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## **Refounding Denied: Hannah Arendt on Limited Principles and the Lost Promise of Reconstruction**

This article argues that Hannah Arendt's essay "Civil Disobedience" contains a critique of white constitutionalism. A close reading of Arendt's comments on the failure of Reconstruction to durably found Black citizenship reveals that the anti-Blackness of her account does not consist in ignoring the racialization of constitutional order but, to the contrary, in a dismissal of Black politics due to the limitations of a white constitutional heritage. In "Civil Disobedience," Arendt thus stood on the edge of an insight that she failed to develop more fully: Black movements had brought to light the limitations that racial domination places on the "augmentation" of America's founding principles. For Arendt, the notion of the "principle" is meant to mediate the novelty of action with the durability of order. But to the extent that she views American institutions as defined by the "inherited crime" of slavery, feedback across temporal strata – between a principle in past, present, and future – is structurally blocked. The symbolic whiteness of citizenship undermines institutional durability, as it generates a crisis of constitutional authority for all. Tracing the sources behind Arendt's pessimistic vision, the article demonstrates echoes between her account and the literature she relied on: Tocqueville, Stanley Elkins, and, possibly, W. E. B. Du Bois. It concludes with a reading of Arendt's commentary on Reconstruction as the attempt to recover a lost moment of foundation, an unredeemed promise of refounding.

**Key words:** Hannah Arendt – Civil Disobedience – Constitutionalism – Black politics – Race – Whiteness

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# **Refounding Denied:**

## **Hannah Arendt on Limited Principles and the Lost Promise of Reconstruction**

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### **Introduction**

In her essay “Civil Disobedience” (1970), Hannah Arendt rang the alarm about “a constitutional crisis of the first order.” From an illegal war in Vietnam to the “increasingly impatient claim to power by the executive branch,” “chronic deception” of Americans by their representatives, and “deliberate attacks” on free speech, constitutional authority had been pushed to the brink (1972a, 89, 93). In the face of these threats, Arendt made the case for civil disobedience as a defense of republican institutions: what appeared as rebellious transgression or criminality was, to the contrary, “quite in tune with the oldest traditions of the country” and embodied the Constitution’s spirit of founding. Her appraisal of civil disobedience culminates in the provocative call to not only envision civil disobedients as the true spokespersons of constitutionalism but to take their action as the occasion for a new understanding of political institutions altogether: “to find a recognized niche for civil disobedience in our institutions of government” (99).

But the second driver of constitutional crisis was not the outcome of Nixonian executive overreach. Its sources were much older, and Arendt’s essay oscillates between political commentary and historical meditation. “Civil Disobedience” was published in *The New Yorker* on September 12, 1970, but Arendt first elaborated her thoughts for the New York Bar Association Centennial Convocation, “Is law dead?,” held on April 30 and May 1

of the same year. Her effort to bring constitutional history to bear on a tumultuous present resonated with the aims of the event. As conference organizer and Dean of Yale Law School Eugene V. Rostow (1971, 11) suggested, the legal profession needed to confront the past anew at a moment when “our institutions are being tested with a vehemence that the nation has not seen since the Civil War.” For Arendt, likewise, recent “social storms, and the violence they have generated” (Rostow 1971, 13) shed new light on the American past: “there has come into the open, at about the same time, the radical unwillingness of certain sections of the population to recognize the *consensus universalis* on which the constitutional order relied for its durability” (1972a, 89).

The *consensus universalis*, a term she takes from Tocqueville, had been continually renewed across generations – up until its present breakdown (87-88). For Arendt, “mutual promises” between the Founders had lived on as a principle of action, dynamically stabilizing the republican order. What she elsewhere (1961, 1965) called authority as “augmentation” is thought of in distinction to the political theology of an absolute will of “the People,” imagined as grounding the law in the French nation-state model (Volk 2015, 125-172). In Arendt’s view, American law, unique in its kind, managed to break with sovereignty by tying the durability of authority to ongoing practices of foundation. Sovereignty would thus be denied “in principle” (1972a, 100).

In “Civil Disobedience,” Arendt is acutely aware of the *racialized* character of America’s constitutional principles. What her phrase “certain sections of the population” so awkwardly points to is, of course, the powerful presence of Black movements in American political life in the wake of the 1960s. Where Arendt praises the movement against the Vietnam War as re-invigorating a Montesquieuan “spirit of the laws” (1972a, 94), her reading of Black dissidence in “Civil Disobedience” came in a different key. Arendt wrestled with contemporary events, as the 1970 conference not only coincided with a nation-wide

student strike against the Vietnam War but also with the trials against Black Panther leaders in New Haven (Rostow 1971, 10), on murder charges that were later dismissed. Contrasting the peaceful student movement with the defense of violent revolution by the Black Panthers, Arendt warned that “attempts of integration often are met by rebuffs from black organizations.” “quite a number” of Black leaders “care little about the rules of nonviolence for civil disobedience and, often just as little about the issues at stake – the Vietnam war, *specific defects in our institutions* – because *they are in open rebellion against all of them*” (92).<sup>1</sup> If read alongside “Reflections on Little Rock” (1954), in which Arendt (2000) infamously opposed Federal intervention to desegregate Southern schools, or *On Violence* (1969), in which she presented Black student movements as the “silly and outrageous” efforts to “lower academic standards” (1972b, 120-121), let alone her passages in *Origins of Totalitarianism*, which referred to Africans before colonization as “savages” who “had not created a human world” (2004, 190-194), then the verdict seems clear: “Civil Disobedience” can only serve as further illustration for Arendt’s anti-Black racism, without much value for political theorists committed to racial justice.

There are key features of Arendt’s essay that fit the bill of what Kathryn Sophia Belle<sup>2</sup> describes as “exclusive misrepresentative thinking” (2014, 126): an inability to take the embodied perspectives of Black people seriously and to not confuse one’s white viewpoint with the “disinterestedness” of an “enlarged mentality.” In developing this critique, Belle’s *Hannah Arendt and the Negro Question* (2014) builds on earlier treatments of racism in Arendt (Norton 1995; Bernasconi 1996). As Grayson Hunt (2020, 637) rightly points out, however, Belle “effectively doubles-down on the charge that Arendt held anti-black views” insofar she moves the target of critique to the heart of Arendt’s theory of judgment. For

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<sup>1</sup> Emphasis added.

