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978-0-521-87768-8 - Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt

Andreas Kalyvas

Excerpt

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Introduction

The Extraordinary and Political Theory

Although the modern age is often described as the age of democratic revolutions, the subject of popular foundings has not captured the imagination of modern political thought.¹ Early democratic theory, marked by the historical experience of the ancient Greek *polis* and enraptured by the Roman republican legacy, at least since the time of Niccolò Machiavelli and Jean-Jacques Rousseau, has elided the theme of collective foundings and democratic higher lawmaking. By confining the question of new beginnings to the instituting acts of mythical lawgivers and heroic founders, usually located outside the *demos*, democratic theory did not systematically address political and legal foundings on its own terms.²

Classical liberalism, meanwhile, has been inclined to emphasize juridical continuity, legality, and gradual political changes. Even in its social contract versions, with the prominent exception of John Locke, liberalism's focus has been more on a fictional natural state and the counterfactual notion of an original contract among equal and free persons and less on actual political ruptures, legal innovations, and new institutional beginnings.³ In fact, the idea of a social contract was predominantly used to explain political obligation, to justify obedience, to describe the consensual basis of authority, and, in a few cases, to legitimate resistance, rather than to account for those historical moments of genuine rupture and transformation. At a later

¹ R. R. Palmer, *The Age of the Democratic Revolution*, 2 vols., Princeton: Princeton University Press, 1959–1964; Claude Lefort, *L'invention démocratique*, Paris: Fayard, 1981.

² Bonnie Honig, *Democracy and the Foreigner*, Princeton: Princeton University Press, 2003, pp. 15–40.

³ John Locke, *Two Treatises of Government*, ed. Peter Laslett, Cambridge: Cambridge University Press, 1991, book II:13, pp. 366–374.

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stage, classical Marxism attempted to fill this gap by invoking the imminent possibility of a proletarian revolution, but its historical determinism and economic materialism has led Marxism to pay more attention to long-term social and economic mutations than to political, legal, institutional, and cultural changes, which were perceived as mere epiphenomenal effects of deeper structural developments unfolding in the realm of the material production of society.⁴ Political ruptures were approached from the vantage point of social revolutions and reduced to a mirroring of objective economic forces.⁵

This lack of reflection on new popular beginnings has impoverished the understanding of democracy, legitimacy, and freedom in modern politics. Against this background, the aim of the present study is to show why it is important for democratic theory to revisit the issue of foundings and to investigate their implications for rethinking vexing topics – the relationship between legitimacy and legality, sovereignty and representation, power and law, freedom and authority – which are at the center of debates in contemporary political theory. My point of departure is to rephrase the question of new radical beginnings in terms of the category of the extraordinary, as it appears in the writings of Max Weber, Carl Schmitt, and Hannah Arendt, and to elucidate its complex and tension-ridden relation to ordinary politics.

Of course, there are all kinds of extraordinary politics that lead to radical transformations, many of them with clear antidemocratic attributes. Undoubtedly, the concept of the extraordinary is not a new one. It has been associated in the past, rather inadequately, in the Jacobin-Leninist tradition of revolutionary vanguards and through the lens of the standard dichotomy of revolution and reform.⁶ In this context, modern revolutions were seen, one way or another, as extraordinary manifestations of the revolutionary consciousness of modernity and of its attempt to break explicitly from the past, to liberate itself from the weight of tradition, and to eradicate all forms of domination and inequality.⁷ However, this conceptualization of

⁴ For a classical statement, see Karl Marx, preface to *A Contribution to the Critique of Political Economy*, ed. Maurice Dobb and trans. S. W. Ryazanskaya, New York: International Publishers, 1989, pp. 19–22.

⁵ Karl Marx and Frederick Engels, “Manifesto of the Communist Party,” in *The Marx-Engels Reader*, ed. Robert C. Tucker, New York and London: W. W. Norton, 1978, pp. 469–500; Frederick Engels, preface to the third edition of Marx’s “The Eighteenth Brumaire of Louis Bonaparte,” in Karl Marx and Frederick Engels, *Selected Works in One Volume*, London: Lawrence & Wishart, 1970, p. 95.

