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Front Pages

Athens Journal of Philosophy

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Gregory T. Papanikos
President
ATINER

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- **Dr. William O'Meara,** Academic Member, ATINER & Professor, Department of Philosophy and Religion, James Madison University, USA.

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Abrahamic Theism, Free Will, and Eternal Torment

By Stephen J. Sullivan[*]

Atheist philosophers Jean-Paul Sartre and Kurt Baier, though from different philosophical traditions, shared a common concern about the traditional Judeo-Christian-Muslim doctrine that human beings are the creations of a Supreme Being. For Sartre, in "Existentialism is a Humanism" (1946), a God who designed us would thereby detract from our freedom and dignity. For Baier, in "The Meaning of Life" (1957), the idea that God designs us to serve his own purposes was deeply offensive in treating us as artifacts, domestic animals, or slaves. Indeed, Baier said explicitly what was implicit in Sartre: that the divine creation of humans as would violate Immanuel Kant's respect for persons principle. But this Kantian objection is badly flawed in ignoring the crucial role of human free will in traditional Abrahamic theism. Still, if we focus not on the divine-creation doctrine but on the doctrine of eternal torment for non-worshippers of God, then traditional Abrahamic theism does arguably undermine human freedom and dignity. For the threat of eternal torment is extraordinarily coercive.

Keywords: *theism, artifacts, free will, eternal torment, coercion*

As one of the pre-eminent philosophers of the existentialist/phenomenological tradition, Jean-Paul Sartre needs no introduction even to professional philosophers outside that tradition. Though less distinguished, Kurt Baier is well-known and respected in the analytic tradition. Sartre published very little in ethics, while Baier's writing is confined largely to moral philosophy. One would not expect these two thinkers to have much in common in their philosophical work, and indeed they don't. But in this paper I will show that in their work there is a surprising convergence on a Kantian objection to traditional Christian theism, in particular to the traditional Christian account of God's creation of humankind.

Before I go any further I should note two limitations of this essay. First, the traditional account is probably better described as Abrahamic than as Christian, since it is also found in some forms of Judaism and (especially) in Islam. But I will set this point aside despite incorporating it in my title, for Baier focuses explicitly on Christian theism and Sartre may well have it implicitly in mind. Second, I will rely on two main primary sources: Sartre's famous 1946 essay "Existentialism is a Humanism" and Baier's somewhat neglected 1957 essay "The Meaning of Life." So far as I know, Baier never retracted the Kantian objection in his essay (which he reprinted in a later collection (Baier 1997). But Sartre's essay occupies an uneasy place in his voluminous writings, and given my linguistic limitations I cannot rule out the possibility that he did later abandon the objection in work still unavailable in English translation.

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In Section One, using the two primary sources I have mentioned, I will explain Sartre and Baier's Kantian argument against traditional Christian theism. In Section Two I will offer a refutation of the argument, including a Sartrean reply to Sartre. Finally, in Section Three I will defend a related argument against traditional Christian theism that I think would be acceptable to both Sartre and Baier.

Section One: The Sartre/Baier Convergence

In broad outline, the traditional Christian doctrine of God's creation of human beings is familiar: as Creator and Intelligent Designer of the universe, God creates human beings in accordance with a plan or purpose. Both Old and New Testaments compare God to a potter and humans to the clay he molds (Isaiah 45: 9, Romans 9: 20-22). Likewise, Sartre focused on God's activity as an "artisan" who creates humans to have a certain nature:

> …[T]he conception of man in the mind of God is comparable to that of the paper-knife in the mind of the artisan: God makes man according to a procedure and a conception, exactly as the artisan manufactures a paper-knife, following a definition and a formula. Thus each individual man is the realization of a certain conception which dwells in the divine understanding….Man possesses a human nature. (Sartre 1975, p. 348)

Like Sartre, Baier emphasized the point that in the traditional Christian doctrine of divine creation, human beings are "divine artifacts", so they were zeroing in on the same target. But Baier did note that there is a bigger picture: a cosmic plan that includes the Fall, the Atonement, Judgment Day, and the afterlife (Baier 2008, pp. 101, 103).

Why did they reject the traditional Christian account of God's creation of humankind? Sartre put the point this way:

> …[T]here is no human nature, because there is no God to have a conception of it….Man is nothing else but that which he makes of himself. That is the first principle of existentialism. And this is what people call its "subjectivity," using the word as a reproach against us. *But what do we mean to say by this, but that man is of a greater dignity than a stone or a table?*....Man is, indeed, a project which possesses a subjective life, instead of being a kind of moss, or a fungus or a cauliflower….Man is responsible for what he is. (Sartre 1975, p. 349, emphasis added; see also pp. 357–358)

It is clear that in Sartre's view, a divinely created human nature is incompatible with human freedom and thus with human dignity. Tables (and stones and plants) possess neither freedom nor dignity: in the language of Immanuel Kant, they are mere means, instruments, things, or objects. In "Existentialism is a Humanism," Sartre never explicitly mentioned Kant's famous respect-for-persons version of the Categorical Imperative: human beings are to be treated not as mere means, but as

ends in themselves (Kant 1969, pp. 52–54, Kant 1983, pp. 127–128). But he was surely invoking it nevertheless, just as—elsewhere in the essay—he made open use of the universal-law formulation of the same fundamental moral principle (Sartre 1975, pp. 350–351).

As for Baier, having told us that on the traditional Christian account human beings are artifacts, he expressed his strong disapproval in the following way:

> Man is in a different category…[from things that have purposes, such as gadgets and windbreaks]. To attribute to a human being a purpose in that sense…is offensive. It is degrading for a man to be regarded as merely serving a purpose. If, at a garden party, I ask a man in livery, "What is your purpose?" I am insulting him. I might as well have asked, "What are you *for*?" Such questions reduce him to the level of a gadget, a domestic animal, or perhaps a slave. I imply that *we* allot to *him* the tasks, the goals, the aims that he is to pursue; that *his* wishes and desires and aspirations and purposes are to count for little or nothing. *We are treating him, in Kant's phrase, merely as a means to our ends, not as an end in itself.* (Baier 2008, pp. 100–101, emphasis added to final sentence)

It is clear not only that Baier was appealing to Kant's respect-for-persons principle but also, I think, that human freedom and dignity were important to Baier, as they were to Sartre.

Section Two: The Glaring Flaw in the Kantian Objection

There is a fairly straightforward refutation of Sartre and Baier's Kantian argument against the traditional Christian account of the divine creation of humankind, and it is surprising that neither philosopher acknowledged it. *Human free will* is central to traditional Christian thought: God gives us the ability to decide freely whether or not to worship him and to accept his plan for us. So in creating us he is not treating us as artifacts (or stones, plants, or domestic animals), which lack free will. Nor need he be treating us as slaves, since he grants us considerably more control over our lives than human slaveowners normally grant slaves. Sartre seems to have overlooked this last point when he asked in his ethics notebooks of 1947-1948, "How can there be freedom in a religion whose principle is the master (Lord)?" (Sartre 1992, p. 18) (See Sullivan 2008 for extended discussion of the "divine-ownership thesis"—accepted by Thomas Aquinas, John Locke, and Kant himself, among other Christian philosophers—that God literally owns human beings.)

I don't mean to deny that some important Christian thinkers, such as Martin Luther and John Calvin, have rejected human free will by upholding the view that every event—including human choices—has been predetermined or predestined by God from all eternity. Nor do I mean to deny that there may be traces of this fatalistic sounding view in both the Old and the New Testaments (e.g., Proverbs 16: 9; 19: 21; 20: 24, Ephesians 2: 8-10). But predestination is extraordinarily difficult to reconcile with the central Christian doctrine of Judgment Day, at least

if God is supposed to be morally perfect: how can God hold us morally responsible for choices and actions he necessitates that we make? (Sullivan 2008, p. 192 n. 53) Perhaps that is one reason that human free will appears to be more central than predestination to the history of Christian thought.

Oddly enough, early in "The Meaning of Life" Baier explicitly indicated his own awareness of the role of free will in traditional Christian theism (Baier 2008, p. 83; see also 104 on predestination); yet he apparently forgot it when he endorsed the Kantian objection. Sartre too should have known better: in his play *The Flies* he had Orestes proclaim to his creator Zeus, "I *am* my freedom. No sooner had you created me then I ceased to be yours" (Sartre 1989, p. 117). If Zeus creates humans to be free, then why not the Christian God? (Interestingly enough, Albert Camus seems to make the same mistake in *The Rebel* (Camus 2008, p. 108).)

Given the all too humanlike behavior of the Greek gods, Orestes' proclamation points the way to a human/parent analogy that further undermines Sartre and Baier's Kantian objection to the divine creation of humankind. When a human couple (or for that matter an individual) decides to have a child, they typically have a plan or set of purposes in mind with at least some of the following elements, among others: (a) living a more fulfilling life through childrearing; (b) loving and caring for the child for its own sake; (c) bringing greater satisfaction to the grandparents; and (d) carrying on the family line. Though some cultures place greater weight on filial duty than others, in no modern culture (so far as I know) is it customary for parents to attempt to prevent their adult children from substantially exercising their free will in living their own lives. Even if such interference were customary in some modern cultures, the traditional Christian God—so often conceived as Divine Parent—could still be modeled on parenthood in cultures that respect the autonomy of adult children. So far I can see, not even Sartre's interesting, difficult discussion of the parent/child relationship in his ethics notebooks (Sartre 1992, pp. 189–195, especially 192 on the God/human-parent analogy) enables him to meet this point.

Section Three: A Stronger Objection

Despite the failure of Sartre and Baier's Kantian argument, there is a related objection that seems much more promising (though far from conclusive). This new objection, which takes human free will for granted, focuses not on the traditional Christian doctrine of human creation but on the doctrine of eternal damnation—indeed eternal torment--for those who fail to worship God properly through Jesus Christ (Mark 9: 45; Matthew 25: 41, which even damns believers who fail to love their neighbor sufficiently; Revelation 20: 14-15). Baier mentioned this doctrine in passing and apparently found it morally absurd (Baier 2008, pp. 103, 105); he even noted its role in the traditional Christian account of God's cosmic plan for human beings (103). But he evidently overlooked its relevance to his Kantian objection and to the reality of free will. Let me indicate that relevance now. (I have benefited in what follows from helpful discussion with students in my Fall 2015 Edinboro University course Introduction to Philosophy and Values.)

Note first that eternal torment is not merely divine *punishment* for human beings who fail to worship God properly or at all (for short: non-worshippers). It is also an explicit *threat* of grievous harm (to put it mildly!), and a *highly credible* one at that: there is no escape from an all-powerful, all-knowing God. As such the threat of eternal torment is inherently *coercive*. And that raises the question of whether human beings granted free will by their Creator are genuinely and fully *free to choose whether or not to worship God*, free to follow or not follow his plan for them.

Take a simple and painfully realistic example. You are an aging, unarmed, slow-moving philosopher, and one night a desperate-looking armed robber points a gun at you and says, "your money or your life." In understandable fear for your life, you quickly oblige him. Surely it is a truism that in doing so you do not genuinely and fully act of your own free will: the robber's coercion nullifies it (or at least reduces it so much that you are not responsible for handing the money over). There is a vast philosophical literature on the complex nature of and relationships between free will, responsibility, and coercion, but any theory that denies this truism is quite implausible on its face.

Now consider a more complicated and more artificial case. You have been raised by seemingly loving but fanatically religious parents in a cult community cut off from the rest of civilization; they have your future in the community mapped out for you. When you reach the age of reason your parents inform you that you were conceived and raised to serve their glorious cultish purposes and that if you refuse to cooperate fully then you will be tortured continually until you change your mind or die, whichever comes first. In understandable fear of these consequences, and with nowhere to turn, you pledge your complete cooperation. Again, it is a truism that due to coercion you are not acting of your own free will (or at least are not responsible) in cooperating.

Let's turn at last to the case of divine threats of eternal torment. Here, I suggest, it is clear, partly on the basis of the foregoing examples, both that God is coercing human beings into complying with his plan for them and that he is thereby undermining their free will. (More precisely, he is doing this to those who are aware of his existence, nature, and expectations; his damning of others to eternal torment who lack this awareness raises familiar and powerful moral criticism that deserves separate discussion on another occasion.) Note too that in all three cases we may well want to appeal to Kant's respect-for-persons principle and accuse the coercers—the armed robber, the fanatical parents, and God himself--of treating human beings as mere means to their own ends or goals.