<sup>2</sup> Formerly known as Kathryn T. Gines.

Arendt (1982), the validity of a judgment hinges on the mental representation of plural standpoints, which is meant to enable a “disinterestedness” that is *impartial*, though never *objective*. Yet to the extent that “misrepresentative thinking” “represents the views only of those allowed in the public realm” (Belle 2014, 124), Arendt is said to duplicate social exclusions in the guise of “impartial” judgment, turning racism into a constitutive feature of her political thought.<sup>3</sup>

*Hannah Arendt and the Negro Question* has been an agenda-setting book on Arendt and race (Owens 2017), regardless of whether one follows Belle in viewing “misrepresentative thinking” as necessarily excluding the already excluded (and whether exclusion – rather than differentiated inclusion – would be the appropriate category for an analysis to begin with). But the biggest obstacle for this debate has been a tendency to construe racism as a matter of personal shortcomings or individual behavior.<sup>4</sup> On this point, it is curious to observe that Arendt is charged with having failed to develop a *political* account of racial domination (Belle 2014, 10-11; Hunt 2020, 631) while criticisms of her work are

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<sup>3</sup> While I agree with Çubukçu’s (2021, 38) important observation that “Civil Disobedience” is “underwritten by racial, when not racist, modes of thinking,” her reading conflates the *impartiality* of judgment, reliant on plural standpoints, which Arendt defends, with the *objectivity* of a rule, derived from a transcendental criterion, which she rejects. The critique of the transcendental as “white flight,” as Mills (2014) once put it with regards to Rawls, does not easily map onto Arendt; her anti-Blackness is not derived from transcendental heights but the product of a historically situated fatalism about American race relations.

<sup>4</sup> Moten’s critique (2018, 66) is a notable exception to individualized denunciations, wrestling with “an antiblackness that infuses and animates Arendt’s work, something perhaps not best understood as belonging to her, but rather as that to which she, along with many others, both black and white, neither black nor white (more than merely), belongs.”

themselves presented in highly individualized ways – engaging Arendt’s writings as the scene of self-disclosure, showing “what kind of person” she is (Belle 2014, 130). Thinking about racial domination through the lens of self-disclosure risks to push out of sight urgent questions regarding the operation of race in institutional spaces. A politically minded account of racial domination would need to move beyond an understanding of Arendt’s writings as expressive of her character and turn its attention to the racialized workings of those republican institutions that Arendt both theorized and performatively enacted. I submit that it is on this level of institutional analysis that one might gain insights, with and against Arendt, that can point in the direction of a theory of racial citizenship: a *political* theory that attends to the ongoing performance of whiteness as institutionally anchored and continually reproduced through the imaginary of American constitutionalism.

In an immensely generative move, Ainsley LeSure (2021) has offered an original interpretation of “Reflections on Little Rock” that challenges previous accounts. LeSure reads Arendt’s critique of desegregation as a pessimistic warning against a “racial common sense” inherent to American social relations: a racial domination impossible to undo by a politics of inclusion that integrates schools but leaves political institutions unchanged. Not only would “*social*” inclusion without *political* refounding be insufficient. If the expansion of formal equality goes unaccompanied by new spaces for action, domination can *intensify* precisely in those moments when racial justice seems to progress, morphing the equality of the law into an “equality that operates as an entitlement one secures when one is considered sufficiently normal by one’s fellow citizens” (LeSure 2014, 5). Such a vision resonates with the contradictions of U.S. racial politics at a moment marked by the simultaneity of increased visibility for racial minorities and radicalizing support for white supremacy. Reading Arendt not as *opposed to racial equality* but as deeply *pessimistic about its depoliticized forms*

allows one to recover crucial insights about the challenges that movements for racial justice continue to face.

Arendt's passage on Black actors' "open rebellion" in "Civil Disobedience" can now appear in a new light. Arendt does not just condemn the "general anti-institutional bias," which she sees as the 20th century's Black movement's inheritance of 19th century's abolitionism; rather, she urges readers to recognize what she calls the "simple and frightening fact" that Black and Native American people "had never been included in the original *consensus universalis* of the American republic" (1972a, 90). It is the *reproduction* of an original exclusion that continues to make it overwhelmingly difficult for Black actors to take up a beginning – a principle – that remains closely tied to a legacy of racial domination. On Arendt's view, civil disobedience

"brought into the open the 'American dilemma' and, perhaps for the first time, forced upon the nation the recognition of the enormity of the crime, not just of slavery, but of chattel slavery – 'unique among all such systems known to civilization' – the responsibility for which the people have inherited, together with so many blessings, from their forefathers" (1972a, 81).<sup>5</sup>

How did civil disobedience bring to light the *inheritance* of slavery? And what could it mean to have *inherited a crime*, given that Arendt understood "our heritage" to be "preceded by no testament" (1965, 215), as she frequently quoted the poet René Char? I argue that these passages stand at the edge of an insight that Arendt failed to spell out: Black movements had brought to light the limitations that America's racial order places on the augmentation of founding principles. In Arendt's neo-Roman terms, the notion of the *principium* is supposed

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<sup>5</sup> Arendt's statement references Gunnar Myrdal, *An American Dilemma* (1944) as well as Stanley Elkins, *Slavery* (1959, 42). Arendt's library at Bard College contains copies of both; I discuss her reading of Elkins below.



to link the novelty of action to institutional durability, connecting “the concern with stability and the spirit of the new” (1965, 223). In *Black rebellion*, Arendt saw the breakdown of the dialectics of action and institution under the impact of slavery’s afterlife: if the “spirit of the law” remained indistinguishable from the specter of racial domination, then “we need not be surprised that the present belated attempts to welcome the Negro population explicitly into the otherwise tacit *consensus universalis* of the nation are not trusted” (1972a, 91).

In the first section, I develop the connection between the augmentation of a founding and the exclusion of Black actors, suggesting that “Civil Disobedience” contains the outlines of a critique of white constitutionalism. My reading challenges interpretations that see Arendt as failing to recognize “the violent and racist ‘spirit’ of American law” (Çubukçu 2021, 43). In some sense, the opposite is true: Arendt *overstated* the racialization of republican institutions to the point of ruling out Black political agency. Arendt’s anti-Blackness does not consist in ignoring the racialization of the U.S. constitution but, to the contrary, in her pessimistic dismissal of the possibility of Black freedom.

