conceive the constitution in the conventional sense of a codified legal document; rather, he uses the concept to denote the internal structure and organization of the political state's institutions that may or may not be legally codified.[5] The constitution is the result of the historically evolved customs, culture and institutions of a given community, that is, its *ethical life* [*Sittlichkeit*], which consists of the three moments: the family, civil society and the political state, the latter transcending and subsuming the former two within itself (Hegel 1991, 312–3 (§ 274), 314 (§ 276)). The constitution in this sense is 'not simply made' but rather the result of 'the work of centuries' – and as such it is not a matter of legal principle or revolutionary invention, according to Hegel, who insist that 'even if it does have an origin in time,' it should be regarded as 'divine and enduring' in order to avoid these misconceptions and their potentially subversive implications (Hegel 1991, 313 (§ 274 add), 312 (§ 273)). Hegel's conception of the constitution, as the particular historically developed political form of a given society, entails that 'each nation accordingly has the constitution appropriate and proper to it' – a classical conservative trope reminiscent of Edmund Burke's critique of the French Revolution (Hegel 1991, 312 (§ 274); Burke 1951; see also Strauss 1953, 319; Wolin 2016, 91–2).

Hegel proceeds to invoke the classical three-fold classification of constitutions, which divided constitutions into monarchies, aristocracies and democracies, denoting the rule of the one, the few and the many respectively; a typology which can be found in both Plato's *The Statesman* and Aristotle's *Politics* and remained prevalent in contemporaneous political thought and debate in Germany. However, Hegel's rendition differs somewhat from the classical schema insofar as the latter further subdivided these constitutions into proper and deviant forms, where democracy consistently figured as the deviant form (Hegel 1991, 309 (§ 273); Leonhard 2018, 66; Aristotle 1992, 190/1279a16-1279b4; Plato 1984, III.44/294D-292A, III.56/302C-E).[6] Hegel argues that the classical typology of constitutions was appropriate to that historical epoch, but no longer held true. These three constitutional forms have attained an internally differentiated unity in the modern state, which, in its proper and rationally developed historical form, is a constitutional monarchy – although one should not attribute too much significance to the term *constitutional* since it does not necessarily refer to a codified legal document defining and delimiting the powers of the monarch but only the historically determined structure and organization of the state as a whole, which Hegel nonetheless insisted should determine the monarch's actions.[7] The modern, rational state is composed of three branches: the legislature, the executive and the crown, each corresponding to or, rather, incorporating one of the three classical constitutional types within it, insofar as *the many* participate in the legislature, *the few* partake in the executive and the monarch rules as *one* (Hegel 1991, 309 (§ 273)).[8] These three branches in turn correspond to the three moments of the concept in

Hegel's speculative logic: the universal, the particular and the singular (Hegel 1991, 305 (§ 272), 308 (§ 273)). Hegel thereby subsumes the three classical constitutional forms into the supposedly modern and rational form of the monarchy via his speculative logic.[9]

Marx's critique of Hegel's position on this matter draws on the two main strands of argument in *Critique*. Firstly, Marx criticized Hegel for his absolute idealism (*qua* theology), i.e. his prioritization of his speculative logic over the subject he was purporting to analyse; rather than analysing the dynamics of civil society and the state in their own right, Marx argued that Hegel simply reorganized and presented the immediate appearance of these institutions and their interrelations in terms of his logic, allowing him to confirm the primacy of his logic and the supposed rationality of 'the world of humankind' (Marx 1975a, 98, 63, 99 (40, 9-10, 43)). Marx's reformatory critique inverted and subsumed Hegel's idealism to his own materialist approach, denoting an approach which considered ideas in terms of their social and material foundations and effects.[10]

Secondly, and by extension, Marx criticized Hegel for the formal-logical subsumption of the family and civil society to the sovereign state *qua* objective spirit – the God-like subject of history, which supposedly transcended and determined the former. Marx proceeded to invert and sublate Hegel's argument, arguing that human existence in the spheres of the family and civil society was the real subject and material foundation of the state, rather than the 'logical' idea of a transcendent and omnipotent state supposedly realizing itself in and through them. However, this idea did nonetheless reflect and contribute to the continued appearance and function of the institutions of the political state as a sovereign subject, based on the internal divisions within civil society. Both of these lines of critique informed Marx's reformatory critique of Hegel's analysis of the internal constitution of the state (see also Flohr 2021).

Marx criticized Hegel's analysis of the internal constitution of the state precisely for the logical subsumption of the other constitutional types to monarchy – and the concomitant subordination of civil society to the supposedly sovereign state. Marx proceeded to invert Hegel's subsumption and incorporation of the various constitutional types in monarchy. However, rather than simply incorporating the other constitutions within the form of democracy, he proposed that democracy constitutes *the content and foundation* of these other constitutional forms (Marx 1975a, 88 (31-2)). Based on this inversion and sublation, Marx proceeds to announce that 'democracy is the solution to the riddle of every constitution' and 'all forms of the state have democracy for their truth and […] they are untrue to the extent that they are not democracy' (Marx 1975a, 87, 89 (31, 32)).

2. Democracy as the constitution of the constitution

But why should democracy occupy such a privileged place amongst the other constitutions? In order to understand the importance that Marx attributes to democracy, it is necessary to examine the classical three-fold typology of constitutions in more detail. Democracy is immediately distinguishable from the two other constitutional forms in this typology in two closely interrelated regards: Firstly, whereas the initial two constitutional forms refer to the rule of a specific part of the population (e.g. the one and the few) over the rest, democracy originally referred to the power of the populace as a whole (*dēmos* / δῆμος) in relation to itself, i.e. what Aristotle at one point in *Politics*

described as 'the rule of all' (Aristotle 1992, 363/1317b17; see also Thucydides 2009, 329/6.39).[11] Democracy is thus the only constitutional form in the schema that coincides with its content; where the distinction between rulers and ruled is effaced in favour of collective self-determination.

Secondly, democracy can also be conceptually differentiated from the other constitutional forms in this schema, if it is noted that it was most frequently deployed in the form of monarchy, oligarchy and democracy – substituting oligarchy for aristocracy (Ober 2008, 3).[12] Democracy differs conceptually from the other two insofar as it describes the power of the people using the suffix *–kratos* (*κρᾰτος*) rather than *–archē* (*ἄρχω*), common to both oligarchy and monarchy. *Archē* is commonly translated as 'power,' 'authority' and 'office,' thus Aristotle defines the constitution as 'the organization of [the state's] offices' using the term *archē* to denote the latter' (Aristotle 1992, 187/1278b).[13] The constitutional forms with this suffix denote and describe the distribution of official positions of institutionalized authority or offices within the state. The associated prefixes thus specify the number of people these offices were to be distributed amongst, e.g. the one in monarchy (the adjective *monos* means singular) or the few in an oligarchy (*hoi oligoi* / *οἱ ὀλίγοι* means the few, and specific oligarchic regimes were commonly described by reference to the number of officeholders) – the same terms Hegel used to describe these constitutions.[14] The Greek noun *kratos*, on the other hand, was never used to denote 'office' but referred to non-institutionalized forms of power, e.g. force, strength, superiority, capacity and/or domination. Since *kratos* did not refer to political offices, this suffix was never coupled with a quantitative specification of their distribution amongst the one, the few or even the many (Ober 2008, 6–7).[15] Democracy is thus the only type of constitution in the classical three-fold typology which does not refer to the organization and distribution of offices within the state or specify a number of officeholders but rather refers to the power (*kratos*) of the populace as a whole (*dēmos*). Democracy must thus be taken to denote the power – understood in the sense of capacity, strength, or force – of the populace, outside of and not reducible to the constitutional organization of the offices of the state (Ober 2008, 7; Rosanvallon 2019, 27).

