

CARL SCHMITT

STATE AND SOCIETY

WILLIAM
RASCH

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ROWMAN &
LITTLEFIELD
INTERNATIONAL

London • New York

Published by Rowman & Littlefield International, Ltd.
6 Tinworth Street, London SE11 5AL
www.rowmaninternational.com

Rowman & Littlefield International, Ltd. is an affiliate of
Rowman & Littlefield
4501 Forbes Boulevard, Suite 200, Lanham, Maryland 20706, USA
With additional offices in Boulder, New York, Toronto (Canada), and London (UK)
www.rowman.com

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British Library Cataloguing in Publication Information

A catalogue record for this book is available from the British Library

ISBN: HB 978-1-78661-169-7

ISBN: PB 978-1-78661-170-3

Library of Congress Cataloging-in-Publication Data Is Available

ISBN 978-1-78661-169-7 (cloth: alk. paper)

ISBN 978-1-78661-170-3 (pbk: alk. paper)

ISBN 978-1-78661-171-0 (electronic)



TM The paper used in this publication meets the minimum requirements of American National Standard for Information Sciences Permanence of Paper for Printed Library Materials, ANSI/NISO Z39.48-1992.

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Acknowledgments

Selected passages from the following two articles appear in various chapters of the book in modified form: William Rasch, “Political theology and political form: power, contingency, authority, belief,” *Journal for Cultural Research*, 2016, vol. 20, no. 3, 217–234; William Rasch, “Carl Schmitt’s Defense of Democracy,” *The Oxford Handbook of Carl Schmitt*, ed. Jens Meierhenrich and Oliver Simons, 2016, 312–337.

I wish to thank Luke Rylander and Anna Spafford for early work on compiling the works cited section of the volume. Above all, I am indebted to Colin Grant for the meticulous and precise job of formatting the book and conducting a thorough and careful copyediting of the text. I am equally indebted to all those who worked on producing the volume, especially Sarah Campbell, her successor Frankie Mace, as well as Rebecca Anastasi, Lisa Whittington, Brianna Westervelt, and Andrew Unger.

Over the years there have been many who, rather unexpectedly, have responded positively to my work and supported me in numerous ways. I will always be grateful to Chantal Mouffe, Costas Douzinas, and Joe Bendersky. My colleague and friend, Bill Scheuerman, has never failed to encourage me and provide invaluable intellectual and institutional help, despite (or perhaps because of) our different attitudes about controversial figures like Carl Schmitt. He is a fierce critic but generous friend, and the knowledge and commitment he brings to our conversations always enrich the way I look at the political and the discipline tasked with studying it. I am an amateur in the field of political theory, but he has never held that against me, for which I hope he will never be faulted.

I dedicate this book to my twin granddaughters, Madelyn Grace and Riley Ann. Born in 2018, they are fated to live in the world we have made, or at

least have been unable to hinder. May they be allowed to make of it something better than we have been able to do.

Introduction

I was of three minds,
Like a tree
In which there are three blackbirds.
—Wallace Stevens, “Thirteen Ways of Looking at a Blackbird”

The human imagination is such that there are certainly more than thirteen ways to look at a blackbird—indeed, more than thirteen ways to look at each of the thirteen stanzas in Wallace Stevens’s poem. Yet, the exercise of human imagination is mightily constrained, because of apathy, no doubt, but most likely out of abject fear. What worlds would our fancy unleash were we not able to keep it in check? Is that not why we invented sin? Given the worlds we have unleashed, including the one we currently live in, this fear is not unwarranted. The first half of the twentieth century spawned what we have labeled totalitarian regimes, brutalizing the lives of their own citizens and those of their neighbors, the memories of which still haunt us. The beginning of the twenty-first century has witnessed the sprouting of autocratic leadership, fundamentalist religious regimes and tendencies, and the rise of so-called populist agitation in the likeliest as well as the most surprising of places. In general, the response to this efflorescence of our political imagination has been to say that there really is only *one* approved way of looking at the blackbird of human cohabitation, and that is the way sanctioned by liberal theory. Pre-political rights of the individual, division of the institutions of political power, the rule of law, and the operations of a so-called free or minimally checked capitalist market are said to be the necessary components of political order. If any one, or each and every one, of these components also displays ambiguity or leads to negative outcomes, then tinkering is called for, but no fundamental questioning. Look what happens, we are told, when you start doubting, when you trust in experiments, when you succumb, for in-

stance, to fist-in-the-air, red-flag romanticism, or dream of the commonality of race or religion as a requirement of community, and community as a requirement of the political.

Truth be told, the economic portion of liberal theory, the free market (with or without safety net), is not in the least bit immune from intense, sometimes frenzied critique. We use a convenient term to excoriate income inequality, the excesses of the profit motive, consumer culture, commodification, global economic imperialism, and so forth—namely, neoliberalism. Whereas liberalism or liberal theory are terms generally used descriptively or positively, neoliberalism is decidedly pejorative. It is almost as if liberal theory would like to amputate the economic limb of its body. Nevertheless, economically speaking, neoliberalism is classical liberalism, a kind of wannabe nineteenth-century, pastoral, laissez-faire liberalism, as if bankers, industrialists, techies all aspire to be Jeffersonian yeoman farmers (*sans* slaves, to be sure), untouched and untouchable. And if the right to private property is the primary *neoliberal* right, whereas the rights of freedom of conscience, speech, and assembly may dominate elsewhere, both property and conscience are on every liberal's menu. It is true that left-liberal theory welcomes some restrictions on the right to private property. Put hyperbolically, "we" (I am assuming a select readership here) would all prefer to live, work, and die in Sweden than, say, in the United States. The social-democratic additive to the liberal brew is so fine and mellow, tastes so right, *is* so right, that even contemporary Marxism can be amalgamated to liberalism, producing a human-rights Marxism, a rule-of-law Marxism, perhaps even a checks-and-balances Marxism, and also a liberal-cum-social democracy Marxism, one that allows the ownership of the means of production to remain in private hands, but sets limits on what those hands may do. Is, then, liberal theory the only way to look at a blackbird?

Well, we know one thing: Stevens notwithstanding, thirteen is surely too high a number. Ronald Beiner opts for two. "According to one dominant conception," he writes, naming John Rawls as its exemplar, "we start with an implicit consensus on what we share as members of a liberal political order, and the job of the philosopher is to articulate the basis of this consensus and raise it to theoretical explicitness" (Beiner 1998, vii). Such practices of liberal exegesis, of course, may also be carried out in more than one way: triumphantly, for example, glorying in the demise of various twentieth-century rivals; or critically, pointing to the gap between dogma and practice; and now, also defensively, attempting to ward off with near-magic incantations the rising menace of ironically named "populism"—we love "the people," but more often than not wish they would leave the thinking to "us." And so, both triumph and finely measured self-critique is also accompanied by persistent fear of the measureless critics of liberal theory, those adversaries who seem occasionally to disappear, but when they reappear, do so with chips on

their shoulders taller than the highest building, wider and deeper than the largest ocean. Nevertheless, despite the “populist” embrace of authoritarian leadership, contemporary political theory remains committed to something generally called liberal democracy, to which the above-mentioned doctrinal attributes (rights, law, etc.) necessarily attach; indeed, these doctrinal shibboleths become forcefully coupled with what was historically considered to be their antithesis—popular sovereignty (a claim we will explore in this volume). To avoid mere advocacy of a status quo (though there is that too), liberal theorists often insist on the gap between the ideal and the real, and that gap is often referred to as a democratic deficit. All progress takes place within the frame of the ideal order, of which actually existing liberal democracy is a mere approximation. When we agitate for reform, therefore, we are asked not to cross boundaries but to expand them.

There is, however, a second, “more radical understanding of political philosophy,” as Beiner puts it, in which the “liberal consensus . . . counts for nothing; rather, the philosopher’s responsibility is to theorize order from the ground up, even if it ends up calling into fundamental question the opinions and beliefs that currently sustain social life within a liberal democratic horizon” (vii). On this view, the task of political theory should not be to affirm existing political order, even if that affirmation is accompanied by internal critique, but to imagine alternatives. Such imagination can take a number of forms, and the purpose of such imagination can also serve multiple ends. One can urge a necessary affiliation with an alternate model as the only way to achieve, as the preamble to the US Constitution has it, “a more perfect union.” One can then surmise that a more perfect union can arise only with the help of presuppositions fundamentally at odds with the foundations of liberal thought. Conversely, one can conjure alternate forms of the political primarily as a warning against deviating too radically from the liberal-democratic norm. One conjures ghosts of the past and fantasies of a dystopic future in a fun house of horrors to warn the innocent away from danger. Theory as Hell House, the avoidance of which leads back to the path of righteousness. In a sense, liberalism as a political philosophy has occupied both of the positions that Beiner articulates. In the beginning of the nineteenth century, in its battles against absolutist monarchy and radical popular democracy, liberalism questioned everything, from state sovereignty to the necessity of war and the very nature of the human being. Once triumphant, however, especially after 1989, it questioned nothing anymore, except of course the propriety of questioning liberalism. Thus the “more radical” form of political philosophy fell out of favor. This disfavor even had a name: the end of history.

If all of this is vaguely accurate (and “vaguely accurate” is the only form of accuracy available in such a hasty overview of such a contested field of thought), if fundamental alternatives to liberal dogma and practice are per-

ceived by liberal theory as either pie-in-the-sky daydreams or regressive, degenerative threats and *not* curiosity-provoking visions of variable possible futures, then why all the fuss about Carl Schmitt since the flow of English translations began in the 1980s? Beiner answers by identifying Schmitt as one who adheres to the more radical vision of political philosophy in “its most uncompromising version.” He therefore asks whether a “dialogue between Rawls and Schmitt” is possible. “Liberal academics and democratic theorists,” he notes,

certainly aren’t immersing themselves in the study of Schmitt because they welcome the possibility that he will persuade them to jettison their liberal democratic commitments. Rather, they study Schmitt because they know that, philosophically, liberal principles have not (yet) established an unchallengeable claim to normative authority, and because only by engaging in dialogue with a steadfast enemy of liberal dialogue like Schmitt can they vindicate both liberalism and the endless dialogue that is political philosophy. (Beiner 1998, viii–ix)

This sounds bracing, refreshing even, but is what Beiner describes really a dialog between “Rawls” and “Schmitt,” between political philosophy as liberal theory and political philosophy as a more fundamental investigation of the possible types of political order? The parenthetical “yet”—“liberal principles have not (yet) established an unchallengeable claim to normative authority”—is the tell. The duel between “Rawls” and “Schmitt” is rigged. A single outcome is not only preferred, it is assumed—namely, the vindication of liberalism. There is no real dialog, certainly no compromise, no consensus. It is, rather, a staged combat with predetermined outcome to confirm and strengthen what is deemed to be the only political form worthy of existence. Perhaps no real “dialog” between these two forms of political theory is possible. On what ground could it take place that does not tilt toward one or the other position? Either what is good, and should be made better, or what is deficient, and should be replaced. Schmitt, Beiner contends, represents the radical wing of political philosophy that questions the status quo, yet, he admits, for liberal theorists there is no legitimate alternative to the status quo, only infinite perfectibility of the same. Schmitt, therefore, is but the whetstone against which the liberal sword is to be sharpened. To engage with Schmitt is not to put one’s own commitments into question, but, in the spirit of “what does not kill me makes me stronger,” to emerge victorious. Having “vindicated” liberalism, the endless dialog that is political philosophy may now continue, for with the sharpened sword in hand, political philosophy once again reduces itself to the thirteen ways of looking at liberal theory.

Is it possible to stand side by side with the dragon against the liberal knight? Maybe, but it is hard. There is the stain of Schmitt’s anti-Semitism and, after the takeover in 1933, his enthusiastic allegiance to National Social-

ism, which can be bracketed but not ignored or simply washed clean. And there is nearly a century that stands between Schmitt's major works on political form and our current, much altered situation, a century that would appear to have little for one who is discontented with the liberal hegemony to hang onto. The alternatives seem all to have betrayed us; indeed, some never promised us much to begin with. The anger, agitation, and optimism that accompanied "1968"—a "year" that marked a decade or more of promise that, alas, in many ways is still (or once again) little more than an unfulfilled promissory note—is difficult to recapture. Age—the age and *my* age—has fine-tuned skepticism. Most telling, however, is our own fearful addiction to liberal individualism itself, and, yes, liberalism *is* an addiction. At its core is the promise of a protected sanctuary within which each of us may pursue our own interests and private pleasures, released from the burden of public responsibility, and none of us who has ever tasted even some of the fruits of liberalism's Elysian fields wants to give any of them up. Even Schmitt was chary of doing so. So why not side with Rawls and company? Why not declare the end of history, or if that sounds too dispiriting or at any rate unlikely, then the continuation of history as the endless conversation over the same, unquestioned, fundamentally invariable thing. Are we just killing time, waiting for the final judgment, a judgment that we already know will fall in our favor?

And yet, Schmitt, and others like him, will "not go gentle into that good night," if I may burden the reader with another canonical, albeit clichéd, example of Western literary modernism.¹ If in the closing decades of the twentieth century Schmitt's name could still cause apoplexy, in the twenty-first his status has been elevated from irritant to indispensability. In his study of Weber, Schmitt, and Franz Neumann, for instance, Duncan Kelly "seeks to offer a new and more thickly characterized understanding of the conceptions of politics and the state. . . . The current renaissance of interest in the work of Carl Schmitt and his critique of an avowedly 'neutral' liberalism, for example, make such an objective, though found in a work of intellectual history, of more than merely antiquarian interest" (Kelly 2003, 1). The premise of this observation must be that the renaissance of Schmitt is not mere fad but felt necessity. Despite the historically distant dialect, he *still* speaks to us. More forcefully and directly, the editors of a collection of essays titled *Law, Liberty and State* declare, "This collection examines the response to the problems of law and liberty raised by the modern state of three of the last century's greatest thinkers: Carl Schmitt . . . Friedrich Hayek . . . and Michael Oakeshott" (Dyzenhaus and Poole 2015, 2). Greatest thinkers? From pariah to canon!

This raises the question: What is the difference between "merely antiquarian interest" and more than merely antiquarian interest? More generally, why do we read the canon of political thinkers from the ancient Greeks down

to the present day? Do we resurrect the dead in search of usable models from the past? I doubt it. We have run through and mixed and matched the three main modes of political form—monarchy, aristocracy, democracy—that have been bequeathed to us by antiquity, and it seems unlikely that we plan on revisiting the cycle in order to start it all over again. By “we,” of course, I mean we “theorists” or we (academic and public) “intellectuals.” What *others* may wish to resurrect remains open. For now, at any rate, democracy, whether liberal or illiberal, representative or plebiscitary, oligarchic or direct, is the name of the game, and even Schmitt knew how to play it. If Schmitt is one who attempts to “theorize order from the ground up,” it is not to the structure he assembles that we should pay primary attention (for it is shadowy and quite fragile), but to the foundation he raises it on. The ground, up from which theorists build, is not pristine, it is ploughed, thoroughly worked over. To theorize from the ground up is to plant oneself in ancient furrows that have been crosshatched, tunneled, and dug deeper and wider over the centuries. To work from the ground up, I mean to say, is to locate and re-regard discarded basic *presuppositions*. Perhaps the occasional genius invents a new one, but most of us either inhabit buildings without inspecting the cellars and foundations or, more adventurously perhaps, become amateur archaeologists, grubbing around abandoned passageways, looking for something that may surprise us, that may be so old that they strike us as something new.

Please pardon the metaphoric miasma. But it is suggestive. What Schmitt unearthed in the early part of the last century is often dismissed as being too dank and musty to be of use, too damp, moldy, and gaseous to be healthy. In this study, however, I investigate a number of Schmitt’s presuppositions that could be seen as direct reversals of liberal—understood broadly—assumptions. I hope to demonstrate general plausibility (*not* forced, dogmatic certainty) of Schmitt’s argumentative defense of each position. I mention four here.

1. Concrete Reason: Philosophical convention has it that reason is a property of unaided human thought. “Unaided” means reason needs no guide. Reason therefore can dispense with traditional and conventional sources of knowledge and authority. Not all agree with philosophy’s assessment. We humans, even philosophers, use faulty reason all the time. To paraphrase Hobbes, reason is always right, those who reason often err. Although reason is our guide, reason too needs guidance. The Roman Catholic Church finds that guidance in revelation, which in turn is housed in the institution called the *magisterium*, consisting of the pope and all the bishops. Hobbes too institutionalizes reason in the figure of the sovereign, who serves as the common standard that arbitrates disputes, including disputes about truth. Carl Schmitt distinguishes between “abstract” and “concrete” reason. Just as the church guarantees the truth of reason by housing it in an institution, so

Schmitt, following Hobbes, houses concrete reason in the modern European state. That is, part of Schmitt's political theology consists in asserting that the sixteenth-century, post-Westphalian state becomes the functional equivalent of the medieval church after the Reformation splintered Christianity's authority. The anarchy of Protestant "Biblicism," in which each individual has his or her own "reading" of the truth, is no longer countered by Catholicism but by the secular authority of the state. In chapter 1, I attempt a plausible justification of this view. In chapters 2 and 3 I articulate Schmitt's political-theological description of modernity, a modernity which, he feels, threatens the achievement of the early modern state to thwart anarchy. As with Hobbes, sovereignty remains the linchpin for the political in its secularized form. However, despite Schmitt's reliance on (an eccentric reading of) Bodin, he has to forge a new definition of sovereignty suitable to the "deism" that characterizes post-Enlightenment Europe. Sovereignty is still needed to ensure a strong state, and a strong state is still needed to protect individuals from the manipulation of their self-interest by the various public and private associations that claim to advocate for them. The definition of sovereignty I offer in chapter 3 relies on a precise reading of the Kantian term *Grenzbegriff* (boundary concept), a concept that limits the hubristic expansion of social forces, especially law.

2. Is the human being basically good or basically "evil," problematic, flawed? Liberal theory traditionally affirms the infinite perfectibility of the human individual, or at least of the human species (Kant), the human as *Gattungswesen* (species being), to use Marx's term. Schmitt demurs. In *Political Romanticism* (following Taine) he attributes this belief to the self-consciousness of the rising bourgeoisie and thus labels it a quintessentially liberal concept. To counter it, Schmitt asserts that all genuine *political* theory must assume the problematic nature of the human being. I read Schmitt's *Political Romanticism* within the larger Francophone and Anglophone literary critique of literary and political romanticism at the beginning of the twentieth century, especially the work of T. E. Hulme, to show the confluence of discontent with liberal-romantic "anthropology." Reflecting Weber's conflict of value spheres, Schmitt makes no claim about the human as such, only about how the human must be approached as a political animal.

3. Are rights pre-political? No, says Schmitt. The liberal assault on all things political begins with the fundamental assertion that certain basic rights—freedom of religion and conscience and the right to private property being perhaps the most important—precede the formation of the political association. On this issue, Schmitt was a bull in a china shop with rights the red cape. Rights do not accompany individuals as they enter or become the political collective. This assertion of the primacy of the individual over the community is, according to Schmitt, the wedge that shatters the political and thus is the source of our ills. Schmitt's primary political parable has the

political collective issue rights. In other words, the author of rights is not God, not nature, not the autonomous individual; the author is the state for as long as the state represents the political collectivity. For Schmitt, authorship was more important than the rights themselves.

4. Finally, the institution of the legislative body (parliament). Schmitt authors a withering critique of the ideology and function of parliament. In short, the nineteenth-century belief in discussion as the road to consensus about truth is demonstrated to be illusory. This was not a difficult argument to make, and few attempted to rehabilitate the view. Refutation of Schmitt's conclusion—his assertion that parliamentary governance is fraudulent because the reality of discussion does not match the ideal—consisted largely in the Weberian argument that parliament was the incubator of political leaders or other assertions that defended the institution on pragmatic grounds. Schmitt rejected those justifications as well. Pragmatism does not suffice because liberal-democratic rule needs the truth of debate as its legitimacy. In reality, therefore, parliament was yet another means to confront the political unity of the people with the disintegrative, self-serving demands of various (primarily economic) interest groups. Put bluntly, parliament is the arena within which social forces undermine political action.

What, then, substitutes for discredited liberal governance? During the decade from about 1923 to 1933, Schmitt advanced what might be called a muscular notion of democracy stripped, as much as possible, of its liberal restraints. While chapter 5 describes Schmitt's attempted dismantling of liberal ideology and practice, chapter 6 attempts an understanding of what Schmitt meant during this decade by the term "democracy." Briefly, while the people as the constitution's constituent power is the true sovereign, the *Reichspräsident* (in the Weimar Constitution) serves as representative of this power, bringing into presence the non-present. The people, then, either approve or disapprove of the act of representation. In other words, Schmitt articulates an illiberal, plebiscitary democracy. Through historical examples, I will make the case for why plebiscitary leadership might sound appealing, but also why it may lead to the type of disaster that will make all and sundry run screaming back into the shelter of basic, liberal, civil, and human rights. Nevertheless, we ignore the allure of blunt democracy at our own peril. When liberal principles become elitist clichés, the white horse of popular, plebiscitary democracy becomes an attractive alternative.

The political theology of a strong, administrative state, the critique of some essential liberal commonplaces, and the articulation of collectivist, non-liberal democracy all stand under the sign of the subtitle of this book: state and society. Schmitt tried to construct the foundations for a strong state in twentieth-century modernity, a state that can claim to be the suitable heir to the early modern military and bureaucratic state (as he liked to characterize it) that fell victim to nineteenth-century liberalism. The newly configured

strong state, then, would be able to stand up to the onslaught of social forces (largely but not exclusively economic) that threaten to overwhelm the autonomy of the political. Behind this way of framing the dichotomy of collective and individual lay Hegel's distinction between state and society. Chapter 4 lays out Hegel's design and his conciliatory hope as well as Lorenz von Stein's more realist assessment. Suffice it to say here that Hegel envisioned an eventual synthesis in which the acquisitive individual would learn to realize that cooperation is to everyone's benefit so that the modern state, guaranteeing individual freedom *and* communal cooperation, becomes an ethical state. Stein, on the other hand, sees in the dichotomy a perpetual war among individuals and their assorted groupings and therefore views the state as the chief mediator of conflicts between landowners and capitalists, on the one hand, and agricultural and industrial workers, on the other, but never foresees eventual harmony. Schmitt took Stein to heart and elaborated the basic state/society distinction in a number of correlative ways: collective vs. individual, public vs. private, and, not least, democracy vs. liberalism.

Chapter 7 examines Schmitt's attempt to delineate a positive notion of the ethical state to contrast with something he confusingly calls the total state, by which he means the total self-organization of society—in other words, the “total mobilization” or occupation of the state by the splintered and splintering forces of political parties and associations representing the economy and other special interests. Still working within the tradition of nineteenth-century German statecraft and the paradigm of the Weimar Constitution, Schmitt increasingly puts stress on the role of the president as “neutral power” (alluding to both Stein and Constant) and the bureaucracy as an instrument of executive power. Nevertheless, the political world around him collapses. After initially opposing a National Socialist takeover, he embraces the new regime almost from the beginning with a palpable sigh of relief. In *Staat, Bewegung, Volk (State, Movement, People)* he declares the problem of state and society solved. It is an interesting text, not least for the passages on Stein and the state/society dualism, but certainly not a sophisticated one to be emulated. In it he famously declares the Hegelian state, meaning the Hegelian problematic, including Stein's explication of that supreme problem, to be dead. A new era has dawned, he proclaims and tries to explain. In Schmitt's writings, this new era lasted no more than three years or so. Banished to the semi-shadows by the Nazis in 1936, Schmitt returns to his Weimar occupations. In 1940 this includes an appreciative essay on Stein and many of his nineteenth-century compatriots, which was used as an introduction to a virtually unknown essay by Stein on the mid-century Prussian constitution. In this introduction we see Schmitt implicitly acknowledge the pronouncement of the death of Hegel and Stein to have been premature. The old problems remain after all, the old liberal dangers are still present, the German fascist

experiment a failure (which did not, however, challenge his loyalty to the regime during the war).

The grand irony of Schmitt's critique of liberalism during the 1920s and early 1930s is that it is uttered within a profoundly liberal framework, not only that of the main part of the Weimar Constitution, but also the Hegelian state/society dynamic. What, after all, *is* society? According to social theory (and I rely on the Weber-Parsons-Luhmann tradition, even if Luhmann rejects Weber as an influence), society is the differentiation of independent and incommensurable value spheres (Weber) or systems (Parsons, Luhmann)—for instance, the economy, law, education, religion, art, *and* politics (among others). This form of differentiation is functional and non-hierarchical. Each realm affects the others, but because all exist on a horizontal, not vertical, plane, none is in a position to instruct others or dictate specific outcomes. For Luhmann (his name will be cautiously raised from time to time in this study), therefore, what Hegel et al. called the state/society dualism was really the differentiation of social systems *within* society. The state does not stand over against society; the state—the political—is a function system like all the rest within functionally differentiated modernity. Thus, the state/society distinction is really the political interacting inside society with, say, the economy or law, which are also part of society.

Schmitt knew this already in its most rudimentary form from Weber and took it into account, but he did not accept all of its consequences. He never used the word “system,” occasionally used Weber's term—“value sphere”—but most often spoke of “associations.” Liberal pluralism and guild socialism theorized society as an assemblage of associations, by which they meant, for example, churches and labor unions, chambers of commerce, and other business interest groups, but also all the components of political governance. To this disarticulation of the state and thus of the political, Schmitt reacted violently. The point he hammers home time and time again is simple: *The political* is not just another association arrayed horizontally among all the others; the political has *primacy* among all associations, value spheres, or, if we now prefer, systems. The political stands within society but vertically above all other systems because of its responsibility for the whole. Accordingly, for Schmitt, there may not be a simple Hegelian distinction between state and society, but there *is* a profound distinction between the political and all the other groupings within society. We will see how he articulates this, for instance, in the way he discusses the necessary presuppositions different value systems assume with regard to the essential nature of the human animal. But he never wavered in his advocacy for the primacy of the political.

Furthermore, even Hegel's basic distinction is essentially liberal, if for no other reason than that he embraces the entrance of the autonomous, self-asserting individual on the stage of history. Moreover, Lorenz von Stein accepts the institution of a liberal parliament as the means for expressing the

political interests of individuals in their various and varied associations. There is no going back from individual liberty (eventually extended, in theory at least, beyond the domain of the white male to the universality of human beings of whatever race, gender, etc.). And again, even Schmitt accepts at least a limited version of this universal humanitarian *ethic* but is wary of its political consequences. Like Stein, but even more so, he is conscious of the corrosive effects all these “social” attitudes and affairs have on the supremacy of the state as the contemporary carrier of the political. Trapped within a liberal world, Schmitt is no liberal theorist. Still, he cannot escape all liberal principles and presuppositions if he is to be able to have a voice and impact on the society in which he lives. His is an internal critique of liberalism, as it were—not one that aims at perfecting liberal theory and practice, but one that asserts that much, perhaps nearly all, of liberalism’s attributes and assumptions must be jettisoned if one truly wishes to establish that “more perfect union” we all dream of.

And all this reminds me of the opening salvo of Raymond Geuss’s (2001) chapter on liberalism, which I quote appreciatively at length.

For a number of reasons and in a number of ways liberalism is conceptually and theoretically much more elusive than the state. For one thing, a given state, after all, is a set of concrete social institutions, which has an aspect of sheer facticity in the form of customs posts, national assembly buildings, oaths of allegiance, aircraft carriers flying the state’s flag, postage stamps, police stations with stacks of rubber truncheons and cattle prods, printed law books, official seals, and so forth. Liberalism is more like Christianity than like the state, that is, it is a complex of doctrines, ideals, suggestions for implementing those ideals, beliefs, and informal patterns of habitual action and thought. Liberalism, though, is both much more doctrinally amorphous and indeterminate than Christianity was, and has a much more indirect relation to any social reality. Christianity had its church buildings, rituals, *symbola*, public professions of faith, seminaries, catechisms, and, at least at some points in its history, inquisitorial tribunals, prisons, etc. The prisons of liberalism are prisons of the mind, and they operate by trapping the unwary in a shifting, labyrinthine hall of mirrors rather than by immobilization behind palpable brick and steel. (69)

In the Anglophone world at least, any author presuming to write on political theory, including anyone engaging with the works of Carl Schmitt of necessity, whether wary or unwary, enters this “shifting, labyrinthine hall of mirrors.” I invite you to follow me into the fun house. Watch your step.

I

Political Theology of the Strong State

A constituent part of the capitalist spirit, and not only this but of modern culture, namely, the rational conduct of life on the foundation of the *ideal of the calling*, was born . . . out of the spirit of *Christian asceticism*. . . .

The Puritans *wanted* to be men of the calling—we, on the other hand, *must be*. For when asceticism moved out of the monastic cells and into working life, and began to dominate innerworldly morality, it helped to build that mighty cosmos of the modern economic order (which is bound to the technical and economic conditions of mechanical and machine production). Today this mighty cosmos determines, with overwhelming coercion, the style of life *not only* of those directly involved in business but of every individual who is born into this mechanism, and may well continue to do so until the day that the last ton of fossil fuel has been consumed.

—Max Weber (2002, 120–21)

Political philosophy may be understood to be what occurs when this movement of reflection takes a certain direction and achieves a certain level, its characteristic being the relation of political life, and the values and purposes pertaining to it, to the entire conception of the world that belongs to a civilization. That is to say, at all other levels of reflection on political life we have before us the single world of political activity, and what we are interested in is the internal coherence of that world; but in political philosophy we have in our minds that world and another world, and our endeavour is to explore the coherence of the two worlds together.

—Michael Oakeshott (1991, 224)

But to grant that revelation is possible means to grant that the philosophic account and the philosophic way of life are not necessarily, not evidently, the true account and the right way of life: philosophy, the quest for evident and necessary knowledge, rests itself on an unevident decision, on an act of the will, just as faith does. Hence the antagonism between Spinoza and Judaism, between unbelief and belief, is ultimately not theoretical but moral.

—Leo Strauss (1997, 29)

Thanks to the revival of interest in Carl Schmitt, the term “political theology” enjoys a currency in the Anglophone world that would have been unimaginable prior to 1985. Because it has become a staple of contemporary political-theoretical discourse, the phrase has a confusing number of definitions and associations, or, as it sometimes seems, no definition at all.¹ The two most common summaries stand perfectly opposed to one another. On the one hand, political theology is viewed as a secularization thesis and a model for understanding European modernity. At the other end of the spectrum, political theology refers to a theologically driven politics. Both models work by way of analogy. The first asserts a conceptual likeness: the political sovereign is the shadow of an omnipotent, lawgiver God; the state of exception is likened to a divine miracle—say, the parting of the waters. The second is more ominous, resembling more a cosmic equivalency than mere analogy. Just as the benign, divine demiurge is locked in mortal combat with its moral opposite, so too, combat on earth is a do-or-die battle between good and evil, reducing war to contests of apocalyptic annihilation. Evidence, coupled with hermeneutic sophistication, can be marshalled for both views. I incline strongly toward the first. To do so calls up the question: What purpose does such a conceptual analogy serve? To this question I will attempt a plausible answer.

Schmitt originally placed the first three chapters of *Political Theology* (under the title *Soziologie des Souveränitätsbegriffs und politische Theologie* [Political theology and the sociology of the concept of sovereignty]) in a volume dedicated to the memory of the recently deceased Max Weber. Within that context, the text reads like both a descriptive and a critical response to Weber’s hotly discussed view of reason, science, and modernity (to be discussed shortly). Schmitt, in other words, joined the ranks of those who offered a theoretical critique of the “rationalized” and “disenchanted” modernity that Weber had so forcefully described,² a critique sophisticated enough to set him apart from nineteenth-century, monarchist, Catholic reactionaries (de Maistre, Donoso Cortés, Action Française), even as he celebrated some of them in the fourth chapter of the published volume and adapted some of their insights, most notably political theology itself.

To a certain extent, Schmitt's description alone implies critique, for it registers a "legitimation crisis," to evoke a similar Habermasian anxiety (Habermas 1975). The absconded God of deism, Schmitt argues (as we shall see), leaves behind a self-organizing society, a machine that runs by itself. One can of course simply accept this putative fact and forge ways of living within such a disenchanted, secular universe, but even the most convinced secularists often find it hard to do so. What we generally get instead—and here one can choose examples from across the political spectrum—is a series of pejorative descriptions of modernity invoking rationalization, reification, alienation, anything-goes relativism, commodity fetishism, and the anguished despair over a center that no longer holds, descriptions that cry out to the (emptied) heavens for redemption (now generally called emancipation or renewal, depending on political taste). It is said that our self-perpetuating bureaucracies are negligently impersonal, our all-consuming economy distorts and perverts human desire, our self-validating legal positivism can protect neither us nor itself in times of real or fabricated crises, and our administrative politics degenerates into a stylized choreography of competing material interests, with victory going to the greediest and most powerful. If, therefore, this machine *does* run by itself, where do we look for the assurance or certitude that faith in the divine once gave? Where do we look for the non-arbitrary legitimacy that would allow us (if that is what we want) to reassert power and control over or resistance to the social and political mechanisms that direct our lives? The Enlightenment has given and continues to give us many choices: human autonomy and the perspective of the transcendental subject, the self-perfecting mechanism of the public use of reason, a deontological ethics that claims universal validity, and the infinite moral perfectibility of the human species and self-actualization of human freedom within the unfolding of history (led by a succession of final "subjects of history," including the proletariat or the multitude), to name but a few. Political theology in general does not so much refute these various solutions as point to the traces of dogmatic or heretical theology lurking behind each. Such shadows of the past neither endorse nor condemn the various attempts to deal with the presumed legitimation deficit, but they do give critics additional intellectual-historical tools of analysis. Nevertheless, it is reasonable to ask, what other function—beyond acting as a diagnostic tool—the term and its corresponding analyses might serve. I propose that Schmitt offers a rudimentary genealogy of modernity as the decline of a hierarchical metaphysics based on transcendent theism and then searches for secular functional equivalents, such as the modern state and a refashioned notion of sovereignty, to serve as the "legitimacy" that will compensate for modernity's death-like, pure immanence. Despite the glee with which Schmitt greets and cites Catholic reactionaries like Bonold, de Maistre, and Donoso Cortés, Schmitt does not expect or advocate a mass European conversion to medieval Christianity; thus,

his political theology is *not* rooted in theology but in the political. I propose, therefore, that Schmitt, explicitly and implicitly, used theological tools to construct an image of the modern secular (nation-) state as a common shelter for a political community and thus a locus for collective freedom. “State,” “political community,” and “collective,” as opposed to individual freedom, are now deemed to be quaintly archaic if not dangerous concepts and thus proof of Schmitt’s useless untimeliness. Whether these notions can be “redeemed,” at least as conceptual stumbling blocks placed at the feet of contemporary complacency, is the political-theological question posed in these pages.

Because enlightenment thought, of which almost all academic discourse is willy-nilly a part, looks askance at, if not with explicit hostility to, any and all religious claims, let me put my cards on the table, lest I be suspected of falsely insinuating nefarious beliefs in the body of a Trojan horse. I am an atheist, a non-believer, who thoroughly resents having to label myself negatively (“a-,” “non-”), as if belief in a deity is the default mode and not just one of multiple equally plausible or implausible possibilities. I have very little patience with the morally impoverished dictates of any religion, which does not prevent me, however, from appreciating the beauty of the best religious art, architecture, literature, music, and ritual practices. Culturally, therefore, I am a namby-pamby secular pluralist, a mere tourist in the holy lands. But most importantly, I am intellectually fascinated with the structures and patterns of biblical theology, especially Christian, if for no other reason than their continuing hold on the Western imagination. Consequently, I harbor a qualified belief in political theology as a way of thinking about the deepest, most rooted presuppositions underlying our political and political-theoretical investments. As an American I almost have no choice, because Protestant Christianity is deeply ingrained in the core of our colonial and national being, our sense of mission and exceptionality, our unshakable belief that God has put us on earth not only to emancipate but literally to save the world. In line with my more general non-belief, I am a firm *non*-believer in America’s manifest destiny as well, but that does not prevent me from recognizing political theology as both a form of political legitimation (no matter how “illegitimate” the belief) and a valuable analytical tool. And that, I believe, is the way Schmitt saw it, albeit from the position of qualified religious belief.

Chapter One

Concrete Reason

My reference to the theological underpinnings of America's political self-understanding suggests a much stronger, starker, and simpler definition of Schmitt's political theology, nothing less and nothing more than an insidious theologically driven politics, a bare-knuckled theocracy. Such a view has been propagated in numerous works by Heinrich Meier, which have been eagerly translated into English.¹ Meier contends that Schmitt's use of the concept is a weapon in the eternal war God wages against Satan. He therefore derives Schmitt's famed friend/enemy distinction from the absolute enmity of dueling deities and believes that as a political theologian Schmitt affirms "*authority, revelation, and obedience*" (Meier 2006, 80). As if mimicking the absolute distinction he attributes to Schmitt, Meier contraposes Schmitt's putatively evil advocacy of obedience to authority to Leo Strauss's beatific political philosophy, which affirms reason over authority in the pursuit of knowledge of the good. Meier reveals what I will incautiously label a rather standard Enlightenment bigotry regarding religion, a kind of holy war against the holy in the name of reason, which in truth is nothing but the holy with a new name.

Now, I imagine that Carl Schmitt, as a believing Christian,² must have had some deeply felt convictions about God, sin, evil, and the Devil. Believing Christians (as well as, in different ways, believing Jews and Muslims) are supposed to reflect on evil in the world and its source and continuing power. Not to do so would either be heretical or betray a trite and inconsequential mode of belief. If secularism means refusing imperfection and reflecting only on the goodness of the human species, then so much the poorer for secularism. To be sure, there are Christians (and others) who do make the easy transfer from theology to politics. One can see them ply their trade daily as televangelists, political commentators, and politicians trying to convince us

that whatever domestic or international controversies confront us are but manifestations of the warfare between God and the Evil One, and that the afflictions we suffer as a nation are punishments showered on us by God for our toleration of the transgressions of His law. And in various parts of the world, including the United States, theocratic thinking and governance can be quite robust. But Schmitt quite simply does not fit that picture. He does not see conflict in the terrestrial city as a mere reflection of discord in the heavens. His friend/enemy distinction, as we shall see, is firmly anchored in the secular world and clearly distinguished from the warfare of good and evil. He does not preach fire and brimstone, neither in an open nor a surreptitious or “esoteric” way, even if, ultimately, he may believe that both fire and brimstone will in fact rain down upon us all. Hell, *I* believe in fire and brimstone, even without believing in God. We human beings, our “original” and ineradicable fallibility, will be the source of our doom. Our mismanagement of our own affairs has beaten and will continue to beat ploughshares into swords, has produced and will continue to produce plagues of locusts that cause so much famine, disease, and death. We need no divine help on that score. What we do need is new and renewed thinking about ways we may limit the damage we do to each other and ourselves, and I do mean *limit*, because we have consistently and insistently shown ourselves incapable of eliminating self-inflicted damage altogether.

Consequently, I view Heinrich Meier’s reading of Schmitt to be a willful distortion, and I find him to be a surprisingly uncomplicated reader of his intellectual Virgil, Leo Strauss.³ Although for Strauss, the distinction between the concept of political theology and his own version of political philosophy seems to be nothing if not absolute, I would like to show that the commonalities are such that the opposition of reason and revelation, which is to say, of reason and authority, falls apart. Without authority, reason cannot function; and although authority can function without reason, it functions more effectively when it gives itself good reason and when it gives reason good grounds and shelter.

