Human Being as a Legal-Political Subject: Pluralism of Hannah Arendt vs Authoritarianism of Carl Schmitt

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Diplomski rad

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SUMMARY

Who or what defines the sovereign ruler and it's political subject? Within legal and political framework of the modern world, questions about sovereignty and power always remain open. Human life is conditioned by the sovereignty of the state he resides in, and that, in turn, conditions the concept of the political which defines a person as a citizen, as well as his status, and political actions. The aim of this research is to compare two concepts of the political in the sphere of a man's position and role as a legal – political subject in modern philosophy of politics and law. The paper compares two distinguished political theorists, who have made their most relevant contributions to political philosophy during the time of Weimar Republic between two World Wars, as well as during the immediate post – war period during the 1950s of the 20th century. This paper interprets and compares the perspective of Hannah Arendt, a theorist whose entire legal – political thought is based on the idea of a human being that is conditioned to live among others, with capability of autonomous action, which is the basis of every political action. As such, human being is unavoidably a plural being. Also, the paper explores the view of a controversial German legal philosopher Carl Schmitt, whose concept of the political is based on the value of state above the individual, and the eternal legitimacy of the concept of the political is the human capability for making the friend/enemy criteria. The aim of the paper is not to discuss which framework is more or less ethically "justifiable", pro – social or humanitarian, the aim is to show their implications on the human being itself, as an authentic political subject. Implications concern political and human rights, as well as physical existence. The similarities, as well as differences in the philosophical views of the above mentioned philosophers are explored, and especially vital is their opposite view of the nature of conflict among human beings, for it is the possibility of conflict that leads to different consequences (political and physical) on human beings in their philosophies.

Keywords: *sovereign, concept of the political, pluralism, friend, enemy*

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Verum est, summus hominorum.

(Truth is, we are only human.)

1. Introductory thoughts and parallel biographies

Writing a research paper on the problems of a man as a legal – political subject from the philosophical perspective is a challenge, especially today. Too many times one can hear cynical and populist critics in public media, who say how writing and discussing a human being as a legal – political subject today does not make a lot of sense, because (as always) all governments are equally rotten, all citizens everywhere in the world are equally unfree and repressed, and the only adequate political and constitutional solution for all problems is some form of benevolent dictatorship in which "everyone will know their place" and "one would not need to think too much, he would just need follow his orders properly". Regardless of wether or not we agree with the above stated opinions, one can agree that the 21st century brought along an intensified activity in political and legal sphere, and not necessarily in pacifist or integrative terms. By the intensified activity I refer to the world's financial crisis and recession from the year 2008, fierce parliamentary disagreements and protests within European Union, revolutions and armed combat in several Middle – Eastern countries – most of all Syria, where the emergency state is still present – as well as the epilogue of the American military intervention in Afghanistan. In the context of alleviating wartime traumas in the Balkans, one should not forget the latest trials of Haague ICTY Tribunal, which add new factors in the discussion about a human being as a legal – political subject, at least in the context of distinguishing military, administrative and civilian factor.[1] Happenings in the political and legal sphere, even the happenings that could be interpreted as a positive progress, are usually completely opposite in character from what a spectator would call "benevolent", "harmless", or "peaceful". The nature of political happenings and legal integrations rests on discord, disagreement and conflict, while pessimist might even say chaos. Modern democratic state is always, within reasonable limits, a conflicted and pluralistic society, in which many conflicts of interests and opinions are possible. Also, in the field of state and international law there are always new exceptional situations arising, that demand new forms of political solutions. Theoretical framework that this paper examines dates from the first half of the

[1] For more on this important distinctive factor of contemporary law see John Rawls, in his book *The Law of Peoples*, p. 111, KruZak, Zagreb, 2004.

previous century, specifically from the time of Weimar Republic[2] and post – WWII period, where this framework was well – received in post – war West Germany and United States of America. That is, one of the frameworks was well – received, for we are talking about two seperate theoretical constructs about the nature of political, and about the nature of a human being as a political subject. The first theoretical framework belongs to Jewish political theorist Hannah Arendt, who emigrated from Germany in 1941 to the USA, where her political theory and anthropology found massive audience and great success. The other theoretical framework belongs to Carl Schmitt, German jurist and political philosopher, in who there is a renewed interest today, and who is the subject of many discussions, mainly because of sympathizing and collaboration during the criminal National Socialist regime in Germany. Thoughts of all philosophers and theorists are deeply linked to life and the surrounding world, and theoretic implications of philosophy find their best use in practice. Precisely because of it, the following part of the paper will examine the spirit of time from which Hannah Arendt and Carl Schmitt came from. If we want to comprehend the deepest and most far – reaching philosophical implications of their theories, research should start from the time and circumstances in which their theories were made, as well as life and actions of the philosophers. Every theory has a practice, and every practice has a theory – especially when it comes to political and legal theory, who always have implications on the life of political subjects, and deal with human beings in a specific way. Because of that, historical background is essential. It should be noted that in this case, a common historical background is there, and it includes First World War, turbulent era of the Weimar Republic, Second World War and the Holocaust, as well as the post – war period of rebuilding, during the fifties and the sixties.

Hannah Arendt was born in the year 1906, in today's city of Hannover, in secular Jewish family. Her political thought is rooted in the phenomenological tradition of Edmund Husserl and Martin Heidegger, which she read during her studies at Marburg and Heidelberg universities in Germany. It should be noted that she was partly influenced by her Jewish heritage, and the fact that she was a part of a Jewish minority in Germany, regardless of being assimilated in German culture. According to her own words, one of the earliest philosophical influences on her worldview were the works of German Enlightenment philosopher,

[2] Weimar Republic (1919 – 1933) – a state made on German territory, after the First World War, as a federative republic with a coalition government assembled from social democrat, democrat and Catholic parties. It has ceased to exist with the establishment of the Third Reich.

Immanuel Kant.[3] By coming to America during the Holocaust, Arendt had become a naturalized American citizen, and in the same time, a guest lecturer at numerous prestigious American universities, including Berkeley, Northwestern and Princeton – where she was the first woman to teach a class ever. She kept a correspondence with many intellectual and political figures of Europe and America, including Mary McCarthy, Karl Jaspers and Gershom Scholem. Through her entire life, she had remained a proponent of an authentic political pluralism, as well as a sharp critic of American foreign policy in Vietnam.

The fate of other intellectual protagonist, Carl Schmitt, is drastically opposite. Schmitt was born in Plettenberg, in the year 1888, in a Catholic family of a middle – class official. Schmitt's intellectual development has a similar background as Arendt's, as it is typical for Germany prior and in between two World Wars. As Schmitt himself states in one of his sketches from the year 1958, formative influcences on him were as follows: "...specific Catholic background of his birthplace, clericalism of Catholic school in Attendorn which he attended as a boy, liberal education received during high school, post – Hegelian Prussian spirit and Neo - Kantianism that marked Wilhelmine Germany before First World War, German nationalism as a reaction to defeat and humiliation in First World War, but also the feeling of "true pluralism and great liberty" that the change of regime and first years of Weimar Republic had brought."[4] Schmitt joined the army service as a volunteer in 1916, although he did not spend war at the battlefront, but in an infantry unit in Munich. From numerous dedications to fallen comrades in his texts it is obvious how much the First World War had influenced young Schmitt. In the year 1921, Schmitt had become a university professor in many prestigious German universities, in Griefswald and Bonn, then Cologne, and finally, University of Friedrich Wilhelm (today's Humboldt University) in Berlin, where he had remained until the end of National Socialist regime. What followed was common to many German intellectuals of the time, and that is collaboration with National Socialist regime, to which he went over after the takeover in 1930. During the early period of Hitler's reign he had become a chief editor of *German Jurist Paper (Deutsche Juristen – Zeitung)*, and during that period some of his morally most questionable texts were produced – i. e. trying to

[3] As stated in the Serbian translation of her interview, published as *Zatočenici zla: zaveštanje Hane Arent*, Beogradski Krug, 2002.
[4] As stated in the Croatian translation of Carl Schmitt and his writings, published as *Politički spisi*, p 180, from the afterword by Nenad Zakošek

justify the murder of the commander of SA[5] squad, an event Schmitt called the protection of the rule of law.[6] However, Schmitt was later denounced in the reports of SS[7] as an opportunist, and he lost most of his functions. After the war he was interrogated at Nuremberg process, although he was not charged. Unlike most of his intellectual contemporaries (including the notable philosopher Martin Heidegger) he had refused denazification, consequentially lost his cathedra, and found himself banned for life from teaching in Germany. After that, he returned to his birthtown of Plettenberg, where he has remained in a semi – isolation for the rest of his life, save for occasional lectures in Franco's Spain (where his later work, *Theory of the Partisan* was made).

The reader will notice how different the life paths of these authors are, during the decades that brought along new political forms, new forms of dictatorship, but new forms of freedom and action as well. Occasionally one can hear that every philosophical and scientific mind is a "product of it's own time", and that the time in which a person lives in necessarily and unavoidably determines the character and ideas of a philosopher. In other words, this belief tells us that if a person is born in a specific ime, within a specific social group, in a specific country, this person will have the same beliefs and ideas as all of his contemporaries. The author of this scientific paper can not agree with that, and this paper aims to show otherwise, and considers that the lives and theories of the two philosophers in question say otherwise. Hannah Arendt and Carl Schmitt, when constructing their framworks, use anthropology as a a starting point, that is, from understanding of a human being as a genuine political being, who is able to create authentic political communities (something that Schmitt stresses) and political action (something on which Arendt puts more emphasis). For such things, only a human being is capable, and in turn, they make him an authentic political subject. However, their thinking of human being as a political subject is different, especially when we look at their concepts of political, the importance of an individual, and the meaning of *conflict* in the political sphere, which is something that influences man above everything else as a legal and

[5] SA – (ger.) *Sturmabteilung* or Assault Division, a German paramilitary organization, whose first commander Ernst Röhm was killed in 1934, after which German generals followed Hitler.
[6] Carl Schmitt, *Politički spisi*, p 183, Politička Kultura, Zagreb, 2007. (from the afterword by Nenad Zakošek)
[7] SS – (ger.) *Schutzstaffel* or Protection Squadron, one of the main Nazi organizations, whose last commander was the notorious Heinrich Himmler.

political subject – that he can be captured, tortured, killed, as well as lose his citizenship status, be it permanently or temporarily.[8]

[8] For more on the topic, see Serbian translation of Hannah Arendt, *The Origins of Totalitarianism*, Feministička izdavačka kuća, Beograd, 1998. and Croatian translation Agamben's work *Homo Sacer*, Zagreb, Multimedijalni institut, Arkzin, 2006.