The coercion objection to the traditional Christian doctrine of eternal torment for non-worshippers may engender some uneasiness. For one thing, the criminal-justice system threatens serious harm to prospective criminals, but does that really mean that they fail to act freely in obeying the law, or that the system is treating them as mere means? For another, the threat of eternal torment goes into effect only posthumously, so that individuals may delay until late in life their decision to commit themselves to God.

Regarding the criminal-justice system, I would make three points. First, as implied earlier, the credibility of human threats of legal punishment cannot

compare to that of divine threats of eternal hellfire: the latter involve certainty, while the former are uneven at best given the vagaries of law enforcement, prosecution, imprisonment, etc. This means that that the divine threats are overwhelmingly more coercive than the human threats, other things being equal. Second, eternal torment is far harsher than any human punishment, and so its threat is once again much more coercive, other things being equal. Third, the imposition of legal punishment on criminals is generally a matter of holding them accountable for their harming or violating the rights of other human beings who are ends in themselves. God's imposition of eternal torment for non-worshippers does no such thing. (Does God himself have rights that we violate by refusing to worship him? If we do then it is still hard to see how eternal torment is a just punishment. But that is another topic for another paper, perhaps one stressing that deliberate infliction of intense suffering as punishment is torture, indeed a blatant violation of human dignity, and as such is inherently wrong (Luban 2012, pp. 242–243)).

As for the disanalogy between delayed enforcement of the divine threat against non-worshippers and immediate enforcement of legal threats against prospective criminals, I would offer three more comments. First, surely any such delay is more than offset by the increased coerciveness mentioned in the preceding paragraph. Second, the divine threat applies even to individuals, such as very elderly ones, who don't have long to live. Finally, God's giving us the possibility of a near lifetime of non-Christian living prior to (say) deathbed repentence may seem generous, but that's only because we're thinking of earthly lifetimes. Eighty years or so of non-Christian living are an infinitesimally small period of time compared to an eternity of torment.

This coercion objection to the traditional Christian doctrine of eternal torment not only shares Sartre and Baier's focus—explained in Section One--on human freedom and dignity, but also takes very much into account (as they do not) the traditional Christian defense of human free will. Moreover, the objection commits no obvious errors, and so may well undermine traditional Christian theism despite the failure of the Kantian argument. I conclude that Sartre and Baier, had they but known of it, would have been well-advised to take it very seriously.

In fairness, however, let me add that the coercion argument against traditional Christian theism has one significant disadvantage compared to Sartre and Baier's Kantian argument. The latter, but not the former, applies just as much to *moderate* versions of Christianity. What I mean is this. Virtually all contemporary Christians still accept the doctrine that God made human beings in God's own image; but many have serious doubts about eternal damnation—and all the more about eternal torment—for non-worshippers. So although all Christians who uphold human freedom and dignity should find the Kantian objection troubling if sound, nontraditional Christians need not be troubled by the coercion objection. Indeed they may already have given up—for independent moral reasons--on eternal damnation for non-worshippers. (For helpful survey data of Americans, including American Christians, see Pew Research Center 2021. For important scholarly work on diverse Christian perspectives on the afterlife, see Ehrman 2020.)

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On Smrti

By E.H. Rick Jarow[*]

"April is the cruelest month, breeding Lilacs out of the dead land, mixing memory and desire… " So, begins T.S. Eliot's iconic poem, "The Wasteland," challenging the memory of Chaucer's April from Canterbury Tales, as being a delightful month to go on pilgrimage. Platonic teachings emphasize that you don't create, you just remember. Might the inverse might also be true, "You don't remember, you just create." As the oneirocritic, Robert Bosnak, contends, you do not actually remember your dreams. You remember your memory you recreate the dream in this time. Since the challenges of post-modernism, this is no longer a far-fetched idea. The eminent historian of immigration, Deborah Dash Moore, defines history in this regard, as "a search for a plausible narrative." "History" is not a record of what happened, but rather, is a record of what we believe happened, or what we want to believe happened. This brings to the fore Foucault's documenting the relationship of knowledge to power, as well as Freud's assertion that material which is unacceptable to the ego, is disguised, in order to make them palatable. This places the notion of memory in a different light. There are incidents that occurred fifty years ago that seem as if they occurred five minutes ago. The depth psychologist and champion of the imagination, James Hillman, referred to this process as "soul-making." Back to T.S. Eliot: when he studied Sanskrit at Harvard, he was certainly aware that the Sanskrit word for memory, smara (from which smrti "that which is remembered," is derived) is also an epithet for Kama Deva, the Indian Cupid. Hence, the mixing of memory and desire. Perhaps, in this light, the study of history, which is a form of collective memory, is also a form of mass therapy, an effort to process the collective past. Hegel and Marx both believed classical India to be an inferior civilization because it had "no history," but collections of mythologies. Maybe classical India, however, held an awareness that all memory is myth, a word which in its early Greek form literally translates as "plot." Jesus declares (in the Gospel story) "Let the dead bury the dead." As the Jesus narrative exemplifies, however, burying the dead is no easy task. Perhaps our ongoing, ever-morphing narratives, allow us an oblique opportunity to connect with and process our pain. And in this theatre of memory, the goal may not be to accumulate or catalogue what has been spoken (itihasa), but look a good miller, to process the grain into its essence: from what has passed, and is passing, and is to come, into what always is. Perhaps, the pilgrimage of the mind, on its endless perigination of story, is meant to ultimately take us to love, but that may be unspeakable.

Keywords: *memory, desire, narrative, history, myth, power*

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"*April is the cruelest month, breeding Lilacs out of the dead land, mixing memory and desire, stirring dull roots with spring rain*." So, begins T.S. Eliot's iconic poem, "The Wasteland," challenging Chaucer's memory of April from *Canterbury Tales*, as being a delightful month to go on pilgrimage. Spring may indeed be an enchanting mud luscious season of rebirth, but like any birth, it can also be difficult, painful, and filled with tribulation. Remembering and narrating our discomforts and even our agonies generally hold a different quality than our stories of triumph, but something compels us to do so. Indeed, tragedy is, more often than not, elevated over comedy in a culture's tapestry of narratives. The following reflection was precipitated by an event: an accident that took place in Uttarkashi, Northern India. While hiking down from a mountain temple to the god Shiva, I slipped and fell through a barbed wire fence and down a ravine. I was carted off to the hospital, a bloody mess, but lived to tell the tale.

About six months after the above incident, I reviewed the notes I had written on the day following the occurrence and noticed that my memory of the accident was significantly different than what I had written on the day after it had happened. My companion on that journey had often joked with me about my "*smrti*," (memory), or rather my lack of *smrti*, my often inability to recall what happened yesterday or even an hour ago. Perhaps the disjunction between my written and later remembered account of the event is living proof of Plato's contention that the written word would obfuscate memory and make us all the poorer for it. In a somewhat related vein, one could view such deficiency of recall as an ominous sign of aging, with events fading further and further into some sort of collective amnesia.

I say "ominous" because I witnessed my mother lose her memory, something that contemporary culture calls "dementia" or Alzheimer's disease. My mother, who had a very strong will and intellect that she was justly proud of, panicked when her grip on her known environment loosened. She would call me in the middle of the night saying things like, "I need "markers right away." This was to write things down, just about everything, so she would not forget where things were placed or what day it was, etc. Eventually she forgot anyway. She forgot her name, my name, where she was, and where she had been. But some traces remained. She may have forgotten that I was her son, but that did not really seem to matter: whenever she saw me, she would hug me and pat my head. Clearly, something in her was in touch with something in me.

In Greek philosophical theories of recollection (Plotinus), memory only exists outside of the *Nous* and is ever weakened by time. Likewise, "You don't create or learn, you just remember," affirms Plato's theory of recollection[1]. But I wonder if the inverse might also be true, "You don't remember, you just create." Indeed, the temporal aspect of memory is said to be a function of the imagination, for the Muses who govern inspiration (the former word for creativity) are the daughters of Memory. Likewise, the oneirocritic, Robert Bosnak, has continually demonstrated that you do not actually remember your dreams. You remember your memory;

[1]*Phaedo,* 72-76. fellowship with the pure and uniform and divine." The main task of philosophyis, therefore, not to impart some new knowledge, really unfamiliar to the soul, but to help it to remember. Ignorance is oblivion, knowledge is recollection, "learning is just recollection."

that is, you recreate the dream in current time (Bosnak 1996). Since the arrival of post-modernism, this is no longer a far-fetched idea. The eminent historian of immigration, Deborah Dash Moore, following post-modern insights, has defined history as "a search for a plausible narrative." "History" is not (and cannot be) a record of what happened, but rather, is a record of what we believe happened, or what we want to believe happened. Perhaps unwittingly, the New York Times slogan "All the news that is fit to print" typifies this. More recently, there are scores of neuroscientific studies on Memory "Reconsolidation," (Haubrich and Nader 2018) the process by which the brain is said to fill in lacunae well after any factual occurrence. Perhaps this is all a symptom of our cultural descent into prosody. In classical cultures of Greece and India, for example, what was known and what needed to be remembered was transmitted through verse, the remembered master-narrative of a community, with the bard being the repository of the narratives that held communities together.

The question may then arise, "Who decides what is fit to print, and who decides what is misinformation?" If you have waded through the work of Michelle Foucault, something that the mainstream media has not, you are aware that "knowledge" has ever-existed in a relationship to power. I remember traveling through communist bloc countries during the era of Soviet domination. The first monument you would see upon entering a major city was always the radio tower; for whoever controls the information controls the culture.

What if the most stringent censorship of information, however, comes neither from the government nor the news media. Perhaps we need to revisit Freud, who in the West, first detailed the censorship mechanisms in our dreams. Material that is unacceptable to the ego, defined here as "our imagined sense of self-identity," does not get into our personal New York Times. It is disguised, like coating bitter pills with sugar, to make them palatable.

This places the notion of memory, literal memory in any case (as distinguished from other forms of "remembrance"), in a different and perhaps more diffused light. When I look over my own issues with forgetfulness, I see that while I may not remember what occurred five minutes ago, there are incidents that occurred fifty years ago that seem as if they occurred five minutes ago. The depth psychologist and champion of the imagination, James Hillman, referred to this process as "soul-making," echoing D.H. Lawrence's rhetorical question: "Have you built your ship of death?" (Lawrence 1932).[2] I assume that this means the construction of the stories, themes, and memes we may take with us when we exit this stage. After all, the overwhelming majority of our memories and even our "landmark events" are destined to be forgotten. Does anything, can anything, in fact, ever get through, or do our ships just help us get toward the edge of the abyss? (Hillman 1817).

I wonder, then, in my own case, if my lack of memory is more or less an unconscious choice. After all, how many things can one take seriously? My name?

[2]*Have you built your ship of death, O have you?*
O build your ship of death, for you will need it.
The grim frost is at hand, when the apples will fall
thick, almost thundrous, on the hardened earth.

Well, I have had three different official nomenclatures in this lifetime and a number of "knick-names" in communities that I have been a part of. The process of forgetfulness and compensation is clearly evident in the contemporary culture of data overload in which just about everyone walks around with a portable brain in hand, the mobile phone. There's just too much information for one skull to hold.

Back to T.S. Eliot: when he studied Sanskrit and Buddhism at Harvard, he was certainly aware that the Sanskrit word for memory, *smara* (from which *smṛti*, "that which is remembered," is derived) is also an epithet for Kama Deva, the Indian Cupid or God of Desire. Hence; the mixing of memory and desire. Perhaps, in this light, the study of history, which is a form of collective memory, can be envisioned as one form of mass-therapy, an effort to process the collective past. Hillman takes this a step further, in *Lament of the Dead,* his discussion of Jung's Red Book with Sonu Shamdasani, where he insists that the true task of humanity is to come to terms with the dead (Hillman and Shamdasani 2013), which I would characterize as the slice of human history within our conscious and unconscious purview. In this sense whatever we remember is what we need to process (i.e., reconcile with), just as what we never can forget (holocausts, disasters, plagues, reigns of terror) are the mountains of process we are asked to climb. On the other hand, there are many like situations and events that we want to forget, or that we conveniently forget, only to have them rear their ugly heads at the most unexpected and inopportune times.