POLITICAL PHILOSOPHY AND POLITICAL THEOLOGY

In notes to a lecture that he delivered on January 8, 1948, Leo Strauss wrote the following:

But this is indeed the question: whether men can acquire knowledge of the good, without which they cannot guide their lives individually and collectively, by the unaided efforts of their reason, or whether they are dependent for that knowledge on divine revelation. Only through the Bible is philosophy, or the quest for knowledge, challenged by *knowledge*, viz. by knowledge revealed by the omniscient God, or by knowledge identical with the self-

communication of God. No alternative is more fundamental than the alternative: human guidance or divine guidance. *Tertium non datur*. (Meier 2006, 149)⁴

There are, then, two and only two orders of knowledge, the one discovered by the free use of human reason and the other by obedience to divine instruction. Reference to either is a knowledge claim. At first glance, the choice of one over the other is undecidable, by which is meant that it requires an ungrounded decision; for if the distinction between the two assertions presents us with a “fundamental alternative,” we are seemingly faced with a dilemma. If it proves to be true that both reason and revelation provide human reasoners and believers with knowledge of the good, that is, with truth, then there is no fundamental alternative, only seemingly different but equal paths to the same truth. More to the point, if unaided reason tells us that knowledge—truth—is achieved through the use of unaided reason, then we have presupposed what we set out to demonstrate, and we find instead that both reason and revelation are founded on unfounded belief. Strauss cannot accept such a solution,⁵ for any “harmonization” of philosophy and theology must subordinate one to the other, either by “transform[ing] revelation into philosophy (Hegel) and thus sacrifice[ing] revelation to philosophy,” or by simply making philosophy “necessarily a humble hand-maid of theology, and not *the* queen of the sciences” (171). Accordingly, if we can accept only one of the two alternatives as true knowledge, then the other must not only be rejected but refuted, must be demonstrated to be mere opinion or convention and not knowledge. This is the problem Strauss addresses in his lecture—addresses but cannot resolve. There is no third term (*tertium non datur*) to serve as standard and judge, for if there were, *that* term would be the true path to knowledge. Thus any refutation would necessarily take place on the ground of one or the other claim, as is demonstrated—perhaps ironically—in the final paragraph of Strauss’s lecture notes: “Possibility of refutation of revelation implied in Platonic-Aristotelian philosophy. What their specific argument is, we cannot say before we have understood their whole teaching. Since I cannot claim to have achieved this, I must leave the issue open” (179).

Did Strauss ever definitively close this issue? A glance at the secondary literature suggests that the jury is still out. Meier, however, is no member of that jury. He comports himself as the prosecutor, and his star witness, Strauss, testifies at times with a deliberate, step-by-step assuredness that can be hypnotic. We need to look carefully at the transcript.

Strauss opens his essay “What Is Political Philosophy?” with a quasi-phenomenological description of the aim of his subject. “All political action,” he states, “aims at either preservation or change,” which implies that we attempt either to prevent a given state of affairs from becoming worse or

that we actively seek to change things for the better. This distinction—better/worse—in turn refers us to *the good*, not just the relatively better, but the “good life,” the “good society” (Strauss 1959, 10), for how could we know what was better or worse without the knowledge of a standard we call “the good”? This notion of the good, which arches over the incrementally better or worse, points to a further distinction, the one between mere opinion and knowledge. “Philosophy, as quest for wisdom, is quest for universal knowledge, for knowledge of the whole.” Our search for knowledge of the whole is “preceded by opinions about the whole.” Thus philosophy seeks to replace opinions with knowledge. “Quest for knowledge of ‘all things’ means quest for knowledge of God, the world, and man—or rather quest for knowledge of the natures of all things: the natures in their totality are ‘the whole’” (11). More specifically, political philosophy is the quest for knowledge of “political things” with a view to raising “a claim to men’s obedience, allegiance, decision or judgment. One does not understand them as what they are, as political things, if one does not take seriously their explicit or implicit claim to be judged in terms of goodness or badness, of justice or injustice, i.e., if one does not measure them by some standard of goodness or justice. To judge soundly one must know the true standards” (12).

At this point in the argument we have cause to pause and note that the quest for knowledge requires “obedience, allegiance, decision or judgment,” a not so different litany from the one that Meier associated with Schmitt and revelation (i.e., “obedience” and “authority”). But the real issue centers on Strauss’s concept of a standard. If the true standard is the ground on which one must stand in order to make valid judgments based not on opinion but knowledge, then we might reasonably ask how knowledge (not just opinion) of the true standard is possible. Would we not already have to be in possession of a true standard in order to distinguish between true and false standards? Do we not need to *be* masters of good judgment in order to *become* masters of good judgment? Rather than get stuck in the infinite regress my questions imply, Strauss simply gives us (on his own authority?) that *ur*-standard by which we can determine the true standard of political judgment. He calls it “nature” and assures us that the “discovery of nature is the work of philosophy” (Strauss 1953, 80). Does Strauss tell us how one can discover nature as the ultimate standard before one is in possession of the ultimate standard? He does not. But he does give us the precondition of that discovery. “Philosophy cannot emerge,” he says, “nature cannot be discovered, if authority as such is not doubted. . . . The emergence of the idea of natural right presupposes, therefore, the doubt of authority” (84). Is doubt, then, the ground upon which we stand in order to pursue the discovery of nature? Strauss the anti-modernist would hardly endorse such a Cartesian solution. Doubt may be a useful tool when used with measure—that is, against an

appropriate target—but such a corrosive solvent must not be universalized. We may doubt authority, but not the authority of nature.

Nevertheless, once doubt is introduced, it stimulates further inquiry. Our inquiry is aided by a subtle yet, when noticed, blatantly obvious shift in the register of Strauss's language, which I highlight in the following with italics. The "discovery of nature is identical with the actualization of a human possibility which, *at least according to its own interpretation*, is trans-historical, trans-social, trans-moral, and trans-religious." Therefore, the "philosophic quest for the first things *presupposes* not merely that there are first things but that the first things are always and that things which are always or are imperishable are more truly beings than the things which are not always. These *presuppositions* follow from the fundamental *premise* that no being emerges without a cause" (Strauss 1953, 89; my emphases). Where do these presuppositions and premises lead us? Traditionally, the ultimate cause without which—so Strauss affirms—no being can emerge is called God. Is, then, human reason founded on authority, even revelation, after all? Officially, no. However: "Originally, the authority par excellence or the root of all authority was the ancestral"; but now, by "uprooting the authority of the ancestral, philosophy recognizes that nature is *the* authority" (Strauss's emphasis). Knowing of course what he has just written, Strauss qualifies his contention. "It would be less misleading, however, to say that, by uprooting authority, philosophy recognizes nature as *the* standard" (91, 92; Strauss's emphasis). The difference between "authority" and "standard" is not articulated. We are led to surmise, perhaps, that whereas authority is restricted to a self-selected few, a standard may be manipulated by anyone in command of reason; or, perhaps, whereas a standard can be internalized, an authority must remain an arbitrary external force. But are not these possibilities pretty "standard," fairly "conventional"? If we exercise our capacity to doubt in the face of these conventions, can we not also assume that only a select few—indeed a self-selected few who call themselves philosophers—can discover nature, recognize this discovery as the true standard, and thus chastise those who reason incorrectly because they themselves now know how to reason rightly? And is not the use of right reason—*orthos logos*—the "ancestral" privilege of the community of the only true philosophers to have walked the earth, the Greeks? For unless there are those who already reason rightly, how can we distinguish between right reason and its opposite? Even Strauss has us spinning in circles.

So let us return to our starting point, the putative distinction between political philosophy and political theology, this time as articulated not in his lecture notes but in the essay "What Is Political Philosophy?" Strauss writes, "We are compelled to distinguish political philosophy from political theology. By political theology we understand political teachings which are based on divine revelation. Political philosophy is limited to what is accessible to

the unassisted human mind” (Strauss 1959, 13). “Unassisted” is meant to show here that the mind is not aided, guided, or directed by authority, but it cannot deny that the human mind has, in fact, been given any number of assists in a startling array of enabling premises, presuppositions, self-interpretations, and most importantly, a “discovery”—nature. We are not told the nature of this discovery of nature. Were we sailing on the sea of convention when we fortuitously spied the shore of a natural ground? Or did we remain home, far away from empirical encounters, and deduce the necessity of nature? What sort of necessity would this be? Logical? Transcendental? Are we being told that *if* we wish to be in possession of a true standard that can turn our opinion into knowledge, *then* we must posit the necessity of “nature” as the authority for—I mean source of—that standard? Or do we simply rely on the proclamation “We hold these truths to be self-evident,” a claim that relies on intuition and shame (“What is wrong with me if I do not see the self-evidence of these truths?”) for its authority.

My meander through some of the relevant thought of Leo Strauss is *not* meant as lack of respect. It is not a game of “gotcha!” On the contrary, I believe Strauss knowingly connives in such a quizzical reading, because he understood Nietzsche very well and therefore must have anticipated the train of thought he would trigger in the knowing reader,⁶ for it is most difficult to read the litany of presuppositions and premises and not think of Nietzsche’s critique of science (in its broad, German understanding as *Wissenschaft*, the disciplined pursuit of knowledge in general, which is why we have not only natural, but also social and human sciences). Presuppositions are not derived from or the result of reason; they are reason’s precondition. And whence the preconditions? Given the air of casual self-evidence that rises so effortlessly from Strauss’s prose, would it be unkind to say that these premises, presuppositions, and preconditions simply *reveal* themselves to us and must therefore be taken on faith? As Strauss knew, Nietzsche thought so. “Strictly speaking, there is no ‘presuppositionless’ knowledge, the thought of such a thing is unthinkable, paralogical: a philosophy, a ‘faith’ always has to be there first, for knowledge to win from it a direction, a meaning, a limit, a method, a *right* to exist” (Nietzsche 2007, 112). In dealing with the distinction between political philosophy and political theology, therefore, we are confronted *not* with reason versus revelation, but rather with *faith* in reason versus *faith* in revelation, for the enemy of reason is not revelation but *lack of faith*. The enemy of reason is not theology but modern rationality, and the enemy of political philosophy is not political theology but *social philosophy*.

Social philosophy “has the same subject matter as political philosophy, but it regards it from a different point of view. Political philosophy rests on the *premise*”—again, my emphasis—“that the political association—one’s country or one’s nation—is the most comprehensive or the most authoritative association, whereas social philosophy conceives of the political association

as a part of a larger whole which it designates by the term ‘society’” (Strauss 1959, 13).⁷ By social philosophy Strauss specifically means Max Weber, who was greatly influenced by Nietzsche and for whom Strauss has the greatest respect as a most formidable adversary.⁸ Nietzsche had claimed that the ascetic ideal, the denial of the sensuous world, the world of appearances, drives both the Christian and the secular search for truth. “Even we knowers of today, we godless anti-metaphysicians,” he wrote, both implicating and, through self-knowledge, exempting himself, “still take *our* fire from the blaze set alight by a faith thousands of years old, that faith of the Christians, which is also Plato’s faith, that God is truth, that truth is divine.” Nevertheless, each “discovery” of a new truth is a refutation of a previous one and is therefore also fated to be surpassed by a yet newer discovery, a new revelation, until we begin to doubt truth altogether. “But what if precisely this becomes more and more unbelievable, when nothing any longer turns out to be divine except for error, blindness and lies—and what if God himself turned out to be our oldest lie?” (Nietzsche 2007, 112–13). God may be our oldest lie, but not our only one. The extinction of the ancient “blaze” that feeds our secular fire takes down *Wissenschaft* as well, as the shadow of doubt extends over all truth claims. This—the ascetic ideal and its consequences—is Nietzsche’s modernity: “this hatred of the human, and even more of the animalistic, even more of the material, this horror of the senses, of reason itself, this fear of happiness and beauty, this longing to get away from appearance, transience, growth, death, wishing, longing itself—all that means, let us dare to grasp it, a *will to nothingness*, an aversion to life, a rebellion against the most fundamental prerequisites of life, but it is and remains a *will!* . . . And, to conclude by saying what I said at the beginning: man still prefers to *will nothingness* than *not will*” (120).

One is hard-pressed to match Nietzsche’s verbal flair and pathos. But one can draw prosaic—one wants to say *wissenschaftlich*—consequences, which Weber does in a language that often evokes Nietzsche’s own, perhaps never more passionately than in “Science as a Vocation,” easily one of the most important and influential essays of the twentieth century. Delivered first as a lecture in 1917, which Carl Schmitt attended,⁹ it seeks to determine the value of *Wissenschaft*, of a reasoned, disciplined, self-sacrificing calling to pursue knowledge in an academic setting. Like Strauss, Weber operates by way of explicit presuppositions, but unlike Strauss, his first presupposition is that life has no intrinsic meaning. Thus reason has “lost” the various missions it had once assigned itself—no ultimate truth at the end of the rainbow, no standard to discover, no God, no good, no nature, nothing that can serve as an ultimate platform from which one can launch one’s investigations in the pursuit of assured truth. There is even no guarantee that what one does when one pursues knowledge is in the least bit *important*. As with all the others, even “this presupposition cannot be proved by scientific methods. It can only

be *interpreted* with reference to its ultimate meaning, which we must accept or reject in accordance with our own ultimate attitude toward life” (Weber 2004, 18). On this view, the justification of reason lies not within reason, but within an extrinsic value—an ethical, moral, or political commitment, a culturally induced view that curiosity and thirst for answers is itself a worthy mode of being—that can be justified only as a pre-rational choice.

Modernity is structured by this “loss” of meaning, or, as Weber puts it, this “disenchantment” (Weber 2004, 30). We no longer believe in the transcendence of truth. The unity of the true, the beautiful, and the good no longer holds (22–23). Instead of such a hierarchical unity, dominated by religion or, as Strauss (and Schmitt) would have it, by the political, Weber theorized the horizontal structure of competing and conflicting social associations, what he called value systems or value spheres, and what are known today as social systems (thanks to the Weber-influenced Talcott Parsons and the Parsons-influenced Niklas Luhmann). To put it in the theological metaphors that Weber uses, we have found ourselves divested of faith in the one true God, whose universe is saturated with coherent, consistent, and discoverable meaning, and we are thus returned to a pagan cosmos marked by a conflictual polytheism. Whereas in the past we had been blinded by the “glorious ethos of the Christian ethic,” we have now been brought back down to empirical reality, to “the religion of ‘everyday life.’ The numerous gods of yore, divested of their magic and hence assuming the shape of impersonal forces, arise from their graves, strive for power over our lives, and resume their eternal struggle among themselves” (24).

Weber’s warring gods stand for the differentiation of social systems and their inherently incommensurable “values.” Jean-François Lyotard postulated discursive incommensurability as the “differend” that marked the lack of an overarching narrative that could translate the divergent discourses of modernity into a common language.¹⁰ Luhmann, radicalizing Parsons, would talk of the autonomy of functionally differentiated social systems, each with its own code and program, again with no ontologically guaranteed hierarchical point of unity.¹¹ Whereas Lyotard and Luhmann depersonalize the conflict between language games or systems, Weber writes with an existential pathos that places the individual in the crossfire. “The assumption that I am offering you here is based on a fundamental fact,” that “fact” being the presupposition of a radical immanence that knows no transcendent justification, for “as long as life is left to itself and is understood in its own terms, it knows only that the conflict between these gods is never-ending. Or, in nonfigurative language, life is about the incompatibility of ultimate possible attitudes and hence the inability ever to resolve the conflicts between them. Hence the necessity of *deciding* between them” (Weber 2004, 27). Weber offers no guidance regarding how that decision is to be made, *pace* Strauss, no ultimate “standards” to rely on, no “bannisters” with which to support oneself,

as Hannah Arendt would later say.¹² In the absence of truth we have ideologies, not in the Marxian sense of deception or self-delusion but in the sense of a smorgasbord of plausible worldviews. It is not, Weber insisted, the mission of the scholar, pretending to possess an infallible standard, to promote ideologies as truth, but it is the existential necessity of the individual to choose between the warring positions with which life, “left to itself,” confronts us.

In the face of Weber’s presupposed “fact,” Strauss throws up his hands in despair. Weber’s refusal to affirm the possibility of establishing a hierarchy of rationally justified values to guide the conscientious scholar, Strauss complains, is based on an assumption that, “while generally taken to be sufficiently established, has never been proven” (Strauss 1959, 22). The irony of Strauss’s critique is not hard to see, for *his own* claims for reason and truth operate just as adamantly with assumptions that defy demonstration or proof. His real concern, however, is not with truth but a morality that relies on truth for justification; his real fear is laxity, and he too resorts to theological imagery to make his point. Weber, he says, “has postulated the insolubility of all value conflicts, because his soul craved a universe in which failure, that bastard of forceful sinning accompanied by still more forceful faith, instead of felicity and serenity, was to be the mark of human nobility.” Weber, in other words, chose the dark clouds of Old Testament Protestantism over the felicitous and serenely blue skies of ancient Greece. The result is a lack of moral rigor. “The belief that value judgments are not subject, in the last analysis, to rational control, encourages the inclination to make irresponsible assertions regarding right and wrong or good and bad” (23).¹³ Revealingly, the language of truth disappears, and fear takes its place in the form of a concern about control and irresponsibility. What, oh what, Strauss seemingly asks, would the world be like were life to be “left to itself and . . . understood in its own terms,” requiring of the individual only existentially grounded decisions? But what, oh what, we may counter, would the world be like were we to appeal to a motherless reason, deflecting thereby all responsibility for our own decisions?

To translate the above questions and questioning into terms that occupied Carl Schmitt, we must ask whether a social order—more specifically, a political order—can exist over time, whether a political body, a people as a political unity, can persist without a sense of its own *legitimacy*, a sense that its institutions are grounded in a unifying narrative. Despite the preaching of the political philosophers and theologians, the narrative need not—or, as Schmitt maintains, cannot—be universal. It must, however, hold for the members of a particular political collective. Weber presents us with a world in which the individual has been abandoned. God has absconded, and with him all legitimacy has flown. We are left with a flat immanence, a sheer legality. Legitimacy through performance, Lyotard would say with alarm.

Legitimacy through procedure (*Verfahren*), says Luhmann with an unconcerned shrug of the shoulders. We float in the air, bob up and down with the waves. Neither the record of God's word nor the machinations of divinely implanted human reason can provide us with solid ground to stand on. The gods of yore return to fill the vacuum, but their internecine rivalries and skirmishes decimate any sense of "the whole" that belief in a God of revelation or reason presupposed. To pretend otherwise, Weber believes, to search for earthly evidence of the absconded God of revelation or reason is to sacrifice one's intellect, to act like an overgrown child. The image Weber bequeaths to us is that of the intellectually heroic, emotionally stoic individual freed of illusions and facing the world alone. Indeed, Weber's individual approximates the archetypal figure of early twentieth-century literature, James Joyce's Dublin version of Ulysses or Ezra Pound's modern-day Odysseus in his travels through time (history) and space (cultures) in search of the components of an earthly paradise, only to find in the end that the fragments he has gathered and shored against ruin do not cohere.

For Schmitt, unmitigated positivity is not enough, nor is the political world based on the heroic individual. Like Strauss, his thought searches for the presupposition upon which any given order is and must be based. Unlike Strauss, he does not find that order to be eternal, nor can reason alone be the guide. He finds legitimacy in a pattern that can be traced back to theology (and canon law), but Schmitt distilled it from the history of the political itself. Our next step will be to trace this pattern.

THE PATTERN OF LEGITIMACY

Heinrich Meier, following Leo Strauss, placed political theology in stark and negative contrast to a preferred political philosophy. A closer look at Strauss, however, reveals that in comparison with what he calls social philosophy (as embodied by Max Weber), political philosophy and political theology are an allied pair. Each, based on presuppositions that claim to guarantee access to knowledge of the truth, provides legitimacy for the political order. The consequences of Weber's description of modernity lead to the belief in a self-organizing, self-grounding, performative legitimacy through success, through the mere fact of its continuance. Schmitt, who thinks not from the point of view of the normal, untroubled operations of a system but from the exception, the point of breakdown, cannot pledge his allegiance to performative or procedural faith. If the true opposition is that between the search for legitimacy, on the one hand, and the acceptance of the performative and the procedural, on the other, then the distinction that Meier and Strauss hold up as fundamental loses its force. Accordingly, if, as Nietzsche asserted, the search for knowledge and truth have their origins in Plato *and* Christianity,

then it is possible, indeed preferable, to treat both political philosophy and political theology under a single rubric, and, given the trajectory of Western thought, it makes sense to label that rubric with the familiar name *political theology*.

Precisely such a move is performed by Heinrich Rommen, a Catholic thinker who was once Schmitt's student, but who disagreed with him on fundamental issues and emigrated from Germany to the United States after the Nazi takeover. Rommen suggests that there are two basic patterns of political-theological legitimation, one based on "natural" and the other on "supernatural" theology. Here is how he expresses the difference:

What is meant here is either natural theology, i.e. God revealing Himself in His creation to the human rational mind, revealing Himself in the conscience, or supernatural theology, the doctrine of God, revealing Himself positively in Christ and the inspired Sacred Scriptures, interpreted by the infallible doctrinal authority of the divinely instituted papacy or, as in Protestantism, by divine guidance of the individual conscience, with or without the assistance of tradition . . . and the consensus of theologians. (Rommen, 1969, 93)

The distinction is a familiar one that can be crudely designated as the difference between natural and divinely revealed law, labeled respectively as "intellectualism" (or "rationalism") and "voluntarism." At issue is the intelligibility of the universe. First, is the cosmos intelligible? Does it have intrinsic, immutable moral meaning? And second, if so, does the human being's soul, its consciousness and ability to reason, allow it to fathom not just the physical but also the moral structure of the universe? Rommen's natural theology answers both questions in the affirmative. We can explore both Rommen's preference and its alternative by engaging in a form of questioning initiated by Socrates (Euthyphro 10a)¹⁴ and developed to its fullest in theological debates of medieval Scholasticism.

Does God do something because it is good, or is something good because God does it? Stripped to its bare bones, this question distinguishes between the primacy of God's inherent goodness and the primacy of His absolutely free and unimpeded will. The first option assumes that the good is logically coextensive with (if not prior to) God; the second that what is considered to be good is the result (not the cause) of an act of God's will. The answer favored by most, including Rommen, affirms the first option, namely that God created the world in the only way a good God could create it, as the necessary manifestation of His eternal goodness, a goodness that can be apprehended (imperfectly) by human reason. On this view, right reason, that spark of divinity in the human being, has access to the laws not only of the physical but also the moral world. God would be in His heaven and all would be right with the world, we are told, if only we could use our reason rightly. It is a comforting thought, leading one to posit a fixed order into which one

can snugly fit. The danger with this position, however, is that it seemingly restricts God's omnipotence. If, by creating the world, God simply follows or unfolds His inherent goodness, then apparently there could be only one world for him to create. Once He had decided that there should be a world, there would be no further decision to make, for there would be only one world possible, the world that accords with His goodness. At least some of us are less than thrilled by such a seemingly robotic God. Accordingly, to preserve God's omnipotence—that is, to safeguard His freedom—one might have to entertain the second alternative of the question, the one that assumes that what is to be considered good comes from a free act of God's will and not from the invariable unfolding of His essence. On this view, God created the world as it is but could have created it fundamentally differently, both physically and morally. It therefore follows that if, as we have been told, we have been created in God's image, then seeing God's creation as a choice and not a necessity gives us an inkling of our own freedom to choose, our own freedom to will, act, and create. True, we follow God's law because we have been commanded to, but by entertaining the consequences of God's omnipotence, we know that God's law could have been different, and in that instant, contingency, the possibility of a whole series of alternate worlds, opens up before our eyes.

Oddly, contingency seems to frighten us. Authority, especially the authority of reason, we are told, must limit us. God is not just good; He is goodness itself. It is not just that He does good; He can do *nothing but good*. Thus His creation is the self-actualization of the good. Because the human is created in God's image, the human is able to fathom God's goodness by reason, even if human reason is fallible and must be aided by that repository of God's revelation, the Roman Church (as we shall see). Secularized, this means that the world is governed by natural law that can be discerned by right reason, at least a right reason that is supervised by those who know how to reason rightly. Humans are thus obligated to fashion their political ideals and institutions according to what right reason dictates. The political consequences of "supernatural" theology, however, point in a different direction. Here, God's omnipotence and His will are highlighted. God created this world but could have created it otherwise. Thus, there is no inherent connection between the present order and eternal, immutable goodness that can be rationally discerned. Rather, there is a covenant between God and His favored creations, human beings, that guarantees He will honor the order He ordained. Thus our knowledge of the good is strictly derived from the covenant that gives meaning to the existing order. If there is right reason, it is right because it follows God's commandments and accepts the order that those commandments found. Thus, any distinction between truth and authority, reason and will, becomes tenuous, and political order relies not on correct discernment of natural law but on a covenant or constitutional order ordained by a constitu-

ent power. In contemporary terms, the difference between natural and supernatural theology becomes the uneasy tension between human rights (the logical descendant of natural law) and popular sovereignty (the voice of God in a secular world) that characterizes the contentious liberal-democratic compromise (which will be examined in part II).

The distinction between nature and divine command, reason and will, threatens to slide into an irreconcilable battle between necessity and contingency, a problem that medieval scholastic theology had to deal with. The vehemently loathed and ceaselessly pilloried voluntarist position developed out of a concern with explaining God's relationship to His creation and eventually with preserving His freedom and omnipotence from the dangers of a perceived Aristotelian necessitarianism that had crept into Christian theology. The distinction between God's absolute power (*potentia absoluta*) and ordained power (*potentia ordinata*) was elaborated to facilitate the discussion.¹⁵ For most of the scholastic era, the distinction was treated analytically. It was acknowledged that God's power is indivisible, but the distinction was needed to understand the act of creation and His relation to the order He established. Thus, God created the world as it is (*de potentia ordinata*), yet He could have created it otherwise (*de potentia absoluta*). The adverbial qualifications preserved creation as the result of a free act and not merely as an inevitable materialization of a necessary idea inherent in His being. If we understand God to be omnipotent, then we must understand His actions as arising out of choice. First, He chose to create the universe rather than not create it. Second, He chose to create it this way and not any other way. He did not follow a necessary blueprint but rather was aware of an array of choices. This world, the one He created, is the one He chose.

Why is this important? Thinking of God's power from the aspect of *potentia absoluta* preserves a realm of possibility that "brackets" the ordained world, reminding us that its structure, though fixed, did not arise necessarily (Oberman 2000, 43). Here is how William J. Courtenay puts the standard, mid-thirteenth-century understanding of the distinction:

The distinction came to express a positive statement about God's relationship with the world, a relationship based on covenant and self-imposed obligations. The distinction affirmed that the structure of the world, the existence of things and causal relationships, are all contingent, not absolutely necessary. None of God's actions are done by strict necessity or external compulsion but by internal, voluntary choice. The order chosen by God is not necessary in any absolute sense but only relatively or contingently necessary inasmuch as it has been freely established by God. God is not bound, save in the sense that he has bound himself. The things and relationships in the world should be viewed not as the Greeks and some of their Arab commentators would have it, but as contingent, freely chosen and created by God. (Courtenay 1990, 76–77)

What Courtenay and other commentators stress is that the analytical distinction between the absolute and ordained power was initially never meant to define a type of divine action. God's initial choice was contingent, bracketed by the array of possible alternatives He could have selected, but once the choice was made, God bound Himself to what He had ordained. Duns Scotus developed this insight in its logically most sophisticated form (referred to by contemporary scholars as "synchronic contingency," an early form of possible worlds modal logic), applicable to both God and humans.¹⁶ It is important to understand that the absolute/ordained distinction and the notion of synchronic contingency associated with it answer real theological questions, not only dealing with God's omnipotence but more importantly with human freedom. "Duns' most important intention," Henri Veldhuis presses upon us, "is to make clear that contingency and freedom only are guaranteed if there are synchronic-alternative possibilities. Reality was not only initially open at the 'moment' of God's act of creating; it is so at any moment." Furthermore, "Duns posits that *potentia absoluta* concerns all non-contradictory states of affairs. The *potentia absoluta* comprises therefore every possible state of affairs, of which the region of *potentia ordinata* is a subset" (Veldhuis 2000, 229). But then Veldhuis quickly affirms that Duns Scotus also believes that God cannot do anything contrary to his essence (such as lie or deceive), so that God can never arbitrarily betray the order that He ordained. Contingency is real, but the ordained world remains the only world we inhabit.

While both the (initial) contingency and (present) necessity of the given order is thereby preserved, it proves to be a delicate balance that ultimately evokes the following reflection: If God creates an order by an act of will, and if what binds God to what He ordained is an act of self-imposition, then certainly God's will may be exercised again to repair or redo that order, even undo it altogether if He deems it necessary. Did He not do just that with the Incarnation, when Jesus abolished the first covenant (circumcision) and instituted a second (baptism)?¹⁷ And what does all this say about earthly contingency and human free will? Accordingly, a more activist account of absolute power became important when direct analogies were made between divine power and the power of an earthly sovereign. Specifically, with regard to papal rule within the church, canon lawyers argued:

On the one hand, the pope was committed to uphold and obey the fundamental laws of the church (the *status ecclesiae*), which he could not abolish or modify. On the other hand, the pope possessed plenitude of power (*plenitudo potestatis*) through which he could, on an individual basis, temporarily suspend or alter particular, lesser laws through dispensations or privileges for the common good of the church at large (the *ratio ecclesiae*). . . . Although the pope, *de potentia absoluta*, is not bound by law, he has bound himself, *de potentia ordinata*, to act in accordance with the law. Furthermore, in order to preserve and fulfill the greater good of the church, it might be necessary, on

occasion, to suspend or even alter particular laws. Just as changes in the present order (*ordo ut nunc*), such as the change from circumcision to baptism, do not alter but rather fulfill God's eternal law, so papal dispensations and privileges are for the greater good of the church and implement God's higher purpose. (Courtenay 1990, 92–93)

Though Courtenay and most other contemporary commentators consider such analogical usage of the distinction to be a distortion of the original,¹⁸ I find it an obvious use of a conceptual tool to think through issues of political governance and, as we shall see, a neat example of what Schmitt had in mind with his notion of political theology. Before we move to Schmitt's explicit definition, however, we must complete our investigation of the relationship of reason and authority, and do so by invoking faith as the source of authority. Again, I am not suggesting that Schmitt posits religious faith as the necessary authority for reason. I am suggesting, however, that the interplay between faith and reason within the institution of the Roman Church serves as an illuminating model for the necessary relationship between authority and reason in Schmitt's reading of the modern, secular state.

FAITH AND REASON

In recent decades, scholars have paid increasing attention to Duns Scotus's sophisticated elaboration of contingency. It is Scotus who solidified the notion of synchronic contingency that was referred to above, namely that at any given moment God's free choice is accompanied by alternate possibilities not chosen. Even if we view God's choice as immutable (because of His love and justice and the covenant He made with us), it was not necessary. Other covenants with alternate standards of justice are available at every instance a choice is made. The claim for Scotus, then, is that his "*Lectura I 39* is the final stage of the emancipation of Christian theology from ancient necessitarianism, and this on two main points: (1) Scotus presents a consistent ontology of contingent reality; (2) he disengages from an absolute ideal of knowledge in which knowledge and necessity are tightly linked."¹⁹ The far-reaching and enduring consequences reverberate not only in Christian theology but also in modal logic—especially "possible world semantics"—and in anthropology. Like God's, "human freedom, too, can only exist and be understood against the background of synchronic contingency. Without it, that is without the awareness that reality, which is partly actualized by us, could have been different from what it in fact is, our central notions of love, sin, guilt, responsibility, grace and forgiveness lose their essential meaning."²⁰ I would therefore like to draw a plausible conclusion from this emphasis on contingency that accompanies the nominalist position, namely that some of the most contentious aspects of Schmitt's political thought (e.g., decisionism, his posi-

tive view of power and covenants [obedience for protection], his critique of “abstract” norms) have to do with a concern with human freedom (as cruelly ironic as that may sound, given his abysmal failures in practice), though where he locates human freedom differs from the standard liberal conception of individual liberty.

Schmitt was fond of citing Hobbes’s well-known claim, “Sed auctoritas, non veritas, facit legem” (but authority, not truth, makes law).²¹ Replace truth with nature and you have Rommen’s distinction between natural and supernatural theology; replace it with reason and you have the intellectualist/nominalist debate. All three cases—truth, nature, reason—carry with them the whiff of indisputability, a very close cousin to necessity. But to such suppositions or implications Schmitt would always address the (Hobbesian) question: Who decides? Concerning a common standard, Hobbes already gave the answer. “This common measure, some say, is right reason: with whom I should consent, if there were any such thing to be found or known *in rerum natura*. But commonly they that call for right reason to decide any controversy, do mean their own” (Hobbes 1994, 180–81). This delightful slap in the face is elaborated in greater depth in chapter 5 of *Leviathan*.

And as in Arithmetique, unpractised men must, and Professors themselves may often erre, and cast up false; so also in any other subject of Reasoning, the ablest, most attentive, and most practiced men, may deceive themselves, and inferre false Conclusions; Not but that Reason it selfe is alwayes Right Reason, as well as Arithmetique is a certain and infallible Art: But no one mans Reason, nor the Reason of any one number of men, makes the certaintie; no more than an account is therefore well cast up, because a great many men have unanimously approved it. And therefore, as when there is a controversy in an account, the parties must by their own accord, set up for right Reason, the Reason of some Arbitrator, or Judge, to whose sentence they will both stand, or their controversie must either come to blowes, or be undecided for want of a right Reason constituted by Nature; so is it also in all debates of what kind soever: And when men that think themselves wiser than all others, clamor and demand right Reason for judge; yet seek no more, but that things should be determined, by no other mens reason but their own, it is as intolerable in the society of men, as it is in play after trump is turned, to use for trump on every occasion, that suite whereof they have most in their hand. For they do nothing els, that will have every of their passions, as it comes to bear sway in them, to be taken for right Reason, and that in their own controversies: bewraying [exposing] their want of right Reason, by the claym they lay to it. (Hobbes 2012, 66)

The claim made here is not about the fallibility of reason but of those who reason, which, however, may come to the same thing. The search for a common, “natural,” “objective,” “true” standard or measure is, *pace* Strauss et al., in vain. Therefore, to avoid indecision or even violent consequences

(“blowes”), a single arbitrator must decide, not because that individual or institution is in tune with nature or in undisputable possession of the ability to reason rightly, but because of the authority that all invest in the position. Truth, which never reveals itself naturally, needs advocates, for the mysterious dictates of reason need to be deciphered by an authoritative reading. Dig deep enough and any advocate of truth or reason will tell you so explicitly. Why else would the “official” public sphere need to censor “public prejudice” (Habermas 2006, 111–12)? Even that which is posited as universal, valid for all people at all times, must be supervised by a particular instance. “These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations” (Article 26.3, *The Universal Declaration of Human Rights*). That there is no truth without authority is, at the very least, a reasonable presupposition.

If we look again to the Roman Church, we see the collaboration of truth and authority explicitly theorized, perhaps most clearly in the papal encyclical *Fides et Ratio* of 1998. At first, faith and reason seem equally paired, like the two wings of the human spirit taking flight (Hemming and Parsons 2003, 3), but it soon becomes clear that the relationship is not symmetrical. The acceptance of God and the truth of His revelation precedes all else. Faith, the encyclical tells us, “is the obedient response to God. It demands of us that he be acknowledged in his divinity, his transcendence, and his total freedom. The God who brings about his own recognition because of the authority of his absolute transcendence at the same time makes the content of his revelation credible.” If we ask how we know this, we are told that “the act whereby we commit ourselves to God” is “a moment of fundamental choice which involves the whole person” (23). Faith works in tandem with reason by being the prerequisite of the latter. Without faith, reason goes astray.

We are assured that reason intuitively is able to formulate universal principles (e.g., non-contradiction, finality, causality) from which reason may draw logically and ethically coherent conclusions. To this function the church fixes the traditional term “right reason or, as the ancients called it, *óρθòs lógos*” (Hemming and Parsons 2003, 9). Although right reason has its “proper domain” and is “restricted by nothing else except its own finite nature before the infinite mystery of God” (27), it must nevertheless be supervised by the church, which is the repository of faith. Article 50 of the encyclical makes the rank ordering of authority, faith, and reason as clear as a church bell on a crisp autumn morning.

Therefore the Church’s teaching office in the light of faith can, and indeed should pronounce an authoritative and critical judgment upon those philosophical ideas and opinions which conflict with Christian doctrine. In the first place it belongs to the Magisterium to judge what the philosophical presuppositions and consequences are that opposed revealed truth, and similarly to indicate the

assumptions that, in the light of faith, are required from philosophy. . . . When we give expression to this judgment as bishops, we ought to be “witnesses of the truth” in a humble but determined ministry of service, which every philosopher should appreciate, as being of assistance to “right reason,” or reason which reflects congruently with truth. (83)

Right reason alone cannot know truth. Its role is to explore and cultivate the truth that is revealed to it. Therefore, the Magisterium—the pope and the bishops—has the authority to keep reason from going astray.

To an outsider, it would seem that the church is simply asserting its disciplinary authority arbitrarily. But even an outsider can see that rival claims to the universal truth of human existence have no greater validity. We are all convinced by our own belief systems, even as those systems radically differ from one another. Being non-Christian (or non-Catholic) gives one no greater access to the meaning of reality than being Christian. But the outsider can also see why belief (authority) matters and why it mattered to Schmitt. It has to do with the much disparaged and infinitely qualified word “community.”²² What collective belief gives is access to a type of relationship that humans have with one another that is quite different, or attempts to be, from the solitary, self-sufficient, autonomous, liberal individual. The believer believes that we are not solitary, lonely Hobbesian creatures who cluster together solely out of fear; rather, we are beings who come to knowledge about ourselves in communion with each other. In the words of an insider, Laurence Hemming, writing of the Catholic liturgy,

It should be stressed that . . . what is sought is *the truth of the person*—what the person is and what the person reveals from deep within. Human perfection, then, consists not simply in acquiring an abstract knowledge of the truth, but in a dynamic relationship of faithful self-giving with others. It is in this faithful self-giving that a person finds a fullness of certainty and security. At the same time, however, knowledge through belief, grounded as it is on trust between persons, is linked to truth: in the act of believing, men and women entrust themselves to the truth which the other declares to them. (Hemming 2008, 32)

The Catholic Church is founded on revelation, which is transmitted through authorized channels, the Magisterium. The community of believers that is thereby created learns the truth of revelation through faith in God, to be sure, but also faith in the Magisterium. The community, however, also *participates* in the truth of revelation in the Catholic liturgy, which, according to Hemming, is a “form of social relation” that “makes present and audible . . . our common being in God” as a “singing-with-others,” a “conversation between the Son and the Father” into which the believers “are to be inserted.” The liturgy is “inherently structured towards the intellect of man” (41) but is not rational in the modern sense, not a “means of calculation and prediction”

(25). The church encourages the activation of the intellect in order to comprehend better what God has revealed. Nevertheless, reason will always have to face its limits when confronted by faith. To know “about” God is not enough, is not “the same as knowing God *in* the liturgy”; to know “about” the Trinity” is not to know “God *as* Trinity” (35).

The institution of the church is a rational construct that serves the revealed truth, which transcends reason. As an external describer, I have to take the truth of revelation on faith—not the faith of the believer, but the faith of a non-believer who takes at face value that there are believers who believe in a revealed truth. As a non-believer I necessarily linger on the rational structure that surrounds belief and notice that both belief and reason rest on authority, namely the authority of the Magisterium, the pope and the bishops. Nevertheless, at the core lies the community of believers. Without the community, the rational structure of the church is meaningless, an empty shell. It is *this* structure surrounding *this* community that matters if, as Schmitt claims, the state occupies the territory explored, cultivated, and lost by the church. The question to ask, then, is the following: Can such a community of believers become secularized (even as they retain their diverse religious beliefs), become a community of citizens at the core of a rationally structured yet meaningful state?

COMPLEXIO OPPOSITORUM

In *Political Theology II*, his last important work, Schmitt reviews the purpose of a half century of contemplating the concept of political theology.

It should have been noticed that my elaborations on political theology are not grounded in a diffuse metaphysics. They bring to light the classical case of a transposition [*Umbesetzung*] of distinct concepts which has occurred within the systematic thought of the two—historically and discursively—most developed constellations of “western rationalism”: the Catholic *church* with its entire juridical rationality and *the state of the ius publicum Europaeum*, which was supposed to be Christian in even Thomas Hobbes’ system. (Schmitt 2008c, 117)

This passage (coming admittedly as a late-in-life self-justification) can stand as a rebuke not only to much if not most of the secondary literature on the topic but also to everything I have written in this chapter so far. The discussion of Strauss, Weber, and especially Roman Catholic theology seems beside the point if all Schmitt wants to say is that the early modern, Westphalian state picks up the functions of the church following the sixteenth- and seventeenth-century European civil wars. Nevertheless, I hope to have made plausible that one can better understand how Schmitt defines the newly fash-

ioned state, that entity which replaces the church as the primary political shelter of the community, by entertaining the importance of the secularization of theological concepts. By “secularization” I simply mean the application of patterns of thinking made habitual by contemplating theological dogma and attendant problems. It is time to bring all of this together into a first run at understanding Schmitt’s idea of the state.