2. Political Community and the Political Subject

If we aim to comprehend what relation is towards political subjects in the philosophies of Schmitt and Arendt, we must first see which political community/form represents the ideal for Schmitt, and which for Arendt. It is important to know how do these authors perceive the concept of *state* itself, as well as which political communities and forms of government do they believe to be valuable for analysis. Schmitt begins his important essay, *The Concept of the Political* (ger. *Der Begriff des Politischen*) by a perfectly concise, and yet esoteric and somewhat vague statement – "The concept of the state presupposes the concept of the political."[9] Schmitt defines a state as a "specific political status of an organized people, and in a determinary sense, a crucial state, against many imaginable individual and collective statuses..."[10] In his essay, he warns how the term political is always used as a counterpoint to something, i. e. morals, religion, law, economy, etc. The conclusion is clear – at this time, there is no satisfactory and comprehensive definition of the political. Political may be thought equal to the category of state, that is, to think in equal terms about the concept of the state and the concept of the political, however Schmitt does not find that this is true, at least not during the time of Weimar Republic. It is worth mentioning how Schmitt, in the foreword to the second edition of the essay *The Concept of the Political* says how once, there was a time when it made sense for categories of *state* and *political* to be considered as equal. In a romantic and very static [11] tone, Schmitt also states the following: "European part of humankind was, until recently, living in the time whose legal terminology was completely determined from the viewpoint of state and they presumed state as a political unity. *Period of statehood is now finished.* This does not need further explanation. (...) State as the model of political unity, state as a bearer of the most intriguing of all monopolies, the monopoly of the political decision, this product of European form and occidental rationalism is now dethroned. But his concepts remain..."[12]

For Schmitt, the designation, and to an extent, *justificiation* of the concept of the political, as an authentic human function is in determining specifically political categories. These categories, or concepts, are *friend* and *enemy*. Having in mind the suggestive character of

[9] Carl Schmitt, *Pojam političkoga*, p 67, Politička kultura, Zagreb, 2007
[10] Carl Schmitt, op. cit., p 67
[11] Statism (from French, etat = state), theory based on a need for larger scale of participation of state in domestic affairs, economic affairs and matters, as well as other areas of social life (political, cultural, educational, etc.)
[12] Carl Schmitt, op. cit., p 62

these conepts, Schmitt does not see the political enimity in terms of good and evil, just or unjust, or a similar concept – for Schmitt, political enemy is simply the Other, a foreigner, with who (in extreme cases) conflicts are possible, which can not be resolved through norms and normative law. Due to that, Schmitt through his entire scientific and academic work speaks in favor of a decisionism[13] in law, something that is constrasted to a "pure" normative law, which was propagated by many legal philosophers of Weimar Republic. On the other hand, Arendt says how the main justification and condition of the concept of political is in human *action* – by this, action is perceived differently than work and manufacturing in Arendt's political anthropology. Arendt believes that action is the only activity that can occur directly between human beings, without any mediation of things or material, that are usually necessary for work and manufacture. According to Arendt, action reponds to the fundamental condition of pluralism, and that is the fact that *people,* and not man (taken as a singular and an individual) inhabit the world. Accoring to that, pluralism is possible only in the multiplicity[14], and togetherness of the people – which unavoidably leads to political communities. Even more precise definition by Adrendt is the one that says how authentic action is the unity of speech and thought, something that was, as Arendt believes, specific to Greek *polis*.[15] Basis for this exists, especially when taking into consideration the different perception of freedom in antic Greece – the type of freedom that was not "negative freedom", but more of a positive freedom, completely tied to action in public life, that is, the political life. It should be noted how Arendt also operates with a fairly romanticized notion of *polis* and the Greek perception of freedom – which is obvious from her major anthropological work *Vita Activa*: "To belong to a few equals *(homoioi)* meant to be able to live among equals; but the public arena itself, was rife with a fierce competitive spirit, where everyone needed to be distinguished from others, how he would by unique actions and accomplishments show how he is the best *(aien aristeuein)*. (...) And because of this possibility and out of love for state that has made this possible for everyone, everyone was more or less willing to share the burdens of judicial work, defense, and public affairs."[16] Arendt ignores the non – existant negative freedom/"freedom

[13] Decisionism (the word is derived from German and the expression *Dezisionismus*) is a political, ethical and legal doctrine which claims that the legitimacy of law is not based on what this law states, rather, is the law created through proper method from the appropriate and sovereign authority.
[14] It should be noted that the concepts of "multiplicity" and "pluralism" are to viewed strictly separate from the concepts of *masses*.
[15] Polis/πολις – a concept that stands for a specific historical and political form of the city – state, typical for ancient Greece. Philosophically, historically and politically, this concept should be sperated from the concepts of "modern nation state" of today. A modern state is defined primarily by the distinction of state and society, as well as the concept of nation. From *Aristotle's Critique of Democracy*, Željko Senković, Faculty of Philosophy, Osijek.
[16] Hannah Arendt, *Vita Activa*, p 38, August Cesarec, Zagreb, 1991

from" within polis, as well as a great number of slaves (people unable to act and unfree), and also – a large influence of polis on the life and death of every individual, be it a free citizen, or a slave. However, Arendt is right when she perceives action as an authentic basic principle of political action, and political subjectivization of a person in general.

To conclude, if the ideal political community for Arendt is a Greek polis, then such an ideal for Schmitt is a classical European Renaissance state, with a clear source of sovereignty and equally clearly defined relation of friendship and enmity towards other sovereign states – such relation is, in Schmitt's work, called a high point of politics. In the given example, Schmitt is susceptible to a dose of political romanticism, a romanticism that sees salvation only in solitary and anti – federalist concepts of statehood, where states could practice politics "as they please", regardless of how warlike, isolationist or even genocidal in character the state politics are. Schmitt's assumption (which is a fairly typical conservative political rhetoric of today) is that if the independant state sovereignty is respected, along with zero tolerance for any kind of interventionism, no matter if the interventionism is of humanitarian, military or political type, interstate politics are just as the way they should be, and it already gives a supposed guarantee that everything is going to be "alright". When he defines the state as a political status, Schmitt says how the state is "a specific kind of status of an organized people."[17] This definition is also imprecise and vague, for a priori it excludes any kind of possibility of co – habitation of two or more people in one state – examples of this include Czhekoslovakia or South Africa.

The terms of pluralism and pluriverse are not completely foreign to Schmitt. In his essay *The Concept of the Political* he states how from the conceptual attributes of the political follows the pluralism of the world of states. Equally, as Hannah Arendt sees human beings as starting points (her starting points are the human beings themselves), Schmitt perceives the states as political starting points, which is examplified by the passage: "As long as a state exists, there will thus always be in the world more than just one state. A world state which embraces the entire globe and all of humanity cannot exist. The political world is a pluriverse, not a universe. In this sense every theory of state is pluralistic..."[18] The forementioned passage corresponds to the above mentioned political – anthropological thoughts of Hannah Arendt, when she speaks of conditions of human life on Earth – "...that people, not man in singular, live on earth and inhabit the world." From that it can be inferred that the understanding of

[17] Carl Schmitt, *The Crisis of Parliamentary Democracy,* Politička kultura, Zagreb, 2007., p 67
[18] Carl Schmitt, op. cit., p 86

legal – political subject for Arendt is based on an individual who is always destined to unavoidably live with Others, while Schmitt's understaning of legal – political subject is necessarily tied to the concept of state, and moreover, it seems that from Schmitt's point of view, a legal – political subject that does not belong to a state (in legal terminology, does not possess a citizenship) is not possible. Schmitt's theory of non – existence of political without the factor of state is not pointless, for Hannah Arendt also speaks in her *Origins of Totalitarianism* how one of the greatest dangers for a person in the political world is the loss of citizenship, examplified by the traumas of Jews and apatrides/stateless persons during the Holocaust. Arendt states how the situation of Jewish people is highly symptomatic, for Jews have always enjoyed a status of a "stateless people".[19] Still, in the opus of Hannah Arendt, state itself is not a guarantee of a legal (nor moral) person in a human being. In the *Origins of Totalitarianism*, Arendt explains how one of the main goals of totalitarianism is, besides constructing a new form of reality, the elimination of a legal and moral *person*[20] inside a human being. Arendt believes how any kind of authentic and functioning legal system would eliminate the essence of totalitarianism itself – an example for manifestation of this essece is the concentration camp.[21] In this frightening new biopolitical space it is possible to eliminate all civil and human rights, and all sorts of legal protection of the individual. Arendt also arguments how it is more difficult to destroy a legal person of a criminal, a person who has done a crime, than that of an innocent citizen – a legal subject who has not done *anything*, who has lost his very right to existence. These considerations lead to perception of human and civil rights in the works of Hannah Arendt and Carl Schmitt, and their perception of this is very much alike, and there will be more arguments on this later.

[19] The situation has changed in 1948, with the establishment of the Jewish state of Israel, in the Middle East.
[20] As a philosophical concept, this word was pioneered by Immanuel Kant. The term person, in a legal and a political sense, is quite different from the concept of man.
[21] A key concept within the history and political theory of the 20th century. It is, above all, a prison camp for political prisoners, members of various undesirable ethnic and/or religious groups, and, in more rare occasions, civilians from a critical area of military combat. The word concentration camp (ger. Konzentrationslager) is unavoidably etymologically and politically tied to Third Reich and Germany. However, it should be noted that the function of a concentration camp was not used in the Third Reich for the first time. The first use of such camps was during the Boer Wars (1899 – 1902) in South Africa. At that time, the British army used them for the isolation of Boer civilian population, and cutting off all supplies and help to the Boer army from the civilians. Boer camps were not aimed at destruction and physical extermination such as the camps of totalitarian Third Reich, as it's sole purpose was isolation. Naturally, every concentration camp includes extremely low quality of life and living conditions, the presence of various diseases, and the inevitable neglect. Also, in the English language, one should distinguish between the concepts of *internment camp* and *concentration camp*. The latter is considered to be much more problematic in nature, due to incomparably lower quality of life and living conditions.