In a second part, I demonstrate that Arendt did not see the exclusion of Black actors as inevitable. To the contrary, she insisted that the racialization of civic space was the outcome of institutional design and, specifically, the result of the failure of the Reconstruction era amendments. In underappreciated passages, “Civil Disobedience” features her *only* engagement with the Lincoln presidency (cf. King 2015, 289) and a rare discussion of the Civil War and Reconstruction.<sup>6</sup> Arendt offers a striking critique of the Fourteenth and

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<sup>6</sup> Arendt evoked the Civil War and Reconstruction in at least three other writings: “Revolution and the Idea of Force” (1963), a speech delivered at a UNESCO conference at the University Chicago; a speech on “Civil Rights” (1964) at the recently desegregated Emory University in Atlanta; as well as the 1968 article “Is America By Nature a Violent Society?” in *New York Times Magazine*. While these comments remained brief and

Fifteenth Amendments on the grounds that they failed to inscribe the transformation of America's racial order within the constitutional imaginary. I read Arendt's brief comments on Reconstruction as gesturing towards a lost moment of foundation – quite akin to, though much less developed than, her “pearl-diving” for the “lost treasures” of the councils in the European revolutionary tradition (1965, 249-281). Tracing the sources behind Arendt's account of the failure of abolition, I show echoes between her vision and the literature she relied on: Tocqueville, Stanley Elkins, and, possibly, W. E. B. Du Bois.

As a wave of “neo-Roman” readings (Tsao 2002; Cane 2015; Muldoon 2016; Straehle 2019) has made evident, the institutional confluence of novelty and durability is best expressed in Arendt's underdeveloped notion of *the principle*. But contrary to the optimism of some readers, Arendt's commentary on the failure of Reconstruction suggests that she did not believe principles to be freely available for uptake. Their *worldliness* – a principle's invitational quality across standpoints – is never given in advance. In order to durably incite action, republican law relies on the difficult articulation of freedom and equality – what Arendt tries to capture with the Greek “isonomy,” a term she idiosyncratically translates as “no rule” (1965, 30) – with a Roman concern for transgenerational durability. To Arendt, this articulation can be achieved through an institutional imaginary (“the spirit”) contained within the law. The action-inspiring principle symbolizes memories of founding such that they generate affective responses among citizens who experience the past as the promise of a freedom to come. But to the extent that American institutions are defined by the “inherited crime” of slavery, such feedback across temporal strata – between freedom and equality in past, present, and future – is structurally blocked.

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inconclusive, they challenge previous readings insofar as they suggest that Arendt, at least on occasion, envisioned the American founding in “two stages – Revolution and Civil War” (Arendt 1964, 2).

The symbolic whiteness of constitutional order thus feeds into a crisis of authority *for all*. Though deeply pessimistic, I suggest that this insight opens up crucial questions for a radical-democratic engagement with legal institutions in our own present. It begins to refigure the relation between Arendt's Benjaminian history of the vanquished and the Black radical tradition, "which although not always conscious of itself as a tradition, was always a politics constituted and construed as the enemy of the Western political" (Hesse 2011) in ways that Arendt never imagined and that, in fact, she might have abhorred.

## **I. White Constitutionalism as a Problem for Political Authority**

"Promises are the uniquely human way of ordering the future," Arendt writes (1972a, 92), as the temporality of the promise establishes a space between human beings across time that does not rely on external grounds, like divine sanction, transcendental morality, or a sovereign will. In Arendt's view, this relational temporality of the promise is contained in the American constitutional order. Before "Civil Disobedience," *On Revolution* (1963, 167) had already presented American politics as a tradition founded on the making of promises, ever since the passengers of the Mayflower supposedly "combine[d] themselves together into a 'civil Body Politick' which [was] held together solely by the strength of mutual promise." But what has, oddly, been bracketed in the voluminous commentaries on Arendt is that this promise occurred in 1620, i. e. 168 years *before* the ratification of the U.S. Constitution. Rather than a logical inconsistency or sloppy historiography (a charge that misses the point of what Arendt is up to in her story-telling), the *antecedent* nature of founding in "mutual promises" to the *legal* foundation of the constitutional order is part of the conceptual challenge that Arendt wishes to pose. Her contention is that Americans were thus able to escape the trappings of sovereignty, imagined as an absolute grounding in a popular will, in

which plural perspectives “disappear into complete unity, such as the *union sacrée* of the French nation” (1972a, 94). As Arendt quotes John Adams, “the revolution was effected before the war commenced,” as the founding had *already* taken place a century earlier when the “colonies were ‘formed by law into corporations, or bodies politic’” (1965, 158). By presenting the founding as *always already having occurred*, the philosophical “problem of an absolute” could be avoided in practice: stretched over time, the perplexities of founding are reinterpreted positively, as a source for an ongoing durability-in-action.

When Arendt speaks of the founding, she is therefore not referring to an event in legal history understood in positivist terms. As her jumbled timeline illustrates, her attempt to theorize a non-sovereign order involved a rethinking of the relation between the temporality of the promise, on the one hand, and the legal form, on the other. But instead of offering a solution to this difficulty, Arendt aims to hold the new and the durable *together*, and she turns to Montesquieu’s notion of “the principle” to imagine their uneasy articulation (1965, 202-203). Montesquieu had, in *The Spirit of the Laws* (1748), developed a typology of regimes, not based on their legal forms but rather on the principles which animated their orders.<sup>7</sup> Importantly, for Arendt, Montesquieu’s analysis shifted the emphasis from a concern with normative *grounds* to the question of institutional *temporality*:

“It is still for Montesquieu the supreme proof of the badness of tyranny that only tyrannies are liable to be destroyed from within, to decline by themselves, whereas all other governments are destroyed through exterior circumstances. Therefore what the definition of governments always needed was what Montesquieu called a ‘principle of action’ which, different in each form of government, would inspire government and citizens alike in their public activity and serve as a criterion, beyond the merely

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<sup>7</sup> Arendt’s annotated copy of Montesquieu, *Spirit of the Laws* (New York: Hafner, 1949) is available at <http://www.bard.edu/library/arendt/pdfs/Montesquieu-Spirit.pdf>.

negative yardstick of lawfulness, for judging all action in public affairs. Such guiding principles and criteria of action are, according to Montesquieu, honor in a monarchy, virtue in a republic and fear in a tyranny” (Arendt 2004, 467).