These conceptual points can also be illustrated by turning to the historical referent, namely the series of popular struggles and uprisings that produced what was retrospectively conceived as 'democracy' in fifth century BCE Athens.[16] This institutional arrangement emerged from a long series of popular mobilization and struggles whose starting point is traditionally identified with Solon's reforms (594-3 BCE), which were devised to avoid a developing social and political crisis. While these reforms did not amount to democracy in any meaningful sense of the word, they did produce a sort of multi-tiered oligarchy (subsequently interrupted by tyranny) that began to include the previously excluded masses into the political life of Athens, where they became increasingly self-conscious and confident, mobilizing their collective power in a series of struggles that transgressed the pre-existing customary, legal and political organization of elite rule in what can in retrospect be conceived as a long, unruly and uneven process of democratization (Wolin 2016, 81–2, 86-7, 90-1). The struggles culminated in what Josiah Ober has dubbed 'the Athenian Revolution' in 508 BCE, where the dēmos overthrew and expelled Isagoras and the Oligarchy of the Three Hundred alongside their Spartan allies after they had attempted to disband the Council. Subsequently, they set up a popular government under Cleisthenes and began developing institutions of direct and participatory self-

governance (Ober 2007, 83–104; Ober 1996, 32–52; see also the classical descriptions in Herodotus 1998, 77–81/5.70-3; [Aristotle] 1891, 45–6 (ch. 20)). The radical institutional advances achieved by the dēmos after this revolution and over the following century were historically unprecedented.[17] However, they were not a static or preconceived political programme to be realized in the form of a specific institutional set-up, and the results were only subsequently identified as a constitutional form called 'democracy.'[18] As Sheldon Wolin points out: 'before its fourth century institutionalization, Athenian democracy was less a constitution in the Aristotelean sense of a fixed form than a dynamic and developing political culture, a culture not only of participation but of frequent rebellion' that was commonly 'identified with revolution' (Wolin 2016, 87, 83).

The concept of democracy was initially used to refer to precisely this popular revolutionary force among both its detractors and adherents, that is, the collective capacity of the populace to overthrow or otherwise transform the pre-existing constitution, rather than the particular organization of powers and offices (*archē*) it produced historically and which was only retrospectively conceived as the democratic constitutional form (Cartledge 2009, 63–4; Wolin 2016, 77–99; Ober 2008, 3–9). However, this was in no way inherent in the concept of democracy or the historical process itself – 'there is no "demarchy"' as Jean-Luc Nancy insists – and Jacques Ranciére likewise suggests that the classical Greek conception of 'democracy is neither a society to be governed, nor a government of society, it is specifically this ungovernable on which every government must ultimately find out it is based' (Nancy 2011, 66; Rancière 2006, 49; This particular passage refers to Plato 2005, 93–94/690c).

Democracy was only (re-)conceived as a constitutional form in the works of subsequent classical writers such as Plato and Aristotle, who tried to contain this revolutionary force conceptually and delegitimize its alleged excesses (see Wolin 2016, 77–99). Yet, their attempts to circumscribe its original meaning were marred by contradictions: on the one hand, democracy's institutional results were codified as a (deviant) constitutional form and, on the other, it was decried as a fundamentally lawless and violent power incompatible with constitutional order as such.[19] Plato thus describes democracy in *Republic* as being instituted 'when the poor win, kill or exile their opponents,' resulting in an 'anarchic form of society' with 'an excessive desire for liberty,' which he suggested did not constitute a coherent constitutional form (Plato 2003, 292/8.557a, 294/8.558c, 299/8.562c, 293/8.557d-8a; on the latter point, see also Wolin 2016, 93). Aristotle described a type of democracy where 'the multitude is sovereign and not the law' and explicitly argued that 'such a democracy is not a constitution at all' (Aristotle 1992, 250/1291b39, 251/1292a31).[20] While Aristotle had also described the other deviant constitutional forms as characterized by the use of extra-legal power, he found something particularly troubling about this form of democracy that disqualified it as a constitutional form altogether. He had already argued that a legal system in itself could not make a just political order or (correct) constitutional form, since the laws would inevitably reflect the perspective of its makers, and, as such, the quality of the laws and the legal system were the direct results of the quality of the constitution. Since democracy was categorized as a deviant constitution from the outset, it could not be expected to produce a well-functioning legal system, suggesting that the issue of legality was secondary to the (non- or extra-)constitutional character of democracy (Aristotle 1992, 200/1281a28, 206/1282a41). Based on my previous conceptual and historical specifications, it may be deduced that this is because, in a tyranny or an oligarchy, there remains

some sort of political hierarchy and order in the form of a fixed organization of the offices of political power (*archē*), which is absent where the subjects (the dēmos) assert their collective power outside and against any such pre-existing constitutional organization of offices (Aristotle 1992, 363/1317b17).[21]

The political and conceptual indeterminacy of the notion of democracy as a constitutional form gave rise to severe problems of classification amongst these classical writers. In Plato's *Statesman*, the concept of democracy as a constitutional form was left ambiguous, referring simultaneously to both a proper constitution and a deviant lawless political form (Plato 1984, III.56-57/302D-303B). In Aristotle, the conceptual confusion was even more pronounced and revealing: having initially defined a constitution as the 'organization of [the state's] offices [*archē*]' he had problems fitting *democracy* into this typology and ultimately ended up describing the proper (non-deviant) constitutional correlative of democracy as '*politeia*,' meaning simply 'constitution,' i.e. the organization of offices [*archē*] in and as the state (Aristotle 1992, 190/1279a32; 187/1278b).[22] This can be ignored as a matter of conceptual imprecision, which it undoubtedly also is, but it can also be read as a reference to the populace's (*dēmos*) collective capacity or power (*kratos*) to (re-)organize or create a constitutional organization of offices, that is, their capacity to constitute the constitution; their constituent power.[23] This certainly seems to be what Marx is implying when he describes democracy in the manuscript as the 'generic' or 'genus' constitution, which 'is related to other constitutions as a genus to its various species' (Marx 1975a, 87, 88 (30, 31)).[24] Marx is here relying on this classical notion of democracy as the popular power underlying and shaping all constitutional forms.[25] Marx thereby inverts Hegel, insisting that: 'the constitution does not make the people, the people make the constitution' and later reiterates that the constitution is 'the people's own creation' and 'the free creation of the human being' (Marx 1975a, 87 (31); see also Kouvelakis 2003, 303).[26]