⁶ Rosa Luxemburg, *Reform or Revolution*, London and Chicago: Bookmarks, 1989.

⁷ For the concept of revolution in relation to novelty and creativity, see Hans Joas, *The Creativity of Action*, Chicago: University of Chicago Press, 1996, pp. 105–116.

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the extraordinary seems to have lost its appeal and to have reached its limits – for two main reasons, I think.

First, the classical model of revolution has been linked to the specter of dictatorship and totalitarianism and/or to the equally unpromising (from the point of view of democracy) experience of restoration and counterrevolution.⁸ Modern revolutions have sought to break with the past but at the cost of extreme violence, rampant rightlessness, and continuous arbitrariness. They seem destined not only to proceed in dictatorial and undemocratic ways but also to conclude in new forms of domination, stuck in a perpetual state of exception.⁹ Hence, it follows the all-too-usual conflation of the extraordinary and the exception, that is, of foundings and emergencies. Or, modern revolutions are regarded as failures to institute a stable and enduring legal and political order, allowing the return of the old state of affairs.¹⁰ In addition, revolutions have often been associated with the apocalyptic myth of an absolute liberation, a progressive and chiliastic philosophy of history, and the millenarian utopia of total emancipation, in which the newly founded political society would transcend David Hume's two circumstances of justice, dispensing with the need of a stable legal framework and a system of rights for the adjudication of differences and conflicts.¹¹ In that sense, the traditional formulation of the politics of the extraordinary hinted at the eventual elimination of all politics and at the eschatological realization of a transparent, rational, and pacified society in complete harmony with itself.¹² If, in the first case, extraordinary revolutionary transformations turned into nondemocratic power struggles among competing elites operating in a legal vacuum where the factual will of the strongest group could prevail over its enemies, then, in the second, revolutions were idealized and mystified as an absolute leap from the realm of necessity to that of total freedom, failing to account for normal, everyday politics.

⁸ Claude Lefort, "La question de la Révolution," in *L'invention démocratique*, pp. 185–192.

⁹ Bruce Ackerman, *The Future of Liberal Revolution*, New Haven: Yale University Press, 1992, p. 5.

¹⁰ Jean Cohen and Andrew Arato, *Civil Society and Political Theory*, Cambridge, Mass.: MIT Press, 1992, p. 493; Jürgen Habermas, *Between Facts and Norms. Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg, Cambridge, Mass.: MIT Press, 1996, pp. 467–472.

¹¹ Ernesto Laclau, *Emancipation(s)*, London and New York: Verso, 1996, pp. 2–19. On the two "circumstances" or "facts" of justice, see David Hume, *A Treatise of Human Nature*, ed. Ernest C. Mossner, London and New York: Penguin Books, 1984, pp. 536–552.

¹² Roberto Unger, *Social Theory: Its Situation and Its Task*, Cambridge: Cambridge University Press, 1987, pp. 163–164.

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Because of this undemocratic and illiberal formulation, the issue of the extraordinary disappeared from democratic theory. However, 1989 changed that. Since then, there have been, from the European Union and Central and Eastern Europe to Russia, from South Africa to Venezuela and Bolivia, and from Afghanistan and Iraq to Nepal, multiple and proliferating attempts to found new regimes, to make new constitutions, and to initiate important political, social, and institutional changes. Attention of democratic theorists has shifted from normal politics and ordinary lawmaking to extraordinary politics, higher lawmaking, and, in some cases, popular movements struggling to alter the cultural and legal self-understanding of their political communities.