There are some "spiritual bypass" teachings that employ rhetoric like "nothing has ever happened," since the world of form is seen as an "illusion." In this view, memory is a long step down from the timeless contemplation of the Absolute, the "Good," which is arguably the true remembrance. While temporality is undeniable, to say "Nothing has ever happened" does not ring true. A dream is still happening if you are in it; especially if you are falling down a steep ravine! In the marvelous text from Classical India, *Yogavasishtha*, Vasishtha is asked by his interlocutor, Rama, about the difference between a dream and a lifetime[3]. From the point of view of death, says Vasishtha, there is no difference at all. Indeed, desire and memory may fuel the dream, but what we actually remember of it when we wake up is an open question. Now, in the *Yoga-Sutras*, *smṛti* is declared to be a *vṛtti* (YS 1.11), a transformational state of mind with which one identifies. It is a sort of *kleśa* or affliction (YS 2.3-9) and an *antarāyas* or obstacle (1.29-40) to the attainment of yoga, but it appears to be a necessary *kleśa* for humanity (Miller 1996). I am not sure if the same can be said for chronology. Yes, time is passing, but is it moving forward (as we are conditioned to believe), around in cycles, or doing figure-eight summersaults on the backdrop of eternity? Perhaps, the "*kleśa* aspect" of time is the particular story that we tell ourselves about it, admittedly partial, but apparently essential, for so many stories ever-abound.

One time, while visiting my mother in her dementia unit, I met a woman in a wheel chair who had just come into the ward. She was dazed and confused to say

[3]*Vasishta Yoga Samhita* (योगवासिष्ठम्) is a historically popular and influential syncretic philosophical text of the Yoga tradition, dated to the 6th CE or 7th CE — 14th CE or 15th CE. The complete text contains over 29,000 verses. The short version of the text is called *Laghu yogavāsiṣṭham* and contains 6,000 verses.

the least and turned toward me. "I don't know where I am," she said, pitifully. I dutifully explained to her that we were in a town in upstate New York, New Paltz (which interestingly enough is a skewed memory of the original Huguenot name, Neu Falles), but I could not help thinking that some yogis meditate for eons to reach such a state. If you have not been prepared for it, however, you will not recognize it. The Tibetans tell us, in this vein, that after death, everyone experiences the clear white light of pure awareness, but almost no one can recognize it, and so we go stumbling back into *samsara*, repeated death and birth, reenacting and repeating the stories that bind us.

But just what is this *smṛti* that we identify with? I once attended a ceremony in which we were guided in the use of psychoactive plants. When the evening was over, I turned to a fellow participant and said, there is no way I can drive home, I cannot remember the first road to take. "Don't worry," my friend replied, "the machine will take you home.' I am still unclear about exactly what he meant by "machine". Was it my GPS? My car, or perhaps my mind? Indeed, in the classic Indian text, the *Bhagavadgītā*, the mind is likened to a machine and its memories therefore are envisioned as purely mechanical. The *Gita* (18.52) literally states that all living beings are revolving around on a machine of *māyā*, illusion.

Hegel and Marx both believed classical India to be an inferior civilization because it "had no history." Instead, they were said to have collections of mythologies. Maybe classical India knew something, however, that post-modern thought is just arriving at: that all history and thus all memory is myth, a word which in its early Greek form literally translates as "plot." We are, all too often, however, encouraged to identify with one particular story and view anything else to be misinformation, myths that are not true. With the advent and development of ever-increasing subjectivity and focus on individuality, the processing of narrative proves to be increasingly frustrating, as there are multiple versions of just about everything: the post-modern perspective demands simultaneous multiplicity.

Mnemosyne, mother of all the muses, is after all memory herself, and she gives birth to all the arts and letters, music, melody, math and the sciences. This is quite a different riff on the idea that "nothing has ever happened." Perhaps we need not discard *smṛti*, but not fixate on it: for in addition to what is remembered, there is the vast open spaciousness, the clear white light of openness. Giving it a name, is giving it a memory, for language is remembered. As I was falling through the fence and down the ravine, there were no words, no thoughts. Many have had a similar experience when almost getting hit by a moving car. It lifts you out of whatever narrative is playing in the mind and moves you right into the brilliance of this moment.

George Santayana's dictum that we study history so as not to repeat it may be a gross misnomer; for we do keep repeating it, as anyone who has lived long enough is apt to tell you. Oh, but we have progressed! When Thoreau was told how wonderful it is that, with the invention of the telephone, someone in Maine can now talk to someone in Kentucky, he wryly remarked that is all well, providing that Maine and Kentucky actually have something to say to each other[4].

[4]Thoreau, Henry David, *Walden: "We are in great haste to construct a magnetic telegraph from Maine to Texas; but Maine and Texas, it may be, have nothing important to communicate...*

Indeed, one of the principal functions of language is to create boundaries of belonging, and the sense of belonging may be our root need. Hence, we cling to it with ferocity

I find myself going over the accident regularly; not because I want to, not to understand, interpret, or to learn anything in particular from it, but because, as with the sudden heart attack I once suffered, it awakened something intangible that keeps demanding attention, that wants to be remembered, even if such "memory" is a process of constant re-creation amidst the utter temporality of everything. But this, like all other memories and dreams, eventually fades, even if the fading process lasts for centuries - as in collective cases. I guess I am writing this to console myself. Don't' worry, don't disrespect the memories that bind our minds and hearts, just understand that they are creative stories, musings of our being.

There may be other dimensions to memory however. Perhaps the literalizing of memory as a recording of the past offers access to only the lower dimension of its possibilities. The tenth century Kashmiri philosopher and spiritual adept, Abhinavagupta, described memory, especially poetic memory, not as a discursive recollection of past events, but as an intuitive insight, a recognition (*pratyabhigña*) that transcends personal experience and opens one to a wider universe through the evocation and awareness of beauty[5].

Jesus declares (in the Gospel story) "Let the dead bury the dead." As the Jesus narrative exemplifies, however, burying the dead is no easy task. Perhaps our ongoing, ever-morphing narratives, allows us an oblique opportunity to connect with and process our pain. And in this theatre of memory, the goal may not be to accumulate or catalogue what has been spoken (*itihasa*), but look a good miller, to process the grain into its essence: from what has passed, and is passing, and is to come, into what always is. Perhaps, the pilgrimage of the mind, on its endless peregrination of story, is meant to ultimately take us to love, but that may be unspeakable. The last words of this reflection, therefore, go to the classical Sanskrit poet, Kalidasa, who in the fifth chapter of his play, Shakuntala, offers the classical Indian version of Plato's *anamnesis.*

Seeing rare beauty, hearing lovely sounds,
even a happy man becomes strangely uneasy.
Perhaps he remembers, without knowing why,
loves from another life buried deep in his being. (Sakuntala V.2)

[5]See Stoler Miller (1984, p. 40). Mammata (*Kāvyaprakāśa*, X. 199) sees memory as a metaphorical poetic phenomenon (*alaṃkāra*) and is described as the recollection of an object as it was experienced when a similar object was seen (324). Other poeticians emphasized the relationship between visual perception (*dṛṣṭa*) and recollection with a more generalized concept of recollection so that the recollection of an object arising from perception is always related to a like object previously seen. Hence, what is termed "memory" is envisioned as an ongoing process of likeness (metaphor) and never as a literal reportage of "what happened."

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Jurisprudence: The Study of the Rule of Law in a Republic

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When we understand the ontological, political and legal underpinnings associated with the concept of freedom, liberty and rights, we understand the relationship between rights and laws. Rights can be understood as liberties or as laws. Liberties can be understood as de facto rights or as de jure rights. It is de jure rights that are recognized as laws that provide the basis for the rule of law. It is the rule of law that provides the basis for equal rights and equal justice in an ideal republic. Rights, laws and the rule of law are distinct. Rights are self-evident truths. Laws are imperatives backed by sanctions (John Austin). The rule of law is a principle that purports that the recognition de facto and de jure rights provide the basis for political, social and economic justice. People live by the rights recognized by law. As such, the rule of law advocates two fundamental underpinnings in a republic: (1) the recognition of rights as the basis for equal rights and equal justice, and (2) the recognition of law as the basis for governance. (H.L.A. Hart). However, since the recognition of law is the recognition of rights, the recognition of rights precedes the governance by law principle. What is fundamental to the rule of law is that it recognizes rights, legitimizes political rule and administers equal/blind justice (Meyers, 1213). As such, no branch of government can weaponize laws to terminate recognized individual rights. The maxim of the republic should be – while anyone can be the ruler, everyone lives as free as the ruler. Majority rule and protection of self-evident individual rights is fundamental to an ideal republic.

Keywords: *law, equal rights, equal justice, impunity, rule of law*

Introduction: Philosophical Underpinnings that Define the Relationship between Rights and Laws

The distinction between freedom, liberty and rights are noteworthy. Freedom is an ontological or existential matter in that the facticity of freedom (Sartre 1977, p. 625) the inescapability of making choices provides the basis for the freedom of choice. Liberty is a political or social matter, in that the rights of each are based on the strength of many (Mazzini 1898, pp. 57-63), and there can be limits to liberties only as prescribed by law[1]. Rights are a moral or legal matter. Rights are understood as self-evident truths[2]. Rights as self-evident truths can be understood either as liberties or as laws. Rights as liberties can be understood as *de facto* rights or *de jure* rights. It is the recognition of *de jure* rights that is the basis for laws. Rights as

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[1]The Declaration of The Rights of Man and the Citizen, 1789: https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen.

[2]The Declaration of Independence 4 July 1776: https://www.archives.gov/milestone documents/ declaration-of-independence.

laws as Austin would argue are imperatives backed by sanctions (Murphy and Coleman 1990, p. 19). Understanding rights as being either legal or moral permits us to define what counts as legal or illegal behavior, and what counts as moral or immoral behavior. Understanding *de jure* rights as laws constricts punishment only for illegal behavior and not for immoral behavior. The freedom to act, the liberty to act and the right to act are different aspects of recognizing rights. The recognition of rights is the recognition of law or better the recognition of law is the recognition of rights. When rights are recognized as *de jure* rights, we have the basis for the rule of law. Once rights become *de jure* rights, rights entail obligations, regulations and sanctions. That is why, while we have the freedom to lie, we do not have the right to lie because de *jure* rights entail responsibilities and involves sanctions. It is the rule of law that defines what is permissible, hence not punishable, and what is not permissible hence punishable.

What is important in a republic is the assurance of rights to its citizens. However, what is noteworthy in an ideal republic are equal rights, equal justice and equal protection. As such, two philosophical principles of the rule of law — namely the recognition of rights (Plant 2006, p. 30) and the recognition of laws are what ensure equal rights, equal justice and equal protection. H.L.A. Hart argued that the recognition of law (Murphy and Coleman 1990, p. 30) is the basis for the rule of law. In this paper it is argued that since recognition of rights precedes the recognition of laws, it is the recognition of rights that is the basis for the rule of law. Since rights as liberties are self-evident truths, laws do not define rights they only ensure *de jure* rights. The rule of law warrants the enforcement of laws (Bart n.d.) and checks impunity (Harrison and Pukallus 2018). The single objective of the rule of law is to enforce equal rights and equal justice. The Declaration of Rights of Man and the Citizen (1789, French revolution), implicitly purports for equal rights and liberties that can be limited only by law[3], as the basis for the rule of law. Contemporary constitutions explicitly purport for the recognition of both inalienable and alienable rights to ascertain the basis for the rule of law. What is legal is what is recognised by law — be it rights (Meyers 2013, p. 407), obligations, regulations or sanctions. Laws ensure rights and justice because the rule of law recognizes rights. Hobbes argued that laws (*lex*) refer to obligations and rights (*jus*) refer to the absence of obligations (Hobbes 2008, pp. 66-67), but in contemporary thinking, it seems to suggest that only *de facto* rights can be held without any obligations and that *de jure* rights cannot be held without obligation, regulations or sanctions. When *de facto* rights become *de jure* rights, rights as laws become imperatives backed by sanctions. By understanding the relationship between rights and laws, we understand the relationship between the law and the state; we understand the relationship between law and justice; we understand the relationship between law and peace and we understand the relationship between the recognition of rights and recognition of law to the rule of law. It is the rule of law that provides equal rights, equal justice and equal protection to all its citizens, thus establishing a republic based on democracy and secularism. Majority rule and protection of self-evident individual rights is fundamental to an ideal republic.