3. Sovereignty and Political Subjects

Schmitt's essay *The Concept of Political* can be taken as a central point for examining the author's entire political theory, as well as theory of the state, however, his more fascinating contribution to the political (and in many ways legal) theory represents his essay *Political Theology: Four Chapters on the Concept of Sovereignty* (ger. *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität)*.[22] If we use the opinions of well – known interpreters of Schmitt's whole work (especially Hass Hoffman), it seems right to say that Schmitt's work can not be viewed as an entirely built system of legal and political categories, but as an order of different, yet close attempts of giving answers to the questions of legitimacy and legality, the concept of the political and state sovereignty.

The concept of sovereignty is a key concept in the philosophyof Carl Schmitt, due to the fact that by the concept of sovereignty (eng. sovereignty, ger. *Souveränität*) Schmitt confronts the concept of standard normative law (the kind of law we know today in criminal, misdemeanor, constitutional and international law) with the concept of decisionist law, that is, law that is based on situations, exceptions and authority that makes a decision, not norms.[23] Moreover, Schmitt thinks how all law is "situational law", and the one that is sovereign, whoever he is, guarantees such a situation in it's entirety. For Schmitt, normative law confronts insurmountable barriers and limitations when it tries to distance itself from the exceptions and limitations, and wants to specify them as clearly as possible. Schmitt believes that the tendency of the entire liberal constitutionalism is to regulate all the exceptions with a clear specification, so that it can be made clear in which cases the law suspends itself. Schmitt's objection to this tendency is that the entire focus is on the norm, that is "normal" condition, which is defined and guaranteed by Constitution. According to Schmitt, the exception is much more interesting than the norm and the rule, for it is the exception that confirms the norm and the rule in it's entirety. Also, in the *Political Theology* essay, Schmitt confronts rationalist – based law (that is close to liberal constitutionalism) and natural law, and shows how these two currents work in the modern theory of state and law. Rationalist – based law is not interested, at least within scientific study, of possible exceptions, while natural law is – because this type

[22] Carl Schmitt, *Political Theology, Four Chapters on the Concept of Sovereignty*, George Schwab (trans.), 1985 by Massachusetts Institute of Technology. First edition was published in March, 1922.
[23] The theory of decisionist law, which was represented by Schmitt, is opposed to dominant theories of normative law of that time, which were represented by numerous lawyers and legal scholars of Weimar Republic, most notably Hans Kelsen.

of law, according to Schmitt, emanates[24] from a different source of ideas. When Schmitt's views are paraphrased, one can conclude the following – rationalist – based and normative law comes from the Enlightenment tradition of mind/reason, while the natural law comes from the concept of the divine, that is – God. Schmitt boldly claims that all relevant modern theories of state are secularized theological concepts, and the exception within law and legal order is analogous to a miracle in theology. This theory is similar to ideas of Max Weber, and the sociology of religion, where Weber claims that the root principals of capitalism are already present in the religious ways of Protestantism.

This leads towards the definition of sovereignty. Schmitt begins his *Political Theology* with a seductively formulated definition – "Sovereign is he who decides on the exception."[25] For better understanding of this brief definition, it first needs to be clarified what the exception is. In this understanding, a helpful insight comes from George Schwab, a respected modern interpreter and translator of the works of Carl Schmitt in the USA, who says the following about the problem of the exception: "In the context of Schmitt's work, a state of exception includes any kind of severe economic or political disturbance that requires the application of extraordinary measures. Whereas an exception presupposes a constitutional order that provides guidelines on how to confront crises in order to reestablish order and stability, a state of emergency need not have an existing order as a reference point because *necessitas non habet legem*[26]".[27] Schmitt sees his definition of sovereignty as the only one that can be applied to a borderline concept. In this case, the borderline concept is not something vague, but something that deals with the most external sphere, that is, sphere where exceptions can arise. State of exception is the state which makes questiong and defining sovereignty particularly important. For Schmitt, every legal order, as any order in general, rests upon an executive decision, instead of norms. It is precisely because of the fact that we can not foresee what kind of exception will arise within state's legal order, a clearly defined sovereignty of the governing body/individual is needed as a highest point, and very opposite of that is, by Schmitt, problematic tendency of identifying the state with the legal order. *Political Theology* essay is important in a legal – political tradition not because of precise legal – political

[24] It is not a random choice of words. As stated in the original: "…natural law tendency, which is interested in the emergency and *emanates* from an essentially different set of ideas." (italics were subsequently added by me)
[25] Carl Schmitt, *Political Theology, Four Chapters on the Concept of Sovereignty*, p 5
[26] (lat.) *necessitas non habet legem* – (eng.) Necessity has no law.
[27] Stated by George Schwab, from the foreword to Carl Schmitt's *Poliical Theology, Four Chapters on the Concept of Sovereignty*

solutions, but because of balanced and detailed historical overview of the history of sovereignty.

Schmitt himself claims how his legal – political findings are directly inspired by philosophical postulates and writings of Jean Bodin[28], one of leading experts of international law of the late Middle – Ages and early Renaissance in Europe, and his concept of sovereignty, which is derived from the final disunion of Europe in nation states and from the perspective of absolutist rulers in conflict with the nobility. Aendt also perceives Bodin as an authority on the question of sovereignty.[29] Bodin's thoughts on sovereignty are presented in the book *Six Books of the Commonwealth*[30], and his thoughts are significant for his stand on sovereign ruler being responsible only to God, especially during the time of political crisis. Bodin's work was made as a reaction on the slaughter of St. Bartholomew's Day massacre, from the year 1572. Such a stand correlates with Niccolo Machiavelli's notion of sovereign ruler. However, the difference between Machiavelli and Bodin is present, for Machiavelli believes that the ruler may conduct free of moral justification. Bodin's argument of the sovereign ruler is of theological nature, because the government and sovereignty is by nature divine, and Machiavelli distances theology from the government. After Bodin, Schmitt continues with a later historical notion of sovereignty, which was formulated in the 18th century by Swiss jurist Emer de Vattel.[31] Eventually, Schmitt comments on the French Revolution and the notions of Jean Jacques Rousseau, and his romantic notion of sovereignty – a notion that is particularly criticized among political scientists and political theorists, as well as Hannah Arendt. Arendt states in the second volume of her work *The Origins of Totalitarianism* – "Political romanticism is accused of creating a theory of race. We might accuse it of many other irresponsible theories. Adam Miller and Friedrich Schlegel are symptomatic for the general toying of modern though in which nearly any theory can temporarily take root. (...) The world needs to be romanticized, as Novalis had said, wishing to give the high sense to the ordinary, mysterious sense to everyday, dignity of the unkown..."[32] On similar notions

[28] Jean Bodin (1530 – 1596), French jurist and influential political philosopher, known for his theory of sovereignty in his classical work *Six Books on the Commonwealth*. The basis of this work is Bodin's "dialogue" with the philosophy of Aristotle, and postulating how Aristotle's political categories are not sufficient to describe a free citizen during the Middle Ages.
[29] Hannah Arendt, *The Origins of Totalitarianism*, p 236, Feministička izdavačka kuća, Belgrade, 1998
[30] Jean Bodin, *Six Books on the Commonwealth*, Politička kultura, Zagreb, 2002
[31] Emer de Vattel (1714 – 1767), Swiss legal philosopher and a diplomat, developed his own theory of law (which served as the basis for contemporary international law), through the influence of Gottfried Leibniz and Christian Wolff.
[32] Hannah Arendt, *The Origins of Totalitarianism*, p 172, Feministička izdavačka kuća, Belgrade, 1998

Schmitt also warns when he states that, in the 18th century, the consistency of exclusive scientistic way of thinking had permeated the political ideas, which consequently repressed the juristic – ethical thought which was active in the time of Enlightenment. The general will that Rousseau spoke of, had become identical with the will of sovereign, and in the concept of generality, *the people* had become *sovereign*. Through that, the decisionist and personalistic concept of sovereignty was lost. This is closely related to Schmitt's political theology – regardless of not judging the metamorphosis of sovereignty as good or bad, Schmitt states how it is necessary to be aware that all important political concepts are extracted from theological premises. Also, from those premises, Schmitt criticizes the normativist and positivist legal theories of his contemporaries, especially that of Hans Kelsen. The key terms of Schmitt's essay *Political Theology* are still historical sovereignty and the sovereign.

However, Schmitt's secures his theoretical position, and yet he does not mention the relationship between the sovereign of the state, and the political subjects, that is, citizens of the state. As a sort of a corrective here stands Hannah Arendt, who unlike Schmitt, precisely arguments the complex relationship of sovereign states and political subjects/individuals in a very "exceptional" legal – political situation. In the *Origins of Totalitarianism*, precisely in the second tome under the title *Imperialism*, Hannah Arendt through a convincing historical and contemporary approach dissects the forms of imperialism, and the overall Europan political situation near the end of 19th and at the beginning of the 20th century. According to Hannah Arendt, the crucial events of the First World War (1914 – 1918), and the turbulent post – war period brought to the light of day all of problems, contradictions, and dangers of terms such as sovereignty and state sovereign, of which Carl Schmitt also writes about. Arendt ties the problem of sovereignty directly with what she calls "apories" of human rights, that came about near the end of the 18th century. Arendt is surprisingly close to Schmitt's understanding of sovereignty in the divison between sovereignty of God and sovereignty of Man. Arendt states how through the entire 19th century human rights were proclaimed as inaliable, as they came directly from the sovereignty and "maturity" of Man, not God. Logically, the approval of calling on human rights whenever a man (as an individual or a group) would be threatened by sovereignty of state was present. Also, very close to the decisionist stand of Schmitt – Arendt as the main problem in the history of human rights sees the inability of appeal to any kind of authority, that is, the lack of divine, rulers, or even institutional authorities when we speak of human rights. No one guaranteed the rights of man, except for Man himself. Also, the entire concept of human rights had become permeated with

the question of sovereignty of the people – it seemed that only the emancipated sovereignty of a people can truly secure such rights. By the beginning of the 20th century, in the legal – political sphere the expression *minority* has for the first time arisen as a political expression.[33] Just then, at the end of First World War, to the light of the day comes out the dark side of an absolute *state sovereignty*, when the repatriation of numerous refugees came into play. The time and the place of this occurence is the post – war WW1 period, when a large number of denationalized people and minorities have come about.[34] A huge number of refugees and banished minorities came about from the breakdown of the old monarchy states, and faced the fate of the statelesness (ger. *Heimatlosen*, fr. *apatride*), a person without any citizenship. The most problematic groups of the stateless were post – war refugees, who were banished by revolutions and war, and after that, they were denationalized by the victorious governments, leaving them in the empty teritorry of statelesness. She states how this record – breaking assurgence of stateless people includes millions of Russians, hundreds of thousands of Armenians, thousands of Hungarians, Spanish, and many others. It it obvious that Arendt is, unlike Schmitt, more interested in specific socio – political events and fates of the people, instead of the history of political concepts and ideas. As for the important factor of sovereignty, Arendt sees the state sovereignty (in the specific context of post - WW1 period) as a highly problematic and crucial factor in the rise of totalitarian regimes in the early 20th century, as well as a factor that determined the fates of a large number of minority refugees and their communities (political subjects) without citizenship. That is very clear from the following quote: "Theoretically, in the sphere of international law, it was always valid that sovereignty is the most absolute in the things of emigration, naturalization, nationality and exile; in reality though, national sovereignities were holding back the practical thinking and silent acknowledgement of common interest until totalitarian regimes had arisen." [35] Sovereignty, and especially people's sovereignty, may be understood in many ways, and according to Arendt, the greatest fallacy of great number of nationally frustrated population was identifying true freedom, emancipation and people's sovereignty with a full national emancipation, as if the people without their own government were without their human rights (which is closely related to permeated concepts of human rights, authority, and the people, which are mentioned above).

