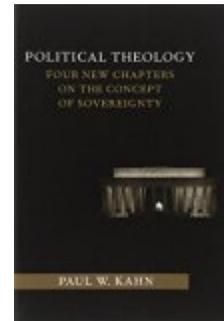


Paul W. Kahn. *Political Theology: Four New Chapters on the Concept of Sovereignty*. New York: Columbia University Press, 2011. 224 pp. \$32.50 (cloth), ISBN 978-0-231-15340-9; \$25.00 (paper), ISBN 978-0-231-15341-6.

Reviewed by Don Herzog (University of Michigan Law School)

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(Why) Do We Need Political Theology?

This is a difficult, provocative, and sometimes plain provoking meditation on Carl Schmitt's difficult, provocative, and sometimes plain provoking 1922 book of the same title. Indeed Paul W. Kahn's four chapters mirror Schmitt's. But this is emphatically not a textual exegesis of Schmitt, nor for that matter any kind of intellectual history of the vexed and vexing idea of political theology. "*I want to think with him,*" Kahn says, "*rather than think about him*" (p. 28; his italics). So—I'm not inclined to police disciplinary boundaries, but I suppose a reviewer has some truth-in-advertising duties—this is a piece of political theory, not history.

Schmitt is (in)famous as an antiliberal. Kahn demurs that he has nothing in particular against liberal politics. But he wants to argue that liberal *theory* is flatly inadequate as an account of our politics, where *our* means those of contemporary America. To make sense of our politics, he thinks, we need the conceptual resources of political theology. He doesn't mean Islamic or for that matter Christian fundamentalism: he doesn't mean the project of subordinating the state to the dictates of organized religion. We are miles away from theocracy. He thinks rather that there are elements of politics, of our relationship to the state, that you can't make sense of unless you are willing to talk about the sacred. What, he demands, does liberal talk about reason and interests have to offer when we need to apprehend sacrifice for the state? Can you really make sense of the people as an intergenerational actor by thinking about

what terms of political cooperation reasonable individuals would agree to? Making sense of (political) freedom—of the sovereign's ability to declare the exception, the judge's ability to write an opinion, the philosopher's ability to make a novel argument—requires richer conceptual resources.

Well, I don't know. Part of the problem is that Kahn's analogies are sometimes contrived and sometimes fall flat. "The sovereign," he says, "wills itself into existence; it will be what it wills itself to be" (p. 52). He urges that we see this just as we see God's creation of the world ex nihilo. But one needn't fuss about blasphemy to seize on the disanalogy: God doesn't will himself into existence. He just is. Maybe Kahn meant to say that the sovereign wills the state—or law? —into existence. But I don't think so.

Part of the problem, though, is that Kahn is by turns a historicist and a transcendentalist. Let me take those unfortunately lofty *isms* in turn. Historicist Kahn is the one who thinks that our concepts and categories are, for better and worse, what we have to make sense of the world. One doesn't have to flirt with any extravagant claims about social construction here. The concept of "chromosome" is indeed socially constructed: that's helpful if you want to investigate how the community of biologists came up with it. But I have no impulse to say that chromosomes themselves are socially constructed, unless that's an elliptical way of remembering

that it takes two to reproduce. But it is importantly true that society is partly constituted by our concepts. In this mood, Kahn thinks that for us, here, now, political theology is inescapable. Our political understandings and practices depend on it, even if we're only furtively aware of that. So historicist Kahn is open to challenges about whether he's got his contingent claims right. Take for instance this one: "For countless Americans, sovereignty remains the critical element of their conception of the source and meaning of political life" (p. 121). This doesn't look like another way of saying that if you try to make sense of what Americans inchoately think and do, you'll have to appeal to sovereignty. It looks like it means Americans self-consciously embrace the concept of sovereignty—indeed a particular, finicky account of it, the one that resonates with political theology. I'd like to see some evidence, because I don't believe it. Even my law students find it very hard to wrap their minds around the concept.

Transcendentalist Kahn is the one who thinks that freedom is an ineluctable fact of the human condition, or that we have to think it is, and that the necessary preconditions to make sense of freedom are those offered by political theology. It's not just us, here, now who need political theology. It's everyone, human beings just insofar as they're free agents. And this Kahn is open to the obvious line of historicizing or pragmatist pressure. Kahn for instance recurs regularly to the distinction between reason and will. It did a lot of work for Schmitt, it's been around for centuries, one reaches easily for it. But I'm suspicious of Kahn's repeated suggestion that finally or ultimately or at bottom we need to think about will, not reason, to make sense of politics. I suspect instead that that conceptual antinomy is ill-suited to some

of the tasks we want it to do. Thinking about legal decisions, for instance, Kahn urges that every new judgment, even in easy cases, is something more than the mechanical application of an existing norm. It is an act of will. (If you don't mind a touch of bathos, contrast the GOP's endless insistence that judges should apply or follow the law, not legislate from the bench.) I'm inclined to think that those alternatives are badly put, so I don't want to take sides at all. More generally, if or insofar as transcendentalist Kahn argues that we need political theology to make sense of the fundamental fact of human freedom, I want to shift things back into a historicist register and think of the range of things we might mean by freedom.

I'm in the camp that Kahn opposes, those cheerful about getting rid of the concept of sovereignty. It's outlived its usefulness. As a weapon against bellicose aristocrats and insidiously powerful churchmen, a tool for state building, it was great: it meant you could insist that society needs a locus of undivided, unlimited authority. But then federalism came to stand for the proposition that you can indeed divide sovereign authority, constitutionalism for the proposition that you can limit it. So what's left of sovereignty? Nothing, I think. And nothing in recent intoxicated writing about the originary or constitutive powers of the people makes me budge. From this point of view, we don't need sovereignty. We need to get over it.

I have one last worry. Kahn, again, insists that liberal theory has no way of accounting for how we are willing—and should be willing—to immolate ourselves in the service of the state. I doubt he's right. But suppose he is. You might think, politically speaking, that that failure is a virtue of liberal theory. The last thing the world needs is more gasoline to pour on certain fires.

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