[3]The Declaration of The Rights of Man and the Citizen. 1789: https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen.

Governance by law purports that the people are sovereign and that the ruler is the custodian of power, not the creator of power (Fuller 1969, p. 106). Thus, the rule of law ensures human rights by (1) separating the legislative, executive and judicial powers to curtail the concentration of power and check the culture of impunity; (2) defining the term-limit for the ruler to ensure that the people are sovereign; (3) distinguishing religious laws from state laws to ensure the rule of law, not the rule of God, as the basis for a secular government; (4) distinguishing legal laws from moral laws to ensure that the government only regulates behavior and not legislate morality. As such, punish people only for illegal behaviour not for immoral behavior; (5) requiring trial by jury for charges against citizens and presume the innocence of the individual until proven guilty; (6) advocating that we are equal before the law and demands blind justice for all. (7) accepting economic inequalities provided equal liberty and equal opportunity are a given.

Methodology and Scope

If by methodology we mean the method used and the thinking involved in research, then the approach of this study is phenomenological and analytical. If the basis for freedom is related to the nature of consciousness then the phenomenological understanding of the content of intentionality would establish the reality of freedom and provide the basis of understanding existential rights as self-evident truths. Phenomenological understanding of the content of intentionality related to the recognition of *de facto* and *de jure* rights establishes the relationship between rights and laws. Literature review include the British Bill of rights (1689), the French Declaration of the rights of man (1789) and the American Declaration of independence (1776) along with the review of the theories that define what law is. Literature review related to Hobbes, Hart, Holmes and Austin is restricted to understanding rights as laws and how the recognition of rights provides the basis for the rule of law. The reason for utilizing analytical jurisprudence as opposed to normative or historical jurisprudence in this study is to understand the relationship between laws and rights in the context of the relationship between the law and the state[4]. Natural law theory (Aquinas) defines laws as self-evident truths, such that "an irrational law is not law at all" (Murphy and Coleman 1990, p. 11). Positive law theory (Hart) defines laws as man-made rules, such that laws are social constructs (Murphy and Coleman 1990, p. 19). Legal realism (Holmes) defines laws as what judges say they are, as such laws are best understood in the context of the application of law (Murphy and Coleman 1990, p. 33). Hobbes understanding of the relationship between rights and laws are understood in the context of rights as defined in the English Bill of Rights and the French Declaration of the Rights of

[4]The sources for law can be traced to: (1) divine commands based on revelation from God; (2) political and social demands from society for having and maintaining proper intersubjective relationship; or (3) personal choices based on the dictates of one's conscience. So, we can delineate laws as a social contract (an agreement), a sacred covenant (a pledge) or a social construct (man-made rules). We cannot escape laws, for laws represent the commands by the state, the demands of society and the dictates of one's conscience.

Citizen. Hart's understanding of the recognition of laws is juxtaposed with the understanding that the recognition of law is the recognition of rights.

The Indeterminacy of Intentionality: Basis for Freedom of Choice

Rousseau argued that we cannot renounce freedom, for to renounce freedom is to renounce being human (Russeau 1762, p. 4). It is impossible to surrender one's freedom because of the nature of human condition. We are free, and we are cognizant that we are free. The nature of consciousness or intentionality provides the basis for freedom (Brentano 2002, p. 481). The nature of consciousness is such that, to be conscious is to choose, to choose is to be conscious (Sartre 1977, p 595). The facticity of freedom is such that, there is no escape from making choices. The freedom we have is the freedom to choose what to be conscious *of*, "for all consciousness is consciousness about something" (Brentano 2002, p. 482). The indeterminacy of intentionality is the basis for freedom. The content of consciousness is the content of intentionality. To be human is to be cognizant of the content of intentionality. Portions of the content of intentionality is our cognizance of the facticity of freedom, our rights, and the relationship between rights and laws. When we define liberties as *de facto* or *de jure* rights, we are aware that only *de jure* rights have obligations or sanctions. Rights can be understood as liberties or laws. Once rights, along with its obligations, are recognised by law, we understand the relationship between rights and laws. The recognition of rights is the basis for the rule of law. It is the rule of law that provides all citizens equal rights and equal justice under the law. Because rights are self-evident truths that are recognised and enshrined in the constitution, they are self-imposed. When responsible citizens obey the law, they become the authors of the laws they obey (Plant 2006, p. 30). Recognition of rights is a self-evident matter, recognition of laws is a constitutional matter and obedience to the law is a self-imposed civic obligation.

Political Consciousness

In today's world, political consciousness is a given, for most citizens are cognizant of their rights. All the political upheaval, all civil unrest, all waging wars can be traced to the violations of human rights. How do we ensure human rights? The separation of the executive, legislative and judiciary powers while being equal and independent is the best way to ensure human rights. Social and political consciousness around the world challenge governments that act with impunity, question the necessity for qualified immunity given to police officers, and see no basis for morality police. What makes us equals is equal freedom, equal rights and equal justice. As George Washington was ascribed to have said, "government is like fire, if we can control it, it is good, if the government controls it, it is bad."[5]

[5]Ascribed to George Washington. 1732-1799. https://www.barrypopik.com/index.php/new_york_city/entry/government_is_like_fire_when_controlled_it_warms_you.

The single purpose of the government is to safeguard self-evident rights. As such governments cannot in any form or shape be instrumental in negating rights, be involved in police brutality, be tangled in extra-judicial killing or in the weaponization of the government. Political consciousness around the world understands the importance and respect for the rule of law.

We are cognizant of the relationship between the ruled, rules and the ruler. The ruled write the rules and chooses a ruler to rule the ruled. The rule of law is not simply about the reign of the ruler but also about the *de jure* laws of the people. What is essential to an ideal republic is "an empire of laws" (Adams 1851, p. 204). The concept of the rule of law is generated from the idea of rule by law (Loughlin 2009, p. 14), without which, arbitrary governmental actions can become the main threat to human liberties (Loughlin 2009, p. 14). The rule of law is a political concept that legitimizes political rule (Loughlin 2009, p. 15). The ruler is the first citizen of the rule of law. In an ideal republic or democratic state, the importance is not about anyone becoming the ruler but about everyone living as free as the ruler and not in fear of the ruler. Jefferson was correct when he argued that "when governments fear the people there is liberty" and "when the people fear the government there is tyranny."[6] Any government that does not respect the freedom or wellbeing of its citizens is no government at all. Hence, we cannot agree with Machiavelli who argued that the ruler should be feared (Machiavelli 1532, pp. 120-121), or with Metternich who believed in absolutism where oppression is a given (Machiavelli n.d.), nor can we agree with Moa who said that political power comes from the barrel of the gun (Tse-Tung n.d.). Mazzini was correct when he argued that the rights of each is based on the strength of many (Mazzini 1898, pp. 57-63). Mandela understood the rule of law well when he argued that "when freedom is gained it does not mean that the oppressed get to oppress the oppressor, but together, both the oppressor and the oppressed live in freedom" (Mandela n.d.). Both the oppressor and the oppressed need to be liberated (Mandela n.d.). The freedom we have is the freedom to do anything that is not prohibited or anything that does not obstruct the freedom of the other (Alpa 1994, p. 7). The essence of the rule of law is the iteration of practical and political reason (Meyers 2013, p. 441), which can be defined as political morality (Stack 2016, p. 4). The single characteristic of the rule of law is the law-bound character of the executive (Meyers 2013, p. 431). Rule of law is identified as the decision-making basis for both the citizens and the ruler who are both cognizant of the legal consequence of actions (Stack 2016, p. 4). As such, Fuller defined law as the "enterprise of subjecting human conduct to the governance of rules" (Fuller 1969, p. 106).

[6]A quotation attributed to former President Thomas Jefferson—third president of the United States.

Recognition of Law is the Recognition of Rights

Because recognition of self-evident rights precedes the recognition of law, recognition of law is the recognition of rights. Natural law theorists argue that rights can be held as self-evident truths (Murphy 1990, p. 15). However, it is the phenomenological understanding of the content of intentionality that provides us the basis for recognizing human rights. Understanding human rights best defines the human condition. In recognizing rights, we discover the relationship of rights and laws and the relationship between the law and the state. The history of human beings is the history of how self-evident *de facto* rights become *de jure* rights and laws. The study of law defines which rights require *de jure* recognition, and why some *de facto* rights do not require *de jure* recognition. Do all rights have to have *de jure* recognition? Some countries prefer to have *de jure* recognition for all rights — such as the right to abortion. Still others, like Canada, do not see the need for *de jure* recognition for such rights. The recognition of human rights requires knowing the basis for how *de facto* rights become *de jure* rights (Armaline et al. 2016, p. 220). If the individual is the most important person in the republic then the rights of the individual must be defined in the constitution — Bill of Rights of England (1689), Declaration of Rights of Man and the Citizen after the French Revolution (1791) are good examples of this ideal. The United States bill of rights (1791) purports that rights are self-evident truths. Men are born free (Rousseau 1923, p. 1), remain free and are equal in rights[7].

Recognition of rights warrants which rights are considered as inalienable (uncreated, hence inviolable); which rights are considered as alienable (created, hence violable); which rights are considered as absolute (having no conditions); which rights are considered as *prima facie* (having conditions); which rights are considered as fundamental (not dependent on other rights); which rights are considered as derivative (dependent on other rights); which rights are considered as positive rights (the right to receive services); which rights are considered as negative rights (right to non-interference); which rights are considered as perfect rights (having legal recognition and are enforceable); which rights are considered as imperfect rights (having legal recognition but are not enforceable); which rights are liberty rights (freedom to do something) and which rights are claim rights (obligations of others to allow you to do something) (Hohfeld 1917, p.719) which rights are claimable (when there is an agent to complain to) (James 2003, pp. 133-147); and which rights are not claimable. In short rights can be understood as claims (rights proper) or as liberties (privileges) (Hohfeld 1917, p.716).

Further, while rights, as claims, are enforceable, all rights or claims are not enforceable. For instance, the right to vote in most countries is a right, but it cannot be enforced because one can choose to vote or choose not to vote. The right to socioeconomic equity cannot be enforced — for instance the US does to recognize socioeconomic rights as human rights (Wiles 2006, p. 46). For free market capitalism opposes government interferences in economics. *Laissez faire* purports that economic inequality is acceptable where equal liberty and equal opportunity is a given (Rawls 2002, p. 461). The right to have an abortion simply means that one

[7]The Declaration of The Rights of Man and the Citizen 1789.

has a choice to do so: it does not mean one has to choose to do so. What must be noted is that all rights include the option for or against such options, as such, they cannot be enforced.

When we understand the recognition of laws as the recognition of rights we establish the relationship between the law and the state. When the relationship between the law and the state is established, Austin would argue that there are two types of laws—laws (commands) backed with sanctions and laws not backed with sanctions (Murphy 1990, pp. 19-23). Positive law (laws properly so-called) are considered as commands backed with sanctions. Laws improperly so-called such as international laws are laws that can be held without sanctions. Laws are enforceable proposition that can be met with punishment if not followed (Bart n.d.). Laws related to inalienable rights define obligations as responsibilities. For example, free speech does not include slander or label — though we have the freedom to say anything we want, we do not have the right to say anything we want without consequences. Laws related to alienable rights define regulations as conditions or limitations — for example, driving without intoxication. The intersection of law and politics is at the core of the rule of law (Meyers 2013, p. 446). As such, if the recognition of law is the recognition of rights then the recognition of rights involves recognition of what is permissible. If recognition of rights involves defining what is permissible, then it must also define what is prohibited. If recognition of rights defines privileges then it must also define obligations. If recognition of rights involves understanding rights as claims, then it must also define which rights as claims are enforceable and which rights as claims are not enforceable. If the recognition of rights involves enforceability then laws that recognize rights must be backed by sanctions.