Montesquieu opposes the “principle of action” to the “nature of government”: “its nature is that which makes it what it is, and its principle, that which makes it act. The one is its particular structure, and the other is the human passions, which set it in motion” (1989, 21). Montesquieu’s typology distinguishes between regimes but also draws on the older, Paulinian image of the “living spirit” that opposes and exceeds the “dead letter” of the law.<sup>8</sup> The very definition of the “spirit of the laws” thereby imports a criticism of the legal form as a stifling limit and unresponsive artifact into the terms of analysis. This was arguably the feature of Montesquieu’s approach that, for Arendt’s purposes, lent itself to a rethinking of the law as an inspiring source of *action*; her aim was to challenge a depoliticizing vision, dominant in liberal constitutionalism, which falsely reduces legal institutions to the limiting frame of subjective rights (Arendt 1965, 154; Gündoğdu, 179).

In her posthumously published “Introduction *into* Politics,” Arendt interpreted Montesquieu’s principle as “a fourth element” of action – beyond “the end that it pursues, the goal which it has in mind and by which it orients itself, and the meaning that reveals itself in the course of the action” (2005, 194). Despite the fact that an action “is never the direct cause of action,” it is nevertheless “what first sets it into motion.” Arendt here states, rather vaguely, that, “in psychological terms,” the principle would correspond to “the fundamental conviction that a group of people share” (194-195). Citing Montesquieu’s distinction between principles in monarchy, aristocracy, and republic, Arendt adds other examples: freedom, justice, “or equality, if by that we understand the belief in the innate worth of every human being” (195). Totalitarianism is variably presented as a violent expansion of one principle

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<sup>8</sup> “The letter kills, but the Spirit gives life.” 2 Corinthians 3:6.

onto the whole world or as the only regime lacking any kind of principle whatsoever, making it a fundamentally anti-political, action-inhibiting kind of order (2005, 159; 2004, 468).

But Arendt goes beyond Montesquieu when she associates the principle to the memory of a beginning within historical time.<sup>9</sup> As she put it in *On Revolution* (1965, 212), “what saves the act of beginning from its own arbitrariness is that it carries its own principle within itself, or, to be more precise, that beginning and principle, principium and principle, are not only related to each other, but are coeval.” Reinterpreting Montesquieu’s “principle” as the “revolutionary spirit” of a founding thus offered a solution to a problem that Arendt (1958, 188-189, 222-224) understood as going back to Plato: the separation between *archein* (Greek for “to begin” and “to command”) and *prattein* (“to execute” or “to see through”). In ancient Athens, *archein* and *prattein* had been inextricably linked, as citizens who initiated action would in time participate in its execution (e.g. through rotating offices), eliminating rule in a strict sense (1965, 31; cf. Markell 2006, 4-5). To Arendt, what laid the groundwork for the reduction of politics to rulership was the Platonic separation of *archein* and *prattein*: legitimizing order through a unitary command in ways that reverberate in modern doctrines of sovereignty. Arendt’s argument in *On Revolution* (1965, 238-239) might by contrast be read as the attempt at re-unifying *archein* and *prattein* under conditions of modernity: the “revolutionary spirit” takes up the role of *prattein* – “seeing through” what the founding “initiated” – which, against originalist reverence, radically flattens the hierarchy between (non-sovereign) founding in past and present.

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<sup>9</sup> According to Ursula Ludz, Arendt had, at the time of her death, planned to systematize her treatment of Montesquieu’s typology of regimes and principles in “Pluralität in den Staatsformen,” which remained a fragment. It is included in *Was ist Politik?* (Arendt 2003, 196), but not in *The Promise of Politics*.

It is the uptake of an institutionally secured principle that is not only able to sustain the space of action by generating *power*; it also connects action to constitutional *authority* without grounding the latter in a sovereign will. Once the dialectical nature of authority as augmentation is foregrounded, the opposition between agonistic, rupture-oriented interpretations of Arendt and supposedly more institutionally oriented deliberative readings reveals itself as a misguided dichotomy. Arendt's point was precisely to avoid the binary of politics as either ephemeral interruption or philosophically grounded stability. Drawing on Angélica Bernal's persuasive reading (2017), one might understand institutional temporality as emerging not from a normative groundwork but from *acts of authorization* of a law that remains constitutively "*under-authorized*": a 'lack' of authorization which is not a shortcoming but its source of durability. Republican law, far from a merely regulatory function, relies on affective investments that reanimate the living spirit from the dead letter. To Arendt, "the regeneration of principles over time" depends "not only on their periodic manifestation in action but also on their preservation as sources of inspiration in relatively stable institutions and artifacts" (Cane 2015, 70).

In order for authority to be "augmented," founding principles depend on performative uptake. But where contemporary readers routinely invoke Austin's notion of performativity, much less attention has been paid to the speech act's "felicity conditions" that need to be in place for a performative "to do what it says" (Ahmed 2006, 105). In "Civil Disobedience," Arendt thinks through the conditions under which the American founding can fulfill its politically regenerative function – and the *conditions under which it fails*. While authority as augmentation gets theorists away from a philosophical concern with the perplexities of founding, it is the historicization of the principle that turns its white supremacist legacy into a serious theoretical problem *on Arendt's own terms*. When Arendt writes that "there was nothing in the Constitution or in the intent of the framers that could be so construed as to

include the slave people in the original compact” (1972a, 90), she is diagnosing the whiteness of American constitutionalism as a source of crisis for authority. She quotes the 1857 Dred Scott decision (91), which affirmed that “Negroes are not and cannot be citizens in the meaning of the federal Constitution” – *not* to praise the United States of 1970 as having progressed but rather to give credence to her view that the strategic law-breaking on the part of Black activists should be understood as “open rebellion” rather than civil disobedience (92). Where the latter sustains the stability of republican institutions, Arendt interprets the former as a source of crisis for constitutional order – not due to her anti-Black racism but as part of her diagnosis of the constitutive whiteness of the American founding as a “simple and frightening fact.”<sup>10</sup> In a pessimistic reading of abolition, Arendt insists that the Reconstruction era amendments did not remedy America’s “original crime” (1972a, 90) but rather, as with LeSure’s interpretation of the *intensification* of racial common sense after moments of progress, ended up entrenching the racialization of America’s *principium*:

“As time went by and wave after wave of immigrants came to the contrary, it was even more obvious that blacks, now free, and born and bred in the country, were the only ones for whom it was not true that, in Bancroft’s words, ‘the welcome of the Commonwealth was as wide as sorrow’” (1972a, 91).