3. Democracy as constituent power

Marx thereby moves from his initial critique and inversion of Hegel's sublation of the classical constitutional forms to his conception of ('constitutional') monarchy towards a conceptualization of democracy as the popular constitution-making capacity underlying all constitutional forms of the sovereign state – a notion which he develops in a muted dialogue with the French political writer and revolutionary Abbe Emmanuel Sieyès, who was the first to systematically develop the concept of 'constituent power' in his 1789 pamphlet *What is the Third Estate?* which remains the paradigmatic formulation of this concept.[27] While there are no explicit references to Sieyès in Marx's unfinished manuscript (or any other thinkers apart from Hegel for that matter), he does appears in Marx's preparatory notebooks from Kreuznach (Marx 1981b, 166)[28] and the notion of a constituent or constitution-making power recurs in a number of central passages in *Critique* and the aforementioned notebooks (Marx 1975a, 87, 121 (30-1, 62); 1981a, 84, 86, 116; 1981b 158, 165, 169). The use of this concept in itself is distinct enough to warrant this connection, especially when paired with the number of other significant analytical and conceptual coincidences.[29] Interpreting Marx's notion of democracy as a form of constituent power in *Critique* on the model of Sieyès' *What is the Third Estate?* clarifies that this is indeed a concept of revolution (the practical or

materialist equivalent of the reformatory critique of political theology) that points beyond the political theological notions of the sovereign state as well as popular sovereignty.

What is the Third Estate was initially published three months before the first convocation of the Estates-General in 175 years, which would lead to the French Revolution. Expenses incurred during France's involvement in the Seven Years War and the American Revolutionary War, combined with the country's unusually inefficient taxation system, had plunged the state into massive debt. Faced with a developing financial crisis, and the Parlement of Paris' refusal to corroborate his proposed financial reforms, the severely weakened King Louis XVI called to convene the Estates-General in Versailles hoping to gain their support for his proposed financial reforms. The Estates-General consisted of representatives of the three estates of the realm: the clergy made up the first estate, the second estate was comprised of the aristocracy and the third estate represented the common people.

Sieyès' pamphlet was an intervention in this particular situation, arguing that the third estate had the right to impose a constitution defining and delimiting the powers of government – with or without the king and the other estates. He argued that the third estate represented the French nation as a whole, not only because it made up the majority of the population, but also because it constituted its productive foundation and was generally excluded from the higher offices within the state, which meant that it did not have any particular or vested interests in the existing (dysfunctional) system and could therefore represent the general will of the nation – unlike the nobles and the clergy. This is the meaning of Sieyès' insistence that the third estate had so far been nothing, but should be everything, i.e. that it was implicitly universal, revealing previous pretensions to universality to be illusory and partial (Sieyès 2003, 149, 150, 194). Sieyès identified the nation as the subject of constituent power that was vested in the representatives of the third estate in the Estates-General and who could thereby legitimately create and impose a constitution. Sieyès' pamphlet became extremely popular, and the argument contained therein exercised a significant influence on the actors and events that came to constitute the French Revolution.

Sieyès' framing of his argument in terms of 'rights' and 'legitimacy' is largely attributable to contemporary conventions. However, upon closer inspection it is evident that his conception of constituent power is based on a proto-materialist analysis of the relationship between social forces and political form (constitution) (von Eggers 2018, 325–356). Constituent power, in other words, is not a political concept in the restricted sense of that term (i.e. tied to the state-form; excluding social and economic matters); rather, it refers to the material power and capacity of the masses to reconstitute and reconfigure the political system, and as such pertains both to the transgression and the potential to overcome the boundary between the state and society.

The concept of constituent power denotes the general population's capacity to make a constitution. This capacity is not exhausted in the act of making a constitution but persists alongside the constitution as an irrepressible and inalienable power to reconstitute it when and how it sees fit. It is and remains superior to the constitution it founds and maintains and is likewise distinguished from the political forms and powers derived from it, i.e. constituted power(s), such as the offices of government and the state more generally. Such constituted powers are defined and delimited by the constitution,

whereas constituent power cannot be contained in this manner: it is the source of the constitution and as such remains unrestrained by it.

Sieyès identified 'the nation' as the bearer or subject of constituent power. Here it is important to note that the concept of 'nation' predates the semantic investment of nationalism and modern citizenship. Nation here simply denotes 'a body of associates living under a *common* law, represented by the same legislature, etc' (Sieyès 2003, 97). The nation, in other words, refers to society as the sum total of those subject to the authority of the laws, government and the various other offices that make up the sovereign state. However, as I already indicated, the nation or society cannot be bound by these laws or the state, whose authority is derived from the constitution and ultimately, therefore, from the constituent power of society. Society is both the origin and the permanent foundation of the constitution and therefore cannot be limited by it or its derivative powers. It always has the right to make a new constitution and as such it 'never leaves the state of nature' (Sieyès 2003, 136–138). This can be reconceived in more materialist terms as an assertion that the continued efficacy and dominance of the fiction of the sovereign state depends on the continued belief and participation of its subjects, who must thereby be conceived as always already having the ability to overthrow, change or move beyond it.

The connection between the classical notion of democracy and this concept of constituent power should be evident from this brief overview. Constituent power is democratic insofar as it denotes the practical primacy and power of the population or nation in relation to the constitution and the supposedly sovereign state. More precisely, it denotes the continuous capacity of a given population to combine and collectively and deliberately determine or change the social and political form of their (co-)existence over and against any pre-existing political and legal forms of power. The concept itself already implies as much, as Andreas Kalyvas has convincingly demonstrated: it comes from 'constituere,' formed by the Latin prefix *con-* meaning 'with' or 'together' and the verb *statūere*, which comes directly from *stătūo* meaning 'to cause', 'to set up', 'to construct' or 'to place'. Constituent power must thus be understood to denote an act of '*founding together, founding in concert, creating jointly*', that is to say, democracy (Kalyvas 2005, 235–6). Coincidentally, this was precisely what Aristotle feared so much about democracy: that it would allow the people, in particular the poor and excluded majority, to rule and make their own institutions and laws (Aristotle 1992, 250–1/1291b39-1292a31, 255/1292b34).[30]

The concept of constituent power thus also suggests that sovereign power is never entirely sovereign; that it can only rule subject to the underlying constituent power of its subjects. The concept of constituent power thus serves as an alternative to the political theological conception of power transcending and determining society from without. Although Sieyès' concept of constituent power has often been identified with the idea of 'popular sovereignty,' he himself never employed the term to describe constituent power.[31]

Constituent power is distinguishable from sovereign power in Sieyès' writings by virtue of its association with the state of nature, which precedes, produces and may also overcome sovereign power in classical social contract theory, which also provides the theoretical parameters of Sieyès' discussion; although the latter renders it a permanent condition that exists alongside the sovereign state in and as society.[32] This suggests

that Sieyès considered sovereign power a constituted power and thus subordinate to the constituent power of society.