Hart distinguished primary rules from secondary rules. Primary rules deal with how we ought to act, and secondary rules encompass rules that deal with recognition, change and adjudications of laws (Murphy 1990, p. 30). Rule of law is a legal system in a system of governance[8] where it has both legal principles and procedural processes to follow, namely political morality (Stack 2016, p. 4). What is the importance of the rule of law in a secular state? The source of law can be religion, but if the rule of God becomes the focal point in a secular state, then the question would be which religious laws should the state accept or reject. If a republic or a secular state gives its citizen the freedom of religion and purports that the state cannot endorse any religion over another, we are left by default only with one option: the rule of law. The rule of God is operable only in a country like the Vatican state where there is only one religion. In a secular state, the logical option is to accept the rule of law.

Operating Principles Related to Jurisprudence in a Republic

Understanding the nature of law, we discover the importance of the principle namely the rule of law in a republic. What is fundamental to the rule of law is that

[8]Stanford Encyclopedia.

the state is accountable to a single legal system. John Locke wrote that freedom in society means being subject to the same law made by a legislation that applies to everyone, including the lawmakers and leaders (Locke 1823, p. 114). It is the rule of law, not the ruler, that matters in this study. While the ruler governs, in reality we are governed by the rule of law. As such, what law *is*, is best understood in the context of what law *does*. If the recognition of rights precedes the recognition of laws, then, it defines not only the relationship between laws and rights, it also defines the relationship between law and the state, the relationship between law and justice, and the relationship between law and morals/religion. The rule of law defines what is permissible, what is punishable and what is enforceable. We shall now discuss the operating principles related to the rule of law or jurisprudence in a republic.

Governance by Law Principle

The first operating principle of the rule of law is the governance by law principle. There are rules that govern social, political and economic life (Weingast 2018, p. 3) of a citizen. A good government is a government of laws (Adams 1851, p. 204). These laws are defined by the constitution, such that everyone is under the law, for no one is above the law, and everyone is equal before the law. The laws are written by the people, is for the people and can only be changed by the will of the people. However, the single purpose of the rule of law is to ensure constitutional rights. Everything the governance by law principle represents ensures the rights of the individual citizen. Individual rights are self-evident truths, as such the rule of law recognizes and ensures such rights to each citizen. No government can tamper with individual rights because human rights are constitutional rights (Murphy 2005, p. 241). Majority rule cannot negate individual rights nor can they suppress or silence the opposition.[9] Democratic process is simply a political process for the selection and election of the executive, not the basis for human rights. As such, laws do not define rights, they only ensure rights. Constitutional rights deal with both criminal and civil laws. Criminal laws define what a crime is and the judge decides who is a criminal after establishing the relationship between guilty mind (*mens rea*) and guilty act (*actus reus*). Civil laws define what is permissible and what is not permissible, what is finable or liable. Law can be understood as a covenant (Hebrews) in that it is an agreement between people[10]; laws can be understood as a contract (Hobbes) in that we tell each other "punish me if I break the law" (Hobbes 2008, p. 25); laws can be understood as a social construct (Murphy 1990, p. 28) (Hart) in that it is alienable or what is created by us and for us. But more importantly laws are commands backed by sanctions (Austin) in that they are imperatives to be obeyed (Murphy 1990, p. 20). Whether the law is a contract, a construct or a covenant, what is common is that it is based on consensus, in that there is a collective will for its content and reflects

[9]Simple majority is a means to choose the ruler, majority rule is not the means to suppress or dispose of the opposition or descent.
[10]II Chronicles 6:11; II Chronicles 5:10; Galatians 3:17.

the spirit of the people. That is why it is an imperative or a command backed by sanctions.

The Sovereignty of the People and Government by Consent

The second operating principle of the rule of law is the sovereignty of the people principle, in that the ruler is the custodian of power, not the creator of power. It is the rule of law, not the rule of the ruler, that matters. While the ruler governs, in reality we are governed by the rule of law. The rule of law defines the relationship between the ruled, rules and the ruler. The ruled writes the rules and chooses the ruler to rule the ruled. "We the people" have the responsibilities in an ideal republic to write the constitution and elect the ruler to rule. "We the people" write the constitution that governs the republic. It is this idea that prevents power from becoming autocratic and prolonged. This in turn prevents the rise of rulers like Hitler, Moa or Stalin who disposed basic human rights and killed as many as they wanted or needed — all in the name of the government. All the atrocities that humans commit against fellow human beings occur when rulers use their authority to negate basic human rights. Yes, there has always been the ruler and ruled distinction. Yes, history has taught us that we cannot live without this distinction. However, we live in times when the ruler acknowledges that the source of power is the people, and that ruler holds office only as long as it is the will of the people. As such, no one can govern in a democratic republic if one assumes that the ruler is the source of power. A sovereign government is a government by consent.

Separation of Powers Principle

The third operating principle of the rule of law defines the need to separate the three branches of government: namely the legislative, the executive and the judicial powers. Judge Scalia of the US supreme court argued that only the separation of powers can afford individual rights (Scalia 1988). What is important in the separation of the legislative, executive and judicial powers is the concept of the independence of each branch of the government. Political, social and economic rights are best guaranteed only by the separation and independence of the three powers. Each play a distinct role. One legislates laws, one interprets the law and the third executes the law. The legislative cannot adjudicate or execute the laws, the judiciary cannot legislate or execute the laws and the executive cannot legislate or interpret the laws. The legislative only legislates, the executive only executes and the judiciary only adjudicates (Scalia 1988). The ruler cannot stay in office beyond what is dictated by law, and the ruler cannot legislate laws as he pleases (Murphy 2005, p. 243). The ruler is like a conductor, the ruler can only play the music composed by the legislative body not create the piece. When there is no separation of powers, human rights can be called into question, and the government can act with impunity. It is the independence of the three branches of the government that best safeguards human rights. This principle of the division of powers checks the

rise of totalitarian governments and ensures the rights of its citizens in the republic. Separation of powers prevents the weaponization of the government.

The Selection and Election Principle

The fourth operating principle of the rule of law relates to the selection or election of the ruler. In modern times, in most western countries the selection of candidates is related to the political parties in the country. Though there are independent candidates, it appears that most western countries have adopted the bi-party system as the process in which the two leading candidates are selected. Once the parties put forward their candidates, the democratic election determines who the next ruler will be. The selction and election process are best rendered when a bi-party system selects its candidates to establish which party comes to power. Why is a bi-party system better than a multi-party system? It is because in any decision there can be only two serious options. Multi-party systems tend to forget that the purpose of the opposition party is to oppose the ruling party, not to oppose each other. Today the transfer and transition of power from one to another is peaceful because of the ballot system. How does this ensure human rights? Each candidate in the primary will have a chance to campaign on ensuring the rights of citizens. It is usually the public perception as to who will best ensure rights and liberties of its citizen that wins the election.

Term-limits and Transition of Power

The fifth operating principle of the rule of law relates to the term-limits and transition of the elected ruler. Since the ruler is the custodian of power, not the creator of power, the people are the basis of power, and as such, term limits are essential if one understands that power resides with the people. This is why democracy is not the rule of the majority but the rule of the people. Once elected, the ruler must always realise that his or her power is term-limited and transitional. This will prevent people who manipulate the three branches of the government to get elected many times. Anyone who believes in the rule of law can rule and become the ruler. It is the rule of law, not the ruler, that ensures human rights. A good ruler is one who governs and is governed by the rule of law, as such, anyone who believes in the rule of law can be a ruler. A citizen is not a subject of the ruler but a subject who can be the ruler. That is why once one's term in office is over, one becomes a regular citizen. Term-limits define political offices as being transitional, prevents dictatorial tendencies and avoids nepotism.

Term-limits are not only good for the people, but also good for the ruler. The ruler runs on a mandate, and it is his job to fulfill those mandates in a given time. The rule of law includes the term-limits and number of terms one can run for election. Why is this important? In a republic, no one is indispensable, for it is the rule of law not the ruler that governs. The ruler is symbol of authority, not the authority. It is the law that is the authority as defined in the constitution. The ruler

acts in accordance with the law. Any ruler who thinks that he or she is above the law ends up disposed. The death of Charles I of England and Hitler are two examples of the fates of rulers who did not understand the rule of law. If the rule of law does not define the selection, election and transition of power, then like in the ancient Roman world, the transfer of power is either done through assassination or by suicide. Elections and term-limits are the safety mechanisms to curb the ruler from effectively becoming president for life.

Penal Principles: Lex Talionis — Rules for Punishment

The sixth operating principle of the rule of law is that laws define what a crime is, and define the penalties related to crimes. Law as a social contract is such that we tell each other "punish me if I break the law" (Hobbes 2008, p. 25), as such, punishments, like laws, are self-imposed. However, one can be punished only after due process and be punished only as prescribed by law. The rule of law demands penal penalties for the violation of criminal laws and fines for the violations of civil laws because laws, by definition, are commands backed with sanctions. The rule of law demands the removal of the criminal from society either through incapacitation or incarceration of the criminal. There are three main principles related to penal philosophy: namely (1) the proportionality principle, which purports that punishment must fit the crime. The old testament principle — namely the "eye for an eye"[11] principle — purports for the proportionality principle (Fish 2008) to avoid extreme revenge; (2) the appropriateness principle purports there can be no cruel or unusual punishment. Dostoevsky argued that a society is considered civilised not by how it rewards the good but by how it punishes the bad (Dostoevsky 1860); (3) the continuity of punishment principle purports that punishments end only when the crimes end. Further, punishment rendered must be as prescribed by law and there can be no *ex post* laws for punishment. What then does punishment entail in an ideal republic? It entails retribution (punishment must fit the crime), restitution (pay back), repentance (remorse), restoration (pardon) and rehabilitation (bringing criminals back to society after serving jail time).

Punishment can be based on the law or on justice. The courts of law have a difficult time arguing for punishment when someone breaks a traffic law to save a child crossing the road (D' Amato 1992, p. 22). Should judges decide cases according to justice or according to law? If it is with reference to the law, the driver should be punished, but if it is with reference to justice, the driver should be praised. What is the purpose of punishment: is it a deterrent to prevent further crimes, or is it a penalty for illegal behavior? Without law or sanctions, Hobbes argues that life would be nasty, brutish and short (Hobbes 2008, p. 9). There are many types of punishments apart from capital punishment, but the object of punishment is to prevent further crimes, be it from oneself or others. That is why Hobbes argued that law is the basis for peace (Hobbes 2008, pp. 9-10).

[11]Deut. 19:21.

Because we are cognizant that laws define what behaviors are permissible and not permissible, laws also define what is punishable. Laws define which rights, as claims, are enforceable (Janes 2003, pp. 133-147) and which rights, as claims are not enforceable. What is considered permissible must always be understood in the context of what is considered prohibited. What we can do must be defined in the context of what we cannot do. These premises are what brings us to the necessity of punishment for prohibited behavior or actions. What must be noted is that what is permissible is not punishable, but what is prohibited is punishable. However, while prohibited actions are punishable, all offensive behavior is not punishable: certain offensive behaviors are only finable. So, while rights are about liberties, there are also prohibited liberties.

Distinction between State Laws and Religious Laws

The seventh operating principle related to the rule of law is the distinction between state laws and religious laws. While there are constitutional rights to preach, practice and propagate one's beliefs, they are not enforceable rights. The right to believe is legally recognized, but what one chooses to believe cannot be enforced by law or by the state. No one can be forced to believe or practice any faith. In a secular state it is the rule of law not the rule of God that is the basis for governance. Countries that do not distinguish state laws from religious laws are considered as fundamental states. This does not mean that the laws in a secular state are not based on religious law. It might well be so. The important aspect to consider is that there is a distinction between religious laws and state laws. A similar distinction can be made between legal laws and moral laws. The relationship between laws and morals has a long history. St. Augustine argued that every law has a moral content, as such, an immoral or unjust law is no law at all (Murphy 1989, p. 11). On the other hand, Hart argued that there is no moral content in law (Murphy 1989) — for example, driving on the left or right side has no moral connotation. Law is a social contract or construct, — nothing more or nothing less. The primary purpose of law is to regulate behavior and to punish those who engage in illegal activities. In fundamental state, where there is no distinction between state laws and moral laws, one can be punished for violating morals laws. The question is "can we have moral policing?" Morality police, as those in Iran, punish those who do not conform to moral codes. In a secular state, we can only punish people for illegal conduct, never for immoral conduct. To be moral is not about what we can't do but what we won't do. To be legal is not about what we won't do but what we can't do.