In these passages, Arendt understands American constitutionalism as deeply imbricated with racial domination. Her account, as suggestive as it is, remains brief – perhaps because Arendt approached the realization that America’s founding principle was at odds with her *own*

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<sup>10</sup> At the 1970 “Is law dead?” conference, Edgar S. Cahn (Rostow 1971, 243-44) recognized the radical implications of Arendt’s critique of white constitutionalism. “If I understand what Dr. Arendt has said, she has politely indicted the entire legal system and the legal profession. [...] The challenge we face today, and that Dr. Arendt has correctly diagnosed, is one of group dissent from the social compact of the past.”



understanding of political space as plural and constituted between free and equal citizens. In other words, Arendt's historical analysis of the Black movement's "open rebellion against all our institutions" implicitly contains the admission that a reading of republican order as animated by the return to its beginning stands in violation of the very qualities that she values as the definition of politics. The anti-Blackness of "Civil Disobedience" is thus not straightforwardly reducible to Arendt's depiction of Black actors; instead, it operates through a complex movement of disavowal.

On the one hand, Arendt *recognizes* the depth of racial (i. e. *social*) violence – the "original crime" – at the heart of a *political* order that Americans "have inherited, together with so many blessings" (1972a, 81). Indeed, Arendt even presents chattel slavery as a *unique* break in the history of civilization, a phenomenon of world erasure so profound that its impact still unravels the entire fabric of American institutions over a hundred years after legal abolition. In this recognition, which in "Civil Disobedience" contrasts starkly to her cursory treatment of slavery in *On Revolution*, Arendt is decidedly more clair-voyant than liberals of the 21st century who, not so long ago, believed America to have entered a post-racial era. On the other hand, though she seems to recognize the principle of the republic as constitutively tied to whiteness, she immediately shies away from the "frightening" conclusion that her own categories demand: that is, to expose the "spirit" of white constitutionalism as structurally *opposed* to (rather than *exemplary of*) the enactment of isonomy – or, put differently, to understand, with Tyler Stovall (2021, 5), that "the relationship between liberty and racism is not necessarily contradictory but has its own internal consistency," that "freedom and race are not just enemies, but also allies, *frères ennemis*, whose histories cannot be understood separately." In the whiteness of the U.S. Constitution, its *authority* – which relies on the futurity of its beginning – is hitting a *political* dead-end. The conclusion that Arendt gestures toward but never spelled out is this: an irredeemable racialization of America's founding is

throwing the durability of republican institutions into crisis. Like Montesquieu's tyranny (Arendt 2004, 467), white constitutionalism is "destroyed from within," decaying from the loss of inspired action, as a matter of principle.

## **II. Refounding Denied: Arendt on the Failure of Reconstruction**

The racial politics of Arendt's theory of authority hinge on whether the connection between racial domination and the "spirit of the laws" is contingent and open to transformation or an irredeemable feature of constitutional order. Lucy Cane (2015, 69) is right to emphasize the "elasticity of principles," which she contrasts to transcendental standards. But "Civil Disobedience" also indicates a limitation to the iterability of America's founding which, though "inherited," Arendt saw as almost impossible to overcome: racial domination in the *longue durée* of an incomplete abolition, which pushed Black movements outside the dialectics of republican citizenship. Strikingly, Arendt portrays Black actors not as heir to constitutional founding but rather to the abolitionist movement of the 19th century. The latter, she claims (1972a, 90), was characterized by "its strong general anti-institutional bias, its abstract morality, which condemned all institutions as evil because they tolerated the evil of slavery." Recalling her characterization of Martin Luther King as a conscientious objector and *not* a civil disobedient, Arendt attributes the "tragedy of the abolitionist movement" to the fact that it "could appeal only to the individual conscience, and neither to the law of the land nor to the opinion to the country." The racialized spirit of American law lives on; "we know the result," she writes all too laconically (1972a, 91).

In developing this pessimistic perspective, Arendt relied most heavily on a single work of historiography: Stanley Elkins' *Slavery: A Problem in American Institutional and*

*Intellectual Life* (1959),<sup>11</sup> which she called a “splendid study” and “an excellent analysis of the sterility of the abolitionist movement” (1972a, 90).<sup>12</sup> *Slavery* was, throughout the 60s, as controversially debated as it was influential (Lane 1971). For one, Elkins mounted a defense of the so-called “Tannenbaum thesis,” associated with the work of Frank Tannenbaum (1947), who had argued that slavery in the United States was a qualitatively distinct, dehumanizing phenomenon that would need to be contrasted to supposedly ‘milder’ forms in Latin America (Elkins 1976, 25-26, 63). Much of the work on slave societies since Tannenbaum has debunked this portrayal and highlighted the continuities of anti-Blackness across the Americas. But Elkins’ thesis of the *uniqueness* of U. S. chattel slavery seemed to have made a particular impact on Arendt (1972a, 81), who called it an “important point,” crucial to understand “the enormity of the crime [...] the responsibility for which the people have inherited.”

What further added to the controversy around Elkins’ work was his choice to draw on interviews with Jewish inmates of Nazi concentration camps to understand the psychology of enslaved Africans. Elkins, who grew up Jewish in Boston, developed a psychoanalytical reading of interviews with Holocaust survivors who, under the impact of life in the camp, had experienced a total loss of their desire to resist, to the point of exhibiting a “child-like”

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<sup>11</sup> Arendt’s copy of Stanley Elkins, *Slavery: A Problem in American Institutional and Intellectual Life* (New York: Universal Library, 1963), conserved at Bard College, contains underlinings.