Sieyès' reference to classical social contract theory indicates that sovereign power for him connotes precisely what it did in the political theological tradition: a transcendent and absolute power over society. Sovereign power does not subsist independently and can only be conceived as sovereign in relation to others; the people, the nation, society, etc. However, the concept of constituent power refers solely to society's immanent and collective capacity for democratic self-determination (over and against any claims to sovereignty), rather than a transcendent and sovereign power over others; and as such it is irreducible to sovereign power (Kalyvas 2018, 104–9; Loughlin 2004, 112).[33]

Moreover, Sieyès conceives the sovereign state as being constituted and maintained by society, i.e. as immanent in it, and insofar as sovereignty in the political theological tradition is inherently tied to a dualistic structure of transcendence, it simply does not make sense to discuss constituent power in terms of sovereignty.[34] Conceiving constituent power in terms of (popular) sovereignty would either be conceptually void insofar as it denotes society's (self-) transcendence in the absence of any external referents, or return to the realm of political theology by redoubling society (and its constituent power) as a transcendent entity beyond its actual temporal existence and practical self-determination, subsumed and dominated by the sovereign state, conceived as the only possible form of its political existence or, as Marx succinctly summarized this political theological figure, 'the people appear as *idea*, fantasy, illusion, *representation*' and thus 'the *represented* people [are posited] as a *particular power* apart from the real people,' that is, the sovereign state (Marx 1975a, 134 (74); see also 1975c, 219).[35]

Historically, popular sovereignty has, of course, occasionally been used to denote the aim of popular self-determination and democracy at various junctures, but these deployments generally ignored the conceptual specificity and limitations of the political theological register and remained tied to the non-democratic form of the sovereign state.[36] The identification of constituent power with (popular) sovereignty inevitably returns to the inherent descriptive and normative limitations of political theology, that is, the abstraction and alienation of society's collective agency and capacity for self-determination. Moreover, this is the precise significance of Sieyès' concept of constituent power to Marx's project: providing a vocabulary to conceive democracy beyond political theology.[37]

Sieyès' identification of constituent power with the state of nature helps locate its proper place in Marx's critique of political theology. Both Marx and Hegel described civil society in terms of Hobbes' state of nature as the *bellum omnium contra omnes*; the war of all against all that precedes and constitutes the sovereign state (Hegel 1991, 329 (§ 289), 467n2; Marx 1975a, 101 (45); Hobbes 1994, 76; see also MacPherson 1962). This identifies civil society as the sphere of constituent power, meaning that civil society constitutes the sovereign state, rather than the other way around, as Hegel had argued in *Philosophy of Right* – a point which, as I have already shown, is one of the central arguments of Marx's *Critique*. The question remains as to why or rather how the constituted power of the political state has come to appear to be sovereign and continues to rule as if it was. The reference to civil society as the state of nature suggests that this is the sphere that needs to be examined in order to understand the constitution of the sovereign state.

This deployment of the state of nature obviously differs significantly from its traditional use: first and foremost, it does not refer to a natural or pre-social condition, but to a decidedly modern mode of social and economic existence: *bürgerliche Gesellschaft* figures here in the sense of bourgeois society, i.e. the emerging capitalist system.[38] *Critique* provides an incumbent critique of the sphere of political economy which Marx would spend the rest of his life developing, and regardless of how underdeveloped Marx's account of civil society from 1843 appears compared to his subsequent analyses, its basic contours are already clear: civil society is the sphere of social and economic activity, most significantly, the production, exchange and consumption of private property in the capitalist market formally and institutionally distinct from the state. The institution of private property divides civil society against itself in the form of competing individuals and antagonistic classes. The resulting conflicts and contradiction of civil society threaten to undermine this system and therefore necessitates and legitimizes a supposedly autonomous and sovereign power, i.e. the sovereign state, which claims to transcend the particular wills and interests of civil society in order to mediate and unite them in its universality – similar to the argument of Hobbes' *Leviathan*. However, Marx's deployment of the state of nature also transforms it fundamentally insofar as he reconfigures it as contemporaneous with the state, which he insists is neither universal nor sovereign.

In the detailed analysis of the modern state's integration in the capitalist system, which makes up the better part of *Critique*, Marx shows that its supposed universality is identical to the particular interests of the propertied classes and systematically excludes the propertyless proletariat – while the state simultaneously legitimizes itself through the pretension of transcending the particular interests of civil society. This political theological abstraction of the state as a sovereign subject transcending and ruling civil society is identical with the phenomenal separation of the political and the economic characteristic of capitalism. Nonetheless, the state does not overcome the divisions and conflicts within civil society; it partakes in them and perpetuates them through the protection of private property and thereby both the class divisions of civil society and the interests of the propertied classes therein. What is more, it is precisely these divisions within civil society that makes its members incapable of recognizing their collective agency as the foundation of the state, which thereby appears as a sovereign subject that transcends and rules them in the (illusory) general interest, overcoming their internal divisions, while it is in fact a structurally integrated part of the very system that produces and reproduces them and their inherent conflicts.

The fundamental import of Marx's analysis here is that the potential subject of democracy and/as constituent power is divided against itself in civil society and therefore incapable of uniting and exercising this capacity in a deliberate and democratic manner. The underlying democratic capacity of civil society is alienated by the system of private property and the associated class struggle within civil society, which divides it against itself and gives rise to the appearance of the state as an abstract and sovereign subject that in turn maintains the property relations that divide society. This is not to say that civil society does not constitute the state, it most certainly does, but not in a deliberate or democratic manner. Rather, it is the political and economic organization of civil society, that is to say, its division into individuals and classes within the system of private property that produces and perpetuates the seemingly abstract political form of their existence in and as the sovereign state. There is, in other words, an alienated democratic foundation to all

modern 'sovereign' political states. This is the contradiction Marx was referring to when he described its constitutional variation as 'democracy in contradiction with itself' (Marx 1975a, 87 (30)). The underlying democratic capacity of civil society is negated by the system of private property and the associated competition and (class) conflict within civil society, which occasions the appearance and function of the supposedly sovereign political state as a structurally integrated part of the capitalist system.

The individuals of civil society that partake in the collective reproduction of the sovereign state do not necessarily do so because they support it as such but because of these pre-existing social and material relationships that govern their existence (namely the institutions of private property and the political state that divide them from each other and inhibit the deliberate and democratic exercise of their collective agency), which entail that they do not see that the state is premised on their participation, perceiving it instead as an objective and unchangeable condition that they have to contend with. Therefore, they do not recognize their ability to change this state of affairs and instead submit to it, thereby becoming part of the social dynamic that constitutes and maintains the functional fiction of the sovereign state. Sovereignty is the illusion of the state as a transcendent absolute power entirely divorced from its subjects – an illusion that derives from precisely what it conceals, that is, the underlying collective agency of the populace that sustains the state. The theoretical privilege attributed to sovereign power in the predominant political theological discourses reflect and perpetuate this heteronomy insofar as it obscures the social foundations of the sovereign state, thus concealing the possibility of change and contributing to its perpetuation. Marx's *Critique* is a deliberate intervention in this context to reveal the social and democratic foundations of the sovereign state, thereby facilitating the possibility of change, more specifically the social and material equivalent of this theoretical inversion, that is to say, a revolution.[39]

To summarize, civil society is the potential subject of democracy and/as constituent power. However, it is split over and by the institution of private property maintained by the supposedly sovereign state and therefore incapable of uniting and exercising this capacity in a deliberate and democratic manner. The structurally integrated institutions of private property and the sovereign state together negate the potential collectivity and universality of society, thereby also denying its capacity for self-determination. This negation must itself be negated in order for society to overcome society's division against itself, which occasions the sovereign political state and perpetuates the system of private property, in order to constitute what Marx describes as a 'true democracy,' which is the simultaneous (self-)constitution of its subject, 'the dēmos' (Marx 1975a, 87–8 (30–2); see also Wolin 1990, 8–31; Negri 2008, 109–10).