Equal Rights and Blind Justice

The eighth operating principle of the rule of law is that everyone has equal rights and rights to equal justice, with no impunity for anyone. The rule of law in a republic demands that both the ruler and its citizens be subject to the law and be

equal before the law — no one is above the law. There are no prerogatives for the ruler — everyone has the same rights and claims to equal justice. What makes us equals are equal rights and rights to equal justice based on the same laws (Locke 1823, p. 114). Two important aspects must be highlighted. (1) The judicial branch of the government must be equal and independent and (2) questions related how judges are appointed. Without independence the judiciary branch cannot adjudicate with fairness. The judicial branch must be an equal branch of the government if it is to act independent of any influence. With reference to the appointment of judges different countries have different ways of related to the selection and election of judges to the judiciary[12] United states allows the elected president to appoint judges, when vacancies arise, who are then approved by the senate. In Israel the judges select their own judges by the judicial selection committee. The ideal scenario would be to have some form of direct or indirect election for the judiciary branch of the government. For if the executive branch is elected and the legislative is elected then it would seem fair to have some form election for the judiciary. What is most important to note is that the protection of human right is not based on majority rule but on the judicial branch of the government. Majority rule only provides for government by consent and it is only the judiciary that can guarantee protection for the self-evident individual rights. Further, the emphasis in the modern world is not only on equality but on equity. Aristotle's claim to treat equals equally is important to note (Westen 1990, p. 185). What makes us equals is the fact that we have equal rights, but equal rights must be defined in the context the honest differences that necessitates us to treat equals equally and unequals unequally (Westen 1990, p. 185). One honest difference is economic inequality provided equal liberty and equal opportunity are a given (Rawls 2002, p. 461). Equal justice under the law is a self-evident truth, and many revolutions have been fought to ensure blind justice. That is why majority rule or a government by consent, cannot use the executives branch of the government to weaponize the law to negate constitutional rights.

Conclusion

Rights can be understood as liberties or as laws. Understanding the importance of freedom, liberties and rights establishes the relationship between rights and laws. Rights as liberties are *de facto* rights that can be held without obligations or sanctions, but rights as laws are imperatives backed with sanctions. The recognition of laws is the recognition of *de jure* rights. Laws and the rule of law are distinct. Laws are legislations that ensure equal rights with obligations, whereas, the rule of law is a concept or principle — the principle being that the recognition of rights is the basis for political, social and economic justice. What guarantees equal rights and justice is the rule of law, and the best way to guarantee human rights is the separation of powers: namely, the legislative, the executive and the judicial powers

[12]Here in this webpage we see the many ways judges are appointed. https://www.nationmaster.com/country-info/stats/Government/Judicial-branch/Judge-selection-and-term-of-office.

where the legislative only legislates laws, the executive only executes the laws and the judiciary only interprets the laws. The greatest threat to human rights is when there is no separation of legislative, executive and judiciary powers. The concentration of power leads to governments to act with impunity, leading to the violation of human rights.

To conclude, jurisprudence delineates the relationship between the law and the state to ensure the rule of law. To this end, the rule of law ensures the following: (1) the recognition of rights and the obligations related to rights; (2) the determination of term-limits providing for the peaceful transfer of power; (3) the separation or independence of the legislative, executive and judicial powers to safeguard human rights; (4) the distinction made between religious and state laws to ensure that the rule of law not the rule of God, is the basis for a secular government; (5) the distinction made between legal and moral laws guarantees that governments only can regulate behavior not legislate morality, as such constricts punishment only for illegal behavior and never for immoral behavior; (6) the concurrence between the guilty mind and guilty act to prohibit the arbitrary incapacitation or incarceration of citizens without a trial; (7) the connection of laws backed by sanctions with blind justice to ensure that governments do not act with impunity; (8) the necessity for equal liberty and equal opportunity as the basis for the acceptance of economic inequalities among citizens.

Understanding freedom, liberty and rights define the importance of the recognition of laws to the rule of Law. However, while laws can be understood as a command, a covenant, or a construct, recognition of law is the basis for rule of law. But since the recognition of law is the recognition of rights, it is rights that provide the basis for law and the rule of law. That is why no government can weaponize laws to terminate constitutionally recognized rights. Social and political unrest around the world can be traced back to the violation of human rights when governments act with impunity. In a republic anyone who respects the rule of law can be elected as the ruler and everyone lives as free as the ruler.

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Leo Strauss's Reading of Spinoza and the Art of "be Alert to the Art of Writing"

By Ke Zhao[*]

Leo Strauss's way of reading of Spinoza's Theologico-Political Treatise got changed after his rediscovery of exotericism. As early as in the comment article on Hermann Cohen's analysis of Spinoza's Bible science, Strauss put forward that the Treatise should not be understood on the basis of our readers' own presupposes of Spinoza's personal motives. Later, in Spinoza's Critique of Religion (1930), Strauss indeed read the Treatise literally, trying to understand it on the basis of Spinoza's explicit statements. After the rediscovery of exotericism in 1930s, however, Strauss's way of reading got changed. Strauss became very alert to Spinoza's way of writing. Strauss found that Spinoza spoke with a view to the capacity of the vulgar and practiced exoteric writing. Some of Spinoza's explicit statements were addressed to the non-philosophic majority and were not Spinoza's true teachings. Based on this, Strauss regarded not all of Spinoza's explicit statements, but those most opposed to what Spinoza considered the vulgar view, as well as those with an implication of a heterodox character, as expressing Spinoza's true views. Strauss shows that "be alert to the art of writing" means two things. First, understand the author's explicit statements. And second, try to find whether there are teachings that are different from or even opposed to the explicit statements.

Keywords: *Leo Strauss, exotericism, Spinoza, theologico-political treatise*

Introduction

Hermeneutics is the art of interpretation. It has a long-standing history in the German intellectual tradition. Friedrich Schleiermacher, Wilhelm Dilthey, Edmund Husserl, Martin Heidegger and Hans-Georg Gadamer all have developed their own principles of hermeneutics. Leo Strauss, a German-born-and-educated American political philosopher, has also made his contribution to the advancement of hermeneutics with his rediscovery of exotericism and his unique thoughts on how to read old great books in western history. Strauss found that past philosophers most times didn't write like us today, trying to be straightforward and clear, without

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reservation. On the contrary, they tended to write exoterically, giving exoteric teachings, while using certain literary skills, such as abrupt changes of subject matter and contradictory speeches, to give esoteric ones (Strauss 1954, 1986, 1988). Strauss suggested that while reading old books, it would be better to understand the author as he understood himself. We'd better start from what the author said explicitly, and try to find out what he said between the lines.

Strauss's rediscovery of exotericism and views on hermeneutics developed from it caused a certain degree of concern in the middle of the 20th century. George H. Sabine (1953, p. 220) raised an objection to Strauss's mode of interpretation by proposing that "whether this provides a workable rule for historical interpretation or an invitation to perverse ingenuity is questionable". Sabine (1953, p. 220) said that "the limits of permissible or probable contradiction in an author are really very difficult to determine" and "a demand for historical exactness" doesn't necessarily mean "the prohibition of any sort of 'reading between the lines'". Hans-Georg Gadamer (2006, p. 375), though showed his appreciation of Strauss's thesis by admitting that Strauss's remark of presenting something in disguise "presents one of the most difficult hermeneutical problems", nevertheless disagreed absolutely with Strauss's philosophy of hermeneutics. Gadamer (2006, p. 531) claimed that "when Strauss argues that in order to understand better it is necessary first to understand an author as he understood himself, he underestimates the difficulties of understanding". At the end of 1960s, Quentin Skinner pointed out that Strauss's argument that contradictions in a book were supposed to be deliberately planted was untenable. "The difficulty with this defense (of the desirability of resolving antinomies)," Skinner (1969, p. 21) said, "is that it depends on two *a priori* assumptions which are not merely left unargued but are treated as 'facts'. First, …to be original is to be subversive… Secondly,… thoughtless men are careless readers."

What seemed a little bit strange, however, was that Strauss's hermeneutical claims were kind of ignored by hermeneutics scholars in the following years. For example, in *Contemporary Hermeneutics* (Bleicher 1980), a book that gave an overview of the main strands of contemporary hermeneutical thought, what Strauss had said about interpretation were completely missing. More than a decade later, in *Understanding Hermeneutics* (Schmidt 2006), one of the books in Understanding Movements in Modern Thought series, Strauss's thesis was still not mentioned at all. Paul A. Cantor (1991, pp. 267–268) once pointed out, though Strauss "have fundamentally reopened the question of how texts from the past are to be understood", he was nevertheless "generally ignored by Anglo-American debates on interpretation". We can add that Strauss was ignored not only by Anglo-American hermeneutics scholarship, but also by continental one. Generally speaking, Strauss's hermeneutical thesis was discussed and studied by some so-

called Straussian scholars during the years, but it never became one of the topics of the hermeneutics circle.

This situation got changed with the coming of *The Routledge Companion to Hermeneutics* (Malpas and Gander 2015). In this outstanding volume with references to the key philosophers, topics and themes of hermeneutics, Strauss's thinking on the art of interpretation was finally introduced and explained. In "Strauss: Hermeneutics or Esotericism?", Catherine H. Zuckert and Michael Zuckert (2015, pp. 127–136) put forward that there were three hermeneutical claims embedded in Strauss's interpretive practices: to fuse of philosophy and history, to understand a thinker as he understood himself, and be alert to "the art of writing". First, philosophy must be distinct from but fuse with history, for only via studies in the history, can we clarify the opinions constituting our cave and so philosophize. Second, the true goal of interpretation was to understand a thinker as he understood himself. For only this could be called authentic understanding. Last but not least, as past thinkers had different reasons to write esoterically, we should pay attention to their art of writing. According to Zuckerts (2015, p. 130), Strauss's first claim shared much with Gadamer's hermeneutics, and the second, with Skinner's.

Zuckerts's essay is an excellent guide for those who'd like to have a good knowledge of Strauss's hermeneutics. But to some extent, some may still wonder what "be alert to the art of writing" means. In what follows, I'll try to answer this question by taking the example of Strauss's own reading of Spinoza's *Theologico-Political Treatise* respectively when he had no awareness of Spinoza's exoteric writing and when he was alert to Spinoza's exotericism. I'll begin with Strauss's critique of Hermann Cohen's analysis of Spinoza's Bible science in early 1920s, to have a look at Strauss's early standing on hermeneutic issues, and continue with Strauss's reading of the *Treatise* in *Spinoza's Critique of Religion* (1930), to see how Strauss interpreted the *Treatise* without ever noticing Spinoza's exotericism. Then, I'll turn to Strauss's explanatory essay "How to Study Spinoza's *Theologico-Political Treatise* (1948) to see how he read the *Treatise* exoterically. With a study of Strauss's interpretation of Spinoza's *Theologico-Political Treatise* before and after his rediscovery of exotericism, I hope to show that before the rediscovery of exotericism, Strauss read Spinoza literally, taking every word of Spinoza for serious. However, after the rediscovery of exotericism, Strauss, though still read Spinoza literally, didn't believe in every word of Spinoza any more. Strauss tried hard to find what may be hidden under Spinoza's explicit statements. The conclusion would be that, for Strauss, "be alert to the art of writing" means two things. First, understand the author's explicit statements. And, second, try to find whether there are teachings that are different from or even opposed to the explicit statements.