My project is to provide a theoretical framework for reconceptualizing the extraordinary by avoiding the problems and limitations associated with the old formulation of revolution and by relating it explicitly to democratic politics. My goal, therefore, is to appropriate the notion of the extraordinary for a normative democratic theory with a radical intent. Focusing on the extraordinary, I argue, expands the scope of the democratic experience by including the beginnings of a popular regime as a meaningful and necessary topic of empirical investigation and axiological reflection. What does it mean to say that a democratic state has to be democratically founded or that it has to start democratically? Is there a distinct democratic founding unique to democracies? Do the identities of the framers and the constituent actors matter? Are founding acts undertaken and carried out by a military coup d'état, a foreign conqueror, a theocratic priestly elite, an elective president, a representative assembly, a small group of constitutional lawyers, or an active community really different? Does the absence or presence of popular participation in the establishment of a democratic regime truly matter? Likewise, is it important whether the institution of democracy unfolds in secrecy or through an open, public, and inclusive process, through elite negotiation or broad popular debate and mobilization?

To be sure, I am not alone in recognizing the return of the extraordinary and in attempting to recover it for democratic theory. Some constitutional scholars have already attempted to do that. Bruce Ackerman, Ulrich Preuss, Frank Michelman, Sanford Levinson, and Akhil Reed Amar, among others, have begun to rethink the return of the extraordinary in the form of constitutional revolutions.¹³ For the most part, however, the extraordinary has been

¹³ Bruce Ackerman, *We the People: Foundations*, Cambridge, Mass.: Harvard University Press, 1991; Bruce Ackerman, "Neo-Federalism," in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad, Cambridge: Cambridge University Press, 1988, pp. 122–123;

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approached from an unduly legalistic perspective – not surprisingly, because most of these thinkers are jurists. They always reason from the standpoint of law. By this I mean that they have focused exclusively on changes taking place in the legal framework and in the basic procedural rules of regimes. Thus, they have occluded the other dimensions of the extraordinary, namely those unfolding at the realm of the symbolic, like the transformation of shared meanings, the radical reorientation of collective and individual values, and the construction of new political identities. On the other hand, efforts to avoid such narrow jurisprudential approaches have ended up in exactly the opposite position: disassociating the extraordinary from any reference to rules, procedures, or norms. Here, I am referring chiefly to Jacques Derrida's strong and unattainable distinction between law and justice, to Antonio Negri's excessive reconceptualization of the constituent power as a glorification of a permanent revolution in constant opposition to constitutionalism, to Sheldon Wolin's exaltation of an agonistic *demos* and a "transgressive" democracy, and even to Roberto Unger's communitarian eradication of legal formalism from extraordinary politics.¹⁴

Bruce Ackerman, *We the People: Transformations*, Cambridge, Mass.: Harvard University Press, 1998; Bruce Ackerman, "Higher Lawmaking," in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, ed. Sanford Levinson, Princeton: Princeton University Press, 1995, pp. 63–88; Ulrich Preuss, *Constitutional Revolution: The Link between Constitutionalism and Progress*, trans. Deborah Lucas Schneider, Atlantic Highlands, N.J.: Humanities Press, 1995; Sanford Levinson, "How Many Times Has the United States Constitution Been Amended? (A) <26; (B) 26; (C) 27; (D) >27: Accounting for Constitutional Change," in Levinson, *Responding to Imperfection*, pp. 13–36; Akhil Reed Amar, "Popular Sovereignty and Constitutional Amendment," in Levinson, *Responding to Imperfection*, pp. 89–116; Frank Michelman, "Law's Republic," *Yale Law Journal*, 97 (1988), pp. 1493–1537; Frank Michelman, "Always under the Law?" *Constitutional Commentary*, 12:2 (1995), pp. 227–247; Frank Michelman, "How Can the People Ever Make the Laws? A Critique of Deliberative Democracy," in *Deliberative Democracy*, ed. James Bohman and William Rehg, Cambridge, Mass.: MIT Press, 1996, pp. 145–172; Frank Michelman, "Can Constitutional Democrats Be Legal Positivists? Or Why Constitutionalism," *Constellations*, 2:3 (1996), pp. 293–308; Frank Michelman, "Constitutional Authorship," in *Constitutionalism: Philosophical Foundations*, ed. Larry Alexander, Cambridge: Cambridge University Press, 1998, pp. 64–98.