4. Preliminary determinations of true democracy

Democracy and constituent power refer to the underlying popular foundation of the constitution of the state and the people's potential to overthrow and change it, which is contradicted or negated by the individualizing competition and class divisions of civil society. However, Marx goes on to suggest that it is not only possible to actualize this capacity in a revolution but also to sustain this as a social and political formation beyond the contradictions of bourgeois society, that is, the alienation and abstraction effected by the institution of the sovereign state and the system of private property.

Contrary to Sieyès, who argued that constituent power should be delegated to a few 'extraordinary representatives' who could constitute a 'representative system' on behalf of the nation and thought that a 'genuine democracy' was both impossible and undesirable, Marx pursues precisely this idea – or what his English translator has rendered 'true democracy' [*wahren Demokratie*] (Sieyès 2003, 147; Marx 1975a, 88–9 (31-2)).

The concept of true democracy may at first appear somewhat strange. Stathis Kouvelakis notes that the use of the adjective 'true' seems to follow the trend amongst German radicals of 'calling things by their true name,' citing the contemporaneous example of the 'true socialists' etc. (Kouvelakis 2003, 303, 415n269; see also Cornu 1948). However, it is also worth noting that the concept of 'pure democracy' at the time was commonly used to denote a form of popular, participatory or direct democracy primarily associated with classical Athens, conceived, through the writings of its classical detractors, as an 'impossible form of government;' connotations that were reiterated by its association with the French Revolution, which simultaneously served to rekindle its classical connotations of both class struggle and equality. The concept of pure democracy was deployed to differentiate it from other more moderate variations, namely representative or republican forms of government or, especially, elements of such within a mixed constitution – similar to Hegel's sublation of the classical constitutional forms (Kurunmäki, Nevers and te Velde 2018, 4; Leonhard 2018, 65–73, 76). Marx was critical of such supposedly 'democratic' constitutions, which he preferred to describe as 'republics' insofar as they remained within the alienated form of the sovereign state and, as such, were still in contradiction with their democratic foundation and content; a critique he also applied to the results of the French Revolution (Marx 1975a, 87–90, 141, 189 (30-3, 80-2, 128-9); see also 1975d).[40] Marx instead deployed the notion of true democracy to designate the mobilization and actualization of the underlying democratic capacity of the populace beyond the contradictions of the sovereign state and private property, thereby emphasizing its social and revolutionary character through the implicit association with the Athenian and French Revolutions.[41]

This understanding can be furthered if Marx's particular terminological variation upon the notion of 'pure democracy' is examined in more detail. The concept of 'truth' or 'true' had a very specific significance in the Hegelian conceptual matrix that Marx continued to operate within (albeit in a sublated, materialist form): Hegel had famously insisted that the 'truth' had to be conceived in terms of the whole, that is, the coincidence of subject and substance. Accordingly, *true* democracy must be conceived as the coincidence of the subject and substance of democracy, that is, the populace overcoming their contemporary divisions (which Marx calls the 'dēmos') and the objective forms assumed by their collective and deliberate self-determination. This coincidence signifies that the subject of true democracy has overcome its objectification (alienation) in the sovereign state and the system of private property, which seems to be what Marx meant to suggest by describing it as a *true* democracy (Hegel 1977, 10).

In spite of the Hegelian language, there is nothing to suggest that Marx repeated the mistakes he criticized Hegel for, namely conceiving history in terms of the teleological self-realization of a (transcendent) concept in and through the supposedly passive medium of human history. First of all, democracy is not a logical *a priori* concept as such but rather a concept denoting a social and practical capacity deduced from a materialist analysis of history; it does not name a metaphysical essence as much as the inherent

capacity of a given group of human beings to combine and collectively and deliberately organize or reorganize the collective form of their existence and reproduction under the given material conditions; a capacity which is the foundation and content of all historical social and political institutions. While these institutions, historically, have ended up alienating societies from this capacity in various ways, Marx's argument is that this need not be so; that this implicit capacity reveals the possibility of changing this state of affairs and actualizing this capacity for collective and deliberate self-determination beyond such alienating institutions, which is what he describes as true democracy. True democracy is merely a possibility visible through the cracks and contradictions of the world of humankind; its achievement cannot be taken for granted and there is no teleological momentum or transcendent subject that guarantees its achievement. It can only be achieved through the practical struggle against the integrated structure of the sovereign state and the system of private property. It is the immanent and decidedly historical self-transformation of society. Moreover, it should be noted that there is no indication that Marx envisaged true democracy as overcoming negativity once and for all, as there may very well be further contradictions within this totality that are not immediately visible from the present and, as such, the universality of the dēmos is asymptotic and there is no end to history in sight.[42]

Having analysed the initial part of Marx's notion of true democracy, I will now turn my attention to the latter part. Marx deployed and developed the concept of democracy (and/as constituent power) as a potentially revolutionary concept that simultaneously denoted the popular foundation of the constituted order, consisting of the supposedly sovereign state and the concomitant socio-economic order *and* the populace's concomitant capacity to overthrow them in and as an expression of immediate and practical popular self-determination; as such, true democracy cannot be conceived as a constitution in the conventional sense of the word – a fixed distribution of offices *within* the sovereign state – there is no 'demarchy,' as I have already noted. To the extent that true democracy can be described as a constitution, it is as a verb rather than a noun; it is a constituent power that does not constitute an order beyond its own continuous self-organization, and it therefore remains active as a form of permanent revolution.[43]

This is not to say that true democracy cannot or will not produce institutional forms, simply that they will not be static and separate from or superimposed upon the dēmos like the sovereign state-form. This is the meaning of Marx's pronouncement that 'the *political state disappears* in a true democracy.' His subsequent remark that the 'political state, the constitution, is no longer equivalent to the whole' refers to the various institutions of the political state, that have hitherto been separate from and dominated society, but would no longer stand outside and determine society in a true democracy and, as such, would lose their distinctly political (abstract) character and become subordinate moments in the 'self-determination of the people' or abolished entirely. In this sense the modern state as a separate and supposedly sovereign entity ceases to exist in a true democracy (Marx 1975a, 88–9 (31–3); see also Marx 1975c, 234). True democracy as such denotes the self-constitution of the dēmos from civil society through its members' continuous collective and deliberate constitution of the form(s) of their coexistence.

As a form of popular self-constitution and self-determination, true democracy cannot be pre-determined in the abstract. True democracy denotes the creation and

maintenance of a certain openness which philosophy cannot and should not try to overcome alone – as the materialist position Marx elaborated in his dual critique of Hegel and Feuerbach also suggests. While the possibility of the collective and deliberate self-determination of the populace could be deduced from the analysis of contemporary social and political forms (and their philosophical representation/reflection), specifically their inherent contradictions, the specific institutional form(s) of its actualization could not. In Hegelian terms, it is a negation (of the negation) that can only attain a determinate form (i.e. become a determinate negation of the existing contradictions) in and as a practical revolutionary movement, and, as such, it remained theoretically indeterminable. Moreover, as a concept of popular and continuous self-determination, any attempts to predetermine it in advance, from the outside, would contradict its fundamental principle.[44] The exact form that true democracy will assume must be developed in the dialectical interrelationship of theory and practice in concrete popular struggles that constitute it.