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[33] Hannah Arendt, *The Origins of Totalitarianism*, p 280, Feministička izdavačka kuća, Belgrade, 1998

[34] Above all, Arendt states that the important factor in this chaos was the breakdown of the large monarchy states – such as the dissolution of the Ottoman Empire and Austria – Hungary, which left a large number of their minority citizens without a citizenship.

[35] Hannah Arendt, op. cit., p 285

Arendt's final political analysis of the chaotic situation of minorities, stateless and repatriations is clearly visible from the following quote – "Full national sovereignty was possible only while the community of European nations existed: for it was the spirit of unorganized solidarity and agreement that stopped every government of using it's full sovereign power."[36] The most important expression here is "full sovereign power", and it gives the problematics of sovereignty a new dimension, and this is never mentioned by Carl Schmitt. The fact is that Schmitt's analysis is turned towards the history of philosophy, theory of law, occasionaly to philology, while Arendt's approach is that of a historian and a political scientist.[37] In *Political Theology*, Schmitt sees sovereignty in a legal – regulative sense, while Arendt's focus is on real political and legal consequences that the full state sovereignty had on political subjects after the First World War. Arendt also states the fact that the sovereignties of states may be "in conflict" during the peace time as well, and more will be explored on that matter in the next chapter. In brief, in his writings Schmitt keeps himself in the "safe" theoretical zone of the theory of sovereignty and history of law, while Arendt deals with political theory and sociology, as well as the consequences of political theories and understandings of sovereignty. If we want to articulate Arendt's conclusions and findings about the nature of sovereignty, then we are faced with the following notions:

1) sovereignty is not always completely possible, 2) full state sovereignty may lead to disasterous and life – threatening consequences for political subjects, that is, citizens, 3) full emancipation of a people and people's government does not guarantee sovereignty.

In his key essay, *Political Theology and Concept of the Political*, Schmitt ignores and does not mention the possible "real – world" consequences of state sovereignty on an individual. When faced with the dichotomy of individual vs state, Schmitt obviously gives a silent, yet great advantage to the state and the authority instance that is "higher" from an individual or a group. From what is stated above, it may be observed that the pluriverse of sovereign states from Schmitt's essay *The Concept of the Political* has similarities to Arendt's analysis of sovereignty, however, one of key differences is Arendt's detection of conflicting sovereignties even during the time of peace, which leads us away from the usual distinction of war and peace. From the perspective of sovereignty and the possibility of conflict among political communities, clearest conclusions can be drawn regarding implications on legal political subjects, in Arendt and Schmitt's respective philosophies.

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[36] Hannah Arendt, *The Origins of Totalitarianism*, p 285, Feministička izdavačka kuća, Belgrade, 1998

[37] At least in her work *The Origins of Totalitarianism.*

4. Human Being as a Being of Conflict vs Human Being as a Being of Action

The era of Weimar Republic, during which Schmitt wrote most of his essays, is also an age of great increase in the significance of anthropology, on a scientific, as well as university level, most of all in German – speaking areas of Europe. Some of the most well – known anthropologists of that time are Helmut Plessner, Arnold Gehlen, Max Scheler, and numerous other intellectuals. Later, in the post – war period of the fifties and the sixties, anthropology is on the rise again, and during that time, Hannah Arendt deals with it, most notably in her work *Vita Activa*. One should also mention how Arendt always stressed that her anthropology is, above all, political anthropology. That is one of the common factors that the philosophies of Carl Schmitt and Hannah Arendt have. Carl Schmitt near the end of his essay *The Concept of the Political* discusses the questions and the importance of anthropology in political thinking, that is, the necessity of every anthropology being a political anthropology. This is backed by the following passage: "Helmut Plessner, who as the first modern philosopher in his book *Macht und menschilche Natur* dared to advance a political anthropology of a grand style, correctly says that there exists no philosophy and no anthropology which is not politically relevant, just as there is no philosophically irrelevant politics. He has recognized in particular that philosophy and anthropology, as specifically applicable to the totality of knowledge, cannot, like any specialized discipline, be neutralized against irrational life decisions."[38] Through most of his work, Schmitt keeps his distance when it comes to proclaiming a human being good or evil "by nature", however, when quoting Plessner's anthropology, he notices how all true political theories observe a man as an "evil", problematic and dynamic being. For Schmitt, such political theories are the theories of Machiavelli, Hobbes, Bossuet, Fichte, and even Hegel.[39] Schmitt's final stand on the "nature" of man in the political sphere can be seen from the following passage: "Because the sphere of the political is in the final analysis determined by the real possibility of enmity, political conceptions and ideas cannot very well start with an anthropological optimism. This would dissolve the possibility of enmity, and thereby, every specific political consequence."[40] Morevoer, Schmitt's knowing of theology

[38] Carl Schmitt, *The Concept of the Political*, p 89 – 90, Politička Kultura, Zagreb, 2007
[39] In the essay *The Concept of the Political*, there is an interesting and precise analysis of Hegel's subtle definition of a *political enemy*. According to Schmitt, Hegel is highly political. For Hegel, the enemy is a ritualistic differentiation (not in a moral sense, but through from the viewpoint of "absolute life" in "the eternity of the people") as something foreign and as something that should be negated. From the contemporary historical viewpoint, Schmitt's reference on modifying Hegel's spirit with conservative state philosophy is correct, as well as his analysis transfer of Hegel's thought all the way to Lenin and Russia, through Marx.
[40] Carl Schmitt, *The Concept of the Political*, p 92, Politička Kultura, Zagreb, 2007

and Roman Catholicism is tied to these claims, and he implies ties between authentic political theories and theological dogmas of the Original sin, similar as in his essay *Political Theology*. Schmitt can not escape the generalization on the choice between "optimism" and "pessimism", that is, on the question of "good" and "evil" in nature of human beings – in anthropological argumentation of his essay *The Concept of the Political* he clearly states how in "good" world, among "good" people, there is always peace, security and balance, and that is, according to Schmitt, the world in which theologians, priests, politicians and statesmen are redundant. There is also the matter of Schmitt's admiration to "pessimistic" political theory of Thomas Hobbes, who he calls "a great and systematic political thinker", who has, alongside Jean Bodin, undoubtedly made a crucial impact on Schmitt.[41] Even the quick reading of Hobbes reveals how his seeing of man is not optimistic. The well – known quotes "Man is wolf to man" or "Continual fear and danger of violent death; and the life of man, solitary, poor, nasty, brutish, and short"[42] speak for themselves.

In her political anthropology, Arendt successfully keeps her distance from defining the tendency of man towards "good" and "evil", even when she writes about the "banality of evil" and radical evil of totalitarian regimes in her later works. According to Arendt, man is determined to live with Others, and he is determined for action, which is even more fundamental than generic moral categories of "good" and "evil". Moreover, Arendt's opinion of Hobbes is symptomatically different than Schmitt's – in the work *Origins of Totalitarianism*, Arendt is highly critical of the philosophy of Hobbes. That is illustrated in the following passage – "*Leviathan* of Hobbes has presented the only political theory where the state is not based on some kind of constituing law, divine law, natural law, or social contract which determines what is right and what is wrong in the interests of the individuals with respect to public affairs, and is solely based on private interests, so the private interest is the same thing as the public interest. (...) The main quality of Hobbes' image of a man is not a realistic pessimism for which he is being praised lately. For if it was true that man is a being from the vision of Hobbes, he would not be able to form any kind of state community."[43] Arendt believes that the state of Hobbes is based on the legitimacy of *rule*, not law. The expression "rule of law" does not apply to political philosophy and state of Thomas Hobbes.

[41] It is not a coincidence that Carl Schmitt is referred to as "The Hobbes of the 20th Century" in more recent publications.
[42] From *Leviathan or The Matter, Forme and Power of a Common Wealth Ecclesiasticall and Civil*, Jesenski i Turk, Zagreb, 2004
[43] Hannah Arendt, *The Origins of Totalitarianism*, p 144, Feministička izdavačka kuća, Belgrade, 1998

The state gains it's monopoly on killing (this does not differentiate it from, i.e. Greek *polis*), and in return it gives a guarantee that the individual will not be killed. The consequence of that is, Arendt states, the blind obedience and frightening new conditions of rule. We can assume that the philosophy of Hobbes is statism in it's perhaps most extreme form. Statism of Hobbes (consequentially, same goes for the statism of Schmitt) is derived directly from the fear of death, that is, from fear of physical murder. Physical murder is the consequence of the inevitable (Hobbes's) conflict and eternal war of everyone against everyone else. According to Hobbes and Schmitt, human being is a political being precisely because he is a being of conflict. According to Arendt, human being is the being of conflict precisely because he is, above all, a political being. Arendt's term of action also includes conflicts with Others, while conflict observed from the tradition of Hobbes and Schmitt presents a mere inevitability in co – existence with Others, the inevitability for which a man creates the state and the laws.