Our shelter in the secular, immanent world is the ethical state, which, in political theological manner, now occupies at the local level the position that the Roman Church once enjoyed Europe-wide. Reflecting again in 1970 on another one of his writings from the 1920s, *Roman Catholicism and Political Form* (Schmitt 1996d), Schmitt writes, “In my essay I do not talk about an affinity between the church and certain forms of political unity (monarchy or democracy). The essay defends the unique political form of the Roman church as the historical and visible representation of Christ” (Schmitt 2008c, 142n5). That unique political form with the legitimacy it embodies is transferred to the modern state as it emerged after the European civil wars. And if, as Schmitt has already impressed upon us, we should have noticed that political theology is not “grounded” in a “diffuse metaphysics,” then we should now also notice that the invention of the modern state and the international order that follows from it marks a “rational ‘progress’” (117), even if “progress” is carefully qualified by scare quotes. Indeed, it is the rationality of the church that recommends itself to the modern political order. Clearly, Schmitt can mean neither the putative rationality of universal norms, against which he consistently polemicizes, nor the rationalization of the social life as theorized by Weber’s “social philosophy.” So what *does* he mean?

In *Roman Catholicism*, Schmitt states that the church and its members have often sought to accommodate and work with polar opposite political movements. “Men of such eminence as Montalembert, Tocqueville, and Lacordaire represented liberal Catholicism at a time when many of their fellow Catholics still saw in liberalism the Antichrist or at least his forerunner.” Furthermore, “Catholic royalists and legitimists appear arm-in-arm with Catholic defenders of the republic.” And, irony of ironies: “Some Catholics are tactically aligned with a socialism others believe to be in league with the devil. They have even parlayed with Bolsheviks at a time when bourgeois advocates of the sanctity of private property still saw in them a cabal of criminals *hors la loi*” (Schmitt 1996d, 4). To the ability of the church to accommodate itself to conflicting political positions and -isms he gives the name *complexio oppositorum* (7). This complex of opposites presides over the political structure of the church itself, which is ruled by a monarch (the pope), who is elected by the “aristocracy of cardinals,” and yet—and this is the putatively democratic touch—whose qualifications and status have nothing to do with birth or station, for “even the least shepherd of Abruzzi” can become “this autocratic sovereign” (7). It also holds sway over everything

theological, ranging from sacred texts and dogma to the fallen but redeemable nature of the human creature. Symbolically, the pope is the father, and the church is both the mother of all believers and the bride of Christ. “Ultimately, most important is that this limitless ambiguity combines with the most precise dogmatism and a will to decision as it culminates in the doctrine of papal infallibility” (8). In this way the church’s *complexio oppositorum* provides for diversity within well-disciplined unity.

We are presented here with a political structure of imperial dimensions. The various particularities—of nation, gender, ideology, language, custom, and habit, among many others—are neither eliminated nor synthesized but brought in *Verbindung* (connection or association) with one another under the umbrella of the church.²³ But above these contrary yet associated points of view and ways of being stands the truth of dogma, guaranteed by the church itself. Schmitt refers to papal infallibility, a position enunciated in Vatican I of 1870, though debated already in the Middle Ages.²⁴ The Catholic Church is today embarrassed by the idea of papal infallibility, but not by infallibility. It is the entire church, understood as the pope in communion with the bishops (the Magisterium), that is infallible, for the truth that was revealed with Jesus was, so says the Roman Church, entrusted by Jesus to the apostle Peter, who founded the church in Rome. Because the church’s teachings are infallible and certain, the community of believers has ground on which to stand that, paradoxically, allows believers to differ, sometimes radically, with one another. And because the (hierarchy of the) church, *not* the individual believers themselves, decides what is true and thus what is “right reason,” the church retains the character of a unity that turns the oppositions within it into *complexity*, not contradiction. That not everything can be accepted within the church is obvious—heresies exist, as do direct violations of moral and other teachings—but because of the unity guaranteed by faith and right reason, parishioners *may* disagree, even as they *must* obey.²⁵ In short, the individual *conforms* to the teachings of the church, but within limits, each in her own way.

In the state, as in the church, we have not only the play of contraries and the linkage of reason and authority, but also the necessary relationship of authority and power. According to Schmitt, and he is most certainly not alone, “No political system can survive even a generation with only naked techniques of holding power. To the political belongs the idea, because there is no politics without authority and no authority without an ethos of belief.” Therefore, “by claiming to be something more than the economic, the political is obliged to base itself on categories other than production and consumption” (Schmitt 1996d, 17). Those ideas and categories may vary from state to state and may remain unspecified, but an “ethos of belief” by a community of believers within a structure of authority is, Schmitt affirms, a necessity. We

can understand Schmitt's reliance on the notion of a common idea with the help of the French legal scholar Maurice Hauriou, whom Schmitt admired.²⁶

Hauriou was one of two or three important French jurists who theorized the importance of institutions when thinking of law. Although he was sociologically grounded, influenced by Durkheim and Bergson, one recognizes a theological undercurrent, specifically a Catholic one, in his thinking. His general thesis states that at the core of an institution (including the state itself) lies an idea that is realized in a social setting by a structure of power. For it to perdure, the idea must be accepted and internalized by the populace (Hauriou 1970, 109, 110–11). It is important to distinguish the *idea* from the *function* of a state. The citizens of the state, he maintains, respond more immediately and intensively to the directing idea of the state than to its function and administration. Indeed, they must internalize the directing idea of the state and make it their own, for citizens are the primary bearer of the idea. Hauriou tellingly labels citizen response “manifestations of communion,” which “can be most clearly grasped in the great popular movements that accompany the foundation of new political and social institutions” and also continue to be necessary because they make subjective the objective power of existing states (107). Thus, the directing idea of a state, that for which a state exists and without which a state cannot continue to exist, is the responsibility of both state authority and the manifestations of communion of its citizens.

By referring to the church as another institution that follows this general pattern of power and participation, Hauriou implicitly compares these two grand governing formations. What he says about the church will now sound familiar, and its relevance to the state seems obvious. “The Christian idea, launched in the world to renew it by the redemption, contained . . . a large part that was indeterminate.” The challenge that presented itself to the community of Christian believers was progressively to determine the undetermined and preserve “the continuity of the idea.” The institution of the church and its guardianship over dogma served as the solution to the problem. “Once the Christian idea had been launched in the world,” a Protestant or secular liberal might ask, “could it not have advanced there by itself, in freedom and in the state of objective truth?” The Catholic answers, “The misfortune is that objective ideas are perceived by men only through subjective concepts, so that Revelation, abandoned to itself, would be in danger of sinking in the ocean of subjective interpretations and of heresies.” It is the institutionalization of dogma and creed that ensures the continued, gradual, patient determination of the undetermined which is the “idea” of the church. “This,” Hauriou concludes, now explicitly referring to the state, “amounts to saying that a governmental action balanced by a communion of the faithful is a guarantee of continuity in the subjective interpretation of the directing idea which is far

superior to anything that free individual interpretation could offer” (Hauriou 1970, 115).

With this, Schmitt would agree. Conscience alone, reason alone, law and norm alone cannot elicit manifestations of communion. Only a constituent power, “the people,” which sees itself as a community of believers in the idea represented by the existence of a political collective, a state from whom they receive not only protection but meaning, and thus to whom they owe a freely given and internally felt allegiance, can embody the necessary idea. *This*, I believe, is the “secularization” of theological ideas Schmitt pits against the “deism” of the modern age. Needless to say, the “metaphysical image” of our liberal age makes such a proposition all but wholly unimaginable.

CONCLUSION

I have taken a rather tortuous route through one aspect of the terrain of political theology.

We use, I have claimed, theological explanations of God, His power, and His relationship with the world He created, including its creatures, to explain the workings of the modern, secular, state-based world we have inhabited and are on the verge of losing, if in fact we have not already lost it. More specifically, I have suggested that Schmitt thinks in terms of functional equivalents when he thinks of political form. His choice of the word *Umbe-
setzung* in *Political Theology II* is precise and apt. One of its meanings refers to the replacement of one theatrical performer with another when the former falls ill or proves inadequate to the task. On Schmitt’s view, the state was the understudy of the church, and when the church stumbled in the sixteenth and seventeenth centuries, a new star was born. But even the most sparkling of ingénues eventually fades and is replaced. By the twentieth century the state had apparently grown old and toothless; at least that was the general political-theoretical gossip of the time. The drama of world politics was able to continue without it, the critics said; marionettes are good enough. Once you drop the right, bright, shiny norm into the machine, the lights go down and back up automatically, the curtains open and close all by themselves.

Schmitt demurred. You cannot play *Henry V* or even *Hamlet* with hand puppets. To give the state back its bite, Schmitt needed to remind us of what he took to be its origins. Nothing runs by itself. More than that, political form is more than the convenient collection of self-interested individuals. The church had taught us that. Conceal your vanity and lay self-interest at the door; you are now in a hallowed space. If the state wishes to maintain its starring role, Schmitt felt, it must renew its resources or pass the role on to yet another understudy, one that could capture the imagination and respect of multiple communities of believing citizens. Neither the League of Nations in

the first half of the twentieth century nor the United Nations since has proven adequate to the task, so the state is continuously called back to reprise the role it once played so magnificently in its youth.

The times have changed, however, and continue to change. The search for functional equivalents becomes more demanding. The explicit definition that Carl Schmitt gives to the concept of political theology in his initial foray into the field he dubbed political theology delineates more precisely the notion of change, its consequences, and how one may compensate the loss of past solutions. To this we now turn.

Chapter Two

Modernity and Its Discontents

Heinrich Meier warns us against falling for any interpretation of Carl Schmitt's notion of political theology that fails to strip off its exoteric camouflage and reveal its true core to be an illegitimate weapon used to enslave all of humankind; he warns us against, in other words, an interpretation that "reduces the concept to a simple and narrow technical term to be used by historians interested in the secularization of theological concepts during the different phases of modernity, or . . . detoxifies and renders political theology a thesis in the fields of 'philosophy of science' or 'conceptual history,' which is concerned with certain 'correspondences,' 'analogies,' or 'structural affinities' between theology and jurisprudence" (Meier 2006, 78). Nevertheless, such a putatively detoxifying reading of "correspondences," "analogies," and "affinities" is precisely what I intend to walk you through in this chapter.

SOCIOLOGY OF CONCEPTS

Schmitt's famous and endlessly cited definition of political theology—"All significant concepts of the modern theory of the state are secularized theological concepts"—primarily makes a diachronic claim. Historically it seems a rather bland if significant commonplace, one repeated in any number of past and present book titles that advertise secularized accounts of various aspects of European modernity, ranging from the "theological origins of modernity" itself to particular studies of its many aspects, starting with Weber's emblematic account of the relationship of the "Protestant ethic" and the "spirit of capitalism" down to recent studies of the "theological genealogy of economy and government" or the "theological roots of the criminal trial."¹ Weber's example stands out of course, but Schmitt was an eclectic reader who must have found examples of what he was looking for in a vast sampling of texts,

not least in the works of John Neville Figgis, an author he read closely. In his introductory chapter to *Studies of Political Thought from Gerson to Grotius, 1414–1625* (originally published in 1907 and reprinted in 1916), Figgis wrote (using near-German word order), “the fact remains that to religious bodies the most potent expressions of political principles has been due. . . . Of political principles . . . we must seek in religious and quasi-theological writings for the highest and most notable expressions” (Figgis 1916, 5). In the next chapter on the pre-Reformation conciliar movement and papal reaction, Figgis claims that the “triumph of the Pope over the Council [Council of Constance in 1414] is the beginning of the triumph of centralized bureaucracy throughout the civilized world” (33). The lesson Figgis draws from this early fifteenth-century watershed event is as follows:

A very slight acquaintance with Locke or Algernon Sidney, to say nothing of the *Vindiciae contra Tyrannos*, will enable the reader of Gerson, and the *De Concordantia Catholica* to see how great is the debt of the politicians to the ecclesiastics. The crisis in the Church was thus, I think, responsible for bringing these questions before men in a more universal form than they had hitherto assumed. (48)

Figgis claims to notice that patterns of European political thought, behavior, and institutional design seem to be preceded by developments in the church. The narrative in which he embeds these observations is a narrative of regret. Had the revolt against absolute papal authority that marks the Council of Constance been successful, Figgis claims, Western political institutions and their ideological justifications would have been different. Monarchical absolutism could have been avoided; constitutionalism and, perhaps, parliamentary sovereignty might have occurred much earlier.² But even in their historical absence, the table was set for such eventual benign developments, because they had been prefigured in church thought and activism. From past theological dogma and disputes, so Figgis claims, there emerge modern ideas and political models.

Now, Schmitt is nothing if not dramatic, and the move from historical observation and suggestion to categorical assertion is not difficult. Here is the full version of Schmitt’s initial definition of political theology.

All significant concepts of the theory of the state are secularized theological concepts not only because of their historical development—in which they were transferred from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver—but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts. The exception in jurisprudence is analogous to the miracle in theology. Only by being aware of this analogy can we appreciate the manner in which the philosophical ideas of the state developed in the last centuries. (Schmitt 1985b, 36)

The first thing to notice is Schmitt's analogical reasoning. From this definition one could devise a research program, analyzing and then going beyond the two examples he gives, the one on sovereignty and the other on the exception within law. Figgis has already given us some hints about what such a historical examination might look like, namely secular sovereignty and absolutist monarchy arising from the model of papal authority, which in turn could be said to be modeled on Christian (and Jewish) monotheistic omnipotence. Such omnipotent authority would also explain the suspension of positive law in an emergency—as in, for example, martial law or a state of siege—for cannot God suspend the workings of the laws of nature, as miracles old and new show? Thus, thought of historically, modern “concepts of the theory of the state” took hold as analogical transfers from church to secular governance. If one looks at the German original (Schmitt 1996c, 43), one sees just how forcefully the model of analogy is articulated. Not only are variations of the term “analogy” used twice in the passage (both times adjectively), but also the term that is translated as “transferred” has as its German original *übertragen* (literally, “carry over”), both terms (English and German) serving as accurate renderings of the Greek etymon of metaphor, the “transference of a name to something analogous,” as *The Oxford Dictionary of English Etymology* puts it.

Analogies, however, are not unidirectional. Each term resembles the other. Of greater interest, therefore, is the synchronic or “systematic structure” of political theology, what Schmitt calls the “sociology of concepts” and describes as follows: “The metaphysical image of the world that a particular epoch makes for itself has the same structure as that which immediately appears to the world as the form of its political organization. The determination of such an identity is the sociology of the concept of sovereignty” (Schmitt 1985b, 46; translation modified). Admittedly, there is some syntactic confusion in the first sentence; it would seem that the epoch, not the world, should be able to perceive and recognize the suitable similarities between political form and metaphysical image.³ Nevertheless, the posited identity seems clear, and I take this passage to be Schmitt's most compact, precise, and effective definition of political theology as a description of political form. We can elaborate it more expansively: Within a well-defined historical era—the Middle Ages, the Renaissance, modernity, to use conventional markers—the intellectual class of a society constructs a metaphysical understanding of the world it inhabits. With this understanding in mind, we “immediately” see that an era's political organization conforms to its “metaphysical image.” Political theology, therefore, postulates a systematic and structural analogy—indeed, a homology—between an era's self-description and what it considers to be legitimate political governance. Belief in an omnipotent and voluntarist God, for instance, makes of the earthly sovereign an almighty lawmaker; belief in the miraculous suspension of the laws of

nature (raising the dead, parting the waters) paves the way for suspending positive law in times of great need. More powerfully, if the miracle (think the Incarnation and resurrection) is said to reveal the redemptive presence of God, then *only* the exception to the norm, not the norm itself, can reveal, explain, and preserve legal normativity in its totality (13–15). Schmitt's articulation of systemic similarity does not annul history, but his periodization, coupled with the idea of the metaphysical image, provides epochal stability in the turbulence of time. The world we live in is certainly marked by change, but, *pace* Heraclitus, history is not pure change. Between epochal ruptures, order floats on time rather like a barge on a river. The world we live in takes place on the barge, not in the water, and *as* a world it is marked by structures that are homologous, non-causal reflections of each other, structures that keep the barge from overturning or running aground. Schmitt's sociology of concepts, therefore, is itself more a metaphysical image or discursive field or poetics of analogies than it is sociology as we have come to understand that term.

For this reason, perhaps, Schmitt's sociology of concepts can be articulated only as a series of denials. It is neither couched in the terms of a Marxian base and superstructure relationship—certainly not a causal one in which one “dialectically” determines the other—nor is it sociology of knowledge along the lines later developed by Karl Mannheim.⁴ Rather, it attempts to chart a homologous correlation between an epoch's basal self-description and the self-description of all its parts (Schmitt 1985b, 45). What is sociological for Schmitt is not a causal linkage between material base and ideological superstructure, to both of which we have only conceptual access, but rather the systematic conceptual coherence of the superstructure itself, or, as Schmitt puts it, the discovery and comparison of “two spiritual but at the same time substantial identities” that commune with one another because they speak the same structural language. Schmitt therefore comes to the following conclusion:

It is thus not a sociology of the concept of sovereignty when, for example, the monarchy of the seventeenth century is characterized as the real that is “mirrored” in the Cartesian concept of God. But it is a sociology of the concept of sovereignty when the historical-political status of the monarchy of the epoch is shown to correspond to the general state of consciousness that was characteristic of western Europeans at that time, and when the juristic construction of the historical-political reality can find a concept whose structure is in accord with the structure of metaphysical concepts. Monarchy thus becomes as self-evident in the consciousness of that period as democracy does in a later epoch. (Schmitt 1985b, 45–46)

It is from within this total conceptual shift that the individual components of a theory of the state take on new forms. The single most important transfor-

mation that Schmitt identifies in *Political Theology* is the eighteenth-century metaphysical shift from theism—the belief in an interventionist, creator god—to deism—the view that the created world is left to run on its own according to mathematically comprehensible laws of physical nature.

The idea of the modern *Rechtsstaat*⁵ triumphed together with deism, a theology and metaphysics that banished the miracle from the world. This theology and metaphysics rejected not only the transgression of the laws of nature through an exception brought about by direct intervention, as is found in the idea of a miracle, but also the sovereign's direct intervention in a valid legal order. The rationalism of the Enlightenment rejected the exception in every form. (Schmitt 1985b, 36–37)

What results is a belief in the complete calculability of the modern liberal-democratic order based on legal governance that knows no sovereign above or outside the law. If, according to a theistic metaphysics, the state is ruled by an interventionist sovereign, then after the Enlightenment, the sovereign is eventually replaced by legal and economic calculability. “The general validity of a legal prescription has become identified with lawfulness of nature, which applies without exception. The sovereign . . . has been radically pushed aside. The machine now runs by itself” (48).⁶ Just as we can calculate the regular revolution of the planets around the sun, so we can also rely on the self-regulation of administrative governance without interference. It is as if divine and therefore human choice had been taken completely out of the process.

This new way of looking at the world, both physical and social, did not happen overnight. In “The Age of Neutralizations and Depoliticizations,” published initially in 1929 and now included in both the German and English editions of *The Concept of the Political*,⁷ Schmitt charts a four-century trajectory of initial stabilization and then decline, though he refuses to call it that specifically.⁸ The initial step, taken in the seventeenth century, was not a decline but a sure-footed lateral leap, a pure functional equivalency.

The transition from the theology of the sixteenth century to the metaphysics of the seventeenth century (which is not only metaphysically but also scientific—the greatest age of Europe—the heroic age of occidental rationalism) is as clear and distinct as any unique historical occurrence. . . . All the astonishing mathematical, astronomical, and scientific insights of this age were built into a great metaphysical or “natural” system; all thinkers were metaphysicians on a grand scale. (Schmitt 2007, 83)

Not coincidentally, the modern European state, that repository of concrete reason, was born mid-century out of the ruins of over a century-long religious civil war. But the fall from grace—“vulgarization on a grand scale”—begins in the eighteenth century with a deistic philosophy that spawned en-

lightenment morality (or, perhaps better, moralism), with its “humanization” (*Humanisierung*) and “rationalization” (*Rationalisierung*).⁹ From there it is no great leap to nineteenth-century secularization, abetted first by aestheticism (romanticism), and culminating in “the general economization of intellectual life and . . . a state of mind which finds the core categories of human existence in production and consumption.” Finally, in the twentieth century, we are left with nothing but “a religious belief in technology,” “a religion of technical miracles, human achievements, and the domination of nature” (83–85).

As in some of Schmitt’s other texts from the 1920s, one can easily see how this piece registers the impact of Weber’s rationalization and disenchantment theses. The narrative he offers traces the *discursive* slippage from a hierarchical world governed by transcendence to one mired in radical immanence. Schmitt attempts to shield his favored seventeenth century from the deluge, holding it up as a model of preservation through change. Theological theism transforms itself into ontological realism, maintaining, metaphysically, the truth of ultimate reality over mere deceptive empirical appearance.¹⁰ With the eighteenth-century Enlightenment, however, a more basic “semantic” shift occurs. We move from the clear distinction between transcendence and immanence to immanence with a transcendental shadow. Reality per se (Kant’s famous *Ding an sich*), like the Calvinist God, disappears from sight and remains unknowable. We replace both God and ontological reality with the transcendental subject, which fashions for itself, in cahoots with the senses, an empirical reality, the world of space, time, causation, and the physical laws that coordinate them. We transcendental subjects also replace divine and natural law with a subjectively established yet universally applicable moral law. This is what Schmitt alludes to with the term “humanization.” A true, transcendent causal origin is replaced by a human construct—the subject—which is said to fulfill the old function. Similarly, “occidental rationality,” concrete rationality hinged on an institution, like the church or state, or linked to some other authority, is replaced by an abstraction, an infinite regress of norms that knows only the subject as its source yet claims the same authority and power as God once did. Welcome to the autonomy of immanence.¹¹ From here, so this narrative implies, the steps that lead to the idolatry of production, consumption, and technology are short and rapid.

We should be concerned neither with the historical accuracy nor the critical evaluations (progress or decline) of Schmitt’s narrative. Of greater interest and apparent influence is what Reinhart Koselleck (2002, 22) calls the “reciprocal interlacing of social and conceptual history” or the act of “conjoining socio-historical and conceptual-historical questions.” Koselleck in fact credits Schmitt with being one of the founders of this research project, especially in the area of jurisprudence; hence Heinrich Meier’s (2006, 78)

disparaging reference, cited at the beginning of this chapter, to the concern “with certain ‘correspondences,’ ‘analogies,’ or ‘structural affinities’ between theology and jurisprudence.” The central conceptual distinction is between theism and deism; the socio-historical phenomena are tagged by markers like metaphysics, morality, aestheticism, economics, and technology. But these terms only vaguely point away from concepts and toward the social. Truth be told, Schmitt’s narrative remains by and large conceptual, lingering on the linguistic terrain, making comparisons, as I mentioned above, of one component of the “superstructure” with the others and showing how the alteration of one term affects the meaning of others. That these alterations ultimately have social and political consequences is of course Schmitt’s main concern, but there is little real engagement with the social in the analysis.

Niklas Luhmann finds a deficit of explicit social correlates in all of conceptual history, Koselleck’s included. The mammoth encyclopedia of lengthy essays on key concepts that anchors the conceptual history project relies, Luhmann says, on vague notions like democratization and temporalization as well as the invention of ideologies and the influence of new forms of politics, but what is missing is any correlation with basic structural shifts (Luhmann 1980, 20). Marxism of course does talk about social structure, linking ideologies with ownership of the means of production, but Luhmann finds what he looks for on a more abstract level. Societies of any complexity must suffer internal differentiation in order to cope. To understand the emergence of modernity—more to the point, to understand the transformation of basic concepts and self-descriptions of society—one must understand the shift in the form of internal differentiation. Luhmann posits two forms of structural differentiation to explain the eighteenth-century emergence of new conceptual vocabularies, definitions, and discursive fields: stratification, or the vertical ordering of society in castes or estates, in which individuals are, as it were, assigned hierarchically ordered occupations according to birth and status; and functional differentiation, a horizontal or immanent ordering of functional systems (the economy, law, education, politics, religion, the military, etc.) to which all have access. *We* can now correlate the transformation of theism and realist ontology to deism with the shift from a stratified to a functional differentiation of society. Luhmann avoids the issue of causality and rejects crude base/superstructure models, but correlation, even co-evolution, serve as terms of explanation. Luhmann more determinedly refuses to evaluate this fundamental change as either progress or decline. It just is. Nevertheless, Luhmann does share a certain disdain for the moralism and critique of Enlightenment discourse, especially as it had been carried into the late twentieth century, considering it to be atavistic. With a touch of irony he referred to Frankfurt School intellectuals as conservatively clinging to hierarchical models of evaluation that were inadequate models of understanding

the modern. In effect, Luhmann found in much of leftist critique an anachronistic mismatch of discourse and social reality.

If Adorno, and if Habermas, with their discontent with many of the features of modernity worn flamboyantly on their sleeve, were inadequate observers of modernity, what in the world can we say about Schmitt? Schmitt's typology of change from theism to deism, from transcendence to immanence, and thus from a hierarchical form of governance (monarchical absolutism, for instance) to a horizontally ordered, liberal-democratic one, would seem to dictate the extinction of the notion of sovereignty as defined by Bodin in the sixteenth century. Schmitt of course says this explicitly in his most emphatic, diachronic definition of the concept of political theology, cited above. Deism eliminates the conceptual correlate to both sovereignty and the exception. It would seem that on Schmitt's own account, therefore, sovereignty could be retained or refurbished *only* on the condition of a return or rehabilitation of an overarching belief in a theistic religion—on Luhmann's terms, only with the collapse of functional differentiation and a return of social stratification. Schmitt never gives a hint of such a need; he was never so foolish, or, on Mehring's account, so devout. Yet Schmitt *did* wish to rescue the concept and practice of sovereignty from threatened extinction. How are we to understand this?

Chapter Three

Sovereignty

Schmitt's oft-cited claim, "Sovereign is he who decides on the exception" (Schmitt 1985b, 5), is just one of the many stylistically powerful one-liners with which he opens a book, chapter, or essay. Here, the punch comes from its concision and apparent universality. No sovereign can fail to show itself when the need arises, and, when that need does arise, no political body can afford to be without this nodal point of decision. Survival depends on it. What added to the force of this formulation in the early 1920s and during the Schmitt revival since the 1980s is its counterintuitive insistence on the continued relevance of sovereignty as a political reality. With the post-1919 presumed triumph of liberal democracy in Western and Central Europe and of international legal governance centered in the newly established League of Nations, sovereignty, associated with personal rule and the authoritarian state, had been ignominiously assigned a dusty corner in the attic of history. The rule of law, separation of powers, and purportedly diminished independence of states to wage war, it was said, precluded sovereign decision. In *Political Theology*, which the above cited sentence kicks off in such an unequivocal manner, Schmitt pronounces the rumors of the death of sovereignty premature.

But how, precisely, could he reassert faith in sovereignty? Does not the opening passage of the third chapter—"All significant concepts of the modern theory of the state are secularized theological concepts," and so forth (Schmitt 1985b, 36)—tell us that the notions of sovereignty and the exception are correlatively linked to theism, and that since the Enlightenment, theism has given way to deism, which rejects the metaphysics that underlies sovereignty and the state of exception? So what does his opening impassioned articulation of the necessity of these two crucial concepts, articulated in crisp, powerful, direct, and convincing prose, mean? Are we all, as one of

his intellectual heroes, Juan Donoso Cortés, forcefully recommended in the mid-nineteenth century, supposed to convert to Catholicism or some other biblical theism in order to set our house aright?¹ As mentioned, this is certainly what many who read Schmitt through both Catholic and vehemently anti-Catholic eyes want to believe. Forced to choose between Heinrich Meier, to whom I have already referred ad nauseam, and Reinhart Mehring, who doubts Schmitt was a believer at all, I would go with Mehring. “Schmitt,” Mehring writes, “repeatedly called himself a Catholic and a Christian. That claim was always controversial and is today hardly tenable.” He concludes, “A ‘Catholic’ interpretation is today, to put it mildly, risky. If it implies a religious perspective and recognition of the primacy of the pope, it is simply false” (Mehring 2014b, 20, 23). I am willing to grant Schmitt his personal belief, whatever it may have been, but I also find deterministic readings based on his Catholicism, his anti-Semitism, or anything else, to be less than convincing and certainly not productive. Schmitt’s political theology is what Meier explicitly says it is not, a “technical term” used to chart the “secularization of theological concepts during the different phases of modernity” and “a thesis in the fields of ‘philosophy of science’ or ‘conceptual history,’ which is concerned with certain ‘correspondences,’ ‘analogies,’ or ‘structural affinities’ between theology and jurisprudence” (Meier 2006, 78). I do not deny the importance of Christian and Catholic patterns of thought; indeed, regardless of my personal non-belief, I find myself convinced of the power that the Christian amalgamation of “Athens” (ancient Greek) and “Jerusalem” (ancient Jewish) ways of thinking about the universe has over our collective imagination, even now in our enlightened, agnostic age, which is what I have tried to show. Nevertheless, if one takes Schmitt’s political theology in a non-theological way, then one is confronted with a dilemma. According to his schema of modernity, deism has replaced theism, and therefore the metaphysical image of the present age no longer supports the sovereign imagination. It supports the machine that runs by itself. We are left, then, with the task of investigating how Schmitt finds it possible to justify the resurrection of the sovereign.

SOVEREIGNTY AS *GRENZBEGRIFF*

The first thing to notice is the explicit rejection of what Schmitt considers to be the conventional definition of sovereignty. At first he merely places it in brackets. “From a practical or a theoretical perspective, it really does not matter whether an abstract scheme advanced to define sovereignty (namely, that sovereignty is the highest power, not a derived power) is acceptable” (Schmitt 1985b, 6). In chapter 2 he subjects it to a withering demolition, though not all the points he makes strike their mark. He repeats what he now

calls the “old” definition, namely that “sovereignty is the highest, legally independent, underived power” (17). One would think that this all-encompassing definition would hit the nail on the head, but no. “Such a definition can be applied to the most different political-sociological configurations and can be enlisted to serve the most varied political interests.” So what? Would not its flexibility contribute to the power of the definition? “It is not the adequate expression of a reality but a formula, a sign, a signal.” This contrast between reality (or substance) and formality is one of Schmitt’s most used ploys, but here it is less clear than usual what work it does. If a formula, sign, or signal succeeds in producing the desired effect, why complain? “It is infinitely pliable, and therefore in practice, depending on the situation, either extremely useful or completely useless” (17). He repeats himself and adds nothing pertinent to what he has already said. All this, however, turns out to be mere throat clearing. “It [the old definition] utilizes the superlative, ‘the highest power,’ to characterize a true quantity, even though from the standpoint of reality, which is governed by the law of causality, no single factor can be picked out and accorded such a superlative. In political reality there is no irresistible highest or greatest power that operates according to the certainty of natural law” (17). Bingo! The conventional definition, articulated in the sixteenth century, fit the “metaphysical image” of that age, though just barely. With God, especially a voluntarist God, still in His heaven, we have a fixed image of a highest, underived power. He serves as the unmoved mover, the primary will, the first cause. We can picture a mundane power modeled on God occupying an analogous position exercising an analogous power. But by the sixteenth century, that fixed image had already lost some of its luster and credibility. Scientific empiricism had begun to explain the world in terms of a chain of causation that knows no ultimate origin. The world could no longer be derived from first principles, but had to be explained by causal sequences that know no first empirical cause.² From a political-theological perspective, the slippage from theism to deism, from what Strauss wanted to rescue with the term “nature” to what Weber described as the resurrection of the old gods at war with each other, none able to assume absolute, non-derived authority, was already a closed book. God may indeed be the ultimate author, but the book is done, the final revisions complete, and there it is, lying before us to be read. The author can no longer be consulted, and we are left to our own interpretive devices.

Schmitt’s critique of the conventional definition serves as a recognition (even if only dimly perceived) that the concept had to be displaced onto an immanent plane. Schmitt finds this displacement already carried out by Bodin in the initial moments of its birth, not in book 1, chapter 8 of *Les six livres de la république*—“Sovereignty is the absolute and perpetual power of a Commonwealth” (Bodin 1992, 1)³—but in chapter 10:

We may thus conclude that the first prerogative (*marque*) of a sovereign prince is to give law to all in general and each in particular. . . .

The same power of making and repealing law includes all the other rights and prerogatives of sovereignty, so that strictly speaking we can say that there is only this one prerogative of sovereignty, inasmuch as all the other rights are comprehended in it. (56, 58)

Schmitt comments as follows: “Nobody seems to have taken the trouble to scrutinize the often-repeated but completely empty phraseology used to denote the highest power by the famous authors of the concept of sovereignty. That this concept relates to the critical case, the exception, was long ago recognized by Jean Bodin. He stands at the beginning of the modern theory of the state,” not because of his most cited definition, but because of his analyses in chapter 10, in which,

he always returned to the question: To what extent is the sovereign bound to laws, and to what extent is he responsible to the estates? To this last all-important question he replied that commitments are binding because they rest on natural law; but in emergencies the tie to general natural principles ceases. In general . . . the prince is duty bound toward the estates or the people only to the extent of fulfilling his promise in the interest of the people; he is not so bound under conditions of urgent necessity. . . . The decisive point about Bodin’s concept is that by referring to the emergency, he reduced his analysis of the relationships between prince and estates to a simple either/or. (Schmitt 1985b, 8)

The either/or dilemma that the concept of sovereignty was meant to decide pertains not to a hierarchical distinction—God or Satan—but to earthly antagonists, contestants for authority and control over the body politic. More fundamentally, the either/or decision postulated by Schmitt pertains to the relationship of normal order with its other, the exception that cannot be contained within order.⁴

Let me refer back to the initial definition of sovereignty that Schmitt provides—“Sovereignty is he who decides on the exception”—in its more complete version.

Only this definition can do justice to a borderline concept [*Grenzbegriff*]. Contrary to the imprecise terminology that is found in popular literature, a borderline concept is not a vague concept, but one pertaining to the outermost sphere [*der äussersten Sphäre*]. This definition of sovereignty must therefore be associated with a borderline case and not with routine. It will soon become clear that the exception is to be understood to refer to a general concept in the theory of the state, and not merely to a construct applied to any emergency decree or state of siege. (Schmitt 1985b, 5; 1996c, 13)

The “general concept in the theory of the state,” we will see, is that the state, a modern historical construct, currently houses the political, a specificity that sets it off against all other manifestations of the social, including law. The crucial term in this passage is *Grenzbegriff*. The standard English translation, “borderline case,” can be misleading. In English, “borderline concept” refers to “the ‘gray area’ or ‘twilight zone’ associated with a vague concept,” or to “a doubtful, disputed, or arguable case” (Audi 1999, 96), but the German term, *Grenzbegriff*, is technically precise. Kant gave it its definition, and it was current in modified forms in the neo-Kantianism of the late nineteenth and early twentieth centuries.⁵ Here is how Kant introduces the concept in *The Critique of Pure Reason*:

I call a concept problematic that contains no contradiction but that is also, as a boundary for given concepts, connected with other cognitions, the objective reality of which can in no way be cognized. The concept of a **noumenon**, i.e., of a thing that is not to be thought of as an object of the senses but rather as a thing in itself (solely through a pure understanding), is not at all contradictory; for one cannot assert of sensibility that it is the only possible kind of intuition. Further, this concept is necessary in order not to extend sensible intuition to things in themselves, and thus to limit the objective validity of sensible cognition (for the other things, to which sensibility does not reach, are called noumena just in order to indicate that those cognitions cannot extend their domain to everything that the understanding thinks). . . . The concept of a noumenon is therefore merely a **boundary concept** [*Grenzbegriff*], in order to limit the pretension of sensibility, and therefore only of negative use. But it is nevertheless not invented arbitrarily, but is rather connected with the limitation of sensibility, yet without being able to posit anything positive outside of the domain of the latter. (Kant 1998, 362; bold in the original)

Schmitt’s apparently vague reference to “the outermost sphere” (*der äussersten Sphäre*) in the explication of his use of “borderline concept” (see above) in fact seems precisely attuned to its Kantian origin, for nowhere else but in the “outermost sphere” does empirical reality impinge on its limit. There is no denying that his use of the term becomes more expansive in its repetition than Kant’s, and I will not pretend to be able to squeeze everything Schmitt says about sovereignty into the sausage skin called *Grenzbegriff*. But I do believe a Kantian understanding of the concept brings greater clarity to what Schmitt is after.

From Kant’s definition and the example (*noumenon*) that he uses, we see that a borderline concept need not be empirically verifiable. Indeed, its point may be to refer to the outside of the empirical. In Kant’s example, its function is (a) to reveal the contingency of the existing order (“for one cannot assert of sensibility that it is the only possible kind of intuition”), and (b) to serve as a limit to the claims of totality that the existing order is always tempted to make (“in order not to extend sensible intuition to things in

themselves,” “in order to limit the pretension of sensibility”). A borderline concept, therefore, has a negative function. The *noumenon* (*das Ding an sich*, reality per se) may have a positive reality, but, though its existence is thinkable, its makeup remains fundamentally unknowable.⁶ Its function is to reveal the empirically known as a contingent, limited whole that may be inspected *as if* from the outside. To say the concept is of “negative use” is not to say that it is an arbitrary construct; it is, on the contrary, a necessary complement to sensibility (the knowledge produced by the senses) in that it shows the latter’s limitations, its possibilities *and* impossibilities. Plain and simple, a borderline concept is both a condition of possibility—without the *noumena* the phenomena would not be—and a limitation of that possibility, revealing a larger whole of which sensibility is only a part. *In nuce*, Kant’s borderline concept functions to disabuse us of the temptation to equate empirical reality with reality per se.

Accordingly, we must ask the question, If sovereignty is a borderline concept, what “negative” function does *it* serve? What does it reveal? Schmitt identifies what he considers to be Bodin’s true definition of sovereignty in its linkage to law, specifically the ability to enact and to repeal laws. “Because the authority to suspend valid law—be it in general or in a specific case—is so much like the actual mark of sovereignty, Bodin wanted to derive from this authority all other characteristics” (Schmitt 1985b, 9). Though technically under the strictures of natural law, an emergency can trigger a state of exception that gives free rein to act in the interests of the political community in toto. In Schmitt’s definition we have, in effect, the linkage of two borderline concepts—sovereignty and the exception. The exception reveals the contingency and the limit of order in general; it even reveals the existence of sovereignty. “It is precisely the exception that makes relevant the subject of sovereignty, that is, the whole question of sovereignty” (6). Invoking the borderline concept of the exception, sovereignty, also a borderline concept, reveals the contingency and limit of law—more exactly, the ultimately impotent, overextended *pretension* of law to exhaust the whole of political order (here we see the parallel to Kant’s complaint about the pretensions of sensibility to encompass the whole of reality). Indeed, the opponents that Schmitt stalks in the first two chapters of *Political Theology* are the proponents who advance the thesis that the state can be reduced to law, that the state is nothing but law, and that law is a total, seamless, exhaustive whole.⁷ Sovereignty is the borderline concept that reveals and draws a line against law’s transgression and hubris. The law is not the be-all and end-all of the political; it is not a self-sufficient whole that consumes the state; it is not the *noumenon* of the political.

There is one more aspect of this view of sovereignty that must be discussed, but first we ought to pay some attention to Schmitt’s critique of the law’s self-proclaimed triumph over the state.

STATE AND LAW

The multiple German states that existed between the end of the Napoleonic wars and the unification of Germany in 1871 were largely monarchical. Because of the political and social movements coursing through Europe—pertinent years were 1830 and 1848—monarchs were gradually forced to grant concessions to “the people,” meaning the educated, propertied bourgeoisie. As a result, executive authority was increasingly checked and balanced by parliamentary legislative and budgetary power. Bubbling underneath political turmoil was the question of where sovereignty truly lay, with the monarch or the people. In the German states and later in Prussian-led, united Germany, a compromise was struck on theoretically delicate premises. Sovereignty lay neither with the monarch nor the people, but with the state as a rights-bearing, juristic person. If the state is an “organism,” or better, a “corporate body,” then, as a “fictive person,” it could be thought of as the locus of sovereignty. What at first glance appears to be the exaltation of the state reveals itself on closer inspection to be the evasion of the question of sovereignty altogether and thus an opportune opening for German liberalism and the idea of the *Rechtsstaat*, the German term designating the liberal, rule-of-law state. If the state is sovereign, then it is neither the inherited personal possession of the monarch nor simply the name given to the general will of the collective body that calls itself “the people.” Rather, state sovereignty becomes the third term that mediates between monarchical and popular claims to sovereignty, making the king and popularly elected parliament mere organs or instruments of the state. In this way, the vexed question of who is the constituent power of a political unity remains unanswered because unasked.⁸ Neither king nor people stand outside the state as its origin; both are subjects of and subject to the state.