¹⁴ Roberto Unger, *Law in Modern Society: Toward a Criticism of Social Theory*, New York: Free Press, 1976, pp. 192–242; Jacques Derrida, "Force of Law: The 'Mystical Foundations of Authority,'" in *Deconstruction and the Possibility of Justice*, ed. David Gray Carlson, Drucilla Cornell, and Michel Rosenfeld, New York: Routledge, 1992, pp. 3–67; Antonio Negri, *Insurgencies: Constituent Power and the Modern State*, trans. Maurizio Boscagli, Minneapolis: Minnesota University Press, 1999; Sheldon Wolin, *The Presence of the Past: Essays on the State and the Constitution*, Baltimore: John Hopkins University Press, 1989; Sheldon Wolin, "Norm and Form: The Constitutionalizing of Democracy," in *Athenian Political Thought and the Reconstruction of American Democracy*, ed. J. Peter Euben, John R. Wallach, and Josiah Ober, Ithaca: Cornell University Press, 1994, pp. 29–58; Sheldon

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Therefore, while there is no doubt that the politics of the extraordinary has been revived, it has not been sufficiently and persuasively theorized. But despite their manifest limitations, these attempts have succeeded in showing that the extraordinary should neither be ignored nor conceptualized as a total revolutionary break. Rather, it needs to be considerably reformulated so as to avoid both the dangers of dictatorship and the arbitrariness related to the absolute ruptures that encompass the risk of unrestrained power and the unrealistic utopian expectations of an ethical society, free from the artificiality and alienating effects of institutional mediations and legal, formal mechanisms of will formation and decision making. Against the background of these two attempts to rethink the extraordinary and its relationship to democracy and legitimacy, I propose an alternative path.

Answering the question of what is the difference between normal and extraordinary politics offers a first step toward such a theorization. Traditionally, normal politics is monopolized by political elites, entrenched interest groups, bureaucratic parties, rigid institutionalized procedures, the principle of representation, and parliamentary-electoral processes. It is also characterized by political fragmentation and low popular participation in the process of deliberation about common affairs and decision making. Normal politics seems to boil down to relations of bargaining and negotiation among organized interests and state officials. In ordinary times, in short, politics as usual fits a utilitarian and statist model that is characterized by civic privatism, depoliticization, and passivity and carried out by political elites, professional bureaucrats, and social technicians.

By contrast, democratic extraordinary politics might be tentatively and provisionally construed as involving high levels of collective mobilization; extensive popular support for some fundamental changes; the emergence of irregular and informal public spaces; and the formation of extra-institutional and antistatist movements that directly challenge the established balance of forces, the prevailing politicossocial status quo, the state legality, and the dominant value system. During these extraordinary moments, the slumbering popular sovereign wakes up to reaffirm its supreme power of self-determination and self-government and to substantially rearrange or alter the fundamental norms, values, and institutions that regulate ordinary

Wolin, "Fugitive Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib, Princeton: Princeton University Press, 1996, pp. 31–45; Sheldon Wolin, "Transgression, Equality, and Voice," in *Demokratia: A Conversation on Democracies Ancient and Modern*, ed. Josiah Ober and Charles Hedrick, Princeton: Princeton University Press, 1996, pp. 63–90.

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legislation and institutionalized politics. In extraordinary moments, politics opens up to make room for conscious popular participation and extra-institutional, spontaneous collective intervention. The means and scope of political action undergo considerable changes. For instance, formal, procedural rules that regulate normal, institutionalized politics are supplemented by or subordinated to informal, extraconstitutional forms of participation that strive to narrow the distance between rulers and ruled, active and passive citizens, representatives and represented. Extraordinary politics aims either at core constitutional matters or at central social imaginary significations, cultural meanings, and economic issues, with the goal of transforming the basic structures of society and resignifying social reality. To put it in more general terms, the democratic politics of the extraordinary refers to those infrequent and unusual moments when the citizenry, overflowing the formal borders of institutionalized politics, reflectively aims at the modification of the central political, symbolic, and constitutional principles and at the redefinition of the content and ends of a community.