Strauss on Hermann Cohen's Analysis of Spinoza's Bible Science

In the first half of the 1920s, after getting doctor's degree under the guidance of Ernst Cassirer, Strauss began to work for the German Zionist movement as a freelance Zionist writer. During this period, Strauss wrote many short but enlightened essays such as "Response to Frankfurt's 'World of Principle'" (1923), "A Note on the Discussion on 'Zionism and Anti-Semitism'" (1923) and "The Zionism of Nordau" (1923), which directly related to Zionist movement, as well as "Sociological Historiography?" (1924), "On the Argument with European Science" (1924) and "Biblical History and Science" (1925), which shed theoretical and philosophical lights on Judaism. It could be seen from these writings that, unlike many other Jewish youths, Strauss was more interested in theoretical questions rather than practical ones. Strauss (2002, p. 8) cared not German Zionist settlements in Palestine, nor "the deteriorating political, social, and economic situation in German".

Among these earlier writings, one stood out as closely related to Strauss's concern for hermeneutical problems. It was a comment article on Hermann Cohen's analysis of Spinoza's Bible science. In this article, Strauss first criticized Cohen's objection to the title of Spinoza's work (*Theologico-Political Treatise*) that it failed to refer to philosophy which joined theology and politics. Strauss (2002, p. 140) made it clear that the reference was not necessary for "in the seventeenth century one could dispense with such a reference". Of course, Strauss explained more specifically why such kind of reference was unnecessary—why the joining of theology and politics was not arbitrary. According to Cohen, Spinoza's joining together of theology and politics without referring to philosophy was arbitrary and this arbitrariness could be explained by Spinoza's personal life experience. However, Strauss (2002, p. 141) said, using Theodor Mommsen's dictum, that "it is not permissible to refer to 'egotistical motives where motives 'in accord with duty' suffice for an explanation". Strauss (2002, p. 142) put forward that Spinoza's motive was to demonstrate "that not only can the freedom of philosophizing be granted without detriment to piety and peace within the state, but its abrogation necessarily entails the abrogation of piety and peace within the state", and due to this motive, Spinoza needed urgently to "connect political problem with the philological one" because "the freedom of inquiry was to be protected by two public powers, the secular and the spiritual". In other words, for the aim of his work was to secure the freedom of inquiry, Spinoza had to "make his argument concerning church and state simultaneously" (Strauss 2002, p. 142). So, according to Strauss, Spinoza's connection of his political theory with the critique of the Bible was sufficiently motivated, and this motive alone was enough to explain why Spinoza joined theology and politics while omitted philosophy. It was not

necessary, as well as not appropriate, to resort to Spinoza's personal life experience, no matter how perfect this kind of explanation may be.

After explaining why there was in Spinoza an "unnatural" connection between politics and theology (it was a political pamphlet which criticized the Bible), Strauss then raised objection to Cohen's argument that Spinoza's politicization of the Jewish religion was partly determined by the resentment that Spinoza accumulated over the years on account of the excommunication. Again, Strauss began with Spinoza's motive in accord with duty. Strauss (2002, p. 145) pointed out that what Spinoza aimed was "to fight against the damage to political life that arises from the coexistence of the two powers (the spiritual and the secular powers)". As the coexistence of these two powers was defended by those who found support in the history of the Jewish people, Strauss said, Spinoza finally needed to fight against the history of the Jewish people, or to say, the Jewish religion. In this sense, Strauss (2002, pp. 145–146) concluded that there was no need to "have recourse to the bathos of a thirst for revenge in order to explain this thoroughly clear and self-sustaining context", and in Spinoza's historical context, the "politicizing interpretation" of the Bible was "sufficiently motivated".

Strauss's third refutation concerned Cohen's critique that Spinoza equated the concept of religion absolutely with Scripture. Strauss (2002, p. 146) first gave the fact that in the 17th century, the universal religion, revelation, the Word of God, and faith were of equal value. After a brief introduction of the spiritual situation in Spinoza's time, Strauss further explained why Spinoza negated the cognitive value of Scripture. Strauss (2002, p. 146) first pointed out that for Spinoza, it was "self-evident and in accordance with his entire standpoint" to give precedence to "autonomous knowledge" over "the authority of Scripture". Therefore, Strauss claimed that Spinoza had to prove that reason was prior to Scripture, and in terms of science, it had nothing to do with the latter. Otherwise, reason was still dependent on Scripture and could not be prior to Scripture. In this way, Strauss (2002, p. 147) made the conclusion that in Spinoza's historical context, the identification of religion and Scripture, and thereby the denial of the cognitive value of religion, was adequately motivated.

These three refutations constituted the first part of Strauss's comment article. In this part, with an analysis of Spinoza's aim, Strauss claimed that Spinoza's critique of the Bible was not due to the so-called hatred towards Judaism as Cohen claimed. The seemingly arbitrary connection of politics with theology, the politicization of the Bible, and the denial of the cognitive value of religion all arose from Spinoza's striving for the liberation of philosophy and state from the Church, rather than from his selfish willing to take revenge on the Jewish community that had excommunicated him. It's not hard to see that Strauss's critique of Cohen's analysis was made possible by his particular way of interpretation different from Cohen's. Starting from Mommsen's principle that motives in accord with duty

come first and egotistical motives next, Strauss tried to understand Spinoza's work with what Spinoza said in the text as well as the historical context Spinoza was in. Unlike Cohen, Strauss didn't care about the personal motives of Spinoza. We can say that at this moment, Strauss's hermeneutical rule was just like Spinoza's fundamental exegetical rule that Scripture should be explained by Scripture alone and could not be understood if the interpreter brought his own subjective presupposes in. Strauss made it clear that the *Treatise* could be explained only on the basis of the *Treatise* alone.

Strauss's Reading of the *Treatise* in Late 1920s

Strauss's comment essay on Cohen's analysis of Spinoza's Bible science attracted the attention of Julius Guttmann, the then director of the Higher Institute for Jewish Studies. As a result, in 1925, Strauss was recommended a research fellowship in the Institute by Guttmann to have a further study of Spinoza there. Three years later, Strauss finished his research project with a report on Spinoza's critique of religion and his predecessors which was published two years later under the title of *Spinoza's Critique of Religion* (1930).

Before telling Spinoza's critique of religion, Strauss first introduced the tradition of criticism of religion. He began with some thoughts on the relationship between religion and science. These two things were so different that they could not be not conflict with each other. The reason why there was scientific critique of religion was that science was considered to be an excellent tool to fight against religion. That's to say, science was only a means to an end and criticism of religion originated in other motives. Strauss gave the example of Epicurus's critique of religion. Strauss told us that Epicurus's critique of religion was originated in an original motive to eliminate fears of gods to secure the individual peace of mind. For Epicurus, science was not where his critique began. Strauss also gave the example of the critique of religion in the Age of Enlightenment. Strauss said that criticism of religion in the seventeenth century, though had its origins in Epicurean thinking, was nevertheless aimed at social peace. For perils arose from the cleavage of Europe on religious grounds, criticism of religion at this age must focus on the dangers religion brought to the society and set its target to achieve peace within society and between societies.

To let his readers know more concrete characters of the criticism of religion in the Age of Enlightenment, Strauss investigated Spinoza's precursors' critique of religion. Those whose criticism were referred to are Uriel da Costa, Isaac de La Peyrère and Thomas Hobbes. In terms of Da Costa's critique of religion, Strauss found that at first, it was just like that of Epicurus's. Da Costa concerned the tranquility of mind and criticized religion on the basis that it tormented men and weighed them down. But with an awareness that present good, the most important

thing, was easy to be destroyed by external social environment, Da Costa's concern shifted gradually to the social peace (Strauss 1985, p. 61). As for La Peyrère's critique of religion, Strauss focused mainly on La Peyrère's theory that there were men prior to Adam and on La Peyrère's interest in the re-establishment of the Jewish kingdom. Strauss found that La Peyrère constructed this theory with the help of the progress of modern science, especially anthropology and ethnology. Of course, Strauss (1985, p. 73) made it clear that, La Peyrère's critique was completed on the basis of a passage in Paul's "Epistle to the Romans" which let him cast doubt on the authority of the Old Testament Scripture. Indeed, this was the way how La Peyrère concealed his unbelief: by using the terminology used in orthodox dogmatics (Strauss 1985, p. 78). Strauss thought that La Peyrère's refrain from attacks on the accepted teachings of the Church was purely out of political considerations. At last, Strauss referred to Hobbes's critique of religion. Strauss (1985, p. 86) found that Hobbes's critique of religion was the complement and culmination of critique of religion for Hobbes explained religion in terms of human nature. With an analysis of Hobbes's work, Strauss implied that Hobbes's critique of religion included two aspects. First, religion sought after causes unmethodically. Second, religion created vanity, desire for status and reputation, and overestimation of one's own powers, which caused conflicts and wars. Of course, Strauss didn't forget to remind us that in his critique of religion, Hobbes was preoccupied with political considerations.

Enough for an introduction of Strauss's consideration of the historical context Spinoza was in. Let's then have a look at how Strauss analyzed Spinoza's critique of religion. It's easy to see that, for this aim, Strauss first paid attention to the question of how the analysis should be carried out. In the *Treatise*, Spinoza expressly attacked two camps regarding revealed religion, the skeptics who demanded the subordination of reason to the Scripture and the dogmatics who sought to make of the Scripture the handmaid of reason. While attacking the orthodoxy, what Spinoza targeted at was Christian orthodoxy, in particular the Calvinism. While criticizing dogmatism, what Spinoza targeted at was Maimonides, the founder of dogmatism. For Spinoza's critique of religion was completed in this order, namely, critique of orthodoxy, of Maimonides, and of Calvin, Strauss decided that his analysis should also be carried out in this order. It can be seen that in the following chapters, namely, in chapter 5, 6, and 7, Strauss gave an exhaustive explanation of Spinoza's critique of orthodoxy, of Maimonides, and of Calvin. As the structure was established, the next question Strauss concerned was what kind of way of interpretation he should use. In the comment article on Cohen's analysis of Spinoza's Bible science, Strauss had claimed that an interpreter should not understand an author by referring to the author's egotistical motives where motives in accord with duty suffice for an explanation. Indeed, here, Strauss chose without any doubt to start from Spinoza's purposes clearly stated in the text

rather than from his own subjective presupposes of Spinoza's personal motives on the basis of Spinoza's life experience. Strauss focused on Spinoza's own words and read the text literally. For example, while dealing with Spinoza's critique of orthodoxy, Strauss set out from Spinoza's own statement of the aims he had in mind in writing the *Treatise*. And when it came to Spinoza's critique of Maimonides, Strauss at first place analyzed Spinoza's own view of the divergences between himself and Maimonides.

Let's take a look at how Strauss tried to understand Spinoza's critique of Maimonides. After an analysis of Spinoza's own statement of the disputes between himself and Maimonides, Strauss then explored the contrast of Spinoza and Maimonides regarding the central theological assumption, the conception of man, and the attitude towards Jewish life. Strauss (1985, p. 156) found, for example, that Spinoza thought revelation "was not actual because it was not possible", while Maimonides just justified revelation. With knowledge of the disputes between Spinoza and Maimonides, Strauss then turned to Spinoza's critique of Maimonides. As usual, Strauss began with Spinoza's own words, concentrating on how Spinoza said no to Maimonides' views on divine law, prophecy, and miracles, etc. By focusing on Spinoza's statement, Strauss (1985, p. 176) found that Spinoza's critique of Maimonides was carried out on four different planes of argument. At first place, Spinoza denied Maimonides's idea that reason and revelation could be reconciled. Spinoza claimed that the elements which Maimonides treated as united in Mosaic law were in fact in contradiction, and most importantly, philosophy and theology could never be united because the former was a matter for the wise minority and the latter, for the unwise majority. Then, Spinoza raised objection to Maimonides's conception of revelation. Spinoza's mind was armed with modern science. He despised Maimonides' allegorical interpretation of Scripture. Thirdly and fourthly, Spinoza completed his critique also on the basis of history and philosophy. Spinoza criticized the revealed character of the Torah and even further denied the possibility of revelation.

So much for how Strauss interpreted Spinoza at this moment. Generally speaking, Strauss fit his deeds to his words. Strauss's hermeneutical rule displayed in this book was the same as that Strauss claimed in his comment article on Cohen's analysis of the *Treatise*. On the one hand, Strauss resorted to the historical context Spinoza was in. On the other, Strauss adhered to Theodor Mommsen's principle and read the text literally, trying to read the *Treatise* as it presented itself without taking his own convictions into it.