There are, in other words, convincing philosophical and political (in the ordinary sense of the word) reasons to avoid developing a programmatic conception of true democracy. But even though philosophy neither can nor should attempt to predetermine some abstract form to be realized in practice, it is nonetheless possible to deduce a number of necessary preconditions for realizing this collective capacity for self-determination based on the contemporary social and material contradictions that inhibit it. As Marx remarked in a letter to Ruge, written in Kreuznach, while he was composing *Critique*: 'we do not anticipate the world with our dogmas but instead attempt to discover the new world through the critique of the old' (Marx 1975d, 207). As I have already shown, Marx identifies true democracy with the overcoming of the contemporaneous abstraction and alienation of society's collective agency (democracy) in and as the sovereign state. However, the sovereign state does not subsist in isolation but is premised on and structurally integrated with the system of private property. Overcoming the supposed sovereignty of the state thus also requires abolishing the system of private property so as to overcome the individualization and class divisions within civil society that structure and sustain the separation of society from its own collective agency. The overthrow of the sovereign state and capitalism is the precondition and beginning of the continuous collective form of (non-sovereign) self-determination, which Marx described as 'true democracy.'

Notes

1. References to the two most central texts in this context, i.e. Marx's *Critique of Hegel's Doctrine of State* (1975a) and 'A Contribution to the Critique of Hegel's Philosophy of Right. Introduction' (1975b) are followed by a parenthesis containing the corresponding page number/s in the authoritative critical German-language *Marx-Engels Gesamtausgabe*^{2} (1982a, 1982b) to ease cross-referencing.
2. Throughout this article, I anticipate Marx's subsequent use of the term 'materialism' in my descriptions of the position that he was beginning to elaborate already at this point in time (e.g. Marx 1987, 262), which was characterized by the inversion and sublation of Hegel's absolute idealism, emphasizing the centrality of social and material relations in relation to ideas such as 'God,' 'the sovereign state,' and 'the human being' (Marx 1975a; 1975b; see also Flohr 2021, 540–47; 2024a). The term materialism is a particularly useful shorthand

insofar as it is intuitively opposed to idealism and has traditionally also been counterposed to religion (and sometimes identified with atheism). On Marx's subsequent conception of materialism see in particular Patrick Murray (1990), Søren Mau (2023, 109–13) and Étienne Balibar (1994, 90–2; 1995, 23f).

3. It should be noted that Feuerbach's reformatory critique of religion emerged out of the broader Young Hegelian millieu, where other influential figures, such as Bruno Bauer, outlined similar inversions of the relationship between God and humanity. However, Feuerbach was the first of the Young Hegelians to criticize Hegel's philosophy as an instance of theology (rather than embrace it as the antithesis of theology), which appears to have been the starting point of Marx's 'Critique,' which also seems to contain terminological traces of Feuerbach's formalization of the method of reformatory critique (Levine 2012, 199–200; Leopold 2007, 218–23; Heinrich 2019, 261). The primary challenge to this interpretation, is Charles Barbour's (2023) alternative dating of the 'Critique' that partially challenges its connection with Feuerbach, which was published after the completion of this article. I hope to address this in the future.
4. I have updated the unnecessarily gendered translation of *Mensch* as 'man' throughout.
5. As the editor Allen W. Wood notes, Hegel avoids explicitly addressing the question of whether a written constitution is preferable in *Philosophy of Right*, in spite of his general enthusiasm for modern codified legal systems. The reactionary surge of 1819 may have influenced Hegel's hesitancy, but his conceptualization of the constitution as a practical political organization derived from the historical and rational development of a given community also seems to have superseded the question of codification (Hegel 1991, 462n9 241–251 (§§ 211–18); Hegel 2009).
6. Note that there is a certain ambiguity regarding democracy in the latter two texts: Plato insists that democracy is dual and can refer to both a proper and a deviant form of constitution, which are both considered inferior to the other (proper or deviant) forms of constitution. Aristotle simply refers to the proper constitutional form of democracy as 'polity' [*politeia* / *Πολιτεία*] and outlines a sort of mixed constitution. Tellingly, this word simply means 'constitution' or 'regime' and applies to all types of constitution. Moreover, he questioned whether or not democracy was in fact a constitution as I will show (Plato 1984, III.56-57/302D-303B; Aristotle 1992, 190/1279a32, 251/1292a31; see also Agamben 2011, 2).
7. Hegel understood the sovereign state as the real subject ('objective spirit') and therefore concluded that the monarch was merely an official 'dot[ting] the "I's"' on its behalf. In this sense, Hegel points out 'it is certainly possible in one sense to say that the Idea is likewise indifferent to the three [constitutional] forms in question (including that of *monarchy*, at least in its limited meaning as an *alternative* to *aristocracy* and *democracy*)' (Hegel 1991, 321 (§ 280), 310 (§ 272)).
8. This organization differs from the classical idea of a 'separation of powers' insofar as Hegel replaces the judiciary with the monarch and insists that these moments mediate each other (de Montesquieu 1989, 156–66; Hegel 1991, 313 (§ 273)).
9. This has certain parallels with the idea of a mixed constitution, which can be traced all the way back to Aristotle's 'politeia' but was most famously outlined in Polybius' *Histories* (book VI), which presented the Roman Republican constitution as an ideal combination of elements from all three classical constitutional forms. The notion of the ideal constitution being a mixed constitution exercised significant influence amongst Renaissance and Enlightenment thinkers (initially via Cicero and then the rediscovery of Polybius, etc.) and circulated in Britain and North America at the time Hegel composed *Philosophy of Right* but remained relatively rare in Germany. However, a similar idea can nonetheless be detected in the Prussian reformer Karl August von Hardenberg's 1807 *Rigaer Denkschrift*, which attributed certain 'democratic principles' to the constitutional monarchy it envisaged. It became a central document of the Prussian reform movement, which may have exercised some influence on Hegel (Polybius 1979, 268ff; Leonhard 2018, 65–6, 69 – but note that Leonhard seems to misread Hegel on this point).
10. Unlike Feuerbach's inconsistent materialism (see Flohr 2021, 545–7, 554).