One sees this strategy at work right from the get-go in Wilhelm Eduard Albrecht’s response to the Hanoverian state crisis of 1837. The new king, Ernst August, refused to recognize the validity of the 1833 constitution, written under the influence of the 1830 revolution, to which his predecessor had pledged his allegiance. Albrecht, one of the Göttingen Seven, those university professors (including Jacob and Wilhelm Grimm) who protested the new king’s actions publicly (and were therefore summarily dismissed from their positions), focused on a jurisprudential critique rather than a popular-political one. It was not in the name of “the people” that Albrecht protested, but, as it were, in the name of the legal status of the state. Thus the king’s actions, Albrecht claimed, rested on a misunderstanding of public law. As a public agent, the king, like any other public institution, including the legislature, is but an “organ” and sworn servant of the state, neither its “owner” nor constituent power. The state itself is a juristic person that acts through the directives of its organs. As a fictive person that outlives its

various agents, the state is “sovereign” in the sense that it perdures and thereby transcends the private will of its mortal executors.⁹

One can see the full fruition of this view in Georg Jellinek’s *Allgemeine Staatslehre* (General theory of the state) of 1900. In attempting to define the nature or essence (*Wesen*) of the state, Jellinek entertains various options, including both popular and monarchical sovereignty. He rejects both pretenders to the throne of constituent power as helpless fictions that rest on obvious errors. There is, for instance, no empirically or psychologically verifiable collective known as “the people” with a unified will, only a collection of contiguous individuals (“die nebeneinander stehenden Individuen”); thus there is no way to add together or otherwise gather this grouping of individual inclinations into a general will. What, therefore, appeared so obvious at first—the will of the people—turns out to be a juridical doctrine that has not been clearly thought out (“eine unklar gedachte juristische Lehre”) (Jellinek 1900, 128–29). If there is to be a juristic person that must serve as the source of sovereign power, then that “person” is the state itself. Though the state can be construed as a concrete reality, its empirical facticity must not be confused with its normative power as a juristic person (145). Rather, as a juristic person the state is a legal subject (*Rechtssubject*), which is, as Jellinek affirms, a purely juridical concept. For a person to be a subject of law does not mean that she thereby acquires substantial being, but rather that she stands in a particular relation to the legal order by virtue of the legal capacities or qualities granted to her by law. Since every “subjectification” (*Subjektivierung*) of a collective (*Menschengesamtheit*) is itself a necessary fiction, so too is the juridical personhood of the state. It is not the fact that a collective (“the people”) has an existentially substantive unity; rather, the existential collection of individuals is “raised” to the status of a collective by virtue of the legal order. Thus the state “embodies” that collective by fashioning itself as a corporate body, a legal “person” (150). Having gone this far, Jellinek now needs to define the state’s relationship to law. Since there is no natural law that stands above or prior to the state, all law is positive law—that is, state law. Yet, though the state is the occasion for law, the state cannot stand outside law, cannot willfully exist without law in a condition of anarchy; rather, it must bind itself—Jellinek speaks of *Selbstverpflichtung* (“self-obligation”)—to a particular form of law.¹⁰ Sovereignty, therefore, is not absolute autonomy above all limits but rather the capability that the state has of self-determination *and* self-limitation under the law (434, 438).

Once one unlinks sovereignty from the notion of a constituent power and thinks of it simply as a legal feature of the state, one is but a short step away from denying the state altogether. In masterly fashion, Hans Kelsen carries out the demolition. Though Kelsen ridicules the logical gymnastics that he finds in Jellinek’s reasoning (and I have only scratched the surface in the above portrayal), rather than simply rejecting Jellinek, he draws what he

believes to be the inescapable logical conclusion of all this contorted maneuvering, namely that the state does not stand in any kind of relationship to the legal system simply because it is *identical* to it. More polemically put, there is no state, only law, which makes law sovereign (Kelsen 1928, 13, 86–87). With great hermeneutical acuity, Kelsen teases out this conclusion from Jellinek’s own words. When Jellinek characterizes positive law as the highest underived conviction that norms should be obeyed, he unconsciously betrays a realization that legal positivity (*Rechtspositivität*) and state sovereignty are identical. The sense that positive law cannot be derived from anything higher, Kelsen notes, nullifies the necessity of assuming the existence of the state, for in defining law Jellinek has inadvertently given us all we need to know about sovereignty.

In a more explicit and far more rigorous fashion than Jellinek, Kelsen operates within a neo-Kantian framework, emphasizing the difference between existence and validity. Norms (“values”), neo-Kantian moral and legal philosophers were fond of saying, do not exist, they are valid: “Seiendes ist, Werte gelten,” “the existent is, values have validity” (Schnädelbach 1983, 199; 1984, 163). Thus the mere existence of the legal system or the psychological response of citizens does not explain its normative force. For this Kelsen must, in effect, reintroduce a version of sovereignty as the highest, underived power in the form of a basic norm (*Grundnorm*), and he does it in the following way. Step 1: Kelsen equates the state with its legal system and thus denies the preexistence of a constituent power. “What is understood as the form of state is simply a particular case of the form of law in general. . . . It is the constitutionally governed method of creating general norms that is captured in the concept of the form of state” (Kelsen 1992, 91). Step 2: “The law governs its own creation,” by which he means “It is a legal norm that governs the process whereby another legal norm is created.” The resultant legal system, then, “is a hierarchical ordering of various strata of legal norms. Its unity consists in the chain that emerges as one traces the creation of norms, and thus their validity, back to other norms, whose own creation is determined in turn by still other norms.” Step 3: The threatened infinite regress is halted by recourse to “the basic norm—the hypothetical basic rule—and thus to the ultimate basis of validity, which establishes the unity of the chain of creation” (63–64). In sum: The concept of the state is a fiction because really there is nothing but a system of laws. The validity of law comes from its unity, which is a chain of ascription, each law derived from a higher-level law. Since validity cannot be derived from actuality, the validity of this entire chain of legal creation must come from a logical point of origin. That point cannot be “known” (for the realm of validity is not the realm of knowledge); thus it must be posited. Behold: The *Grundnorm*.

The Pure Theory of Law works with this basic norm as a hypothetical foundation. Given the presupposition that the basic norm is valid, the legal system resting on it is also valid. . . . The basic norm is simply the expression of the necessary presupposition of every positivistic understanding of legal data. It is valid not as a positive legal norm . . . but as a presupposed condition of all lawmaking. (58)

In other words—in neo-Kantian words—the basic norm does not exist but is presupposed, and as presupposition it is construed to serve as the ground for legal validity. To “locate” it, as it were, one works backward from an existing fact—an existing legal system, for example—and then uses the thereby established basic norm as a legitimating source. In effect, Kelsen has reinvented and refigured the conventional, “old” notion of sovereignty as the highest underived power, only the power is said to be purely normative, not based on will.

In his introduction to the English translation of Kelsen’s work, Stanley L. Paulson refers to this method of reasoning as the “regressive version of [Kant’s] transcendental argument,” which Kelsen learned from the great neo-Kantian philosopher, Hermann Cohen.¹¹ Paulson quotes Cohen to the effect that “enquiry is directed not to the process and apparatus of cognition,” thus avoiding subjectivity, “but to its result, to science itself. Then the unequivocal question arises: from *which presuppositions* does this fact of science derive its certainty?” (Kelsen 1992, xxxix). Kelsen’s fact of science is law, the actually existing legal system. The goal of Kelsen’s Pure Theory of Law, therefore, is “simply to raise to the level of consciousness what all jurists are doing . . . when, in conceptualizing their object of enquiry, they reject natural law as the basis of the validity of positive law, but nevertheless understand the positive law as a valid system, that is, as a norm, and not merely as factual contingencies of motivation” (Kelsen 1992, 58). It is not the law’s positivity that legitimates it, nor is it some external (human) or transcendent (divine) will or natural order of the universe but rather the necessarily presupposed, transcendental basic norm as the source that “constitutes the unity in the plurality of all norms forming a system” (55) and thus the starting point of a procedure that guarantees the validity of posited law (56). The validity of the form of state which is the legal system does not come from the decision of an embodied constituent power but from a constituent procedure derived from a presupposed but factually nonexistent basic norm.¹²

In sum: What exists is a closed, self-sufficient legal system, not the state, neither as a juristic person nor as something that exists outside of or in any way exceeds law. What legitimates the state is neither monarchical nor popular sovereignty, but the validity of a basic norm that, by being presupposed, completes the system and presents it as an all-encompassing unity. Though structurally the basic norm could be confused with a borderline concept, it

has the opposite function. Whereas sovereignty is meant to reveal the limitations of law, the basic norm creates a world in which nothing but the law exists. The former allows us to look at law as if from the outside, the latter knows no outside. To take a position outside the law is to take the position of the sovereign. Kelsen would view this as a breach of the law and thus illegitimate. Schmitt views this breach as built into the structure of law, which simply cannot exist self-sufficiently. Just as the realm of the *noumena* is constitutive of the phenomena (where knowledge resides) by showing its limits, so too sovereignty is constitutive of law by showing where law begins and ends. Pithily, if too clever by half, we can say: If everything is law, nothing is law. Politically, if with an overactive pathos, we can say: If all we have is law then law is tyranny.

THE PHANTOM SOVEREIGN?

In his own essay on political theology, “Gott und Staat” (God and state), published in the 1922 issue of the philosophical journal *Logos*, Kelsen traces a genealogy of modernity in broad strokes that are similar to those of Schmitt. The traditional conception and theory of the state is analogous to the traditional ideas of God in theology, the soul in psychology, and force in physics. Like God and Soul, the juridical personality of the state relies on the now antiquated notion of substance. Modern science has replaced the concept of substance with function,¹³ which has introduced a modern form of psychology without relying on the soul, a modern physics without a theory of force, and, by analogy, a modern theory of the state without the state. In pantheism, the supernatural God has been absorbed by nature, which itself has now been freed of all metaphysical attributes by the natural sciences. Law therefore has been freed both from the transcendent attributes of natural law and from its dependence on any notion of the state to become a “purified *science of positive law*.” The “pure theory of law,” therefore, is also a “pure theory of the state, because any theory of the state is now possible only as a theory of state law, and all law is now state law because every state is the rule of law (*Rechtsstaat*)” (Kelsen 1922, 284).

If we set aside for the moment that Kelsen uses the word “state” generically and that Schmitt uses it historically (as an invention of the seventeenth century), their trajectories, not surprisingly, are similar. Schmitt labels the generative motor of theological change “deism,” Kelsen “pantheism”; whereas Schmitt evokes morality, aestheticism, the economy, and technology as the agents of secular change, Kelsen credits the natural sciences with de-theologizing the modern world. In either case, whether natural or social, the modern machine runs by itself. However, whereas Schmitt, in tune with conservative and Marxian critics alike, bemoans the decay as the rationaliza-

tion or reification of the modern world, Kelsen's is a triumphalist narrative. God is dead. Long live the machine! He seeks to oil the new machine, or rather to convince us that the new machine is self-oiling. We may cast our worries aside as long as we resist the temptation to mourn the demise of God and Soul.

What should strike the reader is the fact that Kelsen's narrative is consistent, whereas Schmitt's seemingly suffers a central contradiction. For a cultural or social order in which secularism (agnostic, if not atheistic) becomes the public gospel (regardless of private belief), the political and legal language reflects the change by purging those concepts that echo the now displaced theological presuppositions. The result for Kelsen is the triumph of an entirely new political and legal language, shorn of the legacies of the past, a triumph he celebrates. Schmitt not only refuses to celebrate, he resists. Chapter 3 of *Political Theology* narrates the loss of belief in theism and thus the loss of a discursive field in which political-juridical concepts like sovereignty and exception have resonance. Yet the first two chapters of the same book plead for the necessity of thinking exception and sovereignty. How, short of a theistic revival, is this possible? This is the question Schmitt implicitly answers.

Schmitt's rejection—even in *Bodin*—of the traditional definition of sovereignty as the highest, underived power is an attempt to fashion a non-transcendent, non-hierarchical notion of sovereignty that, as a borderline concept, places itself *outside* of law, but nevertheless on the same plane as law. Even within immanence, distinctions must be made. These distinctions may operate in a symmetrical or in an asymmetrical manner, but no asymmetry may replicate hierarchical differences. Kelsen is right to replace substance with function but wrong to deny that one of the functions of functionality is to differentiate when differentiation is needed. As the carrier of the political (until further notice), the state must differentiate itself from law, just as the political as the carrier of public identity and the public good must differentiate itself from the social as the realm of private individual freedom. It is this felt necessity to distinguish the political from the social, state from society, public from private, and consequently democracy from liberalism that we will investigate in part II of this study. But first, one final word on sovereignty as a borderline concept.

Kant's example of a *Grenzbegriff* is the *noumena*, a reality per se that can be conceived but not perceived, thought but not known. Its necessary function is to limit the presumptive claim that empirical knowledge of the world is knowledge of the world per se, to deny, in other words, its claim to unity and totality. If sovereignty is also a borderline concept, does that mean that the sovereign—he who decides on the exception—also can only be thought but not known or perceived? Schmitt does not write that way. His language is nothing if not direct, adamant. Yet we will also see in part II that Schmitt can

think the sovereign, can name the sovereign, but in fact cannot find the sovereign in the empirical world that is the constitution. At best we seem only to be able to register “acts of sovereignty,” though the apparent agents of those acts are not the true authors. In *Political Theology* he writes that in “the public interest or interest of the state, public safety and order, *le salut public*,” the sovereign “decides whether there is an extreme emergency as well what must be done to eliminate it. Although he stands outside the normally valid legal system, he nevertheless belongs to it, for it is he who must decide whether the constitution needs to be suspended in its entirety” (Schmitt 1985b, 6, 7). In *Constitutional Theory*, the people occupy that position. As the sovereign constituent power, they remain outside, next to the constitution that they have authored; as a constituted power, they remain within the constitution exercising their rights and duties as citizens. This latter, empirical body of the people is the only body we can actually perceive and know. However, in a democracy, the people as constituent power remains as unknowable as the *noumena*, but it may never be doubted.

II

State versus Society

Civil Society is the [stage of] difference [*Differenz*] which intervenes between the family and the state, even if its full development [*Ausbildung*] occurs later than that of the state; for as difference, it presupposes the state, which it must have before it as a self-sufficient entity in order to subsist [*bestehen*] itself. Besides, the creation of civil society belongs to the modern world, which for the first time allows all determinations of the Idea to attain their rights. If the state is represented as a unity of different persons, as a unity which is merely a community [of interests], this applies only to the determination of civil society. Many modern exponents of constitutional law have been unable to offer any view of the state but this. In civil society, each individual is his own end, and all else means nothing to him. But he cannot accomplish the full extent of his ends without reference to others; these others are therefore means to the end of the particular [person]. But through its reference to others, the particular end takes on the form of universality, and gains satisfaction by simultaneously satisfying the welfare of others. Since particularity is tied to the condition of universality, the whole [of civil society] is the sphere [*Boden*] of mediation in which all individual characteristics [*Einzelheiten*], all aptitudes of birth and fortune are liberated, and where the waves of all passions surge forth, governed only by the reason which shines through them. Particularity, limited by universality, is the only standard by which each particular [person] promotes his welfare.

—Georg Wilhelm Friedrich Hegel (1991, §182, Addition [H, G])

Since life represents a constant struggle of the personal self-determining element with the non-personal and the natural elements, the life of the human

community is a permanent struggle between the state and society. If this is correct, a perfect and undisturbed harmony between state and society, a condition in which society is completely merged with the state, is as unattainable as the Divine. An absolute peace between both is precluded by the very essence of life. And it is also certain the complete dissolution of the personal in the unpersonal, the extinction of the idea of the state within the order of society, means the death of the community. The world does know death. There are no perfect nations, but there are dead nations. They are the ones which no longer have a state, i.e. those where the power of the state is completely concentrated in the hands of society. The character of a nation's life emerges in the constant struggle between state and society.

—Lorenz von Stein (1964, 51)

The long struggle of the alpine communities of Graubünden to retain vital self-government . . . suggests that freedom need not be incompatible with communal collectivism; that autonomy for the individual can be won through political participation in self-governing communities; that politics need not always be defined by self-interest but can instead itself define public interest; and that citizenship can help give meaning and purpose to human life. And, finally, it hints that if the world produced for us by modernization—an affluent world of privatistic materialism secured by power, guided by competitive self-interest and protected by law—is inhospitable to such values, it may be a world that even at its very best requires radical remaking.

—Benjamin R. Barber (1974, 274)

In part I, I suggested that political philosophy and political theology—reason and authority—unite (indeed, are inseparable) in their opposition to “social philosophy.” Social philosophy is the term used by Leo Strauss to label the prevailing Nietzschean/Weberian description of modernity as the loss of meaning, a “loss” that Weber more positively describes as the heroic refusal to sacrifice the intellect. On the latter’s view, the disenchantment of the world is in reality a world seen through the eyes of responsible adults, not “overgrown children.” Any flight from intellectual probity, Weber admonishes us in his 1917 lecture, any resurrection or reinvention of magic elixirs that heighten our senses but dull our mind, would be an act of cowardice. Weber’s lecture was quite deliberately delivered as a challenge to a youthful audience—primarily addressed to students and docents—advising them to give up their childish ways and become sober members of the academy. A still relatively young Carl Schmitt felt the slap and took the challenge seriously. His response to Weber’s provocation was “politically theological” in both a decisionist (“Protestant”) and institutional (“Catholic”) way. Sovereign is he (she or it) who decides on the exception. The exception reveals contingency and thus requires that human beings face their freedom, but the decision that contingency allows and demands is constrained by the history

and order in which it is embedded. Secular history, in turn, is vouchsafed by a delayed promise. In the *Endzeit* between the first and second coming of Jesus, the epoch of the *katychon*,¹ of history as a now near two-millennia-long pause, any belief in the active intervention of God or of a divinely inspired, revelatory reason as truth would be both vain and in vain. The *viator* on his or her journey through life has not been abandoned, but has been firmly implanted in a divinely created yet terrestrially governed world. Through a combination of revelation and reason, God (or rather, theology) has given us patterns of thought and behavior, modeled on His own, that continue to guide us in our worldly ways. But these divine patterns must be instantiated by secular institutions in imperfectly secular ways.

In part I, I also suggested that the theological pattern traced by the distinction between God's absolute and ordained power, coupled with a "concrete" notion of reason anchored in authority, could be seen as a model for Carl Schmitt's various attempts to reinvigorate a politically and legally meaningful concept of legitimacy capable of challenging early twentieth-century legal positivism and rule-of-law liberalism. In this section, we will see variations of this pattern, learned only partly from theological models. It appears most forcefully in the constitutional distinction between a constituent power (*pouvoir constituant*) and a constituted power (*pouvoir constitué*), but also in the fundamental difference between democracy and liberalism. In modern democracies, "the people" ("We the people") as a collective singular is considered to be the ground, the origin, the legitimacy of the constituted order in which people as individuals conduct their daily lives. This almost ignored commonplace is charged with enormous significance by Schmitt, for the people as constituent power never disappears, always remains just under the surface of the constituted order. Just as God's ordained order is contingent and, at least in theory, susceptible to change, so also is any given constituted political order. What the people as a collective singular has² created, the people may also tear asunder. Liberal theory, as afraid of popular sovereignty as it was of monarchical dominion, theorizes the disappearance of the constituent power once a political order has been constituted. This, after all, is the definition of deism. The "will" that creates order is no longer necessary, for order is now said to be self-perpetuating. The words, the machinery of the constitution suffice, and constituted positive law becomes sovereign.

In the following chapters of this section we will see how Schmitt manipulates variations of this basic pattern of thought. However, framing our discussion will be a relatively neglected nineteenth-century dichotomy, the distinction between state and society. On Niklas Luhmann's reading of modernity, the writings of Adam Smith and the French physiocrats mark the emergence of an autonomous economic system that differentiates itself from the political—the state—in its analyses and championing of the so-called free market and global commerce.³ The famed "invisible hand" not only represents the

trace of the absconded God, but also signals the self-organizing and self-producing and reproducing capabilities of all the emerging social systems. God in his watchtower is no longer needed. These initial eighteenth-century declarations of system independence are then theorized in the nineteenth century, most eminently by Hegel, as the relationship between state and society. If from the perspective of late twentieth-century “social philosophy” (represented by Weber’s heirs) the state is simply the traditional name given to the political system, which is charged with producing collectively binding decisions according to recognized procedures, for Hegel and those nineteenth-century thinkers, like Lorenz von Stein, who most closely followed him, the state represented the objective order of *Sittlichkeit*, the ethical and political unity and self-determination of a people. Whereas society (economy, education) emerged as the realm of individual freedom, marked most forcefully as the free play of individual interest, the state rises to the task of guaranteeing the interests of the political community as a whole in opposition, if need be, to the singularly self-serving interests of social agents. Hegel, as was his reconciliatory wont, saw the emergence of individual liberty as the final stage of historical development; thus society functions as the mediating force between two ethical bodies, the (patriarchal) family and the communally oriented state.⁴ Crudely put, the (male) individual emerges from the bosom of the family to become a free person in the institutions of society, but then is integrated into a larger family, as it were, namely that of the communally oriented nation-state. Lorenz von Stein, a relatively unfamiliar name in the Anglophone world, fully accepted Hegel’s differentiation of state and society, but was quite a bit less sanguine about the ideal of reconciliation. In reality, society was a field of war, if not of all against all, then most certainly of group or class against class. Whereas Marx—or at least Marxists—also postulated the coincidence of individual and common interest, albeit in a society emancipated from all or most of the trappings of a state, Stein posited the necessity of the state to intervene in society’s perpetual warfare on behalf of the political community as a whole to ensure the rudiments of civic peace and thus the continued existence of the collective. The main instrument of state power in this regard was the professional, nonpartisan bureaucracy, the very institution that every libertarian liberal and eschatological would-be radical loves to hate.

Carl Schmitt was even less sanguine about the effects of individual liberty on the ability of the state to maintain the political unity and thus collective independence of the people. What disturbed him were what he believed to be the corrosive effects of individual liberties guaranteed by putatively pre-political rights, especially the right of conscience, otherwise known as religious freedom (though the right to private property was not far behind). In 1895, Georg Jellinek published a short study on the 1789 French Declaration of the Rights of Man and Citizen, attributing its inspiration to the enumera-

tion of rights in the various state constitutions of the nascent revolutionary republic in North America, most notably the 1776 constitution of the Commonwealth of Virginia. Jellinek highlights the foundational importance of a single right, the above-mentioned religious freedom. “With the conviction that there existed a right of conscience independent of the State was found the starting-point for the determination of the inalienable rights of the individual” (Jellinek 2009, 42). From this initial right, there follows a list of additional freedoms with which we should all be familiar. Jellinek finds symbolic value in the prominence these rights have in the various North American state constitutions. “Everywhere the bill of rights forms the first part of the constitution, following which as second part comes the plan or frame of government. The right of the creator of the state, the originally free and unrestricted individual, was first established, and then the right of that which the individuals created, namely, the community” (44). In other words, the community, represented by the state, is derivative of and therefore delimited by the individual, who exists, fully individuated and possessed of rights, before the state community is ever formed.⁵

In his *Constitutional Theory*, Schmitt makes much of this invasion of rights into the sphere of the political. Acknowledging that a controversy exists about the historical accuracy of Jellinek’s claim, namely the prominence of the right to conscience, Schmitt nevertheless affirms its *conceptual* priority. With the loss of religious unity following the Protestant Reformation and the resultant resolution of the religious civil wars, two options remained open to the individual European states. By establishing a state religion under the motto *cuius regio, eius religio* (whose realm, his religion), the Central European, confessional states subordinated religion to state authority, tolerating minority religions, if at all, as state-protected communities. However, Anabaptists and Puritans, Schmitt notes, found a different solution. “In the logic of their posture toward the state and toward every social bond lay an absolute *privatization* of every religion,” which “did not mean that religion lost its value—quite the opposite. The state and public life generally were rendered relative and devalued. Religion as the highest and the absolute thing becomes the affair of the individual” (Schmitt 2008a, 198). Against the truth of personal conviction, all social formations and, above all, the political formation called the state, retain only relative if not directly negative value. By way of this creation of an inviolable private sphere, the state is hollowed out and weakened. If the individual is the fundamental unit of human interaction, its power, to use Schmitt’s characterization, is in principle unlimited, and the power of the state is in principle limited (197–98), and so the weakening of state action begins.

In contrast, Schmitt posits the primacy of the political collective over the self-judging conscience of the solitary and acquisitive individual—in other words, of the state over society. In his writings of the late 1920s, especially

Constitutional Theory, this distinction is coded as the difference between democracy and liberalism as well as between the public and private, which is what we will investigate in a subsequent chapter. However, in *The Nomos of the Earth* (originally published in 1950), almost as if compelled to provide his own “state of nature” narrative to compete with Hobbes, Pufendorf, Locke, Rousseau, et al., Schmitt gives us his own version of the origin of law and thereby of the political community, and the primary elements of his just-so⁶ story are land and a people. Perhaps because the noun “earth” (*die Erde*) in German is grammatically feminine (but then, even we Anglophones speak of Mother Earth), Schmitt easily slips into a gendered mythology in which the “the fertile earth” becomes the “mother of law.” Her “womb” contains an “inner measure” that rewards human labor, which manifests itself in the establishment of the clear “demarcation of fields, pastures, and forests” and delineation of the earth’s surface by “fences, enclosures, boundaries, walls, houses, and other constructs.” As a result, “families, clans, tribes, estates, forms of ownership and human proximity, also forms of power and domination, become visible” (Schmitt 2003, 42).⁷ The visibility of power (*Macht*, which can also refer to authority) and rule (*Herrschaft*, translated as “domination”), best embodied by the representative individual, is all-important for Schmitt.⁸ To the “abstract definition of terms found in modern textbooks, which are geared to so-called norms” (45), Schmitt opposes foundation narratives, “the great primeval acts of law” that ground their meaning first and foremost in “terrestrial orientations”—that is, the appropriation and division of land by a community establishing itself as a legal and political entity. To drive this stake in the ground firmly and deeply, allow me the indulgence of stringing some passages together from the first chapter of *Nomos*. Following the citation of a passage from Isidore of Seville (from his *Etymologia*, as reproduced in the first part of *Decretum Gratiani*) regarding the essence of international law, which leads off with land-appropriation and the founding of cities, Schmitt continues:

For the most concrete determination of what one calls international law, any medieval enumeration and listing of contents is illuminating even today, because appropriating land and founding cities always is associated with an initial criterion embodying all subsequent criteria. . . . The first order of all ownership and property relations is created by the initial division and distribution of the land. Whether public or private, collective or individual, or both, ownership derives from this initial land-division. . . . In historical reality, every imaginable possibility and combination of legal and property titles abound. But even when the initial land-division establishes purely individualistic private ownership or common clan ownership, this form of property remains dependent on the common land-appropriation and derives legally from the common primeval act. To this extent, every land-appropriation internally creates a kind of *supreme ownership* of the community as a whole, even if the

subsequent distribution of property does not remain purely communal, and recognizes completely “free” private ownership of the individual. (45)

Ultimately, then, “land-appropriation . . . is the primary legal title that underlies all subsequent law. . . . Land-appropriation also precedes the distinction between private and public law; in general, it creates the conditions for this distinction” (46). Therefore, “the constitutive process of land-appropriation is found at the beginning of the history of every settled people, every commonwealth, every empire. . . . Not only logically, but also historically, land-appropriation precedes the order that follows from it. It constitutes the original spatial order, the source of all further concrete order and all further law. It is the reproductive root in the normative order of history. All further property relations . . . are derived from this radical title” (48).

I have quoted Schmitt on this point at great length not to convince you of the truth of his argument, but to demonstrate both the source and the passion of his critique of pre-political individual rights. The agent of Schmitt’s foundational narrative is most adamantly not the solitary individual who must bargain and establish contracts with other solitary individuals in order to form political unions, but rather *organized communities*, social formations that we can imagine as patriarchal (or matriarchal) extended family structures in a state of nature that eventually establish their political existence by occupying and administering land in distinction from other communities endeavoring to do the same. If through communal land appropriation a constitution is formed, that is, a familial or other social formation is transformed into a political unity, then the individual has a status only *within* that community; therefore, what rights such an individual has derive not from “natural law” but from the “radical legal title” established by the community through the settlement and cultivation of the land. There is no “natural right” to private property, conscience, religion, and so forth, only the rights derived from the community, which may indeed include the right to property, conscience, and religion, depending on the sensibilities of “the people” who establish themselves as a political unity. If Jellinek’s reading of the American state constitutions is correct—if, by way of the initial enumeration of individual rights, the “creator” of the state (the individual) preserves its superiority over the state—then it can be said that on Schmitt’s reading, the creator of the state (the community) does likewise. In the former, the rights of the community as represented by the state are derived from the individual; in the latter, the rights of the individual are derived from the community. We can fill in the blanks in any number of ways, but no matter which way we turn, we are pitting putatively individual rights (so-called subjective or human rights) against the supposed common good (*salus populi*)—individual liberty against popular sovereignty, the self-determination of a person against that of

a people. By the nineteenth century, this conflict was labeled the battle between the state and society.

Chapter Four

Theorizing State and Society

As political theorists and classical scholars well know, the idea of liberty was articulated quite differently in Greek antiquity than it is today. In Athenian democracy, citizens (non-foreign, non-slave adult males—a small percentage of the total population) were the true source of all political decisions, as they participated directly and often in open-air assemblies to discuss and make laws, set policies, hold leaders accountable, and even declare war or make peace. As M. I. Finley states, the members of the polis felt themselves to be members of a community (*koinonia*) “in which the bonds were not merely propinquity and a common way of life but also a consciousness of common destiny, common faith.” Educated by all Athenian institutions small (the family) and large (the political assembly itself), a young man gained a *pai-deia* (formation or *Bildung*), a sense of civic responsibility that fostered the virtues of public service (Finley 1985, 29–31). The distinction between the public and the private (the household) certainly existed, but refusing one’s public duties in favor of private pleasures was considered pathological. In the words of Thucydides: “We consider anyone who does not share in the life of the citizen not as minding his own business but as useless” (cited by Finley 1985, 30). Liberty, then, meant citizenship, the right and duty to participate directly in political decisions. Liberty meant integrating oneself in one’s community.

Finley, writing in the wake of the European and North American political protests of the 1960s and ’70s, offered this image of public participation in opposition to the “elitist” theory of democracy, which promotes a “*de facto* oligarchy of professional politicians” underwritten by “popular political apathy” (Finley 1985, ix).¹ However partial and idealized such a contrasting view of the ancient political community may or may not be, it has served as an object of desire and nostalgia on many occasions. Although Schmitt

spends little time on the virtues of the ancient Greek polis in his writings, the picture presented here of public duty unhindered by the “pathology” of private rights would surely have pleased him. More controversially perhaps, I believe that Walter Benjamin’s “white eschatology,” which longs for an unknown and unknowable yet thoroughly purged future,² also trades on this Greek ideal. You will recall the basic structure of his 1921 “Critique of Violence.” A debased and perniciously instrumental “mythic violence” is opposed by “divine violence.” Subsumed under mythic violence is the legal order, characterized by the further distinction between lawmaking and law-preserving violence. Lawmaking violence is explicitly identified with constitutional law and thus with the modern state (Benjamin 1996, 248). If we look over Benjamin’s shoulder, we see the silhouette of Georges Sorel (to whom Benjamin refers repeatedly) and recognize the latter’s famous distinctions between force, represented by the power of the state, and violence, the explosive, cleansing, revolutionary destruction exercised by the general strike.³ Just as Sorel finds the need to make a firm distinction between an absolutely negative “force” and absolutely positive “violence,” defining the “object” of the former to “impose a certain social order” and the purpose of the latter to be “the destruction of that order” (Sorel 1999, 165–66),⁴ so Benjamin confronts the “perniciousness” of the “historical function” of “all legal violence” with its “destruction” that “becomes obligatory” (Benjamin 1996, 249). And just as Sorel believed that Marx’s “social revolution” would serve as an “*irrevocable transformation*” that “would mark an absolute separation between two historical eras” (Sorel 1999, 129), so Benjamin too believed that “on the abolition of state power, a new historical epoch is founded” (Benjamin 1996, 252). The agent of this fundamental transformation is the “pure immediate violence,” the “unalloyed violence” (252) that is divine violence. And almost as if carried away by a vision, Benjamin offers us a crescendo of “if/then” contrasts between the evil and its remedy. “If mythic violence is lawmaking, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythic violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal without spilling blood” (249–50). Whatever else these contrasts may or may not tell us, we seemingly know one thing—the lawmaking power of a state is utterly reprehensible and therefore eminently dispensable. Our entire political way of being is unequivocally rejected.

One can imagine divine violence to come quite literally from God (*göttlich*, “godly,” is the German word for “divine”). In fact, the world was washed clean once, save for Noah, his wife, and their menagerie. Alas, the mythical reappeared and once again needs to be expunged. When next the divine flexes its muscle, Benjamin seems to promise, the world will be washed as clean as it was then, only this time—perhaps—the perfect vio-

lence of God's wrath will leave behind the perfect peace of a fundamentally new historical order (Benjamin 1996, 251–52). What will be wiped away is made beautifully clear in the final three sentences of the text, and I do mean beautifully, because the sound pattern of this final utterance reverberates crisply in the mind. Let me first cite the passage in German and then give you Jephcott's translation. "Verwerflich ist alle mythische Gewalt, die rechtsetzende, welche die schaltende genannt werden darf. Verwerflich auch die rechtserhaltende, die verwaltete Gewalt, die ihr dient. Die göttliche Gewalt, welche Insignium und Siegel, niemals Mittel heiliger Vollstreckung ist, mag die waltende heißen" (Benjamin 1980, 203). Here now is the translation: "But all mythic, lawmaking violence, which we may call 'executive,' is pernicious. Pernicious, too, is the law-preserving, 'administrative' violence that serves it. Divine violence, which is the sign and seal but never the means of sacred dispatch, may be called 'sovereign' violence" (Benjamin 1996, 252).

What the translation cannot capture, through no fault of the translator, is the repetition of sounds that alerts us first to the repetition of meaning (the repetition of *verwerflich*, which Jephcott translates as "pernicious"), then relationship (rhyming *schaltende* and *erhaltende* with [mythic] *Gewalt*), and finally the stress on the grand, redemptive distinction between, on the one hand, the violence that is so pernicious it needs to be cast aside, thrown away (as the root *werf* in *verwerflich* indicates), and, on the other hand, the violence that will ultimately transport us to a brave new world. That guiding distinction is carried by the root *walt*, which appears in three words: the noun *Gewalt* (violence) and the adjectival forms of *verwalten* (to administer) and *walten* (to rule). One can almost hear—hell, one can almost smell—the redemptive violence that that simple root, *walt*, is subjected to as it is purged of its impure prefix. When divine violence comes to annihilate the juridical-legal order that is mythic violence, both *schaltende* (directive or executive) and, above all, *verwaltete Gewalt* (administrative violence) are destroyed. What remains is the *waltende* or ruling violence. Thus the final distinction on which the text rests is the one between *verwalten*—"to administer"—and *walten*, which, by shearing off the prefix, Benjamin makes to mean a form of unmediated rule that rests "sovereignly," as the translator has it, in its non-instrumental dominion over the world. It ad-ministers nothing; it rules, it "ministers" purely and simply. Accordingly, rule without administration might well fit the picture of the Greek polis. What need for a bureaucracy when all citizens assemble to govern collectively? What need for supply chains, timetables, delivery systems, public transportation, and all the rest when one's creature comforts are provided for by the women and slaves of the household or the foreigners unloading the ships in the harbor? Neither subject nor citizen, these creatures remain, figuratively speaking, outside the city walls. Within the walls, direct, immediate rule prevails.

Hegel too was fond of this Greek exemplar. Judith Shklar has referred to his *Phenomenology of Mind* as a “work of elegiac re-membling, a re-integrating of the past into the present and that in a mood of profound sadness.” Yet he knew this past to be irretrievable, and that simple if disdained prefix “*ver-*” can stand for the reason why. What disturbs this blissful image of the highest, collective purpose—the realm *not* of “mere” or “bare life” (*bloßes Leben*), as Benjamin (and then Agamben) would have it, but of a “just life” (*gerechtes Leben*)⁵—is the emergence of civil society, the system of needs, of economic self-governance under the protection of law (property rights), as well as social policy and policing, in short everything that *die verwaltete Gewalt* introduces into our lives. Hegel is credited with being the first to use civil society (*bürgerliche Gesellschaft*) to mean not the political but the social, primarily the economic. It is this formation of the social that Hegel explicitly deals with in his *Philosophy of Right*. Let us, then, explore some of this Hegelian terrain.⁶

GEORG WILHELM FRIEDRICH HEGEL

“Civil society is the difference which intervenes between the family and the state, even if its full development occurs later than that of the state” (Hegel 1991, §182).⁷ The Greek polis knew only family (the *oikos* or household) and state. The spirit of individuality did emerge in the polis, as the figure of Socrates demonstrates. It is he who questions the conventions of state ethics, suggesting that the thinking individual can find, through right reason, the standards for truth that transcend the conventional wisdom upon which the state relies. My wording, of course, deliberately recalls Leo Strauss’s argument concerning the discovery of nature. Despite the enduring legacy of Socrates’s challenge, this initial intrusion of the individual conscience in ancient Greece is successfully repressed by the state, only to flourish later as a result of Christianity, especially Protestant Christianity. St. Paul, who preached the law written in our hearts, succeeds where Socrates initially failed, and the spirit of individuality, to borrow from Weber, arises anew as the unintended consequence of the Christian, eventually Protestant, ethic, for, as the “spirit of capitalism,” the spirit of individuality in the modern world is the ethic of economic self(ish)-interest that governs civil society.⁸ That ethic has nothing to do with the *Sittlichkeit* (which *is* informed by convention and accepted patterns of belief) that informs both the ancient family and state. Civil society is therefore the realm of individuation. The person—or better, personality—emerges from the familial sphere to pursue his self-interest in civil society.⁹ The state is presupposed by society, because of both its historical but also logical priority. It is within the ethical community of the state that the individual is reintegrated by being raised out of his purely private

(bourgeois) interests and concerns and transformed into a public person, a citizen, a member of the political unity of a people.

What makes the human being a human being is free will. What makes free will a social and not merely psychological phenomenon is property. Through property, a person gives “himself an external *sphere of freedom*.” The rational function or “aspect” of property, therefore, cannot be identified with or limited to the “satisfaction of needs”; rather, “not until he has property does a person exist as reason” (Hegel 1991, §41). Put another way, “it is only as owners of property” that two people “have existence [*Dasein*] for each other” (Hegel 1991, §40). Civil society is therefore the sphere in which individuals interact on the basis of their self-interest. Ideally, civil society becomes thereby the training ground for rational cooperation. Having studied Adam Smith and the other English/Scottish theorists of commerce, trade, industry, and the market, Hegel adopts and adapts the paradoxical dictum that the pursuit of private vices (greed) leads to the public good (mutual satisfaction of needs and interests). The virtue of civil society resides in the fact that although “each individual is his own end, and all else means nothing to him,” said individual also comes to the realization that “he cannot accomplish the full extent of his ends without reference to others.” To achieve selfish ends, cooperation is imperative. “Through its reference to others, the particular end takes on the form of universality, and gains satisfaction by simultaneously satisfying the welfare of others” (§182). In this way, a “system of all-round interdependence” is established, “so that the subsistence and welfare of the individual and his rightful existence are interwoven with, and grounded on, the subsistence, welfare, and rights of all.” This Hegel calls the “*external state, the state of necessity and of the understanding*” (§183). We would call this external state the liberal state in which the state exists for no other reason than to promote and protect individual self-interest. For Hegel, however, individuals have the capacity to move beyond such an instrumental understanding of collective behavior. By realizing that the fulfillment of their particular interests is best achieved through collaboration, individuals begin to glimpse the outlines of the universal, namely the collective interest of the political community. This initial glimmer is reinforced by education, which is both

liberation and work towards a higher liberation; it is the absolute transition to infinitely subjective substantiality of ethical life, which is no longer immediate and natural, but spiritual and at the same time raised to the shape of universality. Within the subject, this liberation is the hard work of opposing mere subjectivity of conduct, of opposing the immediacy of desire as well as the subjective vanity of feeling and the arbitrariness of caprice. (§187)

By way of education, then, “the subjective will obtains *objectivity*, . . . that objectivity in which alone it is for its part worthy and capable of being the

actuality of the Idea" (§187). To put all this more mundanely and with at least plausible accuracy, the realm of civil society removes the individual from the clutches of the family and becomes, at first glance, the arena of free, unhindered, even aggressive pursuit of self-interest. Soon, however, one comes to realize that to satisfy one's desires one must cooperate, even collaborate with others, indirectly serving their interests as they indirectly serve yours. One senses thereby the possibility of a form of ethical life (*Sittlichkeit*) that is not "natural," not rooted in the love, duties, and customs that attend family life, but rather requires self-conscious, intellectual (*geistig*, which can be translated both as "spiritual" and "intellectual") reflection. Such a process of intellectual and spiritual recognition of an ethical life that supersedes that of the family and allows for the individuation that has been achieved in civil society is furthered by education. What awaits one on the other side of this process is a new denaturalized home, a higher community into which individuals will have been thoroughly integrated. That new home, "the actuality of the ethical Idea" (§257), is called the state.