But why should we be interested in these moments? What is the empirical, theoretical, and normative significance of founding moments, institutional breaks, and extraordinary politics? Is it not more meaningful and rewarding to study solely the effects and consequences, say, of a newly drafted constitution rather than delving into the labyrinthine, obscure, and sometimes apocryphal questions of democratic origins and popular foundings?¹⁵ Why, for instance, should we be troubled by the fact that, in certain instances, fundamental political principles and higher legal norms are not democratically produced but are instead the outcome of normal politics and incremental reforms coming from above and realized by ordinary lawmaking if, at the same time, they have unambiguous democratic consequences? Why do radical political changes need to be associated with ruptures, disruptions, and discontinuity? Why is the requirement of popular participation in those extraordinary moments a virtue rather than a vice? And, finally, is there any logical, causal relationship between democratic origins and democratic outcomes?¹⁶

¹⁵ Andrew Arato correctly distinguishes between result-oriented and principle-oriented approaches to constitutional making. Although liberalism often adopts the first approach, the second has come closer to the democratic value of self-determination. Andrew Arato, *Civil Society, Constitution, and Legitimacy*, Lanham, Md.: Rowman & Littlefield, 2000, pp. 247–248.

¹⁶ This question was raised by Hans Kelsen, *General Theory of Law and State*, trans. Anders Wedberg, Cambridge, Mass.: Harvard University Press, 1945, p. 117.

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This study seeks to answer these questions. My argument is twofold. The significance of extraordinary politics, I argue, is due to two key factors. First, it answers to the need for democratic legitimacy and allows rethinking ways of rectifying the problem of the legitimation deficit that unavoidably plagues the normal politics of any constitutional, representative democracy. Democratic extraordinary politics generates the appropriate resources that could guarantee the authority and stability of a political order, which is so necessary during subsequent normal times. Second, it reintroduces the normative ideals of political freedom and collective autonomy at the center of democratic theory. Extraordinary politics might be seen, in Cornelius Castoriadis's pertinent terms, as the explicit and lucid self-institution of society, whereby the citizens are jointly called to be the authors of their destiny and to decide about the central rules and higher normative significations that will shape and determine their political and social life.¹⁷ The politics of democratic foundings illustrates the democratic origins of the basic structures of society, whereby its fundamental regulative principles, institutions, and common values are conceived as the purposeful product of a collective practice based on conscious political will formation.

The task, therefore, is to rethink the extraordinary dimension of politics from the perspective of democratic theory. I turn to the writings of three political thinkers who despite all their differences, have attempted, in their own singular way, to rethink the category of the extraordinary beyond the reform-revolution dichotomy. Undoubtedly, many questions and reservations can be raised about bringing together three authors who wrote nothing or little about each other. What might be the intellectual affinities among Weber, Schmitt, and Arendt? Is it possible to find a common ground for comparing three thinkers with contrasting biographies, political values, and philosophical commitments? How can we legitimately put under the same roof Weber, who, despite all his pessimism (or maybe because of it) came to expound a disillusioned version of liberal, presidential constitutionalism; Schmitt, a member of the National Socialist Party and the notorious "crown jurist" of the Third Reich; and Arendt, whose neo-republicanism put her at a distance from both of them with regard to many issues, as, for

¹⁷ Cornelius Castoriadis, *The Imaginary Institution of Society*, trans. Kathleen Blamey, Cambridge: Polity Press, 1987, pp. 369–374; Cornelius Castoriadis, *Philosophy, Politics, Autonomy: Essays in Political Philosophy*, ed. David Ames Curtis, Oxford: Oxford University Press, 1991, p. 72; Cornelius Castoriadis, "Radical Imagination and the Social Instituting Imaginary," in *The Castoriadis Reader*, ed. David Ames Curtis, Oxford: Blackwell Publishers, 1997, pp. 319–337.

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example, by underscoring the political centrality of relations of persuasion, deliberation, and opinions and by endorsing the controversial institution of popular councils?