11. The concept nonetheless retained a certain duality. As the poor masses forced their way into the political life of Athens and began to use their majority in the assembly (often conceived and addressed as 'dēmos' by way of synecdoche) and beyond, in order to assert their interests and, ultimately, transform the political system as a whole, the old elites began to use the term dēmos in a pejorative and antagonistic sense (alongside synonyms such as *hoi polloi* [*οἱ πολλοί*] meaning 'the many,' occasionally also translated as the multitude, the masses and the majority) to refer to these intruding poor masses and their 'mob rule' (i.e., democracy) as opposed to their own traditional privileges and power, which they reconceived in similarly antagonistic terms as the power of the most excellent, i.e., aristocracy (*aristoi* / *ἄριστοι* literally means the best or most excellent). This political and semantic investment co-existed with the original meaning of the concept, but the latter came back to the fore after the poor masses prevailed. The aforementioned elites gradually gave up their resistance and instead began restyling themselves as champions of the people, muting but never quite overcoming this duality. The historical development of the concept of dēmos (and democracy) thus attests to the intrusion of (at least some of) the excluded in the political system and language that claimed to represent them and the consequent fundamental transformation of both (see Sinclair 1988, 15–6; Cartledge 2009, 6, 63–4, 74; Wolin 2016, 69–70; Ober 2008, 8; Ober 1996, 117–8; see also Lévêque 1997, 129; Conze and Meier 1972, 1–19).

    This is not to neglect the fact that the democratic institutions that stabilized in fourth century BCE Athens only enfranchised adult indigenous males, excluding approximately 70% of the adult population. This was a radical enlargement of political franchise at the time, which could, in principle, have been extended much further under the heading of democracy insofar as the populace as a whole was the referent and basis of its popular power. This would have resulted in a qualitative transformation of the political system and institutions corresponding to the initial intrusion of the poor masses of indigenous adult males (Thorley 2005, 79; Wolin 2016, 69–70; Ranciére 1999, 8–9).
12. Aristotle likewise acknowledged that most people considered there to be only two constitutional forms: oligarchies and democracies, supporting the predominance of oligarchy over aristocracy, contrary to his own schema. Moreover, he also insinuated that the wealth of 'the few' (*hoi oligoi* / *οἱ ὀλίγοι*) coincided with the virtue of 'the best' (*hoi aristoi* / *οἱ ἄριστοι*) (Aristotle 1992, 242/1290a13, 260/1294a19-20; see also Ranciére 1999, 11, 6–7).
13. Note that the translator T. A. Sinclair's somewhat anachronistic deployment of the concept of the state in square brackets in this context actually aligns with Marx's somewhat opportunistic deployment of this classical conceptual configuration as part of his intervention in his own contemporary context.

    Josiah Ober further clarifies the multiple but interrelated meanings of the Greek word *archē*, which could also mean 'beginning (or origin), empire (or hegemonic control of one state by another), and office or magistracy' (Ober 2008, 5).
14. Although he followed Plato and Aristotle (and the disgruntled Athenian elites) in substituting 'oligopoly' for 'aristocracy' as the rule of the few.
15. Josiah Ober further explains that the quantitative specification implied by conceptions of democracy as the rule of 'the many' (*hoi polloi* / *οἱ πολλοί*) was in fact an 'intentionally pejorative diminution' employed polemically by democracy's classical detractors, which was wittingly or unwittingly adopted in subsequent political thought (Ober 2008, 1, 8; Ober 1998; Raaflaub 1983).
16. The historical emergence of the concept of democracy (*dēmokratia* / δημοκρατία) in ancient Greece remains a contested topic in the scholarly literature. Herodotus *Histories* (written 440 BCE) is one of the earliest sources to discuss it and associates it with Cleisthenes, which dates it around 508–7 BCE. The *Constitution of the Athenians*, which also discusses it, was in all likelihood written afterwards. It is unknown who coined the term democracy or what they meant for it to convey. Raphael Sealey has convincingly argued that it was coined as a pejorative meaning 'mob rule' by the Athenian elite at some point during this period, whereas Mogens Herman Hansen insists that it predates it and was also used in a positive

sense by its adherents. I follow Paul Cartledge, who concludes that it was in all likelihood first coined as a pejorative term for the popular mobilizations and insurrections that characterized Athens in this period and was later recovered and resignified by its adherents (see Herodotus 1998, 289/6.131; [Xenophon] 2004; Cartledge 2009, 56–64, 140–3; Sealey 1986, 91–106; Herman Hansen 1986, 35–6).

17. For a useful overview of these reforms see Josiah Ober (1989, 54–5), Sheldon Wolin (2016, 86–7) and Paul Cartledge (2016, 61ff).

    This process of democratization slowed down and assumed a more stable institutional form after two (failed) oligarchic counterrevolutions in 411 and 403 BCE (Wolin 2016, 86; Ober 1989, 96–103; for an exhaustive account of this institutionalized or, rather, *constitutionalized* democracy of fourth-century Athens see Herman Hansen 1999).

18. Cleisthenes and many of his contemporaries generally described this political project in terms of the rather ambiguous isonomia [*ἰσονομία*], composed of 'iso-' denoting equality and '-nomos' denoting law or legality, meaning something akin to equality before the law or equality of rights (the concept was commonly paired with other compounds likewise starting with iso- such as *isegoria*, meaning equal access to partake and speak in political fora). However, the concept of isonomy remained fundamentally ambivalent and could be deployed to different effect by both (proto-)democrats and their oligarchic opponents, depending on who were considered equals (the many or the few) (Cartledge 2016, 75, 94–5; Ober 2008, 6).
19. Both writers substituted oligarchy for aristocracy as the term designating the (correct) constitutional form of the rule of the few, thus emphasizing the excellence of the elites against the multitude and collapsing the conceptual division between -kratos and -archē I have emphasized thus far (e.g., Plato 1984, III.44/291E; Aristotle 1992, 259/1293b22).
20. The anachronistic deployment of the concept of (popular) sovereignty in this translation is obviously misleading but should not distract from the point. For a brief critique of the use of this term in the context of classical Greece see Josiah Ober (1996, 120–1).
21. Wolin concludes 'the impression left by these [classical] accounts was of a natural incompatibility, a lack of proper fit between democracy and the sort of law-defined, institutionally constrained political structure represented by a constitution,' which was reiterated by 'virtually all the canonical political theorists from Plato to Jean Bodin' and would have been well-known to Marx in precisely this configuration from his studies as well as contemporary debates in Prussia, where the classical constitutional scheme remained prevalent and the concept of 'democracy' still carried connotations of 'anarchy' and 'chaos,' which were only strengthened by its subsequent association with the French Revolution (Wolin 2016, 79, 78; Leonhard 2018, 65–72).
22. Aristotle subsequently outlines a sort of mixed constitution under the heading of 'politeia,' which appears to be the proper constitutional correlative of democracy, but due to the conceptual coincidence it is impossible to determine with any certainty (Aristotle 1992, 261–2/1294a30-1294b41, 364/1318a3).
23. For other accounts emphasizing the inherent interconnection of democracy and constituent power, see Andreas Kalyvas (2018, 87–90, 104–9), Antonio Negri (1999, 1), Martin Loughlin (2004, 100; see also Loughlin and Walker 2007, 6).
24. Marx reconceived democracy as the foundation and content of all the other constitutional forms in the classical threefold constitutional classification scheme rather than a constitutional form in itself, which left an empty space in this schema that was filled by 'the republic.' Marx described this as a representative constitutional form (with significant parallels to modern liberal democracy), and while he recognized it as a significant advance over the other constitutional forms, he insisted that it remained in contradiction with its democratic foundation since it assumed the abstract and alienated form of the sovereign state separate from society (Marx 1975a, 89–90, 141, 189 (32–3, 80–2, 128–9)).
25. The separation of the supposedly sovereign state and society is unique to capitalism, which is precisely the context Marx is deploying these classical concepts in and against. In prior historical periods, such as antiquity, which they originally referred to, political status and socio-

economic position coincided, and thus the institutions of political power were not distinct or distinguishable from the class distinctions within society. It was thus possible to distinguish the official rulers within the state apparatus from their subjects outside in society, but not society as such, as a discrete entity. However, this remains inconsequential to Marx's deployment and development of them in the context of 1840s Prussia – note also that the French Revolution had rekindled the classical notion of democracy's affiliation with class struggle (Wood 1995; Leonhard 2018, 72–3, 76).