<sup>12</sup> King 2015, 361, fn 57, perceptively emphasizes the influence of Elkins but his claim that “Elkins’s book is the only study of American slavery in Arendt’s personal library” is incorrect: she owned a copy of Du Bois’ *Black Reconstruction in America*. Moten (2018, 91, 89) likewise recognizes “Arendt’s extension of Elkins’s misrecognition and critique of abolitionism” as a key source for her figuration of Blackness as outside of politics.

affection for SS guards (1976, 113).<sup>13</sup> In light of these findings, Elkins presented plantation slavery as the source of what he described – in terms that reproduce the anti-Black racism they purport to designate – as the production of an “infantilized” (“Sambo”) personality (82-86). The durability of slavery, Elkins claimed, was due to an ideological transformation in the minds of the enslaved themselves. While his work is ripe with racist tropes, it challenged biologist assumptions about innate racial qualities, conceptualizing the violence of slavery as productive of race in the first place and comparing it to the total domination of the Holocaust. Contrary to Bernasconi’s criticism (1996) that Arendt failed to include the enslavement of Africans as exemplary of “statelessness” and a “loss of world,” her admiration for Elkins’ *Slavery* seems to indicate that she herself did, in fact, allow for the comparison between modes of dehumanization in 20th century totalitarianism and Black slavery in America.

While Arendt, in a much needed corrective to her lack of engagement with the history of slavery, gained insights into anti-Black violence from Elkins’ work, her pessimistic vision of America’s racial regime reproduced the fundamental problems of his account. As Stuart Hall (2021, 169-170) points out, Elkins’ understanding of slavery as a “total society of domination” mistook the racist stereotype of the child-like “Sambo” personality for the self-image of the enslaved, failing to analyze it as an ideological picture within the *white* imagination of an African Other, which predated the slave trade and was belied by slave resistance. Elkins, like Arendt, remained blind to the fact that the slaves’ “cultures of survival” were also “cultures of resistance,” falsely presupposing that “if there were not regular, massive, concerted and successful slave rebellions of the openly organized and violent kind, *then there is no history of slave resistance*” (Hall 2021, 170). If critics (Bernasconi 1996; Hunt 2020, 631) see Arendt as failing to comprehend slavery as dehumanization and worldlessness, their charge sits uneasily with Hall’s reading: the problem

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<sup>13</sup> On Elkins’ intellectual biography, see Fermaglich, 2007.

with Arendt and Elkins was not inattention to slavery's violence, but blindness to Black resistance and flight.

Beyond Arendt's failure to attend to histories of resistance, her pessimism is indebted to Elkins in her one-sided presentation of the abolitionist movement as anti-institutionalist.<sup>14</sup> It can serve as an illustration that Elkins (1976, 260) only mentions the crucial figure of Frederick Douglass on three of over 300 pages, briefly evoking "his repudiation" of Garrisonians' "extreme anti-institutionalism." Had Elkins paid closer attention to Douglass, the deployment of America's founding narrative for abolitionist purposes, famously enacted in the 1852 Fourth of July speech, might have led Arendt to question her false conception of abolitionists as anti-institutional moralists.<sup>15</sup> As Larry Svabek (2021, 524) has emphasized, Radical Republicans like Thaddeus Steves envisioned abolition as "the fulfillment of the ideas of America's founders, the creation of a 'true republic'"; and even John Brown imagined himself as part of a continual American founding story (Tsai 2010, 151). Elkins, on the other hand, argued that "the anti-institutionalism so characteristic of the Transcendentalists reached heights of extravagance in the speeches and writings of the radical abolitionists" (1976, 175). What he believed to be the four defining features of American "antislavery thought" – "anti-institutionalism, individualism, abstraction, and guilt" (189) – in fact all mirror Arendt's depiction of Thoreau, whom she described as driven by an "unpolitical," subjectivist morality (1972a, 60). In light of Elkins' characterization of "antislavery thought," one might begin to understand the reasons behind Arendt's

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<sup>14</sup> For her reading of the Civil War, Arendt also consulted Richard Hofstadter, *The American Political Tradition and the Men Who Made It* (1948). Her two references to Hofstadter (1972a, 61, 90) concern Lincoln; they do not, however, advance Arendt's theoretical account, which is why I do not treat them here.

<sup>15</sup> Cf. Gooding-Williams (2018), Frank (2010).

interpretation of Martin Luther King's action as likewise falling outside the definition of civil disobedience (1972a, 64).

When Arendt presents Black actors as standing in "open rebellion," what she means is that Black politics cannot draw on an institutionally anchored principle that collective action would augment and relate to the durability of the law. With Elkins, Arendt pictures Black movements as anti-institutionalist, on the one hand due to the dehumanization of slavery, and, on the other, due to a supposed legacy of abolitionist anti-institutionalism – a misconception that is coupled to her failure to recognize collective, "socio-genic" forms of political organization by maroons (Roberts 2015). What Arendt fails to see entirely are practices of institution-building in the Black radical tradition: undercommon practices of a durable being-with-others which, in Moten's terms, are "not prepolitical, but ante- and antipolitical," enacting "a mode of life whose initiatory figures are given as anarchic principles that are form-generating" (Moten 2018, 79, 137). Arendt reduces Black political agency to its negation through the "inherited crime" of slavery. She thereby repeats the erasure of Black life from the world by ascribing the worldlessness of violence to the excluded themselves. Yet "Civil Disobedience" also opens up the radical possibility of a refounding of the American legal order that would have, *for the first time*, included Black people as citizens and thus transformed the "spirit of the law" in the direction of a revolutionary principle, available for uptake beyond racialized boundaries. This possibility, Arendt suggests, existed during Reconstruction, with the Fourteenth and Fifteenth Amendments.

Bruce Ackerman (1993, 44), to cite an influential interpretation of U.S. legal history, understands the Reconstruction amendments as a "second founding" which, though not fully successful, managed to generate "self-conscious acts of constitutional creation that rivaled the Founding Federalists' in their scope and depth." Arendt's reading of Reconstruction, to the contrary, is that of a failure with long-lasting consequences:

“We know that this original crime [slavery] could not be remedied by the Fourteenth and Fifteenth Amendments [...]. We know the result, and we need not be surprised that the present belated attempts to welcome the Negro population explicitly into the otherwise tacit *consensus universalis* of the nation are not trusted. (An explicit constitutional amendment, addressed specifically to the Negro people of America, might have underlined the great change more dramatically for these people who had never been welcome, assuring them of its finality. [...]. The failure of Congress to propose such an amendment is striking in the light of the overwhelming vote for a constitutional amendment to cure the infinitely milder discriminatory practices against women)” (1972a, 91-92).<sup>16</sup>

Arendt’s critique of the “failure of Congress” to propose a race-specific amendment remains ambiguous, blurring the past into the present when responding to contemporary events, such as the “overwhelming vote” (92) for an amendment on women’s rights. On August 10, 1970, the House of Representatives passed the Equal Rights Amendment (ERA), prohibiting discrimination “on account of sex,” by a 350-15 vote.<sup>17</sup> If one compares Arendt’s conference paper on “Civil Disobedience” from May 1970 and the published version from September 1970, this section is revealed as a late addition in her drafting process.<sup>18</sup> But if Arendt

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<sup>16</sup> Emphasis added.