But to repeat, the state is something categorically different from civil society. "If the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, *the interest of individuals as such* becomes the ultimate end for which they are united; it also follows from this that membership of the state is an optional matter" (Hegel 1991, §257). And to repeat again, such an instrumental view of the state coincides with the liberal state, the state that reduces itself to catering to individual interest. Having outgrown, as it were, his infatuation with the Platonic ideal (which he identifies with the Athenian actuality), Hegel now embraces the intrusion of the individual, yet reintegrates him in the new, modern ideal. To make this ideal actual (and no ideal exists except in its actuality), the instrumental idea of the state must be thoroughly rejected. As an adamant opponent of the contract theory of state formation, Hegel sees a higher purpose for both the individual and the state. "Since the state is objective spirit, it is only through being a member of the state that the individual himself has objectivity, truth, and ethical life. *Union* as such is itself the true content and end, and the destiny of individuals is to lead a universal life; their further particular satisfaction, activity, and mode of conduct have this substantial and universally valid basis as their point of departure and result" (§258). And to drive the point home with yet another twist of the Hegelian screw:

Considered in the abstract, rationality consists in general in the unity and interpenetration of universality and individuality. Here, in a concrete sense and in terms of its content, it consists in the unity of objective freedom (i.e. of the universal substantial will) and subjective freedom (as the freedom of individual knowledge and of the will in its pursuit of particular ends). And in terms of

its form, it therefore consists in self-determining action in accordance with laws and principles based on *thought* and hence *universal*. (§258)

Like the family, the state is an institution based on ethical life, but unlike the family, it achieves this condition through reflection stimulated by education, and like civil society, the state accommodates the particularity of individuals but does not *restrict* them to their particular needs and desires. It is in the state—the political community—that the human becomes fully human.

Despite the language used, the point is pretty simple. Humans are fully human only in concourse with other humans. Most often, social exchange is selfish, competitive, and at times even brutal. Nevertheless, by way of what Kant called “unsocial sociability” (the unintended beneficial consequence of asocial behavior), civil society inadvertently, and then directed by design (education), trains humans to think of themselves as belonging to a higher unity. Hegel characterizes this higher unity—the state—in a number of different but complementary ways, as, for instance, “the ethical whole, the actualization of freedom,” and as “the spirit which is present in the world and which *consciously* realizes itself therein”—in short, as “the march of God in the world” (Hegel 1991, §258, Addition [G]). The trick is to harmonize particular interest with the common good, such that “duty and right are *united* within the state *in one and the same relation*” (§261). On the common (Kantian) view, “the abstract aspect of duty consists simply in disregarding and excluding particular interests as an inessential and even unworthy moment” (§261). Duty, in other words, is most often performed in spite of, not in unison with, inclination: To fulfill my duty, I must do *x* though I would rather do *y*. To counter this Kantian view, Hegel postulates the harmony of duty and interest.

In the process of fulfilling his duty, the individual must somehow attain his own interest and satisfaction or settle his own account, and from his situation within the state, a right must accrue to him whereby the universal cause becomes *his own particular* cause. Particular interests should certainly not be set aside, let alone suppressed; on the contrary, they should be harmonized with the universal, so that both they themselves and the universal are preserved. The individual, whose duties give him the status of a subject, finds that, in fulfilling his duties as a citizen, he gains protection for his person and property, consideration for his particular welfare, satisfaction of his substantial essence, and the consciousness and self-awareness of being a member of a whole. (§261)

The natural, even imposed duty of the child in the family is raised, once that child reaches maturity, to the duty of the citizen in the ethical community of the state, a duty now “naturalized” by reason to be in perfect harmony with that person’s deeply felt right to individuality.

All this sounds lovely, even if we have lost the capacity to imagine what such a community could possibly look or feel like. The classical portrait of an ethical communal life that Hegel paints with such finely achieved symmetry far exceeds any sketch offered by Rawls's "original position" veiled by ignorance, or even Habermas's more ambitious attempt to imagine a neo-Kantian (Hegel would say "abstract"), discursively achieved consensus. Grounded ultimately in contract theory, such functional and procedural would-be solutions to the ills of splintered individuality betray the failure of Hegel's near mystical vision. But perhaps we should not be so hard on ourselves. Even Hegel seems to have known better, even he hedges his bets in the above cited passage, with his "must somehow attain," "must accrue," and repeated use of "should." There is a serpent, even in Hegel's garden, and that serpent's name is poverty.

According to Hegel, the causes of poverty are manifold, the remedies, alas, limited. There is the "arbitrariness" of moral turpitude on the part of parents who refuse to provide an education for their children or impoverish their family by their extravagance. As antidote, "civil society"¹⁰ has the obligation to provide public education and compel parents to send their children, have them vaccinated, and otherwise serve as "guardian" (Hegel 1991, §239, 240). In addition to arbitrariness, we find that "contingent physical factors and circumstances based on external conditions . . . may reduce individuals to *poverty*." Here Hegel points to structural inequalities grounded in civil society itself, which are in general laid out as follows.

When the activity of civil society is unrestricted, it is occupied internally with *expanding its population and industry*.—On the one hand, as the association of human beings through their needs is *universalized* . . . the *accumulation of wealth* increases. . . . But on the other hand, the *specialization and limitation* of particular work also increase, as do likewise the *dependence* and *want* of the class which is tied to such work; this in turn leads to an inability to feel and enjoy the wider freedoms, and particularly the spiritual advantages, of civil society. (§243)

Marx would later see in this division of labor¹¹ the alienation of the worker from his work and would look to the revolutionary self-emancipation of civil society itself, abolishing the state that, in his view, is the mere captive tool of capital. Hegel has no faith in revolution and relies on the state to remedy the situation, but he runs head first into a conundrum. It is property and the work by which property is obtained and increased that makes the human individual fully human. Yet civil society's "system of needs" works in such a way as to deprive a whole class of people of property and condemn them to a type of unfulfilling labor that impoverishes them not only materially but also spiritually, turning them into a "rabble." The state, as guardian, could and should intervene by providing a variety of welfare measures, but the state cannot

provide property and fulfilling work. The latter is hampered by the dynamics of capitalism itself. Again, it is worthwhile to have Hegel's own words on the matter, for he nicely spells out the double paradox involved, the first concerning welfare, the latter the double-edged sword that is labor.

If the direct burden [of support] were to fall on the wealthier class, or if direct means were available in other public institutions (such as wealthy hospitals, foundations, or monasteries) to maintain the increasingly impoverished mass at its normal standard of living, the livelihood of the needy would be ensured without the mediation of work; this would be contrary to the principle of civil society and the feeling of self-sufficiency and honour among its individual members. Alternatively, their livelihood might be mediated by work (i.e. by the opportunity to work) which would increase the volume of production; but it is precisely in overproduction and the lack of a proportionate number of consumers who are themselves productive that the evil consists, and this is merely exacerbated by the two expedients in question. This shows that, despite an *excess of wealth*, civil society is *not wealthy enough*—i.e. its own distinct resources are not sufficient—to prevent an excess of poverty and the formation of a rabble. (§245)

The twofold problem of a simultaneous excess and deficiency of wealth seems to me a felicitous description of the modern, liberal, capitalist system. The Marxian remedy has repeatedly failed to convince us. Hegel's own remedy, the export of excess labor—that is, colonization (§248)—did little or nothing to ease the plight of the nineteenth- and early twentieth-century proletariat. In other words, neither Hegel nor Marx had remedies for the structural causes of poverty; thus neither their idealizations of, on the one hand, the fully realized state nor, on the other hand, the self-emancipated society have been achieved. We have been and still are left with reform and the imperfection that reform implies. Which means we are left with the generation of non-Marxian Hegelians and their compromises, or rather, with one in particular—Lorenz von Stein.

LORENZ VON STEIN

Who was Lorenz von Stein?¹² Born in 1815, Stein was almost an exact contemporary of Marx (born in 1818) who ploughed some of the same intellectual fields. Like the young Hegelians (including Marx), Stein dedicated his early years to studying the political and social movements in France, having the advantage of a stipend that allowed him to live in Paris. In 1842 he published his findings under the title *Der Sozialismus und Communismus des heutigen Frankreichs* (Socialism and communism in contemporary France), in which he introduces us to the world-historical significance of the proletariat. A third, thoroughly revised and expanded edition of that work

came out in 1850 in three volumes under a new title, *Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage*. A severely abridged translation into English, *The History of the Social Movement in France, 1789–1850*, appeared in 1964 and was greeted with resounding silence; for unlike Marx and his collaborators, who, after learning from him, dismissed him as a bourgeois intellectual, Stein offered what we might call a reformist, not a revolutionary, response to the social inequality of industrial society and the suppression of the proletarian class.¹³ Like his Marxian contemporaries, he recognized the importance of society, both as the realm of individual freedom and the arena of economic interest and social class. However, he never nullified the importance of the role that the state should take in mollifying social and economic inequalities and redressing the grievances of exploited classes. That the state *could* come under the control of the landed gentry or capitalist plutocrats he never denied; nevertheless, that the state *should* and *has the ability* to assume an independent role vis-à-vis society and its various classes was the basis of his social and political theory. Rather than waiting for the cure for social inequality to arise almost homeopathically from society itself in the form of the final subject of history—the proletariat—Stein postulates the need of the state to assert, or rather reassert, its authority in its constitutively endless battle with social forces. And indeed it is from Stein that I have borrowed my bellicose imagery.

Though greatly influenced by German Idealism, particularly Fichte and Hegel, Stein succumbed neither to a teleological view of an eventually redeemed history nor to the temptation to resolve contradictions in a supposedly higher unity. His central irreconcilable contradiction was the one that Hegel bequeathed to him, the duo we have been investigating, state and society. To understand the antagonism of their relationship we have to start with a deeper conflict, the one between physical limitation and intellectual ambition that cleaves the human individual in two. As individuals, we are all able to conceive of something beyond physical necessity, an intellectual or spiritual (*geistig*) vocation or destiny, but *as* individuals, as solitary bodies and solitary intellects, we cannot achieve what we can conceive. We need to use the bodies and intellects of others, which of course is why we live in a group of similarly constituted individuals, all riven by the same disjuncture. Our mutual dependency, however, leads not to harmony, as Hegel had hoped, but to exploitation. The group replicates the body/soul tension with a war between workers, who own nothing except their bodies, and those who own everything but do not work (Stein 1856, 27–28). We know the name of this group: society (Stein 1921, I. 40). And we can state its principle: interest (Stein 1921, I. 43; 1964, 48–50).¹⁴ Seen from the perspective of the solitary individual, society is the realm of individual self-actualization. Seen from the perspective of free, contesting and competing individuals, society is the arena in which self-interested individuals and associations maneuver for competi-

tive advantage. Society, then, is the epitome of both individual freedom—which, as Hegel had already theorized, requires the acquisition of property—and servitude, which results from the failure to acquire property. In a very real and ugly way, servitude is the consequence of individual, self-serving freedom. The invariable outcome is the division of society between the educated, property-owning (in industrial society: capital owning) classes and the un(der)educated and impoverished workers (proletariat). Society, that great vehicle of subjective rights and liberty, ends up embodying the principle of domination and servitude.

If interest is the principle that guides the activities in society, the principle of the state resides in freedom. In a sense, the state is the individual writ large. Stein uses the term “personality” to describe the individual human who has become a self-determining being by virtue of owning property and having had an education, the famous German alliterative attributes of *Besitz* and *Bildung*. As a similar singular personality, the state represents the unity of the will of the people, the political unity of the community. The state therefore represents the welfare of the whole as a collective singular, a subject or “moral person,” and not the particular interest of individuals, associations, or political parties. Whereas society is governed by both natural and coerced economic inequality (the root of all other inequalities), legally each individual is an equal member of the state. In this way, the state incorporates the idea of the freedom of the political community as a whole. Legal equality and the idea of a collective freedom based on the admittedly imperfect state guarantee of individual liberty, Stein believed, could best be protected in a constitutional monarchy, for in such an organization of political order, a parliament (based on limited or eventually universal adult suffrage) could advocate for the interests of the varied associations or classes of society, and the hereditary monarch could serve as a *neutral power*; with no special stake in the peculiar well-being of any particular party, a monarch would be capable of making decisions regarding the good of the whole, the fabled *salus populi*. The actual power of this putatively neutral arm of the state—that is, the truly *active* arm of the state, the instrument that executes the will of the people as a collective singular—turns out to be the *Beamtentum*, the professional, disinterested, depoliticized (in a party-political sense) administrative bureaucracy, Benjamin’s much loathed and scorned *Verwaltung*. Indeed, the professional administrators of public policy could be called the frontline soldiers of the perpetual war that the state wages against society, or the first line of defense against the armies of social interest, for, to repeat, it is a perpetual war, with winners and losers. He who rules, Benjamin’s *waltende Gewalt*, does not dismiss but rather relies on the unfairly impugned *verwaltete Gewalt*, because to rule is also to fight.

And there is good reason to rely on the various apparatuses of bureaucratic governance. Simply and obviously put, the world *is* corrigible but *not*

perfectible. In a short passage quite early in the work I have been drawing on, *The History of the Social Movement in France*, Stein implicitly rejects Hegel's ideal state because, even more than Hegel, he focuses on the irresolvable conundrum of poverty. He also dismisses the utopian fantasies of the French socialists and communists, and (by the third edition of 1850) quite likely the prophetic exhortation of *The Communist Manifesto* as well. I have mentioned the parallelism of the notion "personality." As part of a community, the fully formed individual is a personality because of the freedom he enjoys, which is reflected in the possibility of self-determination (with the help of, if not on the backs of, others). That self-determination in turn dictates the individual's interest. However, the collection of personalities we call society cannot itself be a personality, because society has only conflicting, not common, interest. What gives commonality to this collectivity is the state, which represents the common interest of the community, its political unity, and thus collective freedom. In the war between state and society, between common and individual interest, the total victory of the state would ideally give to the community as a whole, state *and* society, a common interest, and individual and communal freedom would coalesce, as Hegel prophesied. Yet, this "all-for-one-and-one-for-all" dream would be impossible, Stein says. Only the Kingdom of God could harmonize self and collective freedom, and that kingdom cannot be found on earth. Unfortunately, the opposite, the total conquest of the state by society *is* possible, and he gives that outcome a name: Death (Stein 1921, I. 32; 1964, 51). There is no perfected community, but there are dead communities, states that have been captured by the particular socioeconomic interests of the ruling classes who have universalized the unrelieved domination of the strong over the weak (Stein 1921, I. 68; Stein 1964, 65). Consequently, in the political/social universe we inhabit, we can never be redeemed (neither by evolution nor revolution), but we can live, if we work at it.

For Stein, working at it meant, among other things, writing an eight-part theory and practice of administration (*Verwaltungslehre*) in ten volumes. Ironically, his fame outside of the German-speaking world, such as it is, rests largely on his technical work. Toward the end of his life he became the object of pilgrimages—such is the word used by the pilgrims themselves—from governmental officials and academics in Japan and China, for in both countries Stein provided the model for administrative modernization.¹⁵ Within Germany, he is currently seen as something of a prophet of the so-called *Sozialstaat*—roughly speaking, the post-World War II welfare state—as a kind of compromise between, on the one hand, a radically libertarian, laissez-faire style of capitalism that could be seen as the total conquest of the state by society and thus death, and, on the other, a fully planned communist economy, which also would be seen as death, the death that results from attempting to achieve the unachievable. I have no desire to investigate the making of the

modern *Sozialstaat* but wish only to ask the reader to keep in mind the components of state rule that Stein emphasizes when we return to Schmitt.

Society's part in government is served by parliament, the advocate for both individual liberty—which Stein in no way wishes to dismiss—and for all social interest groups in general. The monarch is seen as a neutral power because he or she, living apart from both the world of capital and of work, has no social interest. Stein's view of the neutral monarch is modeled on Benjamin Constant's championing of the hereditary monarch in a constitutional setting. Constant, writing in the immediate post-Napoleon France and therefore before the full impact of the rise of social movements had been felt, saw the monarch as maintaining the balance of governmental powers such that no one branch—the ministers, the judiciary, or parliament—would come to dominate.¹⁶ Stein's focus is on the balance of *social* (not governmental) powers, making sure that the state may compensate for the oppression the dominant class exercises over labor, whether peasant or proletariat. Finally, the bureaucracy is the tool the monarch uses. This may strike us as odd, but it shouldn't. First, in the German states, especially Prussia and thus in united Germany after 1871, the famed *Beamten* (bureaucracy) was a much admired, if also a greatly mocked, institution. Its strongest feature was its professionalism, which enabled it, in theory, to distance itself from party-political attachments and economic partiality. The German historian of the rise of the modern bureaucratic state, Otto Hintze, notes that it was liberal constitutionalism in the nineteenth century that triggered a more concentrated response by professional administrators to advocate for the state and show a united front against social pressures.¹⁷ The *Beamten*, in other words, became even more conscious of itself as an agent of the state in this newly hostile environment. Bureaucrats, whose upper echelons, primarily jurists, were recruited from the university and installed for life, thus not subject to the shifting vagaries of party politics, also had little or no connection to the business world, even being forbidden to marry into powerful and influential commercial families. They were seen, then, as a relatively independent force and not the tools of party interest or ideology, but they served more like a conservative roadblock. Clearly, individual bureaucrats and the monarchy itself were not independent of the prevailing prejudices of society at large, and neutrality as a standard could at best be only partially met. But one understands the difference between a professional and a political bureaucracy when one remembers the nineteenth-century American coinage "To the victor go the spoils," which was meant to describe the scramble for political patronage after each election.

Both Hegel's state/society dichotomy and Stein's reformist articulation of it had a wide-ranging impact between 1840 and World War I. Before we move on to its reconfiguration in the early twentieth century, it is worth glancing at an articulation of the opposite sentiment, the advocacy of the total

victory of society over the state, precisely because variations of this advocacy predominated in the early years of the twentieth century and agitated Schmitt to no end.

FRANZ OPPENHEIMER

On the presupposition that an ideal unification of state and society is, *pace* Hegel, impossible, Stein advocates for a rough equilibrium between the interest of the political community as a whole and the gratification of individual pursuits. Even strong advocates of the *Rechtsstaat* (liberal rule-of-law state) like Rudolf von Gneist (to whom Schmitt often referred) accepted Stein's basic insights and acknowledged the tension.¹⁸ There were those, however, who saw the state in strictly negative terms and therefore argued for complete social emancipation. In *The State*,¹⁹ Franz Oppenheimer presents us with a genealogy of the state from its origins as a predator or robber state to its manifestations as the feudal, absolute, and now constitutional state. Despite the transformations, the modern state has remained at heart the robber state of old. In essence, Oppenheimer argues that the owners of the means of production (and there is no reason not to use that common term now), whether those means are land or capital, *invariably* capture the machinery of the state and use it for their own purposes. What Stein described as a possibility, one to be avoided, Oppenheimer declares an inevitability. In particular, Oppenheimer seizes on the administrative bureaucracy (*Beamtenschaft* or, in the English translation, *officialdom*) as the chief culprit. He acknowledges the virtues of the ideal of a nonpartisan administrative apparatus working to ameliorate the exploitation of the workers and peasants by the owning classes, but declares that such an ideal has never been and can never be actualized. Instead, under the pressure of social interests the bureaucracy is at best unconsciously brought into the service of the ruling classes. After all, the members of the vaunted *Beamtentum* are by and large university-trained jurists and thus of the same class as their social counterparts in power. They cannot help but share the same class prejudices, even if they do not directly take part in the predatory activities of their compatriots. He does make some concessions, however. For instance, the bureaucracy in poorer states—like the Prussia of old (presumably the seventeenth and eighteenth centuries)—whose members live on modest means, is more likely to oppose the pressures and excesses of wealth, and a hereditary monarch, because of his relative lack of concern with popularity when compared to elected leaders, can exert a *modest* pressure on wealth. In the end, however, virtually all power lies in the hands of the plutocracy.

Oppenheimer's suggested remedy is not the reform but the elimination of the state. The root cause of economic inequality, he states, are "free labor-

ers,” those peasants who have been dispossessed or driven off the land and into the cities by the large landowners and thus become the surplus labor that keeps wages down and dooms the effectivity of strikes. The cure is not state tinkering but the breakup of landed estates and the distribution and working of small plots of land by the multitude. In this way, the urban proletariat will not be kept down by what Hegel referred to as the “rabble,” Marx’s famously despised *Lumpenproletariat*. Indeed, Oppenheimer’s cure sounds similar to Hegel’s, as it involves emigration to the various colonies and former colonies over the world. In particular, he praises the US state of Utah and the community of Vineland, Iowa, for limiting the acreage a single person could own, and suggests that New Zealand could also serve as a refuge. Clearly, these idiosyncratic examples are meant to be models for global land reform, yet they still strike the contemporary reader as fantastical, not because the plight of the peasantry the world over has improved, but because the world has become (or is still becoming) largely urban and industrial, which no amount of land subdivision could possibly accommodate.

The point of all this is to show that the state/society distinction lends itself to a variety of putative remedies for those who worry about economic inequality and the immiseration of entire classes or populations. Bracketing the “realist” position for the moment, there are two ideal solutions: the pure state, built on a Greek or Hegelian model, and the pure society, devoid of state depredation. At the beginning of the twentieth century, the latter view seemed to gain strength, even if it was not always presented as a utopian solution to economic inequality. There was a kind of giddy, if momentary, faith in the disappearance of the state, a belief that structures of rule and domination could be replaced by impersonal, self-justifying, and self-regulating means of governance that dispensed with the perceived ugly, arbitrary decisions of personal power. There was no state, some said, only legal systems to which the tag was inappropriately applied. Here we might mention figures like Leon Duguit, Hans Kelsen, and Hugo Krabbe.²⁰ Each wishes to replace personal authority (e.g., of a monarch) and state power with legal authority, pure and simple. Often the target is precisely the state/society dualism that, as seen from the perspective of law (i.e., society), is considered to be anachronistic and particularly “Germanic.” Or the state was thought of as just the political association, one of many such associations—churches, labor unions, business or commercial groups—and no more important than these. Here is meant the English school of pluralism, represented by G. D. H. Cole, John Neville Figgis, and Harald Laski, along with Guild Socialism.²¹ English pluralism of the time was inspired and abetted by a highly selective reading of the nineteenth-century German scholar Otto Gierke by the noted English jurists and liberals F. W. Maitland and Ernest Barker.²² Or the state was slated to wither away upon the final self-emancipation of civil society. Oppenheimer, who called himself a liberal socialist and believed in inevita-

ble evolutionary change, is our witness for that position. And not least, as we have already seen, there was the eschatological mode of wishing the world washed clean of state violence, represented by Sorel, Benjamin, and their many latter-day saints.

Carl Schmitt tirelessly bemoaned this, to him, misguided faith in the unqualified beneficence of social institutions and associations, sometimes with a touching pathos. In an extended note in the final section of *The Concept of the Political*, Schmitt turns his attention to Oppenheimer in particular. In Oppenheimer, Schmitt claims, one can find “the best example of this polarity of state and society,” with the twist, of course, that in his work society’s “execution of the state” is celebrated (Schmitt 2007, 76). With Oppenheimer we no longer stand on Hegelian ground. Rather, “whereas Hegel’s systematized conception of the German state in the nineteenth century considered it to be a realm of morality and objective reason high above the appetitive domain of egoistic society, the value judgment is now turned around. Society as a sphere of peaceful justice now stands infinitely higher than the state, which is degraded to a region of brutal immorality” (77). Against the temper of the age, Schmitt declares the evaluative reversals of Hegel’s polarity to be impermissible. Hegel and Stein (who is also mentioned in this section), as we have seen, found both state *and* society to be indispensable, each charged with an ethical core, even if in the end it was up to the state to strike the right balance. In this spirit, Schmitt bemoans the demonization of the state and notes that the stark polarity could just as easily (and perhaps, by implication, just as impermissibly) go the other way around. “The connection of politics with thievery, force, and repression is, in the final analysis, no more precise than is the connection of economics with cunning and deception.” But then he seems seduced and immediately elaborates that latter connection, precisely (or so it seems) because the economy has become the strongest weapon against the mission of the state to protect the political community. First he notes the near identical spelling of terms. “Exchange [*Tauschen*] and deception [*Täuschen*] are not that far apart.” And then comes a passage that could easily come out of the darker moments of Stein’s musings about the death of a political community. “A domination of men based upon pure economics must appear a terrible deception if, by remaining non-political, it thereby evades political responsibility and visibility. Exchange by no means precludes the possibility that one of the contractors experiences a disadvantage and that a system of mutual contracts finally deteriorates into a system of the worst exploitation and repression.” It is precisely to combat such a situation that the state—that is, “politics as the sphere of honest rivalry”—must step in and protect the unity of the political community (77).

The note on the state/society distinction that was just examined is embedded in section 8 of *Concept*, the first word of which is “Liberalism” (Schmitt 2007, 69). Liberalism stands for society and all its ills, economic or other-

wise. Schmitt identifies Oppenheimer as radically liberal in his hostility to the state and politics. The antithesis of liberalism is democracy. If in the early 1920s democracy still marked the negative moment of modernity for Schmitt (e.g., Schmitt 1985b), by at least 1926 (Schmitt 1985a, 1–17) Schmitt started working with the antithesis between democracy and liberalism as a reworking of the old Hegelian dichotomy—or, more to the point, Stein’s adaptation of the Hegelian dichotomy. Democracy equals the political, the political community, and thus the state; liberalism equals the apolitical, the “appetitive” individual, and thus society. There is no doubt on which side of this divide Schmitt stands.

Chapter Five

Liberalism

With more than just a hint of impatience, the Italian political theorist Norberto Bobbio firmly insisted that modern democracy is necessarily formal and procedural. “I have stated on other occasions,” he wrote in the mid-1980s, “and I will never tire of repeating it, that it is impossible to ever understand anything about democracy until it is realized that a democratic system nowadays signifies first and foremost a set of procedural rules, among which majority rule is the main, but not the only one” (Bobbio 1987, 63). Perhaps “nowadays” is the key word in that proclamation, because Bobbio is keenly aware of the history of an antagonism between the ideal of democracy, based on a “social” or “substantial” notion of equality, and liberalism as a political movement that emerged at the beginning of the nineteenth century in opposition to *both* the monarchical principle and popular sovereignty. Individual liberty, formal equality before the law, and constitutional government (understood primarily as the separation of powers and guarantee of select subjective rights) were advanced to combat the absolutist “tyrant” as well as the “tyranny of the mob.” Of course, democracy too saw itself as the implacable enemy of monarchy; hence during the course of their common nineteenth-century battles, a compromise or synthesis occurred—not without its radical critics, chiefly Marx—between the two uneasy allies. As Bobbio describes it, the compromise was worked out on a terminological terrain, though of course it had its political and social correlates.

The battle between liberalism and democracy is the battle between the hegemony of liberty over equality, on the one hand, and equality over liberty, on the other. According to Bobbio, “liberty and equality are antithetical values, in the sense that neither can be fully realized except at the expense of the other: a liberal *laissez-faire* society is inevitably *inegalitarian*, and an *egalitarian* society is inevitably *illiberal*” (Bobbio 1990, 32). To fuse the two

political ideologies, one needs to tweak definitions, primarily by weakening the meaning of equality. “There is only one form of equality—equality in the right to liberty—which is not only compatible with liberalism but equally demanded by its view of freedom” (33). Thus, “nowadays” democracy must restrict its desire for equality to the aforementioned liberal ideals of equality before the law and equal rights (including the indispensable right to private property, the plausible cause of all substantial inequality). A problem that this hybrid creature called liberal democracy cannot examine is the fact that just because one has a *right* to equality does not mean that one necessarily has the material means to enjoy its concrete exercise. This is the lesson we have learned from Hegel, Stein, and above all Marx. Liberalism habitually brushes this inconvenient detail aside and thereby wins its battle with democracy, for whereas liberal ideals seemingly need no alteration, older, “substantial” definitions of democracy are discredited or simply disappear. Modern liberal democracy in its “juridical-institutional” sense is “procedural” in that it emphasizes a “body of rules,” Bobbio maintains; it is a formal “government *by* the people.” What liberal democracy supplants is an “ethical” vision that promotes “substantial” equality, not only of opportunity but of achievement, and therefore exerts itself to be a “government *for* the people” (31–32; emphasis added). This latter, older version, Bobbio says, is to be rejected, for “today non-democratic liberal states would be inconceivable, as would non-liberal democratic states” (38). Like “nowadays” above, “today” here accepts the liberal definition of equality and thus the liberal modification—or mollification—of democracy as an irreversible (and of course desirable) fait accompli. Based on this victory, then, Bobbio can decry Carl Schmitt’s “withering critiques of democracy” (Bobbio 1987, 122), even though by the mid- to late 1920s, especially in his *Constitutional Theory* (a text Bobbio often cites), Schmitt saw himself as a classic, pre-liberal democrat at war with liberalism’s enervating assault on all things political.

Bobbio rehearses here the twentieth-century peace treaty that settled the dispute between liberalism and democracy, a dispute that still raged in the first third of the century, especially, perhaps, in Germany. Though now the standard view, that treaty was never signed by all.¹ In the Weimar Republic, the intellectual civil war between democracy and liberalism still raged, with socialism at times a participant, at times an alternate solution. What follows examines Schmitt’s renewal of the war between the two chief contestants, for during the Weimar Republic, after some hesitation, Schmitt wrapped himself, like some modern Robespierre, in the mantle of democracy. This cloak, like all the capes of political theory, is a patchwork quilt, stitching this with that while leaving the other behind, but the pattern that emerges is coherent, even—some might think—aesthetically pleasing, if politically fraught with danger. In this and the following chapter, I will gather the elements of Schmitt’s critique of liberalism and reinvention of a plebiscitary democracy

as his way of rescuing a strong, ethical state from its feared demise at the hands of social forces.

LIBERALISM AS A WELTANSCHAUUNG

We can pick up the first thread of Schmitt's definition of liberalism by looking at his critique of romanticism. Traditionally, romanticism had been seen as a conservative reaction against the ideals of the French Revolution and, as antidote, an idealization of the Middle Ages and its social order. Some romantic authors sought to reclaim the past in a nostalgic manner to comment critically on the fragmentation of the present. The German author Novalis, for instance, had presented in essay form the stark contrast "Europe or Christendom," favoring the medieval Catholicism of the latter over the secular present. Romanticism is also associated with the revival (and/or creation) of the folklore tradition (by the brothers Grimm in Germany and a host of others elsewhere). And the philological recovery of medieval courtly romances and especially heroic epics like the *Nibelungenlied* seemed to inspire and feed more conservative forms of German longing for national unity. In his delightful long poem, *Germany: A Winter's Tale*, the liberal German Jewish poet Heinrich Heine brilliantly skewered this medievalist spirit when, among other things, he commented on the nineteenth-century attempt (eventually successful) to complete the construction of the medieval Cologne Cathedral in gothic style by referring to it as the "Bastille of the spirit" (*Geistesbastille*).

By the beginning of the twentieth century, however, a new reading of romanticism came to dominate. The French literary critic and sometime associate of the Action Française, Pierre Lasserre, linked French romanticism not with medievalism but with Rousseau and the revolutionary spirit.² In the Anglophone world, this view prevailed in politically informed literary criticism as the distinction between romanticism and classicism. Though many followed the fashion, none matched in wit and incision its English originator, T. E. Hulme. In "Romanticism and Classicism," a lecture published posthumously,³ Hulme claims that romanticism can best be defined by examining its underlying principle, namely *liberty*, the chief of the ideas of 1789. The architects of the revolution "had been taught by Rousseau that man was by nature good, that it was only bad laws and customs that had suppressed him. Remove all of these and the infinite possibilities of man would have a chance. . . . Here is the root of all romanticism: that man, the individual, is an infinite reservoir of possibilities." Classicism, on the other hand, is the "exact opposite," for it presumes that the human is "an extraordinarily fixed and limited animal whose nature is absolutely constant." Not content with mere statement, Hulme deploys a set of striking similes. "Put shortly, these are the

two views, then. One, that man is intrinsically good, spoilt by circumstance; and the other that he is intrinsically limited, but disciplined by order and tradition to something fairly decent. To the one party man's nature is like a well, to the other like a bucket." From here the step to religion is short. As bucket, the human is informed by "the sane classical dogma of original sin." Indeed, religion, "belief in the Deity," is as natural to the human as "appetite, the instinct of sex, and all the other fixed qualities" (Hulme 1994, 61). Just as the denial of the appetites has consequences, so does the denial of God and buckethood.

By the perverted rhetoric of Rationalism, your natural instincts are suppressed and you are converted into an agnostic. Just as in the case of the other instincts, Nature has her revenge. The instincts that find their right and proper outlet in religion must come out in some other way. You don't believe in a God, so you begin to believe that man is a god. You don't believe in Heaven, so you begin to believe in a heaven on earth. In other words, you get romanticism. The concepts that are right and proper in their own sphere are spread over, and so mess up, falsify and blur the clear outlines of human experience. It is like pouring a pot of treacle over the dinner table. Romanticism then, and this is the best definition I can give of it, is spilt religion. (62)

Here we have in admirable clarity and simplicity Hulme's "political theology," an arresting simile that links the loss of a deity with its consequence, a substitute terrestrial structure. He does not approve. As wellsprings of infinite possibilities, we gush forth with uninhibited enthusiasm and optimism, only to fall back and spill our guts over the all-too-solid earth—"there is always the bitter contrast between what you think you ought to be able to do and what man actually can." As buckets we know our "finiteness," our "limit"; we know what and how much we can hold and carry (62). In a well of possibilities, we eventually drown in disappointment.

To my knowledge, Schmitt never read Hulme, but he would have been sympathetic with the views expressed. Indeed, Schmitt later contends in *The Concept of the Political* that "all genuine political theories presuppose man to be evil, i.e., by no means an unproblematic but a dangerous and dynamic being" (Schmitt 2007, 61). Nor does Schmitt mention Lasserre in *Political Romanticism*, but states the latter's thesis, attributing it to "the French" and mentioning Lasserre's compatriot Ernest Seillière (Schmitt 1986, 1). Schmitt accepts with approval the identification of the belief in "natural goodness" and the "denial of Original Sin" with romanticism as "at least an approximate determination" (3) and certainly "a commendable and valuable achievement" (5). Ultimately, however, he claims that such a general grounding "fails to recognize the historical distinctiveness of the movement" (5). The credit for finding that historical distinctiveness goes, Schmitt believes, to the French literary historian Hippolyte Taine, who identified the "new bourgeoisie" as

the “bearer of the romantic movement” (12). Like Lasserre, Hulme, et al., Schmitt cuts against the previously accepted notion that romanticism is identical with conservatism, but more forcefully than the others, he wishes to locate in that new class of self-seeking, self-interested individuals the agents of the romantic ethos. In the flush of his (again, gender assumed) nineteenth-century emancipation from the shackles of the ancien régime, the bourgeois individual embraced the world as his oyster. But not for long. The contradictions that one can locate in romanticism, its exuberance and self-confidence alternating with gloom, doom, and despair, betray the liberal individual’s social and political position, caught between the victory over “the traditional monarchy” and the emerging battle with the “socialist proletariat” (13). The cycle of optimism and despair that Hulme found in romantic poetry finds its social counterpart in the combination of the bourgeoisie’s self-confident identification with humanity as such *and* its violent fear of and hostility toward the propertyless and uncultured “rabble.”

Never a democrat, Schmitt says the bourgeois liberal was unable, nay, unwilling to find its own political form. In *Political Romanticism* this formlessness takes the shapeless shape of an oscillation between the subjective invincibility of romantic irony and the thorough determinism of forces outside of human control. Again, one might liken this to Hulme’s analysis of the romantic mood swing, alternating, as it does, between the optimism of infinite, God-like creativity and impotent despair. On the one hand, the romantic subject makes itself the true substitute for God, the true “creator of the world” (Schmitt 1986, 97), or rather, through irony, the creator of an infinity of worlds, none more real than the last. The romantic subject, Schmitt claims, “ironically avoids the constraints of objectivity and guards himself against becoming committed to anything. The reservation of all infinite possibilities lies in irony,” by way of which the subject may preserve its “own inner, genial freedom, which consists in not giving up any possibility.” It is as if—to evoke our previous discussion of God’s will—God, to preserve the infinite potentiality of his absolute power, refuses to create a world at all, but rather eternally entertains the infinity of possibilities without the burden of having to choose and thus honor his choice with commitment. However, if, alternately, God is banished (or simply absconds) and the ironic subject that takes His place merely contemplates possibilities, it may come to pass that choice will be made elsewhere. Schmitt identifies the nineteenth-century invention of two substitute “demiurges,” humanity and history (59), two impersonal forces that move behind the individual’s back, making of the “individual person . . . the tool of his sociological surroundings, or the tool of the world spirit that evolves in a world-historical fashion, or the tool of the most diverse combinations of these two factors” (81). Hegel’s famed cunning of reason is one such demiurge. “An unconscious and higher necessity hovers over the freedom of the individual human being,” making of the human

individual “an instrument of the reason that evolves in the dialectical process.” Reason’s invisible hand is not the only culprit. Evoking Marx, Schmitt can also point to the notion that “human beings and classes are simultaneously tools and consequences of the vast process of production in whose relations they are impelled, above and beyond their calculations.” Or again, now channeling Schopenhauer, Schmitt finds that “an unconscious, enigmatic, oppressed will directs at its own expense the entire tragedy and comedy of the world with all its details and events, and it treats itself as a spectator at the same time. Thus ‘life is a continual deception’” (80).

Nowhere, Schmitt claims, do we find any sense of political form, because the romantic individual—which is to say the bourgeois individual—is unable to think in terms of the political collective or community. He protects himself by encapsulating himself within himself. “In the liberal bourgeois world, the detached, isolated, and emancipated individual becomes the middle point, the court of last resort, the absolute.” Having “dethroned God,” this liberal, romantic subject “always claimed . . . that his experience was the only thing of interest. This claim can be realized only in a bourgeois order based on rules. . . . Psychologically and historically, romanticism is a product of bourgeois security” (Schmitt 1986, 99). As we already saw in Schmitt’s discussion of Jellinek, these “rules” are the basic, pre-political norms that characterize every liberal constitution and are meant to keep the state at bay. In *Political Romanticism*, we have the hyperbolic articulation of the *Weltanschauung*, the self-identity of the bourgeois subject that sees itself superior to and in need of protection from all political considerations.⁴ Schmitt’s use of the term “bourgeois” (in German, *bürgerlich*) indicates the class to which this individual belongs and which this *Weltanschauung* represents. The aim of Schmitt’s study is to show that this class promotes an “aestheticizing” ideology that vaporizes the world of putatively objective reality. “Subjectivism” and irony do the dirty work of dissolution, but lurking in the wings is the economy, which, as we have been told by Marx and Engels, is what really causes all that is solid to melt into air.⁵ No Marxist, Schmitt never makes the economy (capitalism, the ownership of the means of production) the center of his analyses. Yet, the producing and consuming individual as carrier of the liberal ethos and anxiety (“bourgeois security”) is never very far from that center. As a self-description of the liberal ethos, we may not be able to do better than call on the romantic novelist⁶ and liberal theorist Benjamin Constant.