26. Marx here deploys Hegel's own assertions prior to the passage in question against him, where he (Hegel) insisted that the state is constituted by the people as they exist in their families and in civil society (Hegel 1991, 287 (§§ 264–5)) – as well as through their identification with, obedience to and participation in state institutions (Hegel 1991, 288–290 (§§ 268–9); 325 (§ 281 add)) – before he proceeds to subsume these moments into the sovereign state. Here there is also a faint echo of Aristotle's assertion in *The Politics*, following his initial definition of the constitution as 'the organization of [the state's] offices,' that 'the citizen-body *is* the constitution' – although Aristotle's definition and delimitation of the citizen-body stops him from grasping the implications of this definition (Aristotle 1992, 187/1278b [emphasis added]).
27. The term as well as some similar sentiments may very well have appeared previously. Andreas Kalyvas' expansive conceptual history traces its forebears all the way back to the early 14th century in the works of Marsilius of Padua whereas Antonio Negri starts somewhat later with Niccolo Machiavelli. However, Sieyés was the first to develop the concept of constituent power systematically and his formulations became paradigmatic in modern political thought (including Marx) as Kalyvas also acknowledges (2018, 90–104; Negri 1999, 37ff).
28. Sieyès figures in a list of references from another work on the French Revolution in the fourth notebook from Kreuznach, indicates that Marx was at the very least aware of the work. Whereas the substantial coincidence of content and concepts between *Critique* and *What is the third Estate?* (see note 29) attests to extensive familiarity. A section of *The Holy Family*, written the year after elaborates the importance of the latter (Marx and Engels 1956, 46; see also Sewell 1994, 203).
29. The most notably coincidence is Marx's description of the proletariat in 'Introduction,' which reproduces both the language and argument of Sieyès' *What is the third Estate?* Almost verbatim, substituting the proletariat for the third estate ('I am nothing and I should be everything'). Additionally, Marx's reference to the 'modern French' as the source of his conception of 'true democracy' has certain affinities with Sieyès' brief discussion of 'genuine democracy' in the aforementioned work, although Marx's frame of reference may very well be even broader (Marx 1975b, 254 (180); 1975a, 88 (32); Sieyès 2003, 94; 147n33; see also Ranciére 1999, 9).
30. Much like Aristotle, Sieyès was no democrat. He conceived 'genuine democracy' as both impossible and undesirable. Although his social and material analysis had yielded a fundamentally democratic concept of constituent power, he argued that the constituent power of the nation had to be delegated to a group of 'special representatives' – more specifically the representatives of the third estate in the Estates-General – who should proceed to constitute a 'representative system' of government. Sieyès thereby attempted to separate constituent power from the constituents (Sieyès 2003, 147n33; see also Negri 1999, 216–9).
31. Sieyès only uses it as an adjective in a distinctly apolitical sense three times in *What is the Third Estate?* (2003, 96, 101, 109; see also von Eggers 2018, 329–30; Rubinelli 2020, 33f).
32. This is not to neglect contemporary Hobbes scholarship, which suggests that Hobbes deployed the state of nature as a rhetorical device to support sovereign power (e.g. Johnston 1989; Miller 2011).
33. This is what subsequent political theological thinkers (as well as their critics, such as Giorgio Agamben) misunderstand about constituent power when they reduce it to sovereignty (e.g. de Maistre 1965, 93; Schmitt 2013, 112ff; 2006, 5–15; 2008, 109–10; Agamben 2014, 70; 2016, 266–7; see also Flohr 2023b).

34. Democracy (*qua* constituent power) is not transcendent in the sense this term has been employed thus far, society does not transcend the temporal realm or even the state (Kalyvas 2018, 108).
35. This subsumption of constituent power to the constituted power of the sovereign state is identical to the democratic short-circuit of the political theological tradition, which often invokes the popular foundations of political power, but limits it to more or less mythical founding moments wherein the people/society (as multitude) supposedly combined and transferred their rights and powers to constitute the sovereign state and its representatives, consigning themselves to permanent dormancy and subordination (Tuck 2016; Kalyvas 2005, 227; 2018, 108).
36. As Daniel Lee has convincingly argued 'sovereignty in all its forms – and above all, popular sovereignty – was regarded by its adherents, as intrinsic to, and inseparable from, the concept of the state and its authority' (Lee 2018, 10; see also Loughlin 2010, 184ff).
37. Marx does actually seem to falter at one point in the unrevised manuscript in a formulation that can be read as implying a notion of popular sovereignty. However, it occurs in the context of a very close commentary on Hegel's transcribed comments on paragraph 270, which reproduces Hegel's wording to tease out its internal contradictions. It never recurs and does not impact Marx's critique of political theology or his concomitant conception of democracy as a decidedly non-sovereign form of self-determination (Marx 1975a, 86 (29–30)).
38. Both Marx and Hegel also use the term in a more restricted sense, referring to the bourgeoisie (see Flohr 2021, 558–9).
39. This passage draws on Flohr (2021, 547).
40. This is relevant to remember when considering the brief and somewhat confounding passage towards the end of the manuscript where Marx suggests working towards 'the greatest possible extension of […] active and passive suffrage;' a passage which has often been identified with his conception of true democracy but should rather be understood as a means of mobilizing the masses and, if achieved, exposing the inherent contradictions underlying the illusory universality and sovereignty of the state (Marx 1975a, 191 (130–1)).
41. Note that while Marx's use of the concept of true democracy relies on these historical and contemporaneous connotations to differentiate it from other notions of democracy, it is by no means reducible to them. True democracy is not the romantic return to an idealized version of classical Greek democracy or the French Revolution but denotes the revolutionary overthrow of the distinctly modern institutions of sovereign state and the system of private property, which initiates the collective and continuous self-determination of society.
42. Indeed, there are numerous other central contradictions already evident in contemporary society including, but far from limited to, hetero-patriarchy, white supremacy, and colonialism, which Marx's unfinished critique of political theology does not address. However, its theoretical configuration both could and should be developed to accommodate critical and revolutionary perspectives on these contradictions and their complex interrelations.
43. I use the term 'permanent revolution' in the sense of a permanent constitutive process rather than the concept subsequently developed by Marx (and Engels) and further refined by Leon Trotsky.
44. Suggestions might be made based on relevant historical examples and experiences. However, they were scant at the time and largely beyond the scope of *Critique*. Yet, Marx seems to make one implicit and underdeveloped reference to experiments with imperative mandates (Marx 1975a, 193–4 (132–3); see also Tomba 2018).

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