<sup>17</sup> Arendt’s notes on “Law and Disobedience,” conserved at the Library of Congress, contain paper clippings on the Equal Rights Amendment. <https://www.loc.gov/item/mss1105601375>.

<sup>18</sup> The manuscript of Arendt’s 1970 conference talk does *not* correspond to the published version in the conference proceedings (Rostow 1971, 212-242), as the latter already features the reference to the Equal Rights Amendment (236). The published version expanded precisely on the section dealing with the racialized limits of American constitutionalism

referenced the “overwhelming vote” for the ERA in contrast to the “failure of Congress” to pass a race-specific amendment, there certainly is some irony in the fact that the ERA was never ratified, either – an outcome that Arendt could have hardly anticipated (Mansbridge 1986). Regardless of the ERA’s defeat, however, the amendment “addressed specifically” to Black people which Arendt envisioned would presumably have given constitutional status to the race-specific provisions of the 1964 Civil Rights Act, analogous to what the ERA would have done for sex-specific ones.

While Arendt’s remarks emerge from the immediate context of ongoing struggles over civil rights, she positioned her reflections on racial equality in America in the long aftermath of the Reconstruction era. In her view (1972a, 80-81),

“the Fourteenth Amendment offers an especially instructive example of the relation between law and change. It was meant to translate into constitutional terms the change that had come about as the result of the Civil War. This change was not accepted by the Southern states, with the result that the provisions for racial equality were not enforced for roughly hundred years.”

Arendt notably does not mention the Thirteenth Amendment, which in 1865 abolished slavery; its conspicuous absence suggests that she took abolition to involve more than the negative *liberation* of the enslaved. Arendt did not picture the translation of extra-legal action “into constitutional terms” on the model of expanding subjective rights. In a somewhat counterintuitive move, she called the Fourteenth Amendment “instructive” precisely because it underlined that legislation *could not effectuate change*: “the law can indeed stabilize and legalize change once it has occurred, but the change itself is always the result of extra-legal action” (1972a, 80). If Arendt thus advocated for a constitutional amendment for racial

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(Arendt 1972a, 89-92). For the conference manuscript, see <https://www.loc.gov/resource/mss11056dig.051110>.



equality *in spite* of her pessimism about legislative change, she meant to underline the *political*, more than protective dimension of the law: its potential to connect action to institutional durability, enlarging not only the number of rights-holding subjects but the circle of equals who are called upon to augment its principle. It is through this lens of unfinished refounding – the failure to “translate into constitutional terms the change that had come about” – that Arendt seemed to have judged the Fourteenth and Fifteenth Amendments (90-91).

If Arendt’s reflections are read as evocative of a “lost treasure” of Reconstruction, they run against the grain of *On Revolution*, which mentions neither Lincoln, nor the Civil War. Yet such an interpretation is not without precedent in Arendt’s work. Two years earlier, in the article “Is America By Nature a Violent Society?” (1968), she had similarly analyzed contemporary Black movements as responding to a failure of refounding after abolition:

“We often hear it said today that we are called upon to pay the price for slavery, the greatest crime of the American past. But the *historical period at stake here is much rather the last one hundred years of Negro emancipation without integration than the roughly 250 years of Negro slavery* preceding them. Neither in the South nor in the North, neither before nor after emancipation, were free Negroes ever treated as equals” (Arendt 2018, 357).<sup>19</sup>

In an important parallel to “Civil Disobedience,” Arendt here, too, illustrated the racialization of constitutional order through the experience of immigrants, who “wave after wave” (1972a, 91), unlike Black people “uprooted through recent migration” to the North (2018, 358), were gradually integrated into (white) citizenship. Reconstruction thus takes up a recurrent, if largely undertheorized place in Arendt’s thinking about Black politics, a point she made most explicit in the concluding line of a speech on Civil Rights (2016, 5), delivered on May 1,

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<sup>19</sup> Emphasis added.

1964 at Emory University in Atlanta, Georgia, during her only visit to the South: “If this ends as the reconstruction period ended after the Civil War, the consequences would be extremely grave.” If, in 1964, Arendt still understood the persistence of racialized citizenship as the merely hypothetical result of a defeated Civil Rights movement (“if this ends as the reconstruction period ended”), by 1968, her comments shifted towards a more pessimistic tone, reflecting on the long aftermath of an “emancipation without integration.”

When preparing “Civil Disobedience” in 1970, Arendt seemed to not only have worried about the symbolic transformation of legal order but also about the unfulfilled material preconditions for Black political freedom:

“The Negroes were never included [in the law of the land]. No one who wanted to free them in the generation of the Founders looked upon them as prospective citizens. The crime of slavery compounded by Emancipation of a property-less class (Elkins!). There can be no freedom without property because of the human body; either subject to a master or to one’s own body.”<sup>20</sup>

For Arendt, *juridical* abolition had enabled the formerly enslaved to take part in the hierarchized exchanges of capitalist socio-economic life; yet it failed to *politically* inaugurate citizenship, both for a lack of constitutionally secured spaces of actively practiced civic equality *and* in the absence of Black property-ownership. Indeed, as Arendt’s notes suggest, she viewed “Emancipation” as not only falling short of Black freedom: its inadequacy “*compounded*” the “crime of slavery.”

Besides Elkins’ *Slavery*, a crucial, though perhaps surprising inspiration behind Arendt’s view was Tocqueville’s *Democracy in America*. In chapter XVIII, entitled “Future Condition of Three Races in the United States,” Tocqueville develops the prediction, cited by

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<sup>20</sup> See Arendt’s preparatory notes in “Law and Disobedience,” Library of Congress, pages 026105-026106. <https://www.loc.gov/item/mss1105601375>.