As stated above, Arendt thinks that in the case of Hobbes and his state community, there is no "rule of law", but simply bureaucratic dominance of the state, which is welcome, precisely because it is inevitable. In her work *Vita Activa*, Arendt introduces new terms into political anthropology, terms such as "forgiving", "promise", and "birth" as legitimate theoretical aspects of human action. "The miracle which saves the world, area of human things, from his normal, "natural" doom, is the fact of birth, in which the capability to act is onthologically rooted. That is, in other words, the birth of new people and new beginning, the action they are capable of because they were born."[44] With the exception of *The Origins of Totalitarianism*, Arendt does not place great emphasis on the act of physical murder in political and legal sphere. Schmitt observes the phenomena of killing in philosophy in a different manner, and associates the term of physical killing directly to the concept of enemy. As he states in *The Concept of the Political* – "For to the enemy concept belongs the ever present possibility of combat. (...) War is armed combat between organized political entities; civil war is armed combat within an organized unit. A self – laceration endangers the survival of the later. The essence of a weapon is that it is a means of physically killing human beings. Just as the term enemy, the word combat, too, is to be understood in its original existential sense. It does not mean competition, nor does it mean pure intellectual controversy nor symbolic wrestlings in which, after all, ever human being is somehow alwas involved in, for it is a fact that the entire life of a human being is a struggle and every human being symbolically a combatant. The

[44] Hannah Arendt, *Vita Activa*, p 199, August Cesarec, Zagreb, 1991

friend, enemy, and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing."[45] Schmitt stresses the exact terminology when it comes to political philosophy – it could be said that he belongs to a tradition of a military theorist Carl von Clausewitz. From one viewpoint, it might seem that Schmitt is nothing more than a careful realist who wants to precisely distinguish the expressions of war and peace time politics. As he states in *The Concept of the Political* – "War is neither the aim nor the purpose nor even the very content of politics. But as an ever present possiblity it is the leading presupposition which determines in a characteristic way human action and thinking and thereby creates a specifically political behavior."[46] Still, Schmitt's further standpoints of the concept of the political and categories of friends and enemies need to be examined. In many of Schmitt's works, and most notably in *The Concept of the Political*, Schmitt deals with the legitimacy of the category of political. For Schmitt, the determining point of the political is in the fact that the conflict among people is always possible. In other words, we are dealing "politically" when we have the opportunity to side as friends or enemies with/against other people, on an international, regional or individual level. Schmitt's legitimacy of the political is in the eternal possibility of enmity, conflict and physical murder among people. Togetherness and pluralism are always conditioned by the possibility of conflict. For Arendt, things are somewhat different. In the philosophy of Hannah Arendt, conflicts, enmity and the possibility of physical murder come from the fact that people are always together, and action of any kind is unthinkable outside of a togetherness. For Arendt, conflict is conditioned by togetherness, because togetherness is a necessary condition for all political action. In her work *Vita Activa*, she states the following: - "All human activities are conditioned by the fact that people live together, but only action can not be envisioned outside of a society of people. (...) Action is an exclusive privilege of man; nor god nor animal are capable of action, only action is completely dependant on the constant presence of others. This special relation between action and togetherness seems to fully justify the earlier translation of Aristotle's *zoon politikon* with *animal socialis* that is found already in Seneca, and it becomes the usual translation with Thomas Aquinas: *homo est naturaliter politicus, id est, socialis* ("man is by nature political, therefore social")."[47] Arendt's political philosophy starts with togetherness of people, which is a prerequisite for any other happening of political or legal nature. In his essays, Schmitt implicitly takes togetherness for granted, which is conditioned by conflict and the possibility

[45] Carl Schmitt, *The Concept of the Political*, p 74, Politička kultura, Zagreb, 2007
[46] Carl Schmitt, op. cit., p 75
[47] Hannah Arendt, *Vita Activa*, p 23 – 24, August Cesarec, Zagreb, 1991

of war. It should be noted how Schmitt has a tendency to generalize and to give wide definitions, while Arendt's terminology and definitions are more exact in terms of political science. In his essence, Schmitt is more than a careful realist who wants to separate expressions of war and peace, though his meticulous historical analysis of political and legal concepts remains excellent. Schmitt's philosophy contains a subtle anti – liberal attitude, that is perhaps most radical in his essay *State, Movement, People*, in which he tries to justify first NSDAP sweeps of political opposition.

However, his anti – liberal tendencies are older than the era of Third Reich, they date back to the year 1926, when the first edition of his essay *Crisis of Parliamentary Democracy* appeared. This essay clearly shows Schmitt's standpoints and opinions on liberalism, parliamentarism, and democracy. In this essay, Schmitt deals with what he sees as the general perception of parliamentarism and liberalism in the beginning of the 20th century, in the year 1926. Schmitt states the following in the foreword to the first edition of the essay - "...it will be shown that the systematic basis from which modern parliamentarism developed is scarcely discernible in the terms of current political and social thought, and how far the institution itself has lost its moral and intellectual foundations and only remains standing through sheer mechanical perservance as an empty apparatus. Only when they grasp the situation intellectually could reform proposals gain perspective. Concepts such as democracy, liberalism, individualism and rationalism, all of which are used in connection with modern parliament, must be more clearly distinguished so that they cease to be provisional characterizations and slogans."[48] It is not completely clear on what Schmitt refers to when he speaks of "current political and social thought", but given the fact that the essay was published for the first time in 1926, it is plausible that Schmitt refers to federative Constitution of Weimar Republic of pre – Nazi period, as well as the politics of president Paul von Hindenburg. Still, Schmitt's legitimate philosophical aim certainly is understanding and differentiating between concepts, and the essay (as many other, including *The Concept of the Political* and *Political Theology*) is based on a meticulous and exact legal and historical analysis of political and legal concepts. In this case, such concepts are democracy and parliamentarism. Schmitt's basic understanding of democracy is quite different from the understanding of his philosophical and jurist contemporaries, such as Hans Kelsen, Hermann Heller and Carl Schmid. Schmitt's understanding of democracy is also different from conservative and skeptic attitudes towards democracy, the attitudes that Edmund Burke and

[48] Carl Schmitt, *Crisis of Parliamentary Democracy*, p 9, Politička kultura, Zagreb, 2007

Alexis de Tocqueville presented during the 18th and the 19th century. The following passage illustrates Schmitt's understanding of democracy – "If all political tendencies could make use of democracy, then this proved that it had no political content and was only an organizational form; and if one regarded it from the perspective of some political program that one hoped to achieve with the help of democracy, then one had to ask oneself what value democracy itself had merely as a form. (...) The various nations or social and economic groups who organize themselves "democratically" have the same subject, the people, only in abstract. *In concreto* the masses are sociologically and psychologically heterogenous. A democracy can be militarist or pacifist, absolutist or liberal, centralized or decentralized, progressive or reactionary and again different at different time without ceasing to be a democracy."[49]

Schmitt believes that democracy is, in early 20th century, mostly powerless against the Jacobin argument, that is, against the identification of a certain loud minority with the entire people and the problematic of "education" of citizens so they would be able to choose a good government for themselves. Schmitt's opinion of liberalism is both provocative and original. For Schmitt, liberalism is more than just a philosophy of economy or social system with the basis on liberties of individual. Schmitt thinks that liberalism is a consistent and overall metaphysical system. Basic principles of liberalism, like freedom of speech, freedom of press, freedom to gather and market competition are not just purposeful instruments of social order, but the core of liberalism as an overall metaphysical system. Economic and market competition of liberalism are equal to eternal competition of thought, which is a specific standpoint towards the problem of truth in the philosophy of liberalism. In the essay *The Crisis of Parliamentary Democracy* Schmitt analyses one of key aspects of liberalism – the public opinion and freedom of the press. As is the case with *Political Theology* and *Concept of the Political*, this is an analysis which is historical and terminological, while exact political events and statistics are not the subject of Schmitt's research. When he reviews the history of the freedom of press, Schmitt sees a distorted image which, in time, had become self – explanatory and as such, taken for granted. Schmitt states that, in reality, public opinion is less important than the publicity of the opinion. Moreover, the claim for the public opinion, which has, according to Schmitt, arisen from the theory of state secrets, *Arcana rei publicae*, which was present in numerous writings of the legal – political history of the 16th and the 17th century.[50] The theory of *Arcana rei publicae* was conceived in the writings of Niccolo

[49] Carl Schmitt, *Crisis of Parliamentary Democracy*, p 11, Politička kultura, Zagreb, 2007
[50] Carl Schmitt, *Crisis of Parliamentary Democracy*, p 18, Politička kultura, Zagreb, 2007

Machiavelli, and it belongs to a way of thinking that views politics only as a technique of gaining as spreading the domain of authority. The claim for the public opinion was conceived in the counter – Machiavellian literature, which perceived such theories as "immoral". In the claim for the public opinion, we actually deal with juxtaposed terms of law and justice, and Machiavellian technique of power and rule is being adjusted by legal framework and moral ethos. Because of that, Schmitt believes how in the 20th century, political theory has come to that it views the public as an absolute and inviolable value, and the importance that is given to her is misplaced, for it is nothing else than a practical means of combat agains the secret bureaucratic policies behind closed doors. Politics that is being run by a few people beyond the reach of public is now perceived as something that is bad *per se*, and the public is turning into an absolutely efficient control body, efficient against every political plot and corruption. It remains open to interpretation how correct Schmitt's analysis is. However, Arendt's analysis of the nature of public and totalitarian movements in *Origins of Totalitarianism* is close to Schmitt's stand – as Arendt calls the totalitarian movements "the secret societies founded in broad daylight".[51] Arendt agrees with Schmitt how symptomatic and contradictory the nature of public opinion was during the beginning of the 20th century, especially after WW1 and during the rise of totalitarianism. The existence of a unified world of mass and public had given the totalitarian regimes the sweeping power, reach, and mass support. In other words, totalitarian state may be viewed as a state in which absolutely everything is public, where citizens are one public individual who has no contact with the private sphere of civic life.