Even if we leave aside their divergent political beliefs, are we not still running the risk of underplaying another significant difference – that of their worldviews? Weber's reflections on the political leader, his radical pluralism, his reduction of politics to legitimate domination and violence, and his anxiety about the survival of individual freedom in modern Occidental societies hardly resonate with the tone and content of the other two thinkers' writings. Schmitt, after all, was a conservative, authoritarian statist, fascinated by the reactionary political tradition of Joseph de Maistre and Donoso Cortés, deeply concerned with matters of authority and unity, who at one time professed the need for an active political role on the part of the Catholic Church against the rampant materialism of Marxism and the individualism of liberalism and who flirted unabashedly with Italian Fascism. Meanwhile, Arendt was revolted by the reduction of political power to force and violence, the conflation of the political with sovereignty and the will, and the dictatorial implications of a centralized nation-state. Most importantly, she questioned the instituted relations of political inequality and subordination by vehemently repudiating the distinction between rulers and ruled, which Weber and Schmitt accepted as an inexorable fact of modern political reality. Lastly, how can we neglect the fact that, whereas Weber sanctioned the great charismatic leader and Schmitt spoke of an abstract popular sovereign will, Arendt put the stress on the performativity of speech and deed situated within self-organized public spheres?

Perhaps because of the many obvious and substantial differences among the three authors, there has been no systematic comparison of their thoughts. Yet, despite their differences, certain interesting similarities among them cannot be totally overlooked. For example, they were all Germans marked by the decisive experience of the Weimar Republic. They shared the awareness that the political is a quasi-independent field of unpredictability and indeterminacy. Furthermore, they were equally concerned with the rise of the modern administrative, bureaucratic state. One can also find an analogous interest in the concrete situation and the conjunctural, a penetrating critical attitude toward parliamentary representation, and a common "agonistic" view of politics as the arena of conflict and antagonism. More significantly, the work of Weber, Schmitt, and Arendt is characterized by a steady and continuous effort to salvage the concept of the political from the oblivion to which orthodox Marxism and economic and moral liberalism had relegated it. All three thinkers strove to reestablish its pivotal position as a distinct

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realm of human experience and as an independent domain of investigation with its own internal principles.

Given these similarities, it should not come as a surprise that they all recognized that modernity brought, along with enlightenment, reason, and science, the collapse of ultimate foundations – a collapse that makes politics in a secular, postmetaphysical age look tragically groundless and uncertain. Further, from a broader historical point of view, notwithstanding the different intellectual and cultural contexts in which they worked, they were all actively involved in the political events of their days facing the same historical predicaments of a rapidly changing European society: the crisis of classical, nineteenth-century liberalism; the gradual inclusion of the laboring masses into politics; the solidification of the Soviet Union; and the ascent of a new form of social, interventionist state. Nor should it be forgotten that they confronted similar theoretical questions regarding the tense and intricate relationship between will and reason, the ethical and the political, continuity and disruption, means and ends, freedom and authority.

It is, however, their thoughts on foundations and on the creation of new political, symbolic, and constitutional orders that I discuss. I argue that Weber's theory of *charisma*, Schmitt's conception of the *constituent power*, and Arendt's notion of *new beginnings* represent three distinct variations on a single theme – namely, the extraordinary dimension of the political as the originary, instituting moment of society. Weber, Schmitt, and Arendt focused on the modern sources, conditions, content, and scope of this originating event. Weber located it in the revolutionary nature of charisma, Schmitt in the constituent power of the sovereign popular will, and Arendt in the instituting potentialities of deed and speech. It is also true, however, that this common exploration pulled them in different directions and disciplines. Weber's sociology borrowed a theological concept to look afresh at the historical and political experience of prophetic religious movements, the politics of inspiring founders, and the powers of enthralling visionaries. By contrast, Schmitt, in an unusually sober, plain, and legalistic style, introduced to German jurisprudence the rebellious and insurgent force of the constituent power, which had been formerly discovered in the midst of the English civil war and during the heydays of the American War of Independence and the revolutionary deliberations that shook the French National Constituent Assembly. On the other hand, Arendt plunged into the history of political philosophy, traveling back to the ancients, Greeks and Romans alike, to recover the extraordinary potentialities of action, which, under the ascendancy of the "social," had begun to resemble those rare precious pearls