Arendt, that “‘the most formidable of all the ills that threaten the future of the Union arises,’ not from slavery, whose abolition he foresaw, but ‘from the presence of a black population upon its territory’” (1972a, 89-90).<sup>21</sup> The blatant racism of this statement again seems to foreclose any productive engagement. Yet as Alvin B. Tillery (2009, 640) has shown, there is much to be gained from Tocqueville’s “pessimism about racial integration [...] rooted in the belief that white privilege and racism are so entrenched in American ‘mores’ that genuine reform will be impossible without a complete dismantling of the system.” Drawing from Tocqueville (1945, 360) in her analysis of a racialized constitutional order, Arendt likewise remained deeply skeptical about the prospects of Black freedom *after* formal abolition, given the “imaginary inequality that is implanted in the manners of the people” and sustained by the inherited order of American institutions.

Unlike Tocqueville, however, Arendt *did* envisage the possibility – slim and historically failed, but a possibility nonetheless – that a constitutional amendment *might have* and perhaps *still could* generate a transformative impact on American racial “customs.” Here her argument breaks with the pessimism of her sources. In this regard, too, Arendt’s vision of Reconstruction as a lost opportunity for institutional transformation echoes W. E. B. Du Bois’ *Black Reconstruction in America* (1935). Du Bois does not appear in the footnotes of “Civil Disobedience,” nor anywhere else in Arendt’s work. Her library, however, contains a copy of

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<sup>21</sup> At the “Is law dead?” conference, the Black intellectual Harold Cruse offered a reading of the same passage from Tocqueville (Cruse in Rostow, 317), concluding that “from the very outset, the law was always dead” for Black people (326). While one might doubt whether Arendt was influenced by Cruse’s talk when she expanded “Civil Disobedience” over the summer of 1970, Kujala (2023, 304) has pointed to resonances between Cruse’s and Arendt’s distinctions between rebellion and revolution.

*Black Reconstruction*, with some underlinings throughout the book.<sup>22</sup> There is thus some evidence suggesting that Arendt had read Du Bois and in doing so encountered – *and ignored* – a work that foregrounds the role of slave resistance in the making of abolition, notably in a reinterpretation of marronage in the political terms of a “general strike” (Du Bois 2021, 70-104). Going beyond the language of liberation, Du Bois was centrally concerned with the institutional challenges of transforming America’s racial order in ways that the abstract equality of formal abolition could not achieve. “Abolition democracy” would (2021, 225-228) have to rely on an institutional network that would include legal transformation and enforcement, such as the Freedmen’s Bureau, but that could only gain its durability from the multiplication of spaces for Black freedom, especially through producer and consumer cooperatives. Such institutions would have had to enact a dialectical interplay between insurgent action and institutional durability. On this reading, both Du Bois and Arendt appear as thinkers concerned with “the substantive difference between the legislative nature of emancipation and the problem of a freedom that is yet to come” (Walcott 2021, 105).

## Conclusion

Arendt’s “Civil Disobedience” contains a critique of the racialized boundaries of U. S. constitutionalism and points at a moment of foreclosed possibility – Reconstruction – that could have refounded republican institutions so as to durably ensure the citizenship of Black people in America. In the absence of such refoundation, the constitutional imaginary never underwent the transformation that would have been required for Black political actors to

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<sup>22</sup>

Cf.

<https://hac.bard.edu/amor-mundi/the-hannah-arendt-library-black-reconstruction-in-america-2015-05-15>.

enter the symbolic spaces of the American republic on an equal footing. In failing to more radically transform the constitutional order in the wake of abolition, Arendt suggests, racial domination (“the social”) continued to shape the boundaries of citizenship (“the political”).

Arendt saw one of the tasks of constitutional provisions as ensuring the inscription of a beginning in historical time (*principium*) within a legal form, thus durably reminding citizens of the worldly reality of freedom and equality, if only for moments, within a shared past and inviting them to take it up as a “promise” in ever new ways. Where such inscription fails, as it usually does, the “breakdown of the nexus of event and response” (Markell 2006, 12) ensues and social hierarchies extend their hold. “Civil Disobedience” suggests the racial character of this struggle between social and political modes of organizing collective life: in the face of a blocked dialectic between action and durability, the law is reduced to the expression of a collective will and a reified “phantom possession” of white citizens (von Redecker 2020). If the constitutional order thus lacks a connection to an institutionally secured memory of freedom and equality, a shared “story, started [...] by acting men, to be enacted further, to be augmented and spun out by their posterity” (Arendt 1965, 47) across and against social forms of domination, the promise of constitutionalism remains shallow and, at worst, counterproductive for those to whom it was never addressed.

Arendt understood the deep connection between citizenship and whiteness as a *political* problem insofar as the exclusion of Black actors could generate an existential crisis for constitutional authority. But as Juliet Hooker (2017, 485) highlights, “the political and philosophical problem driving contemporary racial politics is not uncivil black protest or black rage but instead white citizens’ continued investment in forms of political mastery or rule that are not only incompatible with but indeed directly opposed to racial justice and democratic justice.” It is here where Arendt’s account fails across the board. Although she seems to understand racialized citizenship as a source of crisis for institutional durability, she

never adequately addresses the role of white Americans – and her own – in upholding its order. Neither does she draw the implications that her account of Reconstruction would have to entail for white people. Following Hooker, the most important questions one might pose to Arendt’s reading of Reconstruction therefore do not concern how Black actors might relate to its “lost” founding; the principle that was prefigured by Reconstruction but left without institutional anchorage would need to involve a radical transformation of what politics means *for white citizens*. How would white Americans be transformed if, in affirming “their” republic, they would also always and explicitly affirm a revolutionary beginning for Black freedom? Such refounding would inaugurate a world-building practice that Arendt praised but which, against better knowledge, she falsely associated with American constitutionalism.

Limited by her pessimistic outlook on the possibility of Black freedom, a view she in part took from Elkins and in part from Tocqueville, Arendt failed to recognize “lost treasures” in the long histories of *liberation* and *revolution*, of *resistance* and *founding* among Black people in the Atlantic world. But Arendt’s historical landscape should for this reason not be reduced to the mythological pastures of American exceptionalism. Her imagination is that of a pearl-diver among the sunken ruins of failed beginnings, including Reconstruction. “Every end in history,” Arendt writes (2004, 478-479), “necessarily contains a new beginning; this beginning is the promise, the only ‘message’ which the end can ever produce.” The promise of Black freedom remains unredeemed in the quotidian violence of racist world-erasure. But if Reconstruction was a failure, it was, in the words of Du Bois, a “splendid failure” (Phulwani 2018) – a story of which the end remains untold, open to be taken up, until new acts of founding.

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