In Finley’s description of the political practice of the Greek polis, we witnessed the triumph of the public over the private individual. Quite the opposite, Constant contends, is the modern view. Reacting to the French Revolution’s unrestrained public supervision of thought and deed and the near continuous warfare from 1792 to 1815, Constant highlights a necessary distinction between the public and private spheres, between the political

community and the private individual as *homo oeconomicus*. For the ancients, Constant asserts, liberty “consisted in exercising collectively, but directly, several parts of the complete sovereignty” (Constant 1988, 311); communal well-being was thereby elevated over faction or self-interest. The individual was free in his “active participation in collective power” (102); thus his liberty consisted in his ability to take part in communal deliberation and exercise political decision. For the privilege of this active and public liberty, however, he paid by renouncing “private independence . . . since to enable a people to enjoy the widest possible political rights, that is that each citizen may have his share in sovereignty, it is necessary to have institutions which maintain equality, prevent the increase of fortunes, proscribe distinctions, and are set in opposition to the influence of wealth, talents even virtue” (103). For the ancients, then, liberty was a public and political quality, not a private affair.

For the moderns, the poles are reversed. Private practices wholly replace political participation, for modernity no longer permits direct, public citizenship. Based on property rights and grown to a size that is unmanageable by communally deliberative methods, the modern state, Constant says, has happily hit upon the idea of representative government, which removes from the citizen the burdensome necessity of political knowledge and intimate participation. Popular sovereignty, no matter how stridently proclaimed, is at best illusory. “Lost in the multitude,” Constant writes, “the individual can almost never perceive the influence he exercises. Never does his will impress itself upon the whole; nothing confirms in his eyes his own cooperation” (Constant 1988, 311). Accordingly, the pleasure afforded the ancients by their exercise of political rights is no longer attainable. Rather, our pleasure is taken privately. Whereas “the aim of the ancients was the sharing of social power among the citizens of the same fatherland,” the “aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantee accorded by institutions to these pleasures” (312). It is almost as if he were singing us lullabies: “The sole aim of the modern nations is repose, and with repose comfort, and, as a source of comfort, industry” (54). The citizen becomes the bourgeois; the political actor becomes the active producer and passive consumer. Or rather, and much more to the point, the interests of the political subserve those of the economy. With disarming honesty, Constant exults: “The effects of commerce extend even further: not only does it emancipate individuals, but, by creating credit, it places authority itself in a position of dependence. . . . Power threatens; wealth rewards: one eludes power by deceiving it; to obtain the favours of wealth one must serve it: the latter is therefore bound to win” (325). Commerce, therefore, can replace all aspects of public political life, even war. As Kant had asserted before him and John Rawls since, Constant believed that commerce was inherently pacific and brought people and peoples together. Unlike Kant and Rawls, he seems to

have been more honest about what commercial pacification entailed. “War and commerce,” he writes,

are only two different means of achieving the same end, that of getting what one wants. Commerce is simply a tribute paid to the strength of the possessor by the aspirant to possession . . . an attempt to conquer, by mutual agreement, what one can no longer hope to obtain through violence . . . a milder and surer means of engaging the interest of others to agree to what suits his own. (313)

Commerce seems here directed by the invisible hand that ideally distributes wealth, quite unevenly to be sure, but apparently to everyone’s mutual, if coerced, satisfaction.

Read with a more critical eye, Constant’s casual remarks might also confirm Schmitt’s link between trade (*Tauschen*) and deception (*Täuschen*) in the passage I cited to close the section on Franz Oppenheimer of the previous chapter. The pathos of the self-pitying German may be for some unbearable, but Schmitt alludes here to what he felt to be the type of moral and economic warfare exercised by the victorious allies after World War I, a type of warfare that placed Germany, just as it places all economically weak or colonized subjects, in a double bind. It is unlawful and immoral to break the peace through violence, even when peace is but a subterfuge under which economic warfare is in fact being waged, a claim Schmitt often made. To close this section, allow me to repeat a part and then complete the passage on the deception and exploitation that is endemic to an uncontrolled civil sphere.

Exchange by no means precludes the possibility that one of the contractors experiences a disadvantage and that a system of mutual contracts finally deteriorates into a system of the worst exploitation and repression. When the exploited and repressed attempt to defend themselves in such a situation, they cannot do so by economic means. Evidently, the possessor of economic power would consider every attempt to change its power position by extra-economic means as violence and crime, and will seek methods to hinder this. That ideal construction of a society based on exchange and mutual contracts and, *eo ipso*, peaceful and just is thereby eliminated. Unfortunately, also, usurers and extortioners appeal to the inviolability of contracts and to the sentence *pacta sunt servanda*. The domain of exchange has its narrow limits and its specific categories, and not all things possess an exchange value. No matter how large the financial bribe may be, there is no money equivalent for political freedom and political independence. (Schmitt 2007, 77–78)

However one may feel about the justification of the post–World War I peace treaties, the politics of debt and reparations, and the various political restrictions placed on German self-determination, the point Schmitt makes is not limited to that one example. Peasant uprisings, violent strikes, and the turn to war by political bodies who feel they have been pushed to the limit by

embargos, blockades, and other forms of economic coercion can now all be deemed “crimes against peace.” Yet peace is always more peaceful for some than for others.

LIBERALISM AS IDEOLOGY

With the introduction of economic deception, we have already left the realm of liberalism as an apolitical, humanitarian ethic and now approach it as the object of a rudimentary critique of ideology. Although on Carl Schmitt’s reading, liberalism was hostile to state, democracy, and politics in general, it used its individualistic ethos to secure political ends. Liberalism is the mode society uses to weaken the state and strengthen its own sphere of influence. This too is a form of politics, a putatively anti-political, interest-driven politics of the first order. If this is true (or, if you prefer: If this *were* true), it is important to expose the ruse by contrasting what liberal self-description has to say about the function of parliamentary governance and what “really” goes on behind the scenes. Therefore, in *The Crisis of Parliamentary Democracy* and elsewhere, Schmitt engages in a type of ideology critique meant to expose and thereby discredit the actual practice of the legislative branch of liberal governance by comparing practice with liberalism’s own self-description. Although there is an economic component to his analysis, Schmitt’s is by no means an orthodox Marxian critique of ideology. Rather, he simply seeks to show that the wizard behind the curtain of the liberal Oz is not in the employ of truth but of specific, largely economic interests that have little to do with the well-being of Oz as a whole.

In the introduction to the first edition of *Crisis*, published in 1923, Schmitt lists a series of “deficiencies” and “mistakes” that, he says, critics steadily enumerated over the first few years of the Weimar Republic. The exposure of these deficits leads him to conclude that the “real business” of parliament

takes place, not in the open sessions of a plenum, but in committees and not even necessarily in parliamentary committees, and that important decisions are taken in secret meetings of faction leaders or even in extraparliamentary committees so that responsibility is transferred and even abolished, and in this way the whole parliamentary system finally becomes only a poor façade concealing the dominance of parties and economic interests. (Schmitt 1985a, 20)

In the preface to the second edition (Schmitt 1985a, 1–17), he punctuates his point by labeling this “poor façade” a “superfluous decoration, useless and even embarrassing, as though someone had painted the radiator of a modern central heating system with red flames in order to give the appearance of a blazing fire” (6). What is this garishly painted façade? The target of his

colorful derision is “the purposelessness and banality of parliamentary debate” (19) and the “empty formality” of “public argumentative debate” (6). His was certainly not an uncommon complaint, nor would many be outraged or shocked were one to utter it today, but it was more than a lament or object of late-night humor. Rather, it was meant to be the identification of a corpse and an overture to its burial. His critics, like Richard Thoma, whose review is reproduced in the English translation of the work, simply said: So what? The importance of parliamentary democracy, they professed, lay not in its nineteenth-century philosophical presuppositions, but in its twentieth-century efficacy. In deflecting the significance of a substantive justification for liberal parliamentary governance, Thoma and others could call upon the authority of Max Weber’s influential writings on the political during and just after World War I, especially his *Parliament and Government in Germany under a New Political Order*, published in book form in 1918. Weber’s, one might say, was a functionalist argument that admitted parliamentary democracy’s ideological deficiencies yet maintained its inevitable victory as modernity’s form of governance. Despite his clear-eyed assessment of the demagogic roots of parliamentary leadership, party politics as essentially the bureaucratically organized conflict of interests, and the democratic deficit of liberalism, Weber affirmed the latter’s mode of functioning in recognizable terms. “Even in electoral democracies parliament is indispensable as an organ for controlling officialdom and ensuring public scrutiny of the administration, as a means of excluding unsuitable leading officials, as a place where the budget is determined, and as a means of achieving compromises between the parties” (Weber 1994, 227). There is no concession to the ideal of discussion as a means to achieving harmony, collective well-being, or truth, but there is still the belief that since politics is conflict, parliament serves as a useful arena for managing internecine strife and making it functional for the business of bureaucratically organized politics.

Argument by efficacy, performativity, functionality, or process was never enough for Schmitt, at least not when it came to the instantiation of ideological structures of which he disapproved. He was willing to admit an attraction to liberal comforts: “There are certainly not many people today who want to renounce the old liberal freedoms, particularly freedom of speech and the press.” But he doubted the efficacy that the others touted: “But on the European continent there are not many more who believe that these freedoms still exist where they could actually endanger the real holders of power.” And he obdurately refused to believe in its self-appraisal: “And the smallest numbers still believe that just laws and the right politics can be achieved through newspaper articles, speeches at demonstrations, and parliamentary debates” (Schmitt 1985a, 50). Let us look more closely at how he argues his case.

Much read at the time, Wilhelm Hasbach distinguished liberalism from democracy by drawing a paradigmatic distinction between Montesquieu and

Rousseau, adamantly favoring the former. Because Schmitt refers to Hasbach's texts often and of course differs fundamentally with the latter's preferences, it serves us well to look briefly at Hasbach's summary of the highlights of Montesquieu's position.⁷ For Hasbach, Montesquieu represents an eighteenth-century clearing of the air, which replaced the religious wars of opinion with a milder rationalism and deism and resultant materialist philosophy. Alluding silently to the enlightened governance of Frederick the Great, he claims that tyrannical absolutism was gradually replaced by monarchs who saw themselves as the chief public servants (*die ersten Beamten*) of their states. Under these conditions, liberty began to flourish, most significantly economic liberty. Combating all forms of feudal servitude, economic liberalism included within it all further forms of individual freedom, such as the enunciation of human rights, derived from natural law; thus individualism began its career as the center of all political and social considerations. Perhaps most importantly, Montesquieu firmly rejects not only monarchical but also popular sovereignty and theorizes a system of governance meant to limit public, sovereign power. In particular, Hasbach emphasizes the deliberate and strict incompatibility of Montesquieu's articulation of the separation or balance of governmental powers with popular sovereignty. By giving voice to filtered popular demands, the parliament checks monarchical authority, but is also itself restricted by that authority and by an independent judiciary. Individual freedom, Hasbach notes, is the freedom to follow one's desires and the freedom from being forced to do what one does not desire. Political (or collective) freedom resides solely in the *Gemütsruhe* (ease of mind) that comes with the resultant guarantee of personal security. Echoing perhaps more the ethos of the young Wilhelm von Humboldt,⁸ Hasbach praises liberalism for treasuring individuality and calls it the animating power of all things human. A people is measured not by its collective personality, but by its capacity to proliferate a maximum of individual personalities. Democracy, on this view, threatens the individual with its potential tyranny of enforced equality. Liberalism, Hasbach states, is a form of naturalism because it recognizes and allows for the development of the natural inequalities of human individuals. Liberalism and democracy therefore are archenemies, because the proliferation of freedom naturally brings with it the increase in inequality, and conversely, equality can be brought about only by drastically limiting freedom, the very conundrum Bobbio so emphatically made in his articulation of this fundamental difference. Hasbach, channeling Montesquieu, deepens the paradoxical relationship of freedom and equality by postulating the independence of personal from political freedom. From the viewpoint of the individual, democracy is inherently tyrannical; the general will is not an expression but an imposition. Only in a monarchy can individual freedom thrive. In absolutism, the monarch's desire for despotic control can be limited by the institution of basic rights, by the protection of self-interested inter-

mediary powers (the aristocracy, the clerisy, and the cities), and by an independent judiciary. But most efficiently, the individual thrives in a fully constitutional monarchy in which the above-mentioned balance of powers (including the balance within parliament provided by an upper and a lower house) is predominant. Through the play of all these forces, Hasbach affirms, a balance of the constitution is produced, and thereby all powers, by balancing the others, work in tandem for the well-being of the people as a whole.

If you cannot imagine Schmitt tearing his hair out reading these four pages from Hasbach, then you have not been paying attention. I will use three phrases from this text on which to hang Schmitt's critique of liberalism: "rationalism and deism," "balance," and "well-being of the people." With the end of the fifteenth- and sixteenth-century religious civil wars, Hasbach claims, rationalism conquers passionate belief, and deism depersonalizes, if not altogether disavows, religion. On one account, reason replaces the divine and thus takes on divine qualities and authority. With God's evacuation of truth, reason dons the mantle. Yet the adjective "mild" relativizes that authority. Rationalism is not unitary, godlike. It is not inherited from God but rather emerges from the play of forces that is marked by the word "balance." When linked with deism, rationalism takes center stage, but it does so not as an individual—there is no longer a singular deity—but as an ensemble. It is not command, not divine revelation, but discussion. It is therefore not a unitary reason that reveals truth but the "balance" of opinions that establishes harmony; and that harmony is the placeholder for truth. No single instance, no person or single institution, stands for the truth. Rather, each contributes to the construction of truth that emerges in discussion, not as compromise but indeed as truth. In turn, the community, the people, will recognize in that multi-voiced, "decentered" (as Habermas would say) truth its own well-being, not just in the sense of a live-and-let-live libertarian liberalism, but in the sense of a community of self-interested individuals who have discovered a way of living in harmony with one another, despite their "natural" inequality. As Schmitt puts it, the "*ratio* of parliament rests . . . in a process of confrontation of differences and opinions, from which the real political will results. The essence of parliament is therefore public deliberation of argument and counter argument, public debate and public discussion, parley, and all this without taking democracy into account" (Schmitt 1985a, 34–35). To punctuate his claim Schmitt refers to the "absolutely typical chain of thought" of the "absolutely typical representative of parliamentarism," François Guizot. "Starting from right (as the opposite to might)," Schmitt writes, Guizot

lists the essential characteristics of a system that guarantees the rule of law: (1) that "the powers" are always forced to discuss and thereby to seek the truth together; (2) that the openness of the whole of political life places "the pow-

ers” under the citizens’ control; and (3) that press freedom prompts citizens to seek the truth for themselves and to make it known to “the powers.” Parliament is accordingly the place in which particles of reason that are strewn unequally among human beings gather themselves and bring public power under their control. (35)

The almost identical set of principles can be found in the Anglophone literature as well. John Stuart Mill, in the second chapter of his *On Liberty*, titled “Of the Liberty of Thought and Discussion,” also wishes to gather together the scattered particles of reason by way of verbal contest. “In politics,” he maintains, “it is almost a commonplace, that a party of order or stability, and a party of progress or reform, are both necessary elements of a healthy state of political life,” because each compensates for the “deficiencies” of the other.

Unless opinions favourable to democracy and to aristocracy, to property and to equality, to co-operation and to competition, to luxury and to abstinence, to sociality and individuality, to liberty and to discipline, and all the other standing antagonisms of practical life, are expressed with equal freedom, and enforced and defended with equal talent and energy, there is no chance of both elements obtaining their due. . . . Truth . . . is so much a question of the reconciling and combining of opposites, that very few have minds sufficiently capacious and impartial to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners. (Mill 1989, 48–49)

Only in this way, “only through diversity of opinion is there, in the existing state of human intellect, a chance of fair play to all sides of the truth” (49). *This*, the conviction that “the truth can be found through an unrestrained clash of opinion and that competition will produce harmony,” is what Schmitt insists on calling liberalism’s “consistent, comprehensive metaphysical system” (Schmitt 1985a, 35). *This* is the subject of Schmitt’s critique.

Whether explicitly or implicitly, this liberal “metaphysical system” presupposes an individual, usually exclusively white and male, whose “particles of reason” have also customarily been honed and developed in class-based educational establishments. Presupposed, in other words, are property and education (again, *Besitz und Bildung*) along with gender-based and race-based exclusion, as can be documented by the checkered history of suffrage in Europe and the Americas throughout the nineteenth century and into the twentieth. (What the twenty-first will bring remains to be seen.) Presupposed are also the basic rights that protect access to property and exclusive education. Though public education was pioneered on the continent (primarily Prussia) and North America, and admirably championed by Matthew Arnold,⁹ it too has a checkered history and is slowly (or perhaps not so slowly) receding from view today. Furthermore, with proper breeding comes also the

required control of the passions, a presumed mastery that putatively allows reason to rule. And with rational self-discipline comes a silently assumed suspension of self-interest, or perhaps an explicit assumption that among peers the difference in material and spiritual self-interest is only a matter of degree, not kind. However, with the rise of industrial poverty and the resultant social movements, a post-Hegelian doubt, registered in differing ways by Marx and Stein, rises to challenge the quiet assumptions of the liberal bourgeoisie. The popular sovereignty that the separation and balance of governmental powers was meant to suppress, now more often than not referred to as mass democracy, threatens, again in various ways, to break through the old glass ceiling of privilege. The presumption of harmony shatters when the rabble rattles the gates.

These implicit presuppositions and quiet assumptions make up the “façade,” the painted radiator of the parliamentary system, behind which, in closed sessions, decisions are made. The operative term to describe what goes on in legislative bodies is not discussion (*Diskussion*) but negotiation (*Verhandeln*), which on Schmitt’s view is a decisive distinction. One deliberates and negotiates everywhere, in the cabinet of an absolutist monarch and at board meetings of large corporations, even “between Christian and Turk.” Discussion, on the other hand, has a precise definition, “an exchange of opinion that is governed by the purpose of persuading one’s opponent through argument of the truth or justice of something, or allowing oneself to be persuaded of something as true and just” (Schmitt 1985a, 5). Discussion implies not a conflict of interests but of *opinions*, not a calculation of costs and benefits, but a common search for reasoned agreement that is then accepted not as a compromise but as truth. Anyone with eyes to see and ears to hear, he implies, will realize that modern parliamentary proceedings have nothing to do with liberal self-description. Therefore, parliamentary governance is a sham, thoroughly discredited, and slated to be the latest political ideology to be tossed into the dustbin of history.

Democracy, on the other hand, with or without the accoutrements of liberal restraints, has become the only *legitimate* form of rule. “The development from 1815 until 1918 could be depicted as the development of a concept of legitimacy: from dynastic to democratic legitimacy” (Schmitt 1985a, 30). With the possible exception of Italian Fascism, Schmitt states (in 1923), every form of modern governance, from liberal constitutional monarchy to Bolshevism, justifies its existence democratically, which is here defined as the will of the people. Accordingly, the chief issue of democratic thought becomes the identification or recognition of the will of the people—more realistically, the problem of will formation. “One can say today, faced with the expansion of democratic thought, that an identity with the will of the people has become so common a premise that it has ceased to be politically interesting, and that the conflict only concerns the means of identification”

(29). Since Schmitt disqualifies liberal, parliamentary discussion as a possible means, he is obligated to offer an alternative model of democracy. This model is our next object of investigation.

Chapter Six

Democracy

With the disarticulation of what had become the only legitimate modern political means of governance, liberal democracy, Schmitt thought it possible to discard the liberal components (prepolitical rights, separation of powers, parliamentary discussion) and keep democracy, provided that one identified and defined democracy correctly. Before we look at Schmitt's definition, let me pull some threads together in order to better focus our attention on what Schmitt proposes.

You will recall Nietzsche's and Weber's contention that there is no access to the well-reasoned intellectual enterprise called *Wissenschaft* (science in its most expansive sense) without pre-rational presuppositions. Reason alone does not give one norms to follow. Rather, one derives norms rationally only *after* one chooses an enabling starting point without the help of reason. There is, as it were, a required Kierkegaardian leap of faith, after which and only after which one sutures the gap between contingent choice and necessary system. One way to make the contingent leap invisible after the fact is to claim that one's chosen presupposition is an impartial and therefore noncontingent standard. Leo Strauss, as we saw, uses the putative discovery of "nature" as the backstop through or around which one is not supposed to peek. Kant and modern neo-Kantians like Jürgen Habermas rely on a historical process, the continuing and possibly never-ending self-perfectibility of the public use of reason, as its unquestioned legitimacy.¹ Carl Schmitt more frankly speaks of authority, modeled loosely on the role of the Roman Church's guardianship of revelation, as reason's guide, and of community, again modeled loosely on the church's congregation, which recognizes the legitimacy of authority whenever it feels its belief confirmed by that authority. In each case, whether reason ("natural" or "evolutionary") or revelation ("divine" or "secular"), we are dealing with a scarcely concealed fiction.

Nevertheless, if we accept (on faith) Nietzsche's and Weber's views, any critique of the fictionality of reason or revelation must itself be based on an enabling presupposition, a fiction of its own. Neither an objective, rational ground nor the *lack* of an objective, rational ground for our beliefs can be demonstrated objectively or rationally. As Weber said, we choose (singly or as a collective) and are thereby left to our own devices.

A fascinating short essay by Georg Lukács, "Bolshevism as a Moral Problem," written in November 1918, only days before he committed himself wholeheartedly to Bolshevik, revolutionary socialism, illustrates the point with enviable clarity. Lukács distinguishes two conflicting elements of Marx's thought: the *sociology* of continuous, never resolved class struggle, on the one hand, and, on the other, a *philosophy of history* that projects an ideal world order in the future. According to class struggle alone, no flawlessly democratic order would ever be possible, because one would always experience the oppression of one class over the others. Sociologically speaking, a working-class revolution would, therefore, simply replace the oppression of the bourgeoisie with that of the proletariat, which, on Lorenz von Stein's reading, would equally lead to the "death" of society. The Marxist-Leninist adaptation of the Hegelian philosophy of history, however, locates in this dictatorship of the proletariat the final oppression of one class over the other, after which oppression would disappear and a fully transparent self-determination of the *demos* would be established. The political actor who is asked to choose between the reformist platform of a social democratic party and the revolutionary vision of the Bolsheviks would face a moral dilemma. On the one hand, the reform party operates with democratic means to effect incremental democratic reforms, thereby risking "infinite delay, since most of the people might not yet want this new world order." Within the paradigm of reform, the remedy for infinite delay is pedagogy, "to teach, enlighten, and wait, in the hope that one day humanity, through its conscious action, will achieve what has long been viewed by many as the only possible solution to the problems of the world" (Lukács 1977, 422).² The revolutionary party, however, places its belief in the *will* of the political actor, namely the proletarian class. "It is precisely this will that enabled the proletariat to become the agent of the social salvation of mankind, the messianic class of world history. Without the fervor of this messianism, the victorious path of social democracy would have been impossible" (420–21). Belief in the messianic mission of the proletariat entails our acceptance of "dictatorship, terror, and the class oppression that goes with it . . . in the hope that this last and therefore most open and cruel of all class oppressions will finally destroy itself and in so doing will put an end to class oppression forever" (422). We are therefore placed before a dilemma and asked either to work incrementally and in a compromised manner with no sure hope of success or "to believe—this being the true *credo quia absurdum est*—that no new class struggle will emerge out

of this class struggle . . . but that oppression will effect the elements of its own destruction” (423–24). To repeat, the dilemma is, in Lukács’s view, an *ethical* dilemma that no knowledge can resolve. “It is, therefore, a question of belief—as it is in the case of any ethical question—of what the choice will be” (424).

If, in this essay, we are reminded of Weber, it should come as no surprise, since Lukács was a longtime member of the unofficial Weber Circle in Heidelberg.³ At almost the very same time that Lukács composed his exercise on the dilemma of political commitment, Weber delivered his lecture “Politics as a Vocation,” in which he developed the key distinction between a political ethics of conviction (*Gesinnungsethik*) and an ethics of responsibility (*Verantwortungsethik*). The former he attributes to the syndicalist actor who cannot be dissuaded by pragmatic considerations from acting on the purest of motivations.

You may be able to prove to a syndicalist who is a convinced adherent of an ethics of conviction that in all likelihood the consequences of his actions will be to improve the prospects of the reactionaries, to increase the oppression of his own class and hamper its rise. But however convincing your proofs may be, you will make no impression on him at all. Such a man believes that if an action performed out of pure conviction has evil consequences, then the responsibility must lie not with the agent but with the world. (Weber 2004, 83–84)

A “responsible” politician, however, acts according to a contrary principle. He will weigh not just alternative ends but also alternative means, including unsavory ones, to achieve desired if limited results. Yet, the distinction between the two ethics is not symmetrical. Acting out of a sense of responsibility—compromise, reform, measured action that leads at best to limited success while trying to avoid collateral damage—is itself a conviction, as Weber makes clear. “I find it immeasurably moving,” he writes, “when a *mature* human being . . . who feels the responsibility he bears for the consequences of his own actions with his entire soul and who acts in harmony with an ethics of responsibility reaches the point where he says, ‘Here I stand, I can do no other’” (92). The evocation of Martin Luther’s famous utterance that launched the Protestant Reformation says it all. Conviction based on belief and not an ultimate, rational ground lies at the bottom of both political, ethical stances.

When Weber uses the “syndicalist” as his example of one who acts on the premise of an “ethic of conviction,” he has above all the supreme theorist of syndicalism in mind, Georges Sorel, whom we have already encountered. Just as Sorel distinguished between a negatively charged force (state power) and a positively valued violence (the general strike), so too did he oppose a favored, non-rational myth to the calculable and rational predictions of all

utopias. A utopia, which is at best inherently reformist and at worst reactionary (Sorel 1999, 28, 128), is “an intellectual product,” a “work of theorists who, after observing and discussing the facts, seek to establish a model to which they can compare existing societies in order to estimate the amount of good and evil they contain” (28). Utopias, the work of future pragmatic politicians, not revolutionaries, become the object of rational calculation, debate, and public policy. “Liberal political economy is one of the best examples of a utopia that could be given. A society was imagined where everything could be reduced to types produced by commerce and operating under the law of the fullest competition.” Although such “an ideal society would be as difficult to realize as that of Plato,” Sorel adds, “several great statesmen of modern times have owed their fame to the efforts they made to introduce something of this ideal of commercial liberty into industrial legislation” (29). Though Sorel emphatically sides with the proletariat, he claims that even socialism throughout its short history has been plagued by utopian thinking, a situation Sorel aims to correct with the concept of myth.

Myths “are not descriptions of things but expressions of a will to act” (Sorel 1999, 28), not rational plans but an ethos. For Sorel, the general strike, modeled on the singular, cataclysmic Napoleonic battle (109), was *the* myth of modern, radical action.

The general strike destroys all the theoretical consequences of every possible social policy; its supporters look upon even the most popular reforms as having a bourgeois character; so far as they are concerned, nothing can weaken the fundamental opposition of the class struggle. The more the policy of social reforms becomes preponderant, the more will socialism feel the need of placing against the picture of progress which it is the aim of this policy to bring about, the picture of the complete catastrophe furnished so perfectly by the general strike. (126)

Would you care to refute this assertion? It would be to no avail. Not an invitation to discussion, myth is a call to arms. Accordingly, you are invited to recall Walter Benjamin’s “Critique of Violence,” and may again recognize his distinctions as a recrafting of Sorel’s. Not only does Sorel’s opposition of force and violence become Benjamin’s distinction between mythic and divine violence, but—despite the negative valence of the term “mythic” in Benjamin’s scheme—you may now also realize that divine violence is an elevated version of the general strike, and that what Agamben calls Benjamin’s “white eschatology” (which longs for but predicts nothing about the future except that it will be wholly other) follows the logic of myth—undiscussable, impossible to prove or refute, but oh so very enchanting for those who believe.

Sorel’s disdain of “utopian” liberalism must surely have warmed the cockles of Carl Schmitt’s cold, cold heart. Of the myth of the general strike

Schmitt makes Armageddon. There are two antagonists who face each other over the lesser figures of 1848 liberal “utopianism”—the Catholic reactionary Donoso Cortés and the French socialist/anarchist Proudhon (alternately: Marx), each the Antichrist of the other. Their opposition is world historical, Schmitt believes, yet perhaps more importantly each equally opposed “the bourgeois ideal of peaceful agreement,” of the “monstrosity of cowardly intellectualism. Discussing, bargaining, parliamentary proceedings, appear a betrayal of myth and the enormous enthusiasm on which everything depends. Against the mercantilist image of balance there appears another vision, the warlike image of a bloody, definitive, destructive, decisive battle. In 1848 this image rose up on both sides in opposition to parliamentary constitutionalism” (Schmitt 1985a, 69). The common enemy of the reactionary and the revolutionary, in other words, was the bourgeois, that object of literary farce and ridicule now raised for the first time, according to Schmitt, to world-historical significance by Marx and Engels. “They gave it [the figure of the bourgeois] the meaning of the last representative of a prehistorical humanity that was divided into classes, the very last enemy of mankind, the last *odium generis humani*” (74; see also 61). In Sorel, the myth of the general strike, the last battle against the last enemy of mankind, gives the proletariat its motivation and ethos.

Whereas both Lukács (initially) and Weber side with the reformist practitioner of pragmatic politics, Lukács abruptly jumps to the other side and into the open arms, as it were, of Sorel, or at least Lenin and the myth of the dictatorship of the proletariat as the last stage of violence and oppression before human history as we have known it effectively disappears and a new era dawns.⁴ Schmitt harbors no such eschatological illusions. There is no secular substitute for the second coming of Christ. Yet Schmitt *does* embrace the idea of myth, while at the same time refashioning it. Historical examples, Schmitt claims, including the examples that Sorel gives, demonstrate that “the stronger myth” is not that of the proletariat but of the nation (Schmitt 1985a, 75). Though the French Revolution was both a political and a societal event, it is to the idea of the nation that it gave birth, to no small degree because it inspired the myth of the nation in Europe’s opposition to Napoleon, most notably in Spain and Prussia. Even when the myth of nation combines with the myth of class (as in the 1917 Russian Revolution and 1916 Irish uprising, both examples given by Schmitt), nation reigns supreme. Oddly, Schmitt does not give as example the putative truce in class warfare of 1914, when the workers of the world did indeed unite, but each with his or her nation and not, to the chagrin of radical socialists, with each other across national borders. The year 1914 was the true victory of the idea of nation, and, despite the Russian Revolution of 1917, postwar Europe and the Middle East, by dissolving the Austro-Hungarian and Ottoman empires and carving territory out of a defeated Germany and Russia, were defined by ethnic

nationalism and the newly created Eastern European nation-states. Even the Soviet Union, by abandoning St. Petersburg and returning to Russia's Muscovite roots, Schmitt asserts, was as much a victory of the myth of nation as it was of class. And finally, in Fascist Italy, the depiction of the "communist enemy with a horrific face, the Mongolian face of Bolshevism," left a stronger impression and "evoked more powerful emotions than the socialist image of the bourgeois" (75).

The myth of the nation, the people, the *demos* as the unity that gives form to its own political existence, is the element that allows Schmitt to isolate democracy from its extrinsic, liberal accretions and make of it the basis of a strong, self-determining state that has the chance of keeping the party-political, parliamentary forces of contesting social self-interest at bay. The people as the singular, substantial constituent power of the nation is no more a real, empirical entity than is the idea of nature, natural law, universal norms, or pre-political rights; unlike the latter, however, "the people" can serve as the "myth" around which the political existence of a state may coalesce. We now turn to an examination of how Schmitt defines democracy in terms of a united people as the true constituent power of the nation-state in the modern era.

HOMOGENEITY

"Democracy requires . . . first homogeneity and second—if the need arises—elimination or eradication of heterogeneity. . . . A democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and unequal that threatens its homogeneity" (Schmitt 1985a, 9). These words, written in 1926,⁵ will no doubt chill the heart of those of you now reading them for the first time. We twenty-first-century contemporaries cannot help but regard them through the lens of the historical experience attached to the dates 1933–1945 and beyond. The lessons of the twentieth century make it difficult *not* to assume that homogeneity refers to racial or ethnic purity and that "elimination or eradication" implies ethnic cleansing or genocide. The examples Schmitt gives in 1926 do not help matters much. "To illustrate this principle it is sufficient to name two different examples of modern democracy: contemporary Turkey, with its radical expulsion of the Greeks and its reckless Turkish nationalization of the country, and the Australian commonwealth, which restricts unwanted entrants through its immigration laws, and like other dominions only takes emigrants who conform to the notion of a 'right type of settler'" (9).⁶ And to drive the last nail in the coffin, he points to an obvious fact, namely that states who pride themselves on their democratic institutions systematically exclude inhabitants from equal rights and equal participation. "Finally, one has to say that a democra-

cy—because inequality always belongs to equality—can exclude one part of those governed without ceasing to be a democracy, that until now people who in some way were completely or partially without rights and who were restricted from the exercise of political power, let them be called barbarians, uncivilized, atheists, aristocrats, counterrevolutionaries, or even slaves, have belonged to a democracy” (9–10). His examples are the Athenian polis and the British Empire. But the list certainly does not end there: All nineteenth-century democracies excluded women every bit as much as Athens did, some restricting male suffrage to varying degrees as well. And, as a citizen of the United States, I feel obliged to remind all and sundry of the history of our relocation into reservations of that part of the indigenous North American population whom we had not already exterminated, as well as our enslavement of Africans and subsequent de jure discrimination of their descendants, which continues de facto in a variety of ways today—yet we still presume to serve as that shining city on the hill that putatively inspires the rest of the world to become democratic too.

Empirically, Schmitt’s contention seems incontestable. Democracies have always been the rule of the many (not necessarily the majority), never the rule of all. Unlike Schmitt, however, we tend, or *pretend*, to see the above remarked examples as deficiencies to be corrected, not as necessary conditions of possibility. Although the “population transfers” of ethnic Greeks to Greece and ethnic Turks in the opposite direction (though the operative distinction was more religious than ethnic—that is, Orthodox Christians on the one hand, Muslims on the other) was sanctioned and mediated by the League of Nations and served as a legal and moral precedent for subsequent transfers (think of the violent expulsion of ethnic Germans from Eastern Europe after World War II, sanctioned by the victorious Allies, or the similar expulsions that accompanied the independence of India and the creation of Pakistan, just to give two examples),⁷ we now refer to the process as “ethnic cleansing” and, in most cases, no longer endorse it. The “white Australia” policy of restricting immigration based on race or ethnicity was abolished in 1958, and currently Australia is coming to terms with the legacy of racially exclusionary policies that affected not just immigration but also the treatment of the continent’s indigenous population. South Africa, like the United States, was an apartheid democracy, now legally if not in reality fully corrected; but Israel, sometimes championed as the only Mideast democracy, has not granted citizenship or political equality to the Palestinians whose political lives they surveil and control to the most intimate degree. None of this invalidates democracy in the eyes of its champions. Democracy—or better, “democratization”—is considered an aspirational, ongoing process, a continuous effort at reform to match reality with the ideal of formal equality for all. Hope, as they say, springs eternal.

But Carl Schmitt is making more than an empirical and historical observation. With the inserted phrase “inequality always belongs to equality,” something resembling a logical necessity is posited. It is not logic in a strict Aristotelian or modern symbolic, mathematized sense but a form of operating with binary distinctions. The “logic” of distinction asserts that any and every chosen distinction is historically, culturally, or otherwise contingent and thus revisable, but that a distinction be made is necessary. Without differentiation, constructions of identity and difference cannot be made. It is not merely on a formal level that one needs a sense of inequality in order to define equality—just as one needs a background to see a foreground or an outside to perceive an inside—but rather, substantially (to use one of Schmitt’s favorite if relatively undefined terms) one needs a correlative inequality to make equality meaningful. It is such a substantial equality that Schmitt identifies as democratic.

The question of equality is precisely not one of abstract, logical-arithmetical games. It is about the substance of equality. It can be found in certain physical and moral qualities, for example, in civic virtue, in *arete*, the classical democracy of *vertus* (*virtu*). In the democracy of the English sects during the seventeenth century equality was based on a consensus of religious convictions. Since the nineteenth century it has existed above all in membership in a particular nation, in national homogeneity. Equality is interesting and valuable politically only so long as it has substance, and for that reason at least the possibility and the risk of inequality. (Schmitt 1985a, 9)

A democratic equality can exist only if the *demos* can meaningfully differentiate itself from those who do not belong, and those who do not belong do *not* enjoy the status of being equal with those who do. The three historical examples implied in the above passage—Greek and Roman antiquity, early modern Europe, post-French Revolutionary Europe—utilize different unifying or “homogenizing” principles—civic virtue, religion, nationhood—around which citizens collect themselves into a unity above and beyond their personal, private, self-interested, economic, and social lives. It is citizenship in a political community that gives them their public persona, and it is that public persona that enjoys political, “substantial” equality.

Now, the idea of citizenship makes this an obvious and almost trivial observation. Citizens of a state enjoy rights (e.g., to vote) that noncitizens do not. But it is the idea of citizenship, the idea that rights and duties are the properties of citizens of a state (or an equivalent political body), that has come under attack today, most notably in the claims made for pre-political *human* rights regardless of membership in a political community. Human rights are said to be universal, and one bandies the phrase “citizen of the world” to indicate that rights inhere in individuals as individuals, even though “the world” is not a political entity that has the capacity to grant

citizenship or protect its self-proclaimed citizens. It is against this “liberal” ideal that Schmitt polemicizes. “Equal rights,” Schmitt concedes, “make good sense where homogeneity exists” (Schmitt 1985a, 10). However, that “every adult person, simply as a person, should *eo ipso* be politically equal to every other person . . . is a liberal, not a democratic, idea; it replaces formerly existing democracies . . . with a democracy of mankind” (11). Schmitt again fortifies his claim with the observation that such a democracy of mankind exists nowhere in the world. But the claim is stronger than this empirical commonplace. Schmitt really asserts that a universal democracy could never exist because the homogeneous ground for such an all-encompassing extension of democracy would be too formal and abstract to serve the required purpose. The human *as* human can differentiate itself only from the nonhuman, but political equality is neither an affair of the species nor an affair of religious or ethical “brotherly” love. Therefore, to treat equality simply “as a consequence of birth or age and nothing else” would be to strip it “of its value and substance, because the specific meaning that it has as political equality, economic equality, and so forth—in short as equality in a particular sphere—would have been taken away.” On this view, then, equality is “value sphere” (Weber) or “system” (Luhmann) specific. Accordingly, an equality that attaches to the desocialized, abstracted human individual *evades* the question of inequality that makes its inevitable appearance in all the spheres or systems of social life.

Every sphere has its specific equality and inequalities in fact. However great an injustice it would be not to respect the human worth of every individual, it would nevertheless be an irresponsible stupidity, leading to the worst chaos, and therefore to even worse injustice, if the specific characteristics of various spheres were not recognized. In the domain of the political, people do not face each other as abstractions, but as politically interested and politically determined persons, as citizens, governors or governed, politically allied or opponents—in any case, therefore, in political categories. In the sphere of the political, one cannot abstract out what is political, leaving only universal human equality; the same applies in the realm of economics, where people are not conceived as such, but as producers, consumers, and so forth, that is, in specifically economic categories.

An absolute human equality, then, would be an equality understood only in terms of itself and without risk; it would be an equality without the necessary correlate of inequality, and as a result conceptually and practically meaningless, an indifferent equality. (Schmitt 1985a, 11–12; see also Schmitt 2008a, 257–64)

This is the “logical” claim, for which Schmitt continually finds historical support, but which stands or falls regardless of empirical evidence. We can approach an understanding of what he means by a preliminary examination

of Schmitt's most famous distinction of all, that between the friend and the enemy.

In *The Concept of the Political*, Schmitt (2007, 19) dissociates the political from the state. The state "presupposes" the political, implying that the political can manifest itself in other than state forms (e.g., empire, confederation, etc.). The modern, European, post-Westphalian state and its post-1789 national derivative is for Schmitt an exquisite achievement, but political forms come and go. The political, however, remains, regardless of the shape its housing takes; therefore, defining the state is less important than defining the political, which he does by introducing the friend/enemy distinction. Teasing out some of its facets will be important for understanding the homogeneity he identifies as crucial to any democracy.