Strauss on How to Read Spinoza's *Treatise* in 1940s

Spinoza's Critique of Religion was originally published in German in 1930. The English version didn't come until in 1962. In the long autobiographical preface to this version, Strauss (1985, p. 31) said that when he was young, he understood Spinoza too literally because he did not read him literally enough. Then, what does a literally-enough reading look like? Let's turn to Strauss's essay "How to Study Spinoza's *Theologico-Political Treatise*" (1948).

This essay opened with the question why we need to read the *Treatise* again. According to Strauss, why we need to open an old book was a question we must first clarify before any historical investigation. Strauss's answer seemed to be quite simple. He said that Spinoza's *Treatise* was "*the* classic document of the 'rationalist' or 'secularist' attack on the belief in revelation" and the issue discussed in it was still alive" (Strauss, 1948, p. 142). If the need to open the *Treatise* is to see Spinoza's opinion of the philosophy-Vs.-revelation issue, then we need to look at Spinoza's opinion itself. Only in this way can we get what Spinoza himself has said. Indeed, with a brief statement of the reason why read the *Treatise* again, Strauss (1948, p. 143) claimed that "we shall therefore listen to Spinoza as attentively as we can…shall make every effort to understand what he says exactly as he means it…For if we fail to do so, we are likely to substitute our folly for this wisdom". We can partly see from this paragraph that Strauss's claim that we should understand a thinker as he understood himself is not nonsense. It is based on the fact that the intention to read a classic book is to get the wisdom in it. As the aim is to get the wisdom in it, we of course need to listen to the author carefully, instead of carelessly. If we can learn something from past thinkers, then it presupposes that we are not necessarily wise than the past thinkers. This aligns well with Strauss's denial of progressivism that we moderns are wiser than the ancients.

Then comes the question of how to read the *Treatise*. In terms of this issue, Strauss (1948, p. 143) made it clear that the true understanding of the words or thoughts of another man was necessarily based on "an exact interpretation of his explicit statements". But what does "exactness" mean? Obviously, it has different meanings in difference situations. Sometimes, to be exact means to care every word of an author. But if an author discusses something casually, it's certainly not wise to be careful of his/her every word. Thus, Strauss (1948, p. 144) suggested that one must therefore first know the author's habits of writing. At this moment, Strauss (1948, p. 144) further claimed that as people wrote as they read, we could acquire some previous knowledge of an author's habits of writing by studying his habits of reading. Inspired by this, Strauss began to investigate how Spinoza read the Bible. It's well known that in the *Treatise*, Spinoza has spent a whole chapter (chap. 7) to discuss the interpretation of Scripture. According to Spinoza, the Scripture can only be understood by itself and its history for it is composed not of

intellect and reason, but of affects and emotions. It's not hard to see that this hermeneutical principle, however, cannot be directly used while interpreting the *Treatise*, because the *Treatise* is not a masterpiece of affects and emotions, just like the Scripture. We can see that Strauss then turned to Spinoza's hermeneutical principle of interpreting intelligible books. Strauss (1948, p. 150) found that for Spinoza, intelligible books were those like Euclid's book that told certain knowledge and while interpreting them, and it was not even necessary "to know in what language they were originally composed". So, Strauss found that unfortunately, he could not borrow Spinoza's hermeneutical rule here neither, for The *Treatise* was not totally an intelligible book. In this dilemma, Strauss (1948, p. 151) concluded that Spinoza's rules of reading were "of little or no use for the understanding of books that are neither hieroglyphic nor as easy of access as a modern manual of Euclidean geometry".

As Spinoza's book was kind of between a hieroglyphic and an intelligible book, some suggested that history might help greatly. About this view, Strauss was doubtful. Strauss began his refutation with a description of Spinoza's belief that his philosophy was *the* true account of the whole. Strauss (1948, p. 152) said that Spinoza, who had read many very difficult books, was contempt for that thought of the past. As for political philosophy in particular, he "flatly declares that all political philosophy prior to his own is useless". In view of Spinoza's injunction that his teaching was *the* true teaching, Strauss (1948, p. 154) thought that it was better for us to "open our minds and take seriously the possibility that he was right", for only in this way could we understand him. If we rejected his belief, we'd never be able to understand him. Here, it was not hard to see what Strauss meant. If Spinoza dictated that his teaching was *the* true teaching, then it was not appropriate for us to treat it as historically true. If Spinoza's teaching should not be treated as the expression of a particular era, then it was not necessary to consider when, where or under which situation it was formed. Indeed, Strauss (1948, p. 159) made it clear that "Spinoza did not consider relevant for the understanding of his books: information regarding his life, character and interests, the occasion and time of the composition of his books, their addressees, the fate of his teaching and… his sources." "Such extraneous knowledge," Strauss (1948, p. 159) said, "can never be permitted to supply the clue to his teaching except after it has been proved beyond any reasonable doubt that it is impossible to make head and tail of his teaching as he presented it."[1]

[1]Of course, Strauss adds, there is a need for extraneous information when a text is not intelligible to us. Strauss gives the example that an interpreter could not understand the terminology in Spinoza's book. Under this situation, Strauss says, the interpreter has to "learn the rudiments of a language which was familiar to Spinoza's contemporaries…follow the signposts erected by Spinoza himself and the indications which Spinoza left accidentally in his writings". In a word, the interpreter must

Then, how did Strauss himself read the *Treatise*? We can see that Strauss at first place concerned to whom the *Treatise* was addressed. Based on Spinoza's explicit statement that it was the contrast between Christian belief and Christian practice that induced him to write that work, Strauss (1948, pp. 161–162) found that it was addressed to a specific group of men—not philosophers in general, but Christian potential philosophers in particular. If the work was for the philosophic readers, not for the vulgar, then its fundamental teaching must had not been written large on every page. Based on this clue, Strauss (1948, p. 169) noticed that the theological part of the *Treatise* "opens and concludes with the implicit assertion that revelation or prophecy as certain knowledge of truths which surpass the capacity of human reason is possible." However, at the same time, Strauss (1948, p. 169) saw that, there were also such kind of passages in which "the possibility of any supra-rational knowledge is simply denied". Faced with Spinoza's self-contradiction, Strauss (1948, p. 170) finally made the judgment that Spinoza didn't admit the possibility of any supra-rational teachings, for Spinoza declared that "man has no access whatever to truth except through sense-perception and reasoning" and the teachings "above reason" were in truth "dreams or mere fictions" and "by far below reason". But, why this declaration of Spinoza could be taken as the valid evidence to judge whether Spinoza believed the possibility of supra-rational knowledge or not? Was there a general rule to decide which of two contradictory statements expressed Spinoza's true view? Strauss disclosed it by explaining how Spinoza solved the contradictions in the Bible. As Jesus and Paul both had contradictory statements, one of which was addressed to the common people and the other to the wise, Strauss said that Spinoza dismissed all of those which he considered the vulgar view as mere accommodations to the common people. For Strauss, Spinoza's way of interpretation was exactly the rule he was looking for. Strauss (1948, p. 177) concluded that "if an author who admits…that he speaks 'after the manner of man', makes contradictory statements on a subject, the statement contradicting the vulgar view has to be considered as his serious view."

According to Strauss, this rule was presupposed by Spinoza's principle of writing. Spinoza believed that he had better "adapt the expression of his thought to the generally accepted opinions by professing…these very opinions, even though he considers them untrue or absurd" (Strauss 1948, pp. 177–178)." For Spinoza, it was justified to "speak with a view to the capacity of the vulgar" and to accommodate himself to the particular prejudices of particular groups or individuals, for philosophers were in danger of being suspected by the multitude and they needed to be cautious. Spinoza hided his unorthodox views behind "more or less

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"start from Spinoza's explicit statements" and pay attention to "that branch of the philosophic tradition that Spinoza himself considered most important" (p. 161).

transparent accommodations to the generally accepted opinions", giving them a Biblical appearance (Strauss 1948, pp. 179–181). Sometimes, he expressed common views as well as those against them. Sometimes, he just expressed common views, keeping silent about his own ones or only giving implications. In a word, his views might well be expressed by the statements that occurred least frequently or only once, or might even not be spoken out at all. As Spinoza spoke with a view to the capacity of the vulgar, while stated his own views in places "least exposed to the curiosity of the superficial readers", Strauss (1948, p. 186) showed that it was necessary to regard "the statement and implications most opposed to what Spinoza considered the vulgar view" as expressing his serious view. Strauss (1948, p. 186) went further by saying that "even a necessary implication of a heterodox character" had to "take precedence over a contradictory statement that is never explicitly contradicted by Spinoza".

It's not hard to see that by being alert to Spinoza's art of writing, Strauss found something new in Spinoza. Let's take a brief look at Strauss's different interpretation of Spinoza's attitude towards Maimonides. We remember that in *Spinoza's Critique of Religion (1930)*, Strauss said that Spinoza's critique of Maimonides was carried out on four different planes of argument. But, here, we can find that Strauss (1948, p. 181) said that Spinoza "did not indicate what he owed to Maimonides", and when saying that "Moses believed, or at least wished to teach, that God is zealous or angry", he "merely makes explicit what Maimonides had implied when intimating that the belief in God's anger is required…for the good ordering of civil society". Strauss didn't say too much about Spinoza's treatment of Maimonides, but he did show that Spinoza actually didn't object Maimonides' ideas, but just made them simplified.

Now, we can understand why Strauss in the preface said that when he was young, he understood Spinoza too literally because he did not read him literally enough. When he read Spinoza's *Treatise* in the 1920s, he read it quite literally, taking every word of Spinoza for serious. But when he read it again in the 1940s, he didn't believe in the every word of Spinoza any more. He first tried hard to understand Spinoza's explicit statements. He read them so literally that he found that there were contradictions in them. Then he discovered that those that were close to the common views were addressed to the common people (for Spinoza had to accommodate himself to the multitude) and could not be regarded as expressing Spinoza's serious views. Only those that were far away or even opposed to the common views could. With an awareness of Spinoza's exotericism, Strauss finally found that there were esoteric teachings hidden behind Spinoza's explicit statements.

Conclusion

This paper doesn't aim to have a thorough investigation of Leo Strauss's hermeneutics, but aims only to explore what "be alert to the art of writing" means in Strauss's sense by taking the example of Strauss's study of Spinoza's *Theologico-Political Treatise* respectively before and after his rediscovery of exotericism. We can see that at the very beginning, Strauss adopted Theodor Mommsen's principle that motives in accord with duty come first and egotistical motives next, claiming that there was no need to resort to Spinoza's personal motives to understand the *Treatise* which could be explained on the basis of itself alone. Later, Strauss still practiced Mommsen's principle and tried to understand Spinoza with Spinoza's own statements, rather than with presupposes of Spinoza's personal motives on the basis of his life experience. To have a better understanding of Spinoza's statements, Strauss sometimes also resorted to the historical context Spinoza was in. But after the rediscovery of exotericism, Strauss became very alert to Spinoza's way of writing. Strauss found that Spinoza spoke with a view to the capacity of the vulgar. Some of Spinoza's explicit statements were addressed to the non-philosophic majority and were not Spinoza's true teachings, but only Spinoza's accommodations to the multitude. Based on this, Strauss, though still tried to understand Spinoza on the basis of Spinoza's own statements (the understanding of which might needed historical knowledge), didn't understand Spinoza on the basis of Spinoza's all statements any more. He believed only in those most opposed to what Spinoza considered the vulgar view as well as those with an implication of a heterodox character. Strauss (1948, p. 196) made such kind of discoveries as "he (Spinoza) asserts that there cannot be any contradictions between the insight of the understanding and teaching of the Bible…and we know that he did not believe in the truth of the Biblical teaching". From Strauss's encounter with exotericism, we can finally find that "be alert to the art of writing" in general means two things. First, understand the author's explicit statements. Then, try to find whether there are teachings that are different from or even opposed to the explicit statements. It's noteworthy that for Strauss, "be alert to the art of writing" means first of all to have an exact interpretation of an author's explicit statements, rather than to take great pains to find his esoteric teachings.

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