[51] Hannah Arendt, *The Origins of Totalitarianism*, p 384, Feministička izdavačka kuća, Belgrade, 1998

5. State of Exception and Action

The term "action" which Arendt believes to be very importat is not completely foreign to Schmitt. In the essay *Crisis of Parliamentary Democracy*, Schmitt gives a review of a particular schism within the history of legal action, and he deals with this topic in the essay *Political Theology*, as well. Schmitt, believes that, ever since Aristotle, there has been an opposition between the general, correct norm, and the order, which is "real". Schmitt says that this is the characteristic of every legal and political action, as he states the following – "Law, *Veritas* in contrast to mere *Autoritas*, the generally correct norm in contract to the merely real and concrete order as Zitelmann argued in a brilliant formulation, as an imperative always contains an individual nontransferable moment; this idea of law has always been conceived as something intellectual, unlike the executive, which is essentially active. Legislation is *deliberare*, executive *agere*."[52] On the other hand, Arendt is not trying to associate the act of action with a legal context. Schmitt always discusses action within a legal framework, as legal action, that is, action within a legal state context. There is no doubt however, that Schmitt perceives action as a political term as well, but *a priori* he places it into a state context, and every state presumes institutional, legal and normative framework. For Arendt, ability of action presumes some form of community, but she never states that this community must be a state, or an elaborate legal system. The question at hand is, how much action is legal, and how much a political term. For Schmitt, action is more of a legal (and juristic) term, and less political. However, in his analysis Schmitt discusses a legal contamination of political terms through the attempt of defining the state of exception. The problem of the exception and the state of exception within legal and political area is not a new occurence, as Walter Benjamin has also explored this problem, and in more recent times, contemporary Italian philosopher Giorgio Agamben. In her works, Hannah Arendt does not mention the state of exception expression in her works, however, it can be assumed that by state of exception she understood revolutions, which she discusses in her work *On Revolution*.[53] The expression of state of exception is important for better understanding of Schmitt, but also, for better understanding of Arendt. State of exception is a common denominator for Schmitt and Arendt – for it is a "place" where the philosophies of two philosophers are in collision and are overlapping. Namely, the state of exception, which Schmitt discusses, always presumes an action of some type, which Arendt discusses. In state of exception, to light come about the political and legal

[52] Carl Schmitt, *Crisis of Parliamentary Democracy*, p 23, Politička kultura, Zagreb, 2007
[53] Hannah Arendt, *On Revolution*, Belgrade, "Filip Višnjić", 1991

identity of a human being, and those two identities sometimes may be mutually exclusive. Within the state of exception, one deals with a contest of legal and political action, and of the decision about which type of action comes first. Human being as a legal subject, or human being as a political subject? Are there situations when it is justified to give priority to the political aspect, instead of legal? Is it also the other way around in some situations? It is certain that in every society and every country there are states of emergency and various exceptions when power of the law does not apply anymore, and sovereign bodies (whatever or whoever they may be) are not capable of bringing forth the adequate decision or a regulation. Often these states presume civil wars, revolutions, armed riots, rebellions, etc. In his analysis of the legal – political character of the state of exception, in his eponymous book *State of Exception*, Giorgio Agamben writes the following passages: "The problem of the state of exception shows the obvious analogies with the problem of the right to resist. It has been much discussed, especially at constitution assemblies, of the possibility of introducing the right to resist in a text of constitution (...) In any case, it is sure that, if the resistance would become a right, or even duty (and non – compliance with this duty might be punishable), not only would the constitution become the absolute inviolable value, but also the political choices of the citizens would become legally regulated. It is the fact that, with the right to resist, and with the state of exception, the question is the problem of ascribing the legal meaning to an area, that is beyond law."[54] Agamben states how not until the 20th and 21st century, there was an attempt of introducing the state of exception within a legal context and a constitution. However, state of exception has it's history. The origin of the state of exception is found in a modern state is found in France, during the time of Revolution from year 1789. Also, one of the more contemporary political phenomena is the identification of political – military and economic state of exception. However, the question of wether or not are such states true or false states of exception and emergency remains, as well as the question of what is the relation of legal – political subjects to the state of exception. There is a tendency of introducing the state of exception and emergency in the constitutions of modern states. When discussing this constitutional problem, it is very important to keep in mind the constitutional properties of the totalitarian regimes of Nazi Germany and Bolshevist Soviet Union, as well as other more contemporary dictatorships. On this particular phenomena, in *Origins of Totalitarianism*, Hannah Arendt states the following: "The fact how totalitarian regimes handle the constitutional question is even more disturbing. In their first years of power, Nazis

[54] Giorgio Agamben, *State of Exception, Homo Sacer II, I,* Deltakont, Zagreb, November 2008, p 21 – 22

have made an avalanche of laws and directives, but they did not even try to officially abolish the Constitution of Weimar Republic, and even left the public services more or less intact – the fact that made many local bystanders believe in the limitation of party's influence and a quick normalization of the new regime. (...) Soviet Union, which had it's public services destroyed during the revolution and in which the regime barely even considered the law during the revolutionary period, had taken an effort to publish a new and a very detailed constitution in 1936 (a mere front made up of liberal phrases and principles which shrouded the guillotine on the frontline), the event which was celebrated, in Russia and worldwide, as a crown of the revolutionary period."[55] Totalitarian regimes insist on simulating democracies and constitutional freedoms, until the abolishment of those very freedoms. Once again, Schmitt enters the arena of the discussion, with his analysis of authoritarian moments of every constitution and every democracy. Also, Schmitt agrees with Arendt in diagnosis that the existence of a constitution within a state does not mean the absence of dictatorship. It could be said that Schmitt focuses on study of constitutional authoritarianism. As he puts it in *The Concept of the Political* – "For in a "constitutional state" is, as said by Lorenz von Stein, a constituion is an "expression of a social order, the existence of the civic society. As soon as it is under attack, the fight must be decided outside of system and law, *that is through armed force*." [56] The proclamation of war seems an adequate response to endangering of the constitution, at least it is so according to Schmitt and his writings. There is an undoubtable connection between the state of exception and the dictatorship. One of the main historical problems and a something of a constitutional and legal phenomenon is the Article 48 of the Weimar Constitution of that time – the article whose misuse prepared the grounds for Adolf Hitler's takeover. A proper understanding of the connection between the state of exception and the dictatorship, as well as Article 48 is introduced by Agamben, in his work *State of Exception* – "The history of Article 48 of the Weimar Republic is so tightly woven into the history of Germany between the wars that it is impossible to understand Hitler's rise to power without first analyzing the uses and abuses of this article in the years between 1919 and 1933. It's immediate precedent was Article 68 of the Bismarckian Constitution, which, in cases where "public security was threatened in the territory of the Reich", granted the emperor the power to declare a part of the Reich to be in a state of war (*Kriegzustand*), whose conditions and limitations followed those set forth in the Prussian law of June 4, 1851, concerning the state of siege. Amid the disorder and rioting that followed the end of the war, the deputies of

[55] Hannah Arendt, *The Origins of Totalitarianism*, p 402, Feministička izdavačka kuća, Belgrade, 1998
[56] Carl Schmitt, *Concept of the Political*, p 82, Politička kultura, Zagreb, 2007

the National Assembly that was to vote on the new constitution (assisted by jurists among whom the name of Hugo Preuss stands out) included an article that granted the president of the Reich extremely broad emergency powers. Save for a relative pause between 1925 and 1929, the governments of the Republic, beginning with Bruning's, made continual use of Article 48, proclaiming a state of exception and issuing emergency decrees on more than two hundred and fifty occasions; among other things, they employed it to imprison thousands of communist militants and to set up tribunals authorized to pronounce capital sentences. (...) It is well known that the last years of the Weimar Republic passed entirely under a regime of the state of exception; it is less obvious to note that Hitler could probably not have taken power had the country not been under a regime of presidential dictatorship for nearly three years and had parliament been functioning."[57] The final Agamben's remark is a key to understanding the true practice of Schmitt's anti – liberal sentiment and statism. During his extensive theorizing in *Crisis of Parliamentary Democracy* and *The Concept of the Political*, Schmitt, in his usual way, renounces all "real – world" practice and specific cases in which parliament and liberal policies of the public were abolished. Nowhere in the mentioned writings does Schmitt pay attention to the true political and legal practice of his theories, nor historical theories and writings that he uses as his basis. However, Schmitt has in the first edition of his *Political Theology* back in 1922, as a brilliant jurist, stressed the dangers and contradictions of the Article 48 of the Weimar Constitution. Schmitt emphasizes the problematic federative structure of Weimar Republic, and he asks a question are the autonomous regions/states[58] in the Weimar Republic of that period truly autonomous, in the real sense of the word. That is, do they posses the autonomy to resist the proclamation of the state of exception, proclaimed by the president or the supreme chancellor. In the essay *Political Theology* he clearly states how the Article 48 in itself represents unlimited power – " According to article 48 of the German constitution of 1919, the exception is declared by the president of the Reich but is under the control of the parliament, the Reichstag, which can at any time demand its suspension. This provision corresponds to the development and practice of the liberal constitutional state, which attempts to repress the question of sovereignty by a division and mutual control competences. But only the arrangement of the precondition that governs the invocation of exception powers corresponds to the liberal constitutional tendency, not the content of article 48. Article 48 grants unlimited power. If applied without check, it would grant exceptional powers in the same way as article 14 of the [French] Charter of 1815.,

[57] Giorgio Agamben, *State of Exception, Homo Sacer II, I*, Deltakont, Zagreb, November 2008, p 25 – 26
[58] There were 24 in existence.

which made the monarch sovereign. If the individual states no longer have the power to declare the exception, as the prevailing opinion on article 48 contends, then they no longer enjoy the status of states. Article 48 is the actual reference point for answering the question whether the individual German states are states."[59] Schmitt clearly defined the constitutional problem, even though it remains questionable how much of his critique of leading social and political directions, and this critique is undoubtedly pointed at Weimar parliament, has influenced the skepticism and gradual distrust of parliamentary values of the time. Also, in his writings, Schmitt also speaks about democracy as a political form which could have been used by all political directions (including socialism) of the 19th century during their breakthrough, but he never defines the content of democracy itself. It can be interpreted, according to Schmitt, that democracy by itself does not have any political content, and that it is simply a form of organization that as it's subject has the people. In other words, democracy is a mass form of organization and divison of political rights, without a real content. Parliament and parliamentarism are key concepts of political pluralism and political action. Etimologically, the word parliament has it's roots in the 14th century – as a noun, the word originally means consultation, assembly. In it's verb form, the word comes from French language and the verb *parler* – "to speak", "to address". In his analyses, Schmitt sees the concepts of parliament and parliamentarism as something that is opposed to force, as a discussion and a debate which are are a counterweight to the force. Schmitt believes that through parliamentarism, the principle of "la discussion substitutée à la force" [the discussion substitutes the force][60] thrives. In a more recent, English variant, *parley* means "to speak with the enemy". According to Schmitt, it seems that Parliamentarism is something routine – like and impersonal, and something that does not fulfill the purpose it had in the political system of the 19th century – and even then only as a response to secret cabinet policies of the 17th and the 18th century. In the time of a political crisis, and maybe also a state of exception, it seems that the parliament does not have any functions, because the balance of opinions and public argumentation does not have anything to do with real freedoms and can not endanger true holders of power. Schmitt's cynicism and anti – liberalism are obvious at the end of the essay *Crisis of Parliamentary Democracy* – "Real life of parliament made of political parties, as well as the general belief, are today far from such a belief. Great political and economical decisions on which the fate of people rest are not (if they ever were) the result of balancing of opinions in public speech and