First, the distinction is a definition of the political only "in the sense of a criterion" (Schmitt 2007, 26). It is, therefore, applicable to any political form. Yet Schmitt's elaborations clearly place his concerns within modernity—more specifically, within modernity as Weber conceived it. Weber had described modernity in terms of the differentiation of value spheres, such as law, the economy, science, and the like. This differentiation reflects the reappearance of the "warring gods" that we have already discussed in Part I and the resultant lack of overlapping coherence such a conflict brings about in the modern world. Belief in the classical unities has disintegrated. That something is beautiful guarantees neither that it is true nor good; the true neither the good nor the beautiful; the good neither the beautiful nor the true (Weber 2004, 22–23). More importantly, the various spheres of modern life operate by way of criteria (or codes, as Parsons and Luhmann will later say) that are unique to their own activities and therefore cannot be seamlessly mapped onto one another. What is profitable (economy) may not be legal (law). The educability of the individual (education) may not translate into the educability of the human race, as Enlightenment thinkers had postulated. The Kantian moral politician may produce immoral results. And so on. Schmitt reflects this Weberian scheme in his discussion of the political. The friend/enemy distinction "can be neither based on any one antithesis or any combination of other antitheses, nor can it be traced to these. . . . The political enemy need not be morally evil or aesthetically ugly; he need not appear as an economic competitor, and it may even be advantageous to engage with him in business transactions. But he is, nevertheless, the other, the stranger. . . . Thereby the inherently objective nature and autonomy of the political becomes evident by virtue of its being able to treat, distinguish, and comprehend the friend-enemy antithesis independently of other antitheses" (Schmitt 2007, 26, 27).

And second, the friend/enemy distinction relies on the difference between the public and the private. "An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity. The ene-

my is solely the public enemy, because everything that has a relationship to such a collectivity of men, particularly to a whole nation, becomes public by virtue of such a relationship” (Schmitt 2007, 28). Public enmity is different from private hatred and, for that matter, from love. Echoing Weber again, who had also discussed the ethical commands contained in the Sermon on the Mount (Weber 2004, 81–82), Schmitt referred to Jesus’s injunction to “Love your enemies.” Differentiating between the Latin *inimicos* and *hostes*, Schmitt claims that “*diligite inimicos vestros*” refers to a private not a public enemy. “No mention is made of the political enemy. Never in the thousand-year struggle between Christians and Moslems did it occur to a Christian to surrender rather than defend Europe out of love toward the Saracens or Turks” (Schmitt 2007, 29). Needless to say, this sentiment could equally apply the other way around. Saladin’s reputed magnanimity toward Christians did not in the least diminish his determination to repel the foreign invader. Public enmity has, “logically” speaking, nothing to do with personal love *or* hatred of the other. It has everything to do with asserting the political will of the collective in times of need against the political will of another collective.

The point of insisting on friends and enemies as the distinguishing mark of the political is manifold. To distinguish political enmity from moral condemnation or personal hatred aims at establishing warfare among political collectivities as an institution with commonly recognized limits and standards, to distinguish it from murder, individual or mass. If the political is defined as the act of distinguishing friends from enemies, then the collection of socially self-interested individuals within a political entity must find ways of forming a single collective will based on some common criterion that unites them. Individuals have widely varied interests as they confront each other in the several social spheres. They may be debtors, creditors, producers, distributors, and consumers in an economic transaction; legal contestants in a court of law; pupils, parents, teachers, and administrators in a school district; doctors, nurses, patients, and financial managers in a hospital; social scientists and test subjects in a controlled experiment; laboratory researchers and animal rights activists in an ethical dispute; factory workers on strike facing management on the one side and potential strike breakers on the other; or subjects and objects in any of a ridiculously high number of other examples that one could conceive. But if they are all of the same political collectivity, what calls them together *as* a collective when the political need arises? What holds them together Schmitt calls homogeneity, that one thing they can agree on when they wish or feel they have the need to look beyond their individual self-interest to pursue the defense or the greater good of the whole. It is the one thing or cluster of things, even in the fiercest of class, religious, or other conflicts, that allows them to see their opponents as legitimate contestants, as enemies, not criminals; it also allows them to embrace their domestic relig-

ious, economic, and political “others” as friends, members of the same overarching unity.

In a democracy the collectivity is called the people, and what makes the people a people is defined in terms of the political form they inhabit. That form in Schmitt’s day was still the state, and in Europe the state was characterized as the nation-state. Human beings as human beings were equal to each other the world over, though that equality had only the most abstract of meanings. As political beings, only citizens are equal to fellow citizens, and then *only* as citizens. Thus, for Schmitt, of all the distinctions that could divide the people in the nation into individual actors, one must tower over all the others: German/non-German. In the modern (post-Westphalian, European) world, lines of demarcation are not merely ideal but territorial. “Germany” has an ever-changing physical shape with an ever-changing but continuous identity. Without such a ground, literally and figuratively, around which a people can form (in contrast to others with other common grounds), equality, to repeat Schmitt’s contention, would be a formal term that promises much but delivers precious little. This may someday end, Germany (say) may cease to exist as a political unity, but if it does a new entity (Europe?) will emerge as the subject of political identity, and it will do so only by finding a common ground (perhaps physical, perhaps only figurative) by means of which it can establish its identity in contradistinction to other, now non-European identities. All along the way, differences remain. Despite the chic sensibility, we are never the world, or, if so, then only imperially.

At the risk of repetitiveness, I stress that Schmitt’s notion of homogeneity does not mean that heterogeneity disappears. Schmitt often gives a hypothetical menu of qualities from which to choose one or more to serve as the kernel of homogeneity—for instance, historical tradition, language, religion, ethnicity, and so forth.⁸ In a Germany defined, say, by language and the cultural tradition preserved in that language, Protestants will still be Protestants, Catholics will still be Catholics, Jews will still be Jews, and Muslims will still be Muslims. Bavarians will fiercely define themselves in opposition to Prussians, Prussians to Saxons and Swabians. Workers will rail against robber-baron capitalists, the bourgeois entrepreneur will disdain union workers as spoiled, lazy, and unkempt. But none of these differentiations serves as the prime distinction. German (however defined) trumps them all without denying any of them. In Schmitt’s world, for “a people” to exist, it must pick the national distinction around which to rally, if for no other reason than the fact that the national distinction is (or has become) the territorial distinction and thus the physically defensible distinction (Schmitt 1985a, 11). In a world of nation-states, the nation-state is supreme. To raise another distinction above all others—one’s religion, one’s level of education or income, one’s “local” territory—would be to incite civil war, which would make the collective vulnerable to forces and pressures coming from the outside. The democratic

community, in Schmitt's view, is forever defined by the threat of dissolution, either through internal civil war or external physical, economic, or "moral" pressure.

Nevertheless, the term "homogeneity" may still make our skin crawl. By the late 1920s, Schmitt began to use another term—integration—not as a substitute but as complement. The same year that Schmitt published *Constitutional Theory*, Rudolf Smend came out with his own study of the function of state constitutions. In it he developed his so-called *Integrationslehre* or theory of integration. Individuals were integrated into a constitutionally determined state form by three general means. First, citizens were integrated by virtue of the personality of their state's leader. That is, they were formed to think of themselves as part of a greater whole, the state, through the representative function of the political leader, whether monarch, president, prime minister, chancellor, or whatever the leader(s) may be called. Perhaps the purest form of such "embodiment" of the nation through a sovereign leader is executed by a hereditary monarch. Quoting the liberal-democratic primary author of the Weimar Constitution, Hugo Preuß, perhaps with an ironic twinkle in his eye, Smend states that the ovation for a hereditary sovereign does not so much honor the person as serve as an act—and here he quotes Preuß—"of the self-consciousness of a unified people in a state" ("ein Akt 'des Selbstbewußtseins eines einheitlichen Staatsvolkes'").⁹ In the case of the functioning democracy of the Weimar Republic, this function is taken over by the *Reichspräsident*, who is elected by the entirety of the adult population. Interestingly, Smend further echoes what we have learned from Lorenz von Stein by stating that the bureaucracy and other state functionaries should also be considered an integrative "person" (Smend 2010, 146) and thus perform the same representative service. Both the leader and the forceful arm of state action are persons who in some fashion stand in for the unity of the political community.

Second, citizens are also *functionally* integrated in the political order. Here Smend has in mind any activity that reinforces the sense of living in a community with a collective will. Means of functional integration range far and wide, from rhythmic physical activity found in work or the military¹⁰ to more rational or at least thoughtful activities like elections, referenda, and other forms of political participation. Smend, therefore, defends the function of the parliament against both Schmitt's critique and Richard Thoma's defense. Like Thoma, Smend believes that parliament needs no ideological justification; thus Schmitt's ideology critique misses the mark. An ideological justification for the institution may easily become outdated or forgotten even as its integrative function continues. Against Thoma (and Weber) he argues that simple success in executing political decisions or serving as the breeding ground for future leaders is not enough to justify parliamentary government. Rather, parliament finds its ultimate political meaning in the

formation and organization of its citizens into interested groups who ultimately find their collective identity in the fashioning of a workable, governing whole through the acceptance of majority rule. It is through party-political participation (supplementing or replacing direct action in modern mass democracy) that dominion or rule (*Herrschaft*) of the leader can have its integrative effect.

Finally, the integration of a state's citizens is brought about *factually*, or, one could also say, emotionally, on the level of symbols, from the display of flags, banners, seals, and the pledges of allegiance and anthems that accompany them to the narrated and pictorial representation of historical events in schools and during patriotic holidays. It is precisely the rationality and size of the modern state machinery that provokes the necessity of non-rational symbolism. Without symbolic representation, there could be no overview, no sense of the whole, only the impression left by the cold, fragmented, disenchanting, rationalized workings of the state apparatus. Symbolic representation attempts to make citizens conscious of the fact that the state is not mere machinery but also a community based on shared history, shared culture, and shared values.

There is much in Smend's notion of integration that Schmitt could use for his own articulation of modern democracy. Of the three forms of integration that Smend delineates, Schmitt would of course have the biggest problem with the second. Versions of Smend's views of the function of parliamentary governance have always been propagated; indeed, the commonly accepted notion, voiced by Lorenz von Stein as well, was the view that the bourgeoisie had been integrated into the political community, formerly dominated by the aristocracy, by way of parliamentary participation in constitutional monarchies and republics. On the other hand, in the turbulent 1920s Schmitt could see nothing in liberal, party-political, parliamentary procedures but the danger of *disintegration*, which in fact came to full fruition in the early 1930s. Nevertheless, given what Schmitt had already written in his own work on the constitution, one can see how the other two moments—the function of the leader and the means by which people attach themselves to the “myth” of the nation—had their appeal. Schmitt did occasionally use the term “integration.” In particular, he would note the urgency of “integrating” the proletariat in the twentieth-century German democratic state, just as the bourgeoisie had been integrated in the constitutional monarchy of the nineteenth century. But this is pretty much as far as Schmitt went in dealing with the issue of class and class conflict. Schmitt was hardly unaware of economic issues and debates; they are shot through the Weimar Constitution, party battles, and the political theory of the time, and some of his best students and sometime admirers, like Otto Kirchheimer and Franz Neumann, were socialists or at least social democrats. Yet “class” never appears on Schmitt's menu of homogeneous options. On the surface, the reason is obvious. If the idea is to

preserve the nation by identifying the constituent power with the collective called “the people,” then dividing the people into warring classes could lead to nothing but civil war. Schmitt, then, could use class as an operative principle *only* if he could accept the Marxian (or “Bolshevist”; see the discussion on Lukács above) philosophy of history, which prophesized the apocalyptic elimination of economic strife. Economic differences, however, could not realistically be dealt with by such quasi-magical incantations.

I will return to Schmitt’s glancing engagement with economic inequality when I examine his notion of the “total state” in the next chapter. First, we must complete the outline of his picture of the modern democratic nation-state.

THE PEOPLE AS CONSTITUENT POWER

In *Constitutional Theory*, the distinction between liberalism and democracy is starkly portrayed as the difference between the private and the public, between civil society and the state, between the economically driven denial of politics and the existential necessity of the political. This distinction is organizationally portrayed by the juxtaposition of section II, “The Rechtsstaat Component of the Modern Constitution,” and section III, “The Political Component of the Modern Constitution.” Under the “Political Component,” Schmitt gives a thorough definition of his conception of democracy, to which we will shortly turn. In the former, however, he informs us that the *Rechtsstaat*, the state governed by the liberal rule of law, is not really a state form at all, but rather the enumeration of means by which civil society and the private, pleasure-seeking individual can keep any hint of the state at bay. As a *Rechtsstaat*, the “state appears as the strictly regulated servant of society” (Schmitt 2008a, 169). “Bourgeois freedom” is the guiding value, which leads to the following formulation of the essence of liberalism: “The individual’s sphere of freedom is presupposed as something prior to the state, in particular the freedom of the individual is *in principle unlimited*, while the authority of the state for intrusions into this sphere is *in principle limited*” (170).¹¹ Organizationally this priority of the individual over the state is guaranteed, as we have already seen, by a series of basic rights and on the separation or balance of powers.

Though Schmitt means his definition to be a critique, a consistent liberal would find here little with which to argue. Basic rights—now commonly called human rights—are generally thought of as pre-political, and fear of state power and the desire structurally to limit it motivates all liberal constitutions to such an extent that nowadays “constitution” and “liberal constitution” are synonymous. Again, Constant can be our guide. “No authority on earth is unlimited,” he admonishes us, “neither that of the people, nor that of

the men who declare themselves their representatives, nor that of the kings, by whatever title they reign, nor, finally, that of the law. . . . The individuals possess individual rights independently of all social and political authority, and any authority which violates these rights becomes illegitimate” (Constant 1988, 180). Not only is “the sovereignty of the people . . . circumscribed within the limits traced by justice and by the rights of individuals,” but even “God, if he intervenes in human affairs, can only sanction justice” (182).¹² In the liberal world so depicted, the single most important political imperative is to place limits on the political. It would be difficult, if not impossible, to find anyone today who, when push came to shove, would not seek protection behind the shield that the word “right” claims to give us. Even those who wish to *limit* the rights of others do so not by denying rights, but by claiming a superior right, such as recourse to “religious freedom” (I speak now of a phenomenon current, as I write, in the United States) that seeks to legalize discrimination against LGBTQ individuals (for instance) based on a claimed religiously instructed moral conscience.¹³ As already mentioned, even Schmitt recognized the enjoyment that comes with guaranteed rights. Yet one may still ask whether the equal right to the individual pursuit of happiness is the be-all and end-all of the political. And even if the answer to that is “yes,” one may still legitimately ponder whether such a pursuit can best be executed in a strictly liberal society in which private pleasures are inextricably linked to (though not exclusively determined by) the accumulation of private property. A time-honored question, never answered in a way that has satisfied all, asks whether communities exist so that some, and *only some*, may enjoy the wealth produced by all.

Schmitt’s concerns regarding the triumph of the bourgeois individual over the state citizen can be usefully, though carefully, compared with those of the young Marx. In *On the Jewish Question*, Marx, seemingly echoing Hegel’s state/society distinction, *contrasts* rather than conflates the “rights of man and citizen.” The rights of man “are simply the rights of a member of civil society, that is, of egoistic man, of man separated from other men and from the community.” The right to liberty, he continues, is the “right of the *circumscribed* individual, withdrawn into himself.” Likewise, the right to property is founded upon “self-interest.” Most tellingly, equality is nothing but “the right to liberty,” as long as liberty is confined to its liberal definition (Tucker 1972, 40). To what purpose, then, does the political community exist in this self-interested view of the world? With no little indignation Marx concludes:

The matter becomes still more incomprehensible when we observe that the political liberators reduce citizenship, the *political community*, to a mere *means* for preserving these so-called rights of man; and consequently, that the citizen is declared to be the servant of egoistic “man,” that the sphere in which

man functions as a species-being is degraded to a level below the sphere where he functions as a partial being, and finally that it is man as a bourgeois and not man as a citizen who is considered the *true* and *authentic* man. (41)

The state circumscribed by liberal safeguards, then, has no other function than preserving the rights of the “egoistic” individual pursuing his or her private pleasures, and both Karl and Carl have a problem with that. Schmitt’s antidote is not Marx’s; it is not the achievement of perfection by way of the emancipation to come; rather, it is the “muscular” democracy to be shored up in the here and now. It is therefore not surprising that section III of *Constitutional Theory*, “The Political Component of the Modern Constitution,” is the section in which democracy receives its fullest definition. For the Schmitt of 1928, democracy is all but coterminous with the political and thus with the state, at least for as long as the state serves as the vehicle of the political. In the heart of every modern constitution, then, the putatively pre-political rights of the individual are pitted against the political decision of the people, or, more succinctly, private property and private pleasure confront the public common good in a fight over the control of the political apparatus and to what purpose that apparatus is to be put. It is for this reason that the notion (“myth”) of the people or the nation as constituent power looms so large in Schmitt’s writings of the late 1920s and early 1930s.

Stripped of all its qualifying phrases modifying the subject, the preamble to the Weimar Constitution of 1919 reads: “The German people . . . has given itself this constitution” (Das deutsche Volk . . . hat sich diese Verfassung gegeben), a statement to which Schmitt often refers.¹⁴ The constitution thereby unequivocally announces who the constituent power is—“das Volk”—that is, “the people” as a collective singular (“The German people . . . *has*”), not a collection of individuals (i.e., *not* “have”).¹⁵ Without using the term (which did not yet exist), Schmitt specifically *denies* that naming the people the author of the constitution is a performative act. “It is not the case that the political unity first arises during the ‘establishment of a constitution.’” Rather, the constitution results from an “*act of the constitution-making power*,” an act that “*constitutes* the form and type of the political unity, the existence of which is presupposed. . . . Such a constitution is a conscious decision, which the political unity reaches *for itself* and provides *itself*” (Schmitt 2008a, 75–76). Schmitt’s pronouncement is both direct (indicative sentences) and purportedly descriptive (not normative), yet slippery. “The German people” is both the subject of the utterance—the German people has given itself this constitution—and what the utterance presupposes—there is a German people who has the power to give itself this constitution. A political unity is said to exist prior to the shape its peculiar political identity takes. This preexistent political body gives itself distinct political form by way of a politically conscious act of giving itself a constitution. The inarticulately political becomes

articulated, delineated. Therefore, a people and its constitution are not identical. The people is the *will* that authors a constitution and may also be the will that destroys an old constitution and fashions one anew. The “German people” of the preamble to the Weimar Constitution, as constituent power of that constitution, necessarily precedes the act of this formal creation, which has to be seen, therefore, as a deliberate political decision and not simply as the resolution of self-evident norms or the result of logical deduction. The German people has given itself *this* and no other constitution, at *this* and no other particular time, by *this* and no other deliberate act. “The people,” then, as the subject of political decision, must be thought of as more than just the historically contingent state or its historically contingent constitution.

This emphatic contention that “the people” (all 80 million Germans, all 330 million Americans in the United States, all 1 billion Chinese) have and exercise a united will is, well, a myth. The question is not whether the myth is “true,” but what purpose it serves. Hans Lindahl, one of the more sensitive and sympathetic critics of Schmitt and the paradox of constitutional origins, affirms that democracy must embrace the “ontological status of the collective self” for the necessary *legitimacy* it lends to the political order. “For Schmitt, liberating democratic politics from its liberal containment requires acknowledging that a legal constitution is valid because it is the political decision of a people.” Yet, the “paradox of constituent power” resides in what by now has become the performative commonplace, one that Schmitt explicitly denies, namely “that self-constitution begins as the constitution *of* a political unity through a legal order, not as the constitution of a legal order *by* a political unity” (Lindahl 2007, 22). The paradox consists in the necessary simultaneity of legitimacy and legality in which each validates the other. The people serves as the author of and thus legitimacy for the constituted order, even though it first exists at the very same moment as that order comes into being. Put theologically: God’s creation of the world creates God. To think otherwise, to assume the existence of the people before the constitution, would be to succumb to a “metaphysics of presence.” To avoid the sin of presence, which the last half century of critical theory has emphatically warned us against, Lindahl postulates the necessity of precisely the liberal accoutrements that Schmitt wishes to disregard.

Democracy . . . emerges as the form of political organization that embraces this ontological status of the collective self, institutionalizing the principle that “the distinctive manner of political existence” must *always* be legitimated. From this perspective, the division of powers underpins rather than undermines the democratic principle. For a division of powers . . . is a way of acknowledging that a people is never directly present to itself as a unity: whoever claims to speak on its behalf may only do so if the claim can be questioned by another power. (Lindahl 2007, 22)

Lindahl replaces the metaphysics of presence with what could be called a metaphysics of paradox and a politics of conflict or contradiction. In this, he is in line with other positive or “left” receptions of Schmitt, most notably Chantal Mouffe.¹⁶ If one knows anything about my work on Niklas Luhmann, one knows that I have joyously committed myself heart and soul to the fundamental productivity of paradox and to a politics of dissent rather than consensus. Schmitt’s commitment to a substantive reading of constituent power contradicts my fundamental skepticism, based in part on my inability to find myself included whenever a politician voices the well-worn phrase “the American people.” Yet somewhere, in the deep recesses of my (nonexistent) soul, I would not mind discovering an America in which I *could* find myself (though I do not for a minute harbor the illusion that I ever will), which is precisely why I wish to entertain Schmitt’s reading of the “ontological status of the collective self.” In a world and intellectual climate of suffocating conformity, highlighting difference, incommensurability, and “questionability” is certainly a virtue. At any rate, in Schmitt’s Germany, in which civil war continuously bubbled just underneath the surface, often erupting through the cracks and fissures of daily life, placing “the people” in question, pitting each power and interest against the other, may have had less appeal. The downward disintegrative spiral in which the twenty-first century seems to be inextricably caught up may eventually put some critical pressure on the virtue of continuous questioning, a time for which we may wish to be prepared. So let us look more closely at how Schmitt configures constituent power by examining what I take to be his direct model, Emmanuel Sieyès.

At one point in *Constitutional Theory*, Schmitt finds “nation” to be a “clearer” term than “people,” for nation “denotes, specifically, the people as a unity capable of political action, with the consciousness of its political distinctiveness and with the will to political existence, while the people not existing as a nation is somehow only something that belongs together ethnically or culturally, but it is not necessarily a bonding of men existing *politically*” (Schmitt 2008a, 127). If Lindahl is correct, and the people emerge simultaneously with the legal order that the people create, then this notion of the nation seems muddled or wrong. Recall, however, Schmitt’s just-so story about how laws emerge.¹⁷ First we have land appropriation and then distribution. It is with the act of distribution that law is established, because one has alternatives: collective ownership of all the land, public ownership parceled out to households, private ownership with rights to buy and sell, and so forth. Here one can imagine—with difficulty, it must be admitted, but that goes for all the just-so stories created by early modern natural law theorists (Hobbes, Locke, et al.)—that the original appropriation was conducted by a “nation” that exists collectively before land was appropriated and then distributed, that is, before the nation created for itself a constitution. At any rate, whether “nation” is clearer or not, at least here we have a distinction between “peo-

ple” referred to as a social or familial group and “people” as a collective, as politically self-conscious and thus the subject of political decision. It is surely not coincidental that Schmitt turns to the concept of “nation” here, as nation is the operative term used by Sieyès, a term that in fact answers the question of his most famous pamphlet, *What Is the Third Estate?* It could plausibly be argued that large sections of Schmitt’s *Constitutional Theory* are extended elaborations of that text’s fifth chapter.¹⁸

“In every free nation,” Sieyès states, “there is only one way to put an end to differences about the constitution. Recourse should not be made to the Notables, but to the Nation itself. If we lack a constitution, then a constitution must be made, and the Nation alone has the right to do it” (Sieyès 2003, 133). We are straightaway faced with Lindahl’s conundrum: The nation is posited as the author of the political and legal form that in fact is the very institution that creates the notion of the nation in the first place. To justify his claim, Sieyès tells his own just-so story, staged in three historical eras. The first epoch, in which “one can imagine a more or less substantial number of isolated individuals seeking to unite,” is “characterized by the activity of *individual* wills” serving as the source of all power. Given the terms we have been using, we might grant the title of “society” to this epoch and wonder how a political form (“state”) can be said to come about. We learn that in the second historical epoch of Sieyès’s story, a “*common* will” develops, one that is exercised directly by everyone. To “give their union consistency,” the assembled multitude “agree[s] on public needs and how to meet them.” Individual wills still lie at the source of these deliberations, but power now “belongs to the public,” “resides solely with the whole.” “Without this *unity* of will, it would not be able to make itself a willing and acting whole” (134). And finally, in the third epoch, when the population has grown too large to act directly, the common will becomes “a *representative* common will,” exercised by a few to whom the nation has delegated limited power to act on its behalf. It is at this stage that a constitution—that is, the form of representative government—comes into play. It is worth quoting Sieyès at some length, so that later we can hear the resonance (and some dissonance) in Schmitt’s description of the constituent power and that which it constitutes. “But how,” Sieyès asks,

is it possible to claim that the nation itself ought to have been given a constitution? The nation exists prior to everything; it is the origin of everything. Its will is always legal. It is the law itself. Prior to the nation and above the nation there is only natural law. To have a proper idea of the sequence of *positive* laws, all emanating solely from the nation’s will, the first in order of precedence will be the *constitutional* laws, which will be divided into two parts. Some will regulate the organization and functions of the *legislative* body; others will fix the organization and functions of the various *active* bodies. These laws are said to be *fundamental*, not in the sense that they can be

independent of the national will, but because bodies that can exist and can act only by way of these laws cannot touch them. In each of its parts a constitution is not the work of a constituted power but a constituent power. No type of delegated power can modify the conditions of its delegation. It is in this sense and no other that constitutional laws are *fundamental*. . . . Thus all the parts of a government are answerable to and, in the last analysis, dependent upon the nation. (136)¹⁹

In sum: “In the very first epoch it had all the rights of a nation. In the second epoch, it exercised them itself. In the third, it turned all the rights needed for the preservation and the good order of the community into rights exercised by its representatives.” And, displaying a touch of bravado, he adds: “If you stray from this sequence of simple ideas, you will simply stumble from one absurdity to the next” (137).

It is important to note the stress that Sieyès places on the absolute temporal priority of the nation, so please pardon this last longish citation.

Every nation on earth has to be taken as if it is like an isolated individual outside all social ties or, as it is said, in a state of nature. . . . However a nation may will, it is enough for it to will. Every form is good, and its will is always supreme. . . . A nation never leaves the state of nature and amidst so many perils, it can never have too many possible ways of expressing its will. There is no reason to be afraid of repeating the fact that a nation is independent of all forms and, however it may will, it is enough for its will to be made known for all positive law to fall silent in its presence, because it is the source and supreme master of all positive law. (Sieyès 2003, 137–38)

From a political-theological point of view, it can be said that the will of the nation is the functional equivalent of God’s will; the nation creates the political constitution of its own existence much like God created the universe. *We* may wish to see God’s command, “Let there be light,” to be an act of self-creation—God comes into being at the moment (and let *us* call that moment the Big Bang) light emerges from darkness; but the book of Genesis does not see it that way. God *willed* the universe into being by drawing distinctions: separating light from darkness, the firmament from water, and most importantly, God Himself from what He created. Recalling the discussion of God’s absolute and ordained power, we can see that just as God had the power to create or not create the universe, and to create it in this and not some other way, so too does the nation have the power to create or not create a constitution, and to create it in this and not some other way. And we note that just as God *remains* the power over and above His creation, able to destroy it and create it anew if He so desires, so too does the nation in relation to its creation. The nation is no more bound to the constitution it has fashioned for itself than was God when He destroyed the social order by flood and commanded Noah to start humanity anew, or when He sent His “only begotten

Son” to change the fundamental law from circumcision to baptism. And finally, just as God is the *legitimacy* of both the establishment and the destruction of the ordained order, so too is the nation the legitimacy of the constitution it underwrites *and* the revolution against the constituted order leading to a new constitution, a newly ordained political order. The nation is both the legitimacy that stands behind the constitution and the legitimacy that stands behind a new constitution after a successful revolution. “The Nation” is the name given to the “myth” of legitimacy, a myth based on the sovereign *will* of the people, not a myth based on the immutable and immutably sovereign structure of nature that asks to be understood (“right reason”) and obeyed. With this in mind, let us now move back to Schmitt.

So, the paradox of origin and the putatively performative quality of all “We the people” utterances notwithstanding, Schmitt reads the preamble to the Weimar Constitution—“The German people . . . has given itself this constitution”—in the same way that a Jewish, Christian, or Muslim believer reads the opening lines of the First Book of Moses, called Genesis—“In the beginning God created the heaven and the earth”—namely, literally. Furthermore, dipping his toe into medieval theological controversies, Schmitt also implicitly confirms that the creation of the world was an act of God’s *will*, and not the unfolding of God’s nature, by affirming the parallel will of the people as the constituent power of every democratic constitution. Alluding to the “traditional and eternal metaphysical dispute” framed by the question “whether something is good and just, because God wills it, or whether God wills it, because it is good and just,” Schmitt affirms “that the constitution must be a decision and *every act of the constitution-making power* must necessarily be *command*” (Schmitt 2008a, 125). A democracy must be founded by the *will* of the people, not the impersonal and imputed universality of norms.

Furthermore, the people as constituent power never exhausts its omnipotence. It precedes the authorization of a constitution and then remains outside it, as legitimation and as threat.

The issuance of a constitution can no more exhaust, absorb, or consume the constitution-making power than an organizational decree can exhaust the organization’s power, which its supreme command and authority holds. The constitution-making power is not thereby expended and eliminated, because it was exercised once. The political decision, which essentially means the constitution, cannot have a reciprocal effect on its subject and eliminate its political existence. This political will remains alongside [*neben*] and above the constitution. (Schmitt 2008a, 125–26)²⁰

This basic point is elaborated later, again using clear spatial metaphors to describe the three ways a people appear within and yet also outside of the constitution. First, as original subject of the constitution-making power, the

people stand *vor* and *über* the constitution, that is, “before” or “anterior” to and “above” it.²¹ Second, once the constitution exists, the people are of course included “within” (*innerhalb*) the constitution as they exercise “constitutionally regulated powers,” chiefly as the electorate (268). Yet these two moments no more exhaust the capacities of the people for Schmitt than they do for Sieyès. The nation, the people as constituent power, remains *neben*, or next to the constitution. Thus, the people as a constituted power *within* the constitution—the people as voters, party members, officeholders—are clearly distinguished from the people as constituent power. The people can never be wholly reduced to a mere state “organ” or “functioning bureau,” but rather “persists as an entity that is unorganized and unformed” (271).²²

If we return one last time to Walter Benjamin’s scheme of mythic and divine violence, we can now give it a constitutional interpretation, or rather two interpretations. On the one hand, mythic violence can stand for a political constitution, with lawmaking violence standing for the constituent power and law-preserving violence for constituted power. Divine violence would then be the wholly other of law and thus of any and all political constitutions. This radical alterity would give it its chiliastic significance.²³ On a second reading, however, we can say that mythic violence stands merely for the constituted order. Here, lawmaking violence may be thought of as something like the legislative process and law-preserving as the executive and bureaucratic apparatus that sustains the legal order. Divine violence would then be the sign for constituent power, the voice of God that in a democracy becomes the voice of the people. It stands *before* mythic violence by virtue of the fact that divine violence constitutes mythic violence; and it stands *next to* the constituted order, ready, if necessary, to destroy that order and reconstitute it differently. Divine violence would be the absolute power of God. He establishes an order (mythic violence) that reflects his ordained power, but He remains outside that order, ready, if necessary, to flex his absolute muscle once again to create anew. This may not comport with Benjamin’s intention, but it nicely conforms to the notion of constituent power advanced by Schmitt.

THE ABSOLUTE AND ORDAINED POWER OF THE PEOPLE

As the constituent power of a democratic constitution, the people flexes its absolute might. This absolute power of the people does *not* cease to exist once the act of constituting is completed but remains as a formless presence outside the constitution, simultaneously as the legitimacy of that order and as the source of its potential alteration or overthrow. According to Schmitt, the constitution that the German people gave itself in 1919 had a democratic form—popular sovereignty—with a liberal shell designed to constrain the

popular will. That shell of rights and restrictions on state power cocooned the bourgeois individual in the “utopian” (Sorel) belief that we will all eventually flourish as so many butterflies. The parliaments of the nineteenth-century constitutional monarchies and republics were the site where agents of the bourgeoisie advocated for the realization of their social (primarily economic) interests. It was and remains a battlefield, not a shelter. We have seen that unlike Hegel and Stein, but like Marx, Schmitt had no use for the liberal institution of the parliament. Rather, he was more interested in the search for evidence pointing to the political participation of the people as a collective. If the people as constituent power remains outside of the constitution, do we ever see or feel its presence in the activities of the people in their ordained duties as a constituted power? One answer to that question is: certainly not in parliament. To explore other answers, we must direct our attention to two related topics advanced by Schmitt: direct democracy and plebiscitary leadership.

To understand the following discussion, we need to know some basics about how the Weimar Constitution divided governing power. The Reichstag was the parliament and thus the seat of legislation. The electorate voted for party lists, not for individual members. Thus, roughly speaking, if the Social Democrats received, say, 35 percent of the vote, 35 percent of the members of parliament were Social Democrats. Given the multiplicity of political parties during the Weimar era, no party ever received an absolute majority; therefore, parliamentary governance was conducted by coalitions of parties, usually some combination of the so-called constitutional parties (those more centrist parties most committed to the republic), the Social Democratic Party, the Catholic Center Party, and the German Democratic Party. The leader of the coalition government was called the chancellor (equivalent to a prime minister). In addition, the electorate as a whole voted for an individual as *Reichspräsident* for a seven-year term. The president had some of the traditional duties of the executive arm of the government, including representing Germany in foreign affairs, commanding the armed forces, appointing most civil servants, and granting pardons. Most significantly, the president had emergency powers. In cases of rebellion, civil unrest, or other threats to the country, he could use military force at his discretion and suspend basic rights. The president’s emergency powers were used often in the early and late years of the republic, when civil war or near civil war conditions prevailed.²⁴

Our concern will not be with the more famous Article 48²⁵ but with Article 73, which deals with what in the German of the day was called *Volksentscheid* (referendum) and *Volksbegehren* (people’s initiative).²⁶ Here are the first three paragraphs of Article 73:

A statute concluded by the Reichstag is brought to a referendum before its promulgation if the President so decides within a month of its passage.

A statute whose promulgation is requested by petition of at least a third of the Reichstag is submitted to a referendum if one-twentieth of those entitled to vote demand it.

Additionally, a popular vote should be held if a tenth of those entitled to vote present the demand for the submission of a draft statute. A completed draft statute must be the foundation of the initiative. It must be presented to the Reichstag by the Reich government with its recommendations. The referendum does not take place if the desired draft statute has been accepted unchanged by the Reichstag. (Schmitt 2008a, 420)

To summarize: First, if the parliament passes a law, the president may call for a nationwide referendum of all eligible voters to see whether the legislation should be enacted. Second, the outvoted minority of parliament may request a referendum on a passed or rejected piece of legislation, provided at least 5 percent of eligible voters agree with them. Finally, the voters themselves may initiate a specific law (composed presumably by a citizen's committee) with a vote by at least 10 percent of eligible voters. If the Reichstag accepts the proposed law as written, no referendum is held; otherwise it is left to the voters at large to accept or reject the proposed legislation. It should be noted that in 1921 a law was passed stating that should the legislature propose an alternate law to the one as framed, then the referendum would be held to choose between the two versions. As Schmitt rightly notes, that law technically violated the constitution by eliminating a crucial aspect of the initial proposal, in that it no longer made it possible to reject the proposed law altogether, only to select between the two versions.

Why is this important to Schmitt? First, it is clear that "the people" who are referred to in a *Volksentscheid* are not the people as constituent but as constituted power. With the constitution, the people as constituent power has given the constituted people certain functions, most notably the duty to vote by way of secret ballot. Article 73 in particular gives the electorate means to exercise a limited form of direct democracy. In Article 73, paragraph 3, the electorate is configured to be a rival to parliament. It may initiate legislation by delegating a committee to frame a proposed law and, with a 10 percent vote, demand that the legislature act, either by accepting or rejecting the electorate's proposal. Should the legislature reject their proposal, then a general referendum will be held. In part because the procedure in this paragraph becomes muddled by a subsequent law, Schmitt is more interested in the simple referendum, as spelled out in the first two paragraphs. Here the electorate is asked to adjudicate a dispute, either between the legislative branch of government and the president (paragraph 1) or between a minority in parliament and the majority (paragraph 2). Schmitt remains adamant that the people who are asked to adjudicate the dispute are not sovereign. They can

be called “the people” only because, in their role as electorate in a referendum, they appear *not* as magistrates and not as functionaries, yet are asked to settle irrevocably a conflict with a simple yes or no vote (Schmitt 2014b, 74). In so doing, they undertake a “sovereign act” because of the “decisionist” and exceptional nature of the situation (72). “One cannot simply say,” Schmitt elaborates,

that the people in a referendum are sovereign, for they are active only within the framework of the constitution and on the basis of direction by magistrates, not on their own accord as befits sovereignty. Yet they are also not just summoned like a court of appeals, even if one often speaks of an “appeal to the people.” In a referendum the people appear as legislators and at the same time as the final authority for resolving a dispute at the highest level of lawmaking. Called from the outside to intervene, they decide without having previously been procedurally involved in the lawmaking process. (73)

Only the people as constituent power is sovereign, but here the sovereign has ordained an instance in which the people as electorate take on quasi-sovereign form in a moment of exception. This is perhaps the closest modern mass democracy can get to the ideal of direct democracy.

Accordingly, if in a referendum the people as a collective singular never truly leaves the shadows of the state of nature to intervene directly in the day-to-day political process, there is another way in which it can make its presence felt: acclamation (Schmitt 2014b, 51–54).²⁷ A people, Schmitt remarks, that can appear together as an assembled community, gathered together in some open-air field or marketplace, is something quite different from a collection of individuals as members of an electorate casting their votes in secret to be added up later and elsewhere. The former has a collective will, and that will is made known by way of a simple and direct affirmation or rejection. Acclamation is not about the display of expert knowledge, but the demonstration of trust or lack of trust in a leader’s (or leaders’) decisions. Acclamation is a referendum or, rather, a modern referendum is a limited type of mass-democratic acclamation. Schmitt finds in the constitution another form of acclamation that brings the people as constituent power a step or two further out of the shadows and into the public sphere of the constituted order: plebiscitary leadership affirmed or rejected by acclamation.

Recall for a moment Stein’s description of the function of the constitutional monarch and the administrative apparatus in his or her control—in Benjamin’s terms, both the *waltende* and the *verwaltete Gewalt* that he or she exercises; in more conventional terms, his or her authority and power. Together, the executive and its bureaucratic apparatus stand for the state, which in turn represents the unity—after reading Lindahl, one is tempted to say the ontological unity—of the political community in opposition to the particular interests of the individual members of the society. Schmitt attempts to graft

aspects of that model onto the constitutional structure of the Weimar Republic. The contract between prince (state) and people (bourgeois society) that lay at the foundation of the nineteenth-century constitutional monarchy is replaced by a structure that sets the constituent power of the people apart from the people as social beings with discrete and limited political functions. By analogy, the *Reichspräsident* stands in for the representative function of the monarch. Only he (both Weimar-era presidents were men) is elected by “the entire German people” (Article 41); he is not a member of parliament and stands over against it (Article 44); he manipulates the symbols of national unity in the arena of international affairs; and only he is charged with emergency powers to face internal dissension and civil strife. Therefore, only he represents the nation as a whole (Schmitt 2008a, 416).

In 1923, Schmitt had already developed a notion of representation, modeled on a particular understanding of the function of the pope in the Roman Church, which, in *Constitutional Theory*, he carries over to the position of the president. With this particular notion of representation, coupled with a reclaimed need for acclamation in the political process, Schmitt develops a notion of plebiscitary democracy that is meant to give the state (the unity of the political community) at least commensurate power over against society (the interests of individuals and groups who exert their influence in the legislative branch of society).