[59] Carl Schmitt, *Political Theology, Four Chapters on the Concept of Sovereignty*, George Schwab (trans.), 1985 by the Massachusetts Institute of Technology, p 11 – 12
[60] Carl Schmitt, *Crisis of Parliamentary Democracy*, p 26, Politička kultura, Zagreb, 2007

counter- speech and are not a result of parliamentary debate. (...) It is certain that today there are not many people who would want to renounce old liberal freedoms, especially freedom of speech and freedom of press. Despite that, in the European continent, there are not many of those who believe that those freedoms truly exist there where they could jeopardize the true holders of power."[61] It is not my intent to question how true is Schmitt's historical analysis of parliamentarism. Fact is that the form of parliamentarism and parliament that we know today has emerged in the 18th century. However, Schmitt degrades the problem of parliament and parliamentarism when he views it as a pure technical matter. In his essay *Crisis of Parliamentary Democracy* he states that "parliamentarism abandons it's spiritual basis..." without going into question of what this spiritual basis really is. For Schmitt, congresses, parliaments and gatherings are merely historically induced technical means for combat against cabinet secrets of the 16th and the 17th century. It is highly problematic to understand any political phenomenon only in technical terms. Arguments that can be aimed at Schmitt's views are numerous, and it is perhaps best to use practical examples. Practical response to Schmitt regarding the parliament's role in politically exceptional states is certainly the case of Weimar Republic from the year 1933, however, one can also use the case of Czech parliament from the year 1993, during the time of "Velvet Divorce"[62] and the breakdown of Czechoslovakia. Intense negotations between Czech and Slovak parliamentary groups were held from July up to November 1992, during which the constitutional law and the right of sovereignty of both nations were re – evalued. The confirmation of separate and independent sovereignties was established in the Article 542, and the dissolution of Czechoslovakia was completed on December 31, 1992. The Czech president at that time and ex – dissident Vaclav Havel had resigned before his term ended, because he did not approve of the seperation. However, with his political action and numerous speeches, he is a legitimate source and presents a valid counter – argumentation to Schmitt's arguments. In his speech *The Post – Communist Nightmare*, on the topic of historical phenomena, Havel states the following: "Anyone who understands a given historical phenomenon merely as an inconvenience will ultimately see many other things that way too: the warnings of ecologists, public opinion, the vagaries of voters, public morality. It is an easy, and therefore seductive, way of seeing the world and history. But it is extremely dangerous because we tend to remain aloof from things that inconvenience us and get in our way, just as some of my acquaintances avoided me during the

[61] Carl Schmitt, op. cit., p 26 – 27
[62] A name by which is the peaceful and non – violent dissolution of Czechoslovakia often known. This led to the formation of the independent states of Czech Republic and Slovakia.

Communist era. Any position based on the feeling that the world, or history, is merely an accumulation of inconveniences inevitably leads to a turning away from reality, and ultimately, to resigning oneself to it. It leads to appeasement, even to collaboration."[63] Regardless of the attitudes towards parliaments, it is a fact that the parliament is a historical and political phenomenon, that can not be taken lightly. Parliamentarism is not an a priori marking of a political pluralism, because in reality, parliament can also be made of a single party. However, parliament is not a mere "technique of rule without proper content and function", or a mere technical matter. When speaking of pluralism, one should bear in mind that it is a social, as much as it is a political phenomenon. In Hannah Arendt's philosophy, political and social are separate categories, regardless of the fact that these expressions are often taken as one and the same thing. Arendt considered that public life and political relations are not something natural, but artificial, completely man made. She considered it to be a unique human accomplishment. Political pluralism is possible in the world which is shared by people in togetherness, which is also a technical term in Arendt's philosophy. She elaborates on her viewpoints in *Vita Activa* – "Under the conditions of a common world, reality is not guaranteed primarily by the "common nature" of all men who constitute it, but rather by the fact that, differences of position and the resulting variety of perspectives notwithstanding, everybody is always concerned with the same object. If the sameness of the object can no longer be discerned, no common nature of men, least of all the natural conformism of a mass society, can prevent the destruction of the common world, which is usually preceded by the destruction of the many aspects in which it presents itself to human plurality. This can happen under conditions of radical isolation, where nobody can any longer agree with anybody else, as is usually the case in tyrannies. (...) In both instances, men have become entirely private, that is, they have been deprived of seeing and hearing others, of being seen and being heard by them."[64] This presents another counterpoint to Schmitt's critique of the public and it's discourse. While Schmitt sees the public factor of politics through technical – historical approach, Arendt places the public at the very core of her anthropological political system. According to Arendt, politics and political life have not become a public matter through historical development of parliamentarism, they are that way because they are human and man made in origin.

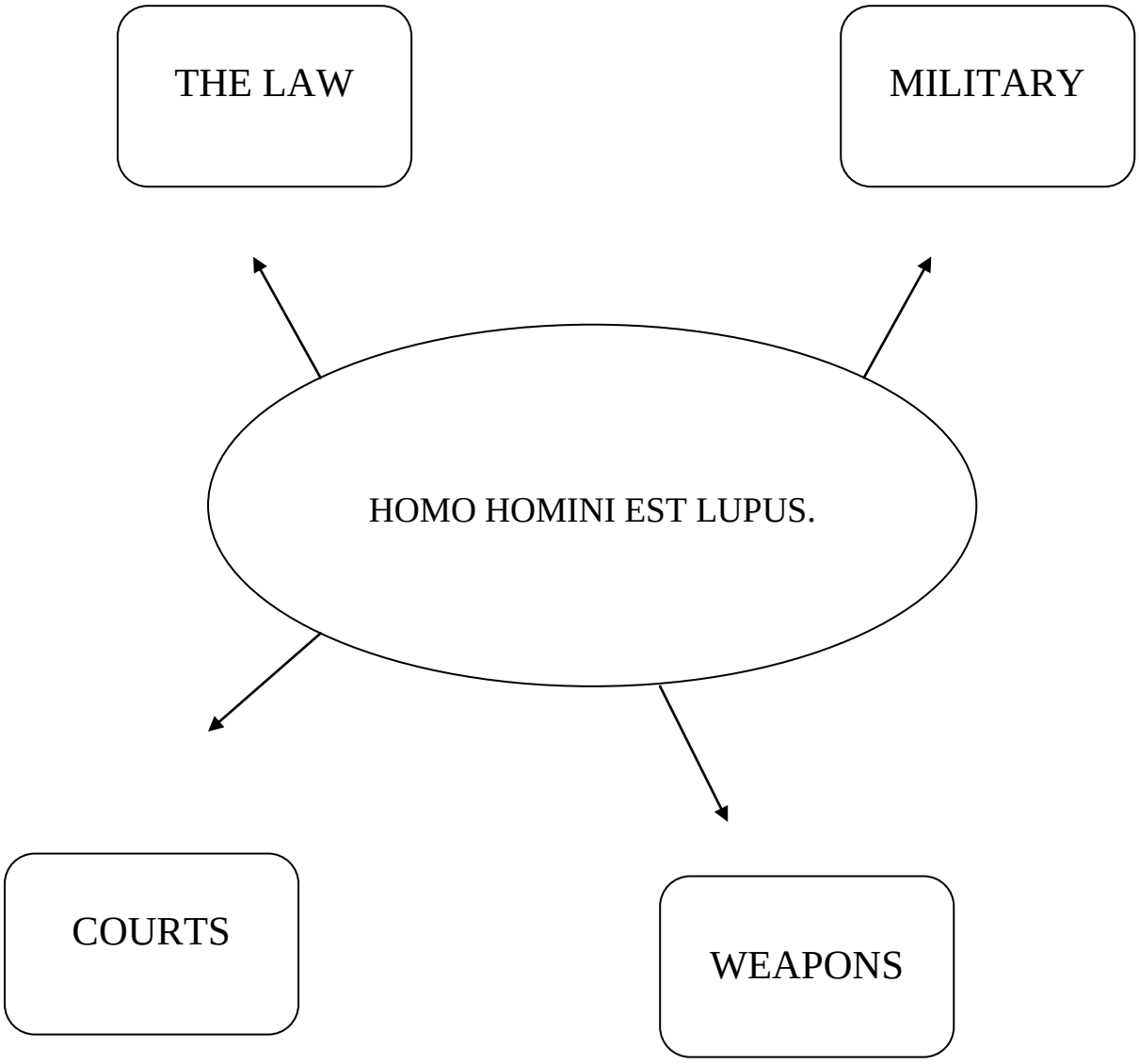
[63] Vaclav Havel, *Everything is Possible: Selected Speeches*, p 61 – 62, Matica hrvatska, Zagreb, 2000
[64] Hannah Arendt, *Vita Activa*, p 50, August Cesarec, Zagreb, 1991

6. Definition of a Legal – Political Subject Within Context of Didactic and Pedagogy

Definition of man as a legal – political subject in international politics has it's application in didactic, that is, in a school period in interaction with students. Given that every theory has it's practice, and every practice has it's theory, pedagogic practice is highly important in the field of political education of children and youth. The word "political education" might seem disturbing and contradictory to some, but in this context, I understand political education as an integral part of civic education and/or ethics. In this context, political education should be the education of the possibilites of choices, as well as opening the possibilites for a creative student's discussion. Given the recent rise of importance of subjects such as civic education and ethics, it is important to consider the lecturing implications of this political concept. Idea of a man as a legal – political subject can be presented to students within the subjects of philosophy, politics and economy, ethics and civic education. The idea of a man as a citizen (that is, legal – political subject) is an important part of philosophy's curriculum, due to the fact that many philosophers (alongside Hannah Arendt and Carl Schmitt) dealt with the human being and his fundamental legal – political determination. The attempt to define human being as a legal – political subject is present in the philosophy of Plato, Aristotle, Hobbes, Spinoza, Kant and many other philosophers, who are an integral part of every high school textbook of philosophy and ethics. Correlation with other subjects is also possbile, especially with history and sociology, especially if the violations of human and civil rights in historical context are discussed in class. A school period with this topic is possible in high school, as well as the university. It is important to note that the given topic requires a certain foreknowledge of history of philosophy, and the ideal timing for this kind of class/period would be at the end of a semester, when the students are versed in basic political terminology and categories. Through studying human being as a legal – political subject, the students will gain insight into historical, problematic and philosophical approach towards this philosophical phenomena.

The period may begin with a technique of "brainstorming", thus encouraging the students on a creative game of associations. A central phrase may be i.e. a phrase by Thomas Hobbes "Homo homini lupus". Students may have five minutes to think about associations (also possible through work in pairs), and after that the teacher writes down the key assocations on

the blackboard. It is probable that the students will first think of associations from Greek political philosophy, or some contemporary assocation from the present times. Expected associations are, for example: "law", "military", "courts/tribunal", "parliament", "president", "weapons", "danger", etc. As a brief repetition the concepts and expressions such as democracy, parliament or law can be explained further through student questioning or teacher's explaining. At the blackboard, associations may look like this:



In the next five minutes, a brief discussion can take place, followed by the student's impressions of the current state of affairs in their country's politics, do they feel safe as the inhabitants and citizens of Republic of Croatia. Teacher can try to focus the discussion towards a dilemma – is living in Croatia safe due to togetherness with their friends and fellow

citizens, or due to the fact that the Republic of Croatia (or any other country which they are citizens of) is a state which is governed by the rule of law, with it's constitution, courts and other institutions. After that, teacher directs the students to the most prominent philosophers who were dealing with human being as a citizen or a legal – political subject, as well as the differences in their opinions.

PHILOSOPHER	**CITIZEN/STATE**
Plato	*Politeia*, 3 classes, citizens are philosophers/rulers, guardians and manufacturers
Aristotle	Greek *polis*, citizens have various trades and professions, and the status of citizens is meant only for some.
Hobbes	Constitutional authoritarian state, the war of all against all, citizen is a *lupus*/a wolf and an immediate danger for every other citizen.
Kant	Constitutional state, world alliance of republics, every citizen must respect the freedom of every other citizen.

After that, the main part of the class begins, and it should last about thirty minutes. If the circumstances are favorable, the main part of the class may be backed up with a Power Point presentation, although it is not necessary. The main part of teaching is of frontal type, although it includes many opportunites for debate and work in pairs. Main part of the class begins with explanations of main philosophical concepts of Thomas Hobbes – *bellum omnium contra omnes*, man is wolf to man, natural condition, state, sovereign ruler, constitution. It is desirable to ask students for their impressions on the philosophy of Hobbes – is Hobbes a realist, a pessimist, does he favors the dictatorship, etc.? Going from there, students are directed towards the philosophy of Carl Schmitt, and his relationship with totalitarian Nazi Germany. Comparison with the philosophy of Immanuel Kant – categorical imperative, cosmopolitism, perpetual peace. It is also desirable to ask students for their opinion on Kant from today's perspective – is Kant a utopist, does the categorical imperative make sense, is perpetual peace among nations possible? Philosophy of Immanuel Kant leads to philosophy of

Hannah Arendt, and her most important philosophical contributions. When explaining Arendt to students, a central concept should be the concept of togetherness. The lecturing part may last between fifteen and twenty minutes. After that, teacher asks the students a question – "Is there truly a war of all against everyone else among people, or is togetherness more important, and does it precede every conflict?" With this question it is possible to start a brief discussion, i.e. in the following way – during the period of ten minutes, students are to be directed to writing down their brief review and stand on the dilemma at hand. This can also be an opportunity for some creative work in pairs. After the students are done, discuss their viewpoints and direct them to individual thinking of everyday political events and phenomena that are shown in the media – such as, political refugees from foreign regimes, constitutional crises, civil wars, initiatives for constitutional and political changes, etc. Final five to ten minutes may be used for suggesting topics for essays and critical reviews. Possible topics include: "Man and Law, Past and Today", "Individual in Totalitarianism", "Perfect Constitution", "Man is a Wolf to a Man", as well as other topics suggested by students. It is desirable to direct students to additional sources that mention human being as a legal – political subject, and the list of those sources includes authors such as Leo Strauss, Giorgio Agamben, Walter Benjamin, Raymond Aron, Thomas Hobbes, Jean Bodin, Niccolo Machiavelli, and of course, numerous works of Hannah Arendt and Carl Schmitt.

7. Final Considerations and Closing Words

In the world of politics, international law and social philosophy, human being's status as a legal – political status has a tendency to change. This status can not be something permanent and unchangeable, precisely because of states of exception and unexpected changes that can always take place in the sphere of politics. Human political life is conditioned by changes and conditions that can not be predicted. In modern society, citizens expect security and protection from the state, especially if there is a democratic regime in power. This type of citizens' attitude is fully understandable, for a solid and secure state and civil rights are still the most firm guarantee of physical survival and protection. Regardless of the increased strength of international law, especially in Europe, nation state is still a crucial factor in the individual's protection and the protection of his status. On this matter, Hannah Arendt and Carl Schmitt are in agreement – the importance of nation state in the modern world is unquestionable. However, political paradigm by which this relation between the state and the individual is realized is different in their respective philosophies. Their definition of the concept of political is different, and every definition in political and legal theory has it's implications, consequences and influences. From Schmitt's point of view, there is a concept of political that is built on notions of friendship and enmity. From Arendt's point of view, there is a concept of the political that is built on the inevitable pluralism and togetherness. The concept of togetherness and plurality comes before concepts of friendship and enmity. That means that before political subjects can successfully side as friends and enemies, one needs plurality, some sort of togetherness. Paradox of Schmitt's theory is that one man can not be both friend and enemy to himself at the same time, especially in exclusive and strict political terminology, on which Schmitt himself insists on. To be your own's friend and enemy at the same time might be valid in psychological interpretation, but certainly not in political interpretation. To create any kind of friendship or enmity among people, plurality is needed. This is precisely the crucial point in Hannah Arendt's theory – people inherit the Earth, not a man in singularity. Arendt's definition of politics can be summed in the way that politics is everything we do in *togetherness*.

Radical consequences of Schmitt's friendship and enmity are numerous – one of them is the legitimacy of any kind of conquering politics of the Third Reich. Moreover, Schmitt's theory of political leaves plenty of room for any kind of politics of conquest, as well as the politics of

segregation within a single state, as was the case of i.e. Apartheid and politics of South Africa in the 20th century. Arendt's political theory can be considered more egalitarian, regardless of the fact that is applicable in the same way as Schmitt's. Arendt's theory of political should not be considered simply more humanitarian, but more precise in determination of the concept of political. Schmitt's theory of friendship and enmity, along with statism and importance of state are close to ideas of Hobbes, and ideas of Hobbes are known to stand that from the worst possible evil, physical murder and torture, we can protect ourselves by the other form of evil, which is state itself. When constructing his theory of state, Schmitt is, much like Hobbes, focused on fear from immediate physical killing, something that is close to consideration that, as a political form, the state is conditioned by something that comes from the outside, in this case - threat of war, torture and murder. With Arendt, the order of things is inversed. Man creates the state and his public space with humans equal to himself, precisely because man is conditioned to live forever among others. Schmitt's definition of the state of exception is valid today as well (Agamben agrees with Schmitt's diagnosis), however, every state of exception includes action of some type. Schmitt's concept of *action* is different that the concept of action in Arendt's philosophy. Schmitt does not insist on separation of action and legal context. For Arendt on the other hand, authentic action is a pure political act, something that does not a priori include a legal order (after all, action may be constitutional to a legal order, state, institution, etc).

Problems stated above are more abstract in nature and do not have much influence on citizens as legal – political subjects. However, the problem of bare survival is created precisely when one takes a look at the state sovereignty issue. Schmitt's analysis of sovereign government never takes into consideration any consequence on citizens, that is, legal – political subjects of some legal order or state. Schmitt is satisfied with a historical and legal analysis of the concept of sovereignty, as well as theological implications of this concept. Arendt's analysis of sovereign power is more exact and more real, examplified by the post – WW1 chaotic period. In her *Origins of Totalitarianism,* Arendt uses the expression which Schmitt never considered, which is *full sovereign power*. For examples of full sovereign power she lists the actions of Bolshevik Russia, Hungary, Spain, and many other European states after the year 1918. Although the loss of citizenship is not necessarily a jeopardization of a person's physical survival, the loss of citizenship is equal to the loss of legitimate legal – political subject in the eyes of international law. In the 21st century, situation is not so hopeless as it was, due to the existence of UN, Geneva Conventions, Council of Europe and other

international and legal bodies. However, even today the loss of citizenship is something that is very close to the possible jeopardization of human rights and physical survival, because this places people on a highly uncertain territory, where none of the bodies of the state can guarantee their safety. In this paradox lies one of the most significant dangers and inconsistencies of Schmitt's theory – from one side, a powerful state is present to guarantee safety of it's citizens. According to Schmitt, the state must have a sovereign ruler or at least a fully sovereign government. However, full sovereign power of a state is evident also in the ability to remove citizenship from it's citizens, even in mass numbers, which can be seen from the examples given by Hannah Arendt. Modern constitutions are usually clearly defined on issues of gaining citizenship, however, they are quite vague regarding the loss of citizenship, and the most frequent reasons for such a loss are listed as "dismissals", renunciations" and "international treaties" due to which a person can lose it's citizenship.[65] Also, the only article of the constitution of Republic of Croatia which mentions the revocation of citizenship is article 9, which states the following – "Croatian citizenship, and its acquisition and revocation, shall be regulated by law. A citizen of the Republic of Croatia may not be forcibly exiled from the Republic of Croatia nor deprived of citizenship, nor extradited to another state, except in case of execution of a decision on extradition or surrender made in compliance with international treaty or the acquis communautaire of the European Union."[66]

When circumstances of war and various emergency states are taken into account, it is obvious that the loss of citizenship depends on political and legal situation in a state, that is, on a given "situation". It is precisely because of these unspecified and ill – defined circumstances under which the loss of citizenship can occur, Schmitt's theory of sovereign as the one who decides on the exception remains insufficient. If the emergency states, such as wars, economy crises and acts of terrorism are inevitable and always possible, isn't there a need for a more precise definition of sovereign and sovereignty? Hannah Arendt has correctly noted that the largest state of exception is the problem of legal status of a citizen of a state, as well as the question of who can take that status away from them arbitrarily. Full sovereign power of a government in certain situations is capable of doing so. Because of that, it is necessary to see sovereignty within a context which takes human beings and their status into account, before the state or any other type of entity. It is there that Hannah Arendt takes over with her thinking of political action as togetherness and pluralism, instead of primitive seeing of friendship and enmity, on a human, as well as an international level.

[65] Such provisions are stated in the Law on Croatian Citizenship, from the year 1993.
[66] The Constitution of Republic of Croatia (consolidated text)

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