Hanna Fenichel Pitkin (1967) has given us both a taxonomy and a history of the concept of representation that will enable us to put Schmitt’s assertions in a suitable context. For brevity’s sake, one fundamental distinction will be emphasized. Pitkin claims that if we ask about the “substantive content” of representation, then “two directions of inquiry are open to us. We may ask what a representative does, what constitutes the activity of representing. Or we may ask what a representative is, what he must be like in order to represent” (59). Thus, she labels the operative distinction “acting for” (chapter 6) and “standing for” (chapters 4 and 5). Quite helpfully, she notes that in German the distinction is clearly marked by contrasting “*vertreten*, to act for another, and *darstellen*, to stand for another” (59). Etymologically, the latter is closer in meaning to the Latin original, *representare*, “to make present something that is *not* in fact present” (92; see also 241). This is the contrast we are after because this is the contrast that Schmitt emphasizes, using the Latinate *repräsentieren* (verb)/*Repräsentation* (noun) exclusively for his preferred meaning, and *vertreten/Vertretung* for the liberal notion of parliamentary representation, which in the English translation of *Constitutional Theory* is rendered “advocate for/advocacy.” Now, for Pitkin, the distinction is not a stark either/or. In the modern political world, the representative acts for the represented, and in so doing makes the absent represented present. By maintaining the linguistic distinction *Repräsentation/Vertretung*, Schmitt reduces the liberal brand of representation of interests in parliament to a lawyer/client

relationship. The *advocate* argues for the clients' interests;²⁸ the *representative* brings the absent represented into presence. The former works for individuals and interest groups, the latter for the people as a whole.

Pitkin further subdivides representation as "standing for" into descriptive and symbolic modes. "Standing for" as descriptive representation works mimetically. Thus, a "representative body is distinguished by an accurate correspondence or resemblance to what it presents." As an example of this view, Pitkin cites John Adams as follows: "A representative legislature, John Adams argues in the American Revolutionary period, 'should be an exact portrait, in miniature, of the people at large, as it should think, feel, reason and act like them'" (Pitkin 1967, 60).²⁹ One hears such sentiments today in phrases like "my cabinet should look like America" as justification for the diversity (gender, sexual preference, race, etc.) of the members chosen.

The second mode of "standing for" Pitkin calls "symbolic," and here we hit pay dirt. "Symbols . . . are often said to represent something, to make it present by their presence, although it is not really present in fact" (Pitkin 1967, 92). Objects, like flags, can act as symbols for the nation, but so too can human beings.

The case probably most familiar from the literature of political science is that of the king in a constitutional monarchy. A recent textbook on British government tells us that the monarch "stands for the majesty, the authority, the *unity* of the British nation, and in each of the units of the Commonwealth . . . he represents its statehood." . . . The same kind of symbolic representation is often attributed to heads of state in general; they "represent or embody, that is, are symbols for the *unity* of the people of the state; as flags, coats of arms, national anthems are in a more material and functional way." (92–93; my emphasis)³⁰

Besides striking the notes that have echoed throughout part II of this book, the stress on unity that one finds in both quotations in the above passage suggests a significant twist to the notion of "standing for." Seemingly passive, asking for little or no specific action on behalf of the interests of the represented, "standing for" can nevertheless have an active quality. "If the main goal to be achieved is the welding of the nation into a unified whole, the creation of a nation, then it is tempting to conclude that a single dramatic symbol can achieve this much more effectively than a whole legislature of representatives" (106–7). That dramatic symbol can of course be a charismatic leader, and once such a figure is produced, discussion of fascism cannot be far off. Indeed, Pitkin eventually finds her way to the almost obligatory mention of Hitler (108), but she is sensitive to alternate readings, including the function of Renaissance kingship and even modern "despotism" that, on occasion, may more adequately "represent" and thus serve the collective it leads (107). The upshot of thinking of representation as forging a

consciously collective sense of the political whole is that symbolic representation (as, perhaps, opposed to its descriptive cousin) cannot be thought of as merely passive. “The concept of the political leader as essentially passive, standing for others symbolically, must thus be supplemented by the view that he is a symbol-maker, making himself into an accepted leader through his activity.” The point of this type of activity is “to foster belief, loyalty, satisfaction with their leaders, among the people” (107). With all this under our belt, let us return to Schmitt.

“To represent,” Schmitt claims, in terms now familiar to us, “means to make an invisible being visible and present through a publicly present being. The dialectic of the concept is that the invisible is presupposed as absent and nevertheless is simultaneously made present” (Schmitt 2008a, 243; translation slightly altered). The pope, for instance, “represents” Christ by bringing him forth in a public manner, by making his presence visible to the gathered community of believing Christians.³¹

Similarly, the leader of a political community—the monarch in pre-modern Europe, the *Reichspräsident* in the Weimar Republic—represents or bodies forth the “*political unity as a whole*. . . . Only he who *rules* [*regiert*] takes part in representation. The government [*Regierung*] distinguishes itself from administration and business management by presenting and rendering concrete the spiritual principle of political existence. . . . Every genuine government *represents* the political unity of a people, not the people in its natural presence” (245).³² Indeed, it is precisely *to* a people in its natural presence that the political unity of a people is represented. The invisible constituent power that remains formlessly *next to* the constitution is coaxed out of the shadows in the hope that it may somehow make its presence known.

It is through acclamation, which we witnessed Schmitt bring into the discussion of constitutionally sanctioned referenda and initiatives, that the individuals who compose the political unity show themselves as the singular people and constituent power. We can visualize the relationship of representation and acclamation with a theater analogy. It is evening. As individuals we enter the lobby, which is still part of the private, economic sphere. We buy tickets and, if in Europe, a program. During intermission we return to the lobby for more economic exchange—a drink, sweet pastries. Within the theater itself something else happens, however. The space becomes a public space, a space in which we see and are seen. At first we are still private citizens, we are spectators of the action on a public stage. The actors present to us the actions of embodied characters. The actors are of us—we mingle with them before and after the play—but now stand before us engaged in public speech and action. In full theatrical majesty and dignity, they make present and visible the collective—the “we-the-people”—as a political unity. Each individual now sees the whole of which he or she is a part. The citizen-

spectator, however, need not—indeed, should not—remain passive. For the representative of the people to have adequately made the invisible visible, the publicly gathered citizen-spectator must recognize and acclaim the deed. If not, if the attempt has gone awry, then the gathering must reject the attempt. Required is either the recognition that those who are charged with representing the people to the people have in fact done so or the recrimination that they have failed. Those in the theater either cheer and applaud or boo and hiss.

Those cheers or boos function as affirmation or rejection of a leader's attempt to "stand for" the whole. "The natural form of the direct expression of a people's will is the assembled multitude's declaration of their consent or their disapproval, the *acclamation*" (Schmitt 2008a, 131). In our fictional theater, acclamation, whether positive or negative, could be direct; in modern mass democracy, such gatherings of the whole are impossible. Hence, the modern mode of acclamation, according to Schmitt, is public opinion. We must keep in mind the distinction Schmitt wishes to uphold, namely the one between the people as organized electorate *within* the constitution and the people as constituent power *next to* the constitution. The modes of administering government (through parliament, executive branches, courts, etc.) and the basic rights of individuals, including the right to assemble, are all manifestations of the constituted order and mark the place of the people within that order. Even voting by secret ballot is essentially an expression of the private interests of the individual (in the "privacy" of the voting booth) and not the voice of "the people." *Public opinion* as the modern form of acclamation embodies the voice of the people outside of these organized, essentially private, administrative functions. To be able to secure the clear distinction between liberal forms of limiting the will of the people in the interest of the individual, on the one hand, and democracy as the political form of the collected people, on the other, public opinion must remain "uncontrolled," "diffuse," "unorganized." "Precisely like acclamation, [public opinion] would be deprived of its nature if it became a type of official function. . . . It can never be recognized legally and made official," which is why Schmitt—surprisingly, given his contempt for the relative dysfunction of party politics in the Weimar era—links public opinion with the function of political parties (which, as he notes, are mentioned nowhere in the Weimar Constitution). "There is no democracy without parties," he declares,

but only because there is no democracy without public opinion and without the people that are always present as the people. Just as a party cannot transform itself into an official organ without losing its party character, so public opinion cannot permit its transformation into an official jurisdiction, in particular because even the people cannot allow itself to be transformed into an official body without ceasing to be the people. (275)

In our fictional theater, the outburst of bravos or catcalls must not be orchestrated by the management.

Modern democracy therefore requires representation to be symbolic, embodying the invisible essence of the *demos*, and carried out by a popularly elected leader whose bearing exhibits the necessary dignity and gravitas. People function within organized politics as interested individuals, but also, through their leader's (or leaders') acts of representation, recognize their public, collective stature as constituent power and make that power visible and effective through "unofficial" channels of public opinion. This arrangement corresponds exclusively neither to representative democracy (though it cannot do without the "acting for" mode of legislative representation) nor to direct democracy. It preserves, or so Schmitt proposes, the idea of democracy, the idea of the public citizen over the private individual and the public body over the masses with divided interests. Liberal participation, which may be indispensable, is nevertheless trumped by democratic participation, which does not directly make political decisions, but simply affirms or rejects decisions that are made elsewhere.

Most will find Schmitt's affirmation of plebiscitary democracy—symbolic representation of political unity coupled with acclamation—frightening. The gamble involved in trading our right to private pleasures for public duties has all the allure, in our cautious, shell-shocked age, of betting our life savings at the craps table. It is not surprising, therefore, that Pitkin finds in symbolic representation, when taken to the extreme, the fascist theory of representation as exemplified by the leadership principle. "Representation is a power relation, that of the leader's power over his followers," she writes, with reference to symbolic representation; "Hitler claimed that he had greater right to say that he represented his people than did any other statesman" (Pitkin 1967, 108).³³ And indeed, in 1933 Schmitt did *not* boo or hiss, but loudly and eagerly applauded and cheered. Is there a way, then, of trying to understand the possibilities of plebiscitary democracy without immediately evoking the great Satan of the twentieth century?

Anything resembling plebiscitary leadership today comes frequently if not exclusively from populist authoritarian rulers who gradually or not so gradually undermine or simply eliminate the customary liberal-democratic checks, balances, and individual rights. Because of twentieth-century examples, not least the one with the Charlie Chaplin mustache, we prefer (despite our complaints) governmental paralysis to the promise of effectivity and efficiency. However, the US presidency has given us examples of the type of populist leadership that Schmitt describes.³⁴ Despite the pejorative labels we attach to unpopular manifestations of presidential overreach ("imperial presidency," "executive unbound"), we have been known to succumb to the temptations offered. Conversely, despite the apparent need to trust a leader who claims to know what is best, we have also been known to respond with

derision. I would like to offer two examples of attempted presidential plebiscitary leadership. The first is the presidency of Woodrow Wilson, especially his second term. Throughout his academic career, Wilson exercised a critique of the division of powers and weak executive branch while detailing the necessary elements of strong presidential leadership in terms surprisingly similar to Schmitt's, though admittedly within the structure of a constitution quite different from that of Weimar Germany. The second example comes from Jimmy Carter's only term as president. Whereas Wilson was successful in receiving the requisite acclamation, Carter was not. Yet, on my reading, each example, the positive and negative, proved to be disastrous—the first by succeeding, the second by failing. Negatively, then, by showing the failure of success and failure of failure, we can say that the jury is still out. Even as this chapter has *not* been an endorsement of Schmitt's construction of modern, mass democracy, it has also and quite clearly *not* been an endorsement of the status quo. Admittedly, helpless despair seems to be the only non-naïve response. We all inhabit that “shifting, labyrinthine hall of mirrors” that Raymond Geuss calls the prison of liberalism,³⁵ and helpless passivity (or, for that matter, helpless activity) seems, existentially, to be the only reasonable response. But even a healthy skepticism should not hold us back from attempting to design conceptual escape attempts. Whether our friend in this endeavor or just another one of our jailers, Schmitt may nevertheless come inadvertently to our aid, leaving us scraps of ideas we may be able to make use of. We would be lazy not to take advantage of them.

WOODROW WILSON

The plebiscitary leader, who professes to represent the general will of the people in a more articulate way than the people themselves are able to do, has become a feature of what the American political historian, Jeffrey K. Tulis, has called “the rhetorical presidency” (Tulis 1987, esp. 117–37). Though his assertion sparked a controversy among American presidential historians, Tulis credits Woodrow Wilson with initiating the paradigm, which changed the presidency's relationship to both Congress and the American public. I submit that readers of Carl Schmitt (or even readers of these pages) will be struck by some familiar themes to be found in Wilson's writings.

Like Schmitt, Wilson found discussion as conducted in the US House of Representatives a false façade behind which all political decisions are executed in private committees, though he never officially doubted the epistemological value or ideal of discussion for democracy (Wilson 2006, 68–73).³⁶ And he believed the separation or “balance” of powers to be both antiquated and debilitating. “The makers of the Constitution,” Wilson wrote just a few years before his presidency,

constructed the federal government upon a theory of checks and balances which was meant to limit the operation of each part and allow to no single part or organ of it a dominating force; but no government can be successfully conducted upon so mechanical a theory. . . . The government of the United States was constructed upon the Whig theory of political dynamics, which was a sort of unconscious copy of the Newtonian theory of the universe. (Wilson 1908, 54–55)³⁷

It is within this context that Wilson also condemned divided sovereignty. “Leadership and control must be lodged somewhere,” he emphasized (54). The “division of authority” and the resultant “concealment of responsibility” lead to “a very distressing paralysis in moments of emergency.” Therefore: “*Power and strict accountability for its use* are essential constituents of good government,” for “the only fruit of dividing power [is] to make it irresponsible” (Wilson 2006, 186, 187). The interesting question to ask, then, is the following. If power and authority are to remain undivided, not “checked” or “balanced” by countervailing, equally powerful governmental controls, who or what holds the leader accountable? The answer would seem to be “the people,” expressed through some form of “acclamation.” For Wilson too, popular opinion served this function.

In short, in the 1880s Wilson despaired of the presidency as an institution and advocated a revision of American government along the lines of British parliamentarianism, in which a strong leader at the head of a majority party could rule with full transparency and responsibility. By 1900, however, things had changed, and he saw a renewed chance for executive leadership. The catalyst was the war with Spain. In the preface to the fifteenth printing of *Congressional Government* (dated August 15, 1900), Wilson notes that “the greatly increased power and opportunity for constructive statesmanship given the President, by the plunge into international politics and into the administration of distant dependencies [e.g., the Philippines], which has been that war’s most striking and momentous consequence” raises hopes for an integration of power that will “substitute statesmanship for government by mass meeting.” After all, no one but the president “represents the people as a whole.”³⁸ Therefore: “Let him once win the admiration and confidence of the country, and no other single force can withstand him. . . . If he rightly interpret the national thought and boldly insist upon it, he is irresistible . . . [The country’s] instinct is for unified action, and it craves a single leader. . . . A President whom it trusts can not only lead it, but form it to his own views” (Wilson 1908, 68). What Wilson craves is “common understandings, common interests, common impulses, common habits,” “common consciousness,” “common standards of conduct,” and “the habit of concerted action, which will eventually impart to it in many more respects the character of a single community.” What calls forth all these commonalities is representation. Elizabeth created England as a nation, for “a great ruler made great

subjects” and she was England’s “embodiment.” Frederick the Great did the same for Prussia—he “called it into consciousness” (32, 33). This is what a leader is, a man or woman who is the “embodiment” of the nation, “who understands his own day and the needs of the country, and who has the personality and the initiative to enforce his views both upon the people and upon Congress” (65). Ultimately, leadership is interpretation, for a leader must impute to the people the opinion that they genuinely hold and then represent that opinion before them. The leader must “arouse” the community from its slumber. “The forces of the public thought may be blind: he must lend them sight; they may blunder: he must set them right” (Wilson 1952, 45).

After having promised the electorate America’s continued neutrality during his 1916 reelection campaign, Wilson declared war against the Central Powers after his inauguration in 1917. At his request, Congress passed the infamous Espionage (1917) and Sedition (1918) acts, which were used to imprison those who remained vocally opposed to the sudden shift to war, triggering governmental surveillance and imprisonment of the most trivial of violations (including speaking a foreign language in public), and the government coordinated or condoned civilian violence and vigilantism during Wilson’s wartime second term.³⁹ In response, the American Civil Liberties Union was formed and a general “rights revolution” was inaugurated that has lasted to this day. At the conclusion of his fine study on World War I and the making of modern American citizenship, Christopher Capozzola muses about the relative merits of obligation and rights. “These days,” he writes, “some Americans wish for obligations, hoping to renew among Americans a sense of commitment toward our fellow citizens. Ninety years, they tell us, have put rights, and not obligations, at the center of our political life. Individualism has corroded our common culture and our civic associations; we even bowl alone.” The complaint resonates with us, he admits. “From such a perspective, the sense of voluntarism and obligation in the political culture of early twentieth-century America must astound.” But, he insists, the humiliation, persecution, imprisonment, and murder of German Americans and other immigrants, the intensified terror waged against African Americans, the flare-up of anti-Semitism, the violation of religious conscience, and the violent destruction of the radical labor movement and the Socialist Party tell a different story. “Those who seek something beyond the rights revolution must understand the political culture that existed before rights talk, when obligation still held sway. In a divided and unequal society, civil society could be an arena for negotiating political obligation; it could also be a weapon wielded against the weak” (Capozzola 2008, 213, 214). Capozzola reminds us that the state’s power to control and manipulate civil society, that a popular plebiscitary leader who claims to be in possession of the public’s true opinion and thus marshals public and private propaganda to sell and

enforce that imputed truth, can be intolerably brutal, even in democracies seemingly protected by liberal safeguards (rights) built into a constitution. The success of Wilson's leadership and the excesses (to use that vastly understated term) it led to, indeed, the suppression of liberal freedoms in the name of protecting liberty as such, can most assuredly stand as an indictment of non-liberal democracy.

I have stressed the commonality of themes and language between Wilson and Schmitt not to equate them in the form of a one-to-one relationship. The cultural, historical, and political differences of their environments lend varying shades of meaning to their words, and their political commitments are certainly not identical, though they are perhaps not as antithetical as common opinion might believe. Wilson's ruminations (and later actions) are meant to be in the service of the form of government outlined by the American Constitution; Schmitt's, though occasioned by the Weimar Constitution, seem to question more thoroughly the basis of political form in general. Nevertheless, there is enough here to show that Schmitt's views were not aberrant. The idea of representation as "standing for" rather than merely "acting for" may be more common than modern political philosophers are willing to acknowledge. So, considering the historical judgment concerning Wilson's presidency during World War I and immediately thereafter (even though relatively unknown and certainly not promulgated to the population in general), if one wants a poster child for what is wrong with Schmitt's notion of representation and plebiscitary democracy, then that child need not sport the above-mentioned, obligatory mustache.

But in fact, the idea of plebiscitary leadership, as articulated by Schmitt or Wilson, is neither inherently negative nor positive. It is a feature of the political life we currently lead, altered no doubt by technology and history to make it perhaps utterly unrecognizable to either of the former presidents.⁴⁰ Since negative examples of successful plebiscitary leadership, like Wilson's, spring easily to mind, I leave you with an example of a *failed* attempt—one that, *because of its failure*, is an indirect cause of the radically unchecked pursuit of private economic interests that we call freedom today, a form that Schmitt (and, I would venture to say, Wilson too) so thoroughly loathed.

JIMMY CARTER

On July 15, 1979, President Jimmy Carter addressed the nation in a televised speech.⁴¹ In it he responded to a series of crises, environmental and economic, each firmly linked to energy, which is to say, to the use of nonrenewable fossil fuel. He emphasized the country's increased dependence on oil beyond its capacity to produce it and the connection between consumption, energy use, and environmental hazards, all issues that continue to occupy our politi-

cal and private concerns today. He claimed that the United States faced “a fundamental threat to American democracy.” That threat was not aimed at “our political and civil liberties,” nor was our “outward strength”—that is, our military might or economic power—challenged. Rather: “The threat is nearly invisible in ordinary ways. It is a crisis of confidence. It is a crisis that strikes at the very heart and soul and spirit of our national will. We can see this crisis in the growing doubt about the meaning of our own lives and in the loss of a unity of purpose for our Nation.” He went on to say that “our people are losing . . . faith . . . in the ability as citizens to serve as the ultimate rulers and shapers of our democracy,” and that “too many of us now tend to worship self-indulgence and consumption.” He concluded: “We must face the truth,” because “we are at a turning point in our history. There are two paths to choose. One is a path . . . that leads to fragmentation and self-interest. Down that road lies a mistaken idea of freedom, the right to grasp for ourselves some advantage over others. That path would be one of constant conflict between narrow interests ending in chaos and immobility.” In contrast, he said, “All the promises of our future point to another path, the path of common purpose. . . . That path leads to true freedom for our Nation and ourselves.”

Carter’s speech is a remarkable document, one that Tulis (1987, 3, 136, 141) alludes to, as does Andrew Bacevich, ruefully pointing to the consequences of Carter’s failure (Bacevich 2008, 31–36). It lays out concrete legislative proposals, including import quotas on oil, tax incentives for fuel efficiency and conservation, investments in alternate sources of energy and public transportation, and the establishment of a new government agency to organize and supervise various aspects of commercial life affected by these proposals, all with specific targets and dates that now, given our present denial and paralysis, boggle the mind (for instance, the goal to have solar power provide 20 percent of energy use by the year 2000!). In remarkably clear terms, ones that no American president would dare use today, Carter clearly drew a distinction between the freedom of private interest and the duty of public, collective action, reminiscent of, if not roughly equivalent to, the distinction Schmitt makes between liberalism and democracy. To today’s ear, his language rings prophetic. What he feared has come to pass: “fragmentation,” “self-interest,” “chaos,” and “immobility.” What he advocated seems completely out of reach and sounds profoundly dissonant, perhaps dangerous to most, vaguely “fascist” or “socialist.”

But his words also sound archaic, harking back to the language spoken much earlier in the century, the language of Schmitt’s notion of democracy as the action of a people who see themselves—no, sees it self—guided by a “common purpose,” as opposed to the freedom of unbridled, individual self-interest. In this speech Carter presented himself as the representative of the American people, attempting, with a sense of urgency, to make the collective

political unity visible and present. In Wilson's terms, he wished to "interpret" or channel the general will so as to make it active for the perceived crisis at hand. As "symbolic" representative of the American people, Carter acted, as it were, as this constituent power's commissar, not as commissarial dictator, for he hoped to operate strictly within normal constitutional structures, but as one who sought to carry out the will of the whole for the good of the whole in a time of crisis. In the act of representing the people, he called it to self-consciousness as a unity and not as a conglomeration of individual parts. In representing that unity, he was set to act "decisively." But first, he needed the people to recognize that in fact he was its representative and thus was authorized to exercise his commissarial duties. He therefore delivered the speech orally, by television, in front of the entire nation. Carter then awaited positive acclamation.

He did not receive it. The spectator-citizens, carriers of public opinion, booed and hissed. The speech was dubbed the "malaise" speech, though Carter never used that word. From both the left and the right, from within his party and from the opposition, from the full spectrum of the press, he was mocked, ridiculed, scorned. In the Democratic primaries of 1980, he was challenged by Ted Kennedy. In the general election he was defeated by Ronald Reagan, who had repeatedly assured the conglomeration of American individuals, whom he pitted one against the other—white against black, Christian against non-believer, rich against poor—that the first path Carter had outlined, the path that was lit by the false idea of freedom and that leads to fragmentation and self-interest, would be the path we could all painlessly take.

As Lorenz von Stein might have said had he witnessed the speech and its aftermath, the path we have taken is the path that leads—and perhaps we can now say, has led—to death.

Chapter Seven

Ethical State, Total State

In 1930, Schmitt published the essay “State Ethics and the Pluralist State” in a journal devoted to the study of Kant. In it he rehearses the lament that the idea of the state has lost its appeal, replaced by a variety of pluralist alternatives in which the associations of society command the loyalty that once attached itself to the state. Evoking Hobbes, he asks, “When ‘God on earth’ falls from his throne and the empire of objective reason and morality becomes a *magnum latrocinium* [large band of robbers], the parties slaughter the mighty Leviathan and each cuts its bit of flesh from the body. What does ‘state ethics’ mean then?” (Schmitt 2000b, 301). Objective reason is not the reason of objectivity. It is the “concrete” reason embodied in institutions. If once the Roman Church housed objective reason, it took up new residence in the state at the end of the European religious civil wars. Thus, it is not just Hegel’s but also Kant’s state that is threatened in the twentieth century. The orgy of slaughter engaged in by the parties and associations of society “does not affect merely the state ethics of Hegel (which makes the state the bearer and creator of an ethic of its own) . . . it is also a blow to the state ethics of Kant and liberal individualism.” This comes as a bit of a surprise, but is justified as follows:

Although the state ethics of Kant and liberal individualism does not see the state as the subject and bearer of an autonomous ethics, but rather as bound to ethical norms, it has so far . . . always proceeded on the assumption that the state is a highest body and the decisive judge of external “mine and thine,” through which a merely normative and thus judgeless state of nature—a *status Justitia* (more precisely, *judice*) *vacuus* in which each is his own judge—is overcome. Without the concept of the state as a *transcendent* unity and quantity, all practical outcomes of Kant’s state ethics become contradictory and invalid. (301)

“Normative and thus judgeless.” Norms—even rational norms—need instantiation, require decision. Just as the church’s Magisterium (pope and bishops) was the guardian of revelation, which served as the infallible guide to keep reason on its true path, so too the Kantian state must have its arbiters of rational disputes, those who tell us what reason actually says: its philosophers, according to Kant (1992); its better sort of journalists, as Lippmann (2010) affirmed; or its supervisors of the “official” public sphere, as Habermas (2004) already informed us.

The assault on the state, both Hegelian and Kantian, is of course simultaneously an assault on political unity. Schmitt briefly categorizes the means of achieving unity, again identifying the moment of dissolution. One can establish “unity from *above* (through command and power) and unity from *below* (out of substantial homogeneity of a nation)”; unity through agreements or the balancing of interests (a form in which I doubt Schmitt had much faith); unity from within and from the threat coming from without (the friend/enemy distinction); and “finally, unity by power and unity by *consensus*.” It is this last alternative that elicits a few lines of explanation. The idea of consensus, he says, predominates among the advocates of pluralism, “the ethical meaning of which is apparently to ethically accept only *unity through consensus*.” Schmitt has no objection to that proposal. “Rightly so.” But he does point to some problems, albeit problems that may well attach to all modes of forming the political. Every consensus, he states,

including a “free” one, is somehow motivated and produced. Power creates consensus, often a reasonable and ethically justified consensus; and conversely, consensus creates power, often an unreasonable and—despite the consensus—ethically reprehensible power. Viewed pragmatically and empirically, the question then is, Who has at his disposal the means for producing the “free” consensus of the masses—the economic, pedagogical, psycho-technical means of the most various sorts with the help of which, experience shows, a consensus can be produced. If the means are in the hands of social groups or single human beings and out of the state’s control, then what is still officially called the “state” is at an end; the political power has become invisible and irresponsible. (Schmitt 2000b, 306)

In other words, the question is: Who owns the means of the production of consensus and thus of power? Explicitly: Who owns the means of the manufacture and proliferation of public knowledge through the media (“psycho-technical means”)? If not the state, the state is dead, a mere instrument in the hands of social forces.¹

By the late 1920s and early 1930s, the social force that seemingly concerned Schmitt the most was the economy. We get an inkling of his concerns in *Constitutional Theory*, when he uses the economy (not, say, war or insurrection) to illustrate the necessity of suspending private law in the name of

the public good. First, he articulates that democratic equality does not entail socialist, economic equality. “According to democratic principles, equality in private law is dominant only in the sense that the same private law statutes are valid for everyone, not, on the contrary, in the sense of *economic* equality of private wealth, property, or income. In its consequences and applications, democracy as an essentially political concept involves, to begin with, only the public law.” Here the separation of the public (political) and the private (social) is affirmed; and indeed, in the realm ruled by private law, Bobbio’s formal notion of equality seemingly triumphs. The “free play” of society is granted, material inequality accepted as an inevitable outcome of the pursuit of interests. Yet, because *public* law is *political* law, law in the service of the political unity and not the self-aggrandizing individual, public law may trump private law when the greater good is damaged by egregious inequalities in wealth that threaten to disrupt civic peace.

However, the superiority of the public over the private results unconditionally from democracy’s essentially political character. As soon as political equality is destroyed or endangered by economic inequalities or by the social power of private property, it can become politically necessary to eliminate, by statute or measure, that type of disturbance or threat. In regard to this necessity, appealing to the sanctity of private property would be undemocratic. Still, such an appeal would be in accord with the principles of the bourgeois Rechtsstaat, whose sense lies precisely in hindering the logical consequences of a political principle, as with democracy, and to transform democracy into a constitutional democracy, which is limited by constitutional law. (Schmitt 2008a, 283)

Here Schmitt places democracy between two conflicting social extremes—liberal individualism and socialism. Neither the pre-political right to private property nor radical economic egalitarianism is endorsed. Rather, civic peace and a perceived good of the whole are held above both, and corrections to dangerous social conditions are to be effected either by parliament (“statute”) or the *Reichspräsident* (“measure”). If the chief liberal, parliamentary struggle of the nineteenth century was to integrate the bourgeoisie into the power structure of the state, then one of the aims of modern, mass democracy is to integrate the proletariat.² In this battle between liberalism and socialism, the democratic state remains neutral, intervening only in the case of emergency. Of course, this putative neutrality would be contested by both sides, but it is a sense of neutrality that both harkens back to Stein and is directly addressed by Schmitt in his deliberations on the “total state.” And it is a neutrality that Schmitt will discard after he casts his lot with National Socialism in 1933. We close our inquiry into the duality of state and society with an examination of two texts, *Der Hüter der Verfassung* (*The Guardian of the Constitution*) of 1931³ and *Staat, Bewegung, Volk* (*State, Movement, People*) of 1933. In the former, Schmitt struggles with adapting Stein’s nineteenth-century solution

to the state/society problem for the new, twentieth-century reality, and in the latter he enthusiastically embraces a synthesizing solution that is not a Hegelian sublation but is made to be a functional equivalent. Neither is successful, but the issues he deals with still point to some of the problems of our present moment, as Schmitt seemed to recognize after his unbridled infatuation with National Socialism waned in the late 1930s and early 1940s.

TOTAL STATE

On Schmitt's reading, the history of the modern European state could be narrated in three phases. The so-called absolutist state, theoretically defined by Bodin's concept of sovereignty in the second half of the sixteenth century, first developed in France as a strong bureaucratic state that tamed and largely privatized the power of the aristocracy.

The absolute state that won its form from the sixteenth century onwards originated precisely from the breakdown and the dissolution of the medieval, pluralistic, feudal, and estate-based rule-of-law state and its jurisdiction, and it based itself on the military and a professional civil service. It is therefore essentially a state of the executive and of government. Its *ratio* . . . consist[s] . . . in the efficiency with which it creates a situation in which norms can be valid . . . because the state puts a stop to the cause of all disorder and civil war. . . . The state "produces public security and order." (Vinx 2015, 128)

This passage from *The Guardian of the Constitution* reads not only like a description of the absolutist state, but on Schmitt's account, like the purpose of the state, any state, in general. It is the Hobbesian state, the "mechanism" by which humans extricate themselves from the state of nature and give themselves order, or, as Schmitt puts it, give themselves a normal situation from which norms may be produced. The characterization of the medieval "pluralistic" "rule-of-law state" (*Rechtsstaat*) sounds suspiciously like his characterization of the Weimar Republic, a polemical provocation highlighted by his use of the term *Rechtsstaat* (rule-of-law state), though that term is usually reserved for the liberal constitutional state and not medieval feudalism. What Schmitt achieves with this seemingly anachronistic description is the view that absolutism supplanted chaos by establishing the conditions for political order. I will return to the question of premodern political order later, but for now I will trace ever so briefly the lineaments of the early modern state.

Both Otto Hintze in 1919 and Schmitt in his 1921 *Dictatorship* charted how commissaries, agents delegated to represent a monarch's financial and legal interests, eventually ousted regional authorities and established themselves as centralized state bureaucracies, uniting administrative control over

an entire domain.⁴ In line with the usage of antiquity, “civil society” still referred strictly to the realm of the political. Subjects—even, increasingly, the aristocracy—were thought of as private persons, not as individuals demanding representation and rights. Treading the path explored by Max Weber’s *The Protestant Ethic and the Spirit of Capitalism*, Hintze and subsequent historians emphasized the role discipline played in training individuals to be subjects of the newly formed state. While Oestreich (1982) emphasized the influence of Justus Lipsius and Neostoicism, Hintze (1975, 88–154) and Gorski (2003) have more closely followed Weber in their emphasis on Calvinism. All, however, see the Netherlands as central, with Brandenburg-Prussia the main beneficiary. An internally disciplined (by religion and education) populace allowed for an increasingly rationalized (*avant la lettre*) form of governance and waging war. This new political entity that emerged in the late sixteenth and seventeenth centuries is generally referred to as the military and administrative state, sometimes positively, more often as a condemnation. Schmitt habitually used the phrase “military and administrative” to characterize the Prussian and German state of the nineteenth century, and one certainly gets the impression that this was his favored form of governance, yet even the nineteenth-century Prussian state, often thought to have been “atavistic,” was fundamentally different from its absolutist predecessor, for the French Revolution and its aftermath introduced the passion of nationalism, the ideology of liberal governance, and the reality of social movements, thereby irrevocably changing the political landscape.

With reference to the nineteenth century we enter the second stage of modern political development, which has been the focus of part II of this volume. In its most extreme articulations, it has been described as the liberation of the individual from the shackles of tyranny or, as Schmitt has it, the political “attack” of society on the state in the name of an apolitical economic idyll. Howsoever one wishes to view it, the state/society distinction represents the quintessentially liberal view of the political, a limitation of state power and maximization of individual liberty. The state becomes neutral, especially with regard to religion and the economy. This neutrality has a twofold function. In addition to giving the self-interested individual a theater of activity virtually untouched by state interference, it also preserves the identity and, at least to a certain extent, the strength of the state as a power that stands guard over the political community. Thus, in addition to emancipating the individual, the emergence of society throws the state in stark relief, especially in the constitutional monarchies of the nineteenth century. Monarchical leadership and the administrative power of even the increasingly liberal, constitutional state was thought (or hoped, or, of course, feared) to be able to hold its own against rising social pressures. As we have seen, the duties of state and society were clearly defined and differentiated: the former represented the whole, the latter advocated for the individual. The former

refrained from intervening in the affairs of the latter, unless and until non-intervention became, in effect, intervention on the side of the socially tyrannical and economically powerful owning and producing classes. Threatening both individualistic society and the state were the organized masses, primarily the proletariat, but also the stateless nations eager to free themselves from empires (Austro-Hungarian, Russian, Ottoman, and British).

World War I changed everything. That nearly the entire nation was mobilized for the war effort proved irreversible. What had been the liberal state with its clear differentiation from society now became the welfare state, consumed by social (primarily economic) tasks. The state that organized total war in peacetime became, in Schmitt's terms, the total state,⁵ a misleading label that actually means the total mobilization, a term he borrows from Ernst Jünger,⁶ or total self-organization of society (a term Schmitt favors and one that today is unabashedly and descriptively used by Luhmannian systems theorists). Let us let Schmitt explain what happened.

This [nineteenth-century] state, which was neutral in principle towards society and economy, in the liberal, non-interventionist sense, remained the presupposition of the [Weimar] constitution even where exceptions were made in the field of social and cultural politics. But it changed from the ground up, to the same extent that the dualistic construction of state and society, government and people, lost its tension and the legislative state came to completion. Now, the state becomes the "self-organization of society." The distinction between state and society, between government and the people . . . disappears. . . . But something even more momentous and profound happens at this point. If society organizes itself into a state, if society and state are supposed to be identical, then all social and economic problems immediately turn into problems that concern the state, and it is no longer possible to distinguish between issues that are political . . . and issues that are social. (Vinx 2015, 131–32)

Society no longer merely intrudes—it consumes the state, regurgitating it as just one social association among many, with a coordinating or managerial function. Furthermore, in the totally mobilized state, the association or party replaces the individual as the subject of society. In the pluralism advocated by Laski, Cole, Guild Socialism, and those others in England influenced directly and indirectly by Gierke, the individual comes to be defined by participation in a variety of associations—churches, unions, chambers of commerce, professional societies, philanthropic organizations, schools (parent-teacher associations, volunteers), sports clubs, and fan groups, and in the present century a host of social media networks. No longer self-determining as the liberal ideal would have it, individuals are determined in conflicting and contradictory ways by the associations they make, or rather, by the associations that make them. With the disappearance of the state, a counter pole to social identities also vanishes, and the individual can no longer secure

its relationship to an overarching group, a collectivity or community, that may provide a singular collective identity over against the fragmentation one faces in social life. This at any rate could be one function of a state that still maintains the theorized independence from social forces.

Is there a remedy for the malady Schmitt posits? In *The Guardian of the Constitution*, published before the National Socialist takeover, Schmitt offers a classic nineteenth-century solution, namely the re-establishment of the state/society distinction that equips the state with its appropriate weapons: a neutral power and an active, nonpartisan bureaucracy.

First, let us consider the neutral power. “Difference of opinion and conflicts between those who exercise rights of political decision and of influence cannot in general be decided in judicial form,” Schmitt claims. Indeed, the purpose of *Guardian* is to argue against the notion of judicial review (as we have with the Supreme Court in the United States) as the proper and most—well—judicious guard against violations of the constitution by the other branches of federal or provincial government. Rather, Schmitt asserts, such fundamental conflicts “are either resolved, from above, by a stronger political force, that is by a higher third that stands above the differing opinions . . . or they are arbitrated or settled by an authority that is not superior to but that stands alongside the conflicting parties” (Vinx 2015, 150–51). The higher third is the sovereign, but in a democracy, the presence of the sovereign—the people as constituent power—is hard to locate in a specific and concrete manner. We have already explored the referendum, in which “acts of sovereignty” are executed by the constituted people within the constitution, and we have heard, if not the voice of the people itself, then at least the possibility of that voice raised in acclamation. Although only the sovereign may truly protect (or legitimately destroy) the constitution, acclamation comes not in response to an emergency but to a decision. Thus, the second option, an authority that stands “alongside,” on the same level with the conflicting powers, may be called into action. That authority Schmitt calls “a neutral third,” a “*pouvoir neutre et intermédiaire*” (151).

Schmitt’s use of French is not a mere flourish, for he points explicitly to Constant, whom he praises for “a political intuition that clearly grasps the position of the monarch or of the president in a constitutional state” (Schmitt 2015, 153). In the Weimar Constitution, that intuition is articulated as a recognition of the “independence of the plebiscitary system” centered on the figure of the popularly elected *Reichspräsident* (169). As head of state the president is equipped with a “special form of authority” that allows him to represent “the continuity and permanence of the unity of the state.” Thus, beyond his normal competences, the president can act as a neutral third, but “only in a state of emergency.” As a neutral power, the role assigned to the president is one of “arbitration, preservation, and regulation” (Vinx 2015, 156). It is of interest to observe how Schmitt tiptoes through the snarls,

contradictions, and confusions of the Weimar Constitution to elicit both the plebiscitary and neutral function of the president. The “position of the president,” Schmitt writes, “can be constructed only with the help of a further development of the doctrine of a neutral, arbitrating, regulating, and preserving power” (translation slightly altered). The specific competences granted to the president, who, as Schmitt repeatedly emphasizes, is popularly elected, “conform to the typical catalogue of competences of a head of state as it was already put forward by B. Constant” (157). Whereas in parliamentary elections the electorate votes for parties and not individuals, the president is the only figure popularly elected by all *as* an individual. (You will recall Wilson’s similar argument with regard to the US president, though it must be said that the Electoral College system undercuts the principle of democratic, majority rule.) Therefore:

The peculiar, much-discussed balancing of the plebiscitary with the parliamentary element of the constitution, the connection between an independence from the *Reichstag* grounded in self-standing competences and a dependence grounded in the general requirement of ministerial countersignature (article 50 RV), the federal execution, i.e. the protection of the constitution of the *Reich* (federal state) against the *Länder* (provinces), and finally the protection of the constitution . . . according to article 48; all that would be a contradictory and meaningless mixture of irreconcilable provisions if it did not become comprehensible through the doctrine of the neutral power. (157)

To dot all the i’s and cross the t’s, Schmitt calls on the main architect of the Weimar Constitution to support his thesis. “Hugo Preuß pointed out . . . that it is ‘only one of the functions of the president of the *Reich* to form a counterweight to the *Reichstag*.’ ‘Aside from that, there is the more important one: to form a kind of centre in the constitution, a pole that is at rest’” (157–58).⁷ As the center of the constitution, the president is given exceptional powers to stand alongside the other powers and intervene to “guard” the constitution in times of emergency.

As overarching authority, the president may be the solitary center, the plebiscitary pole, but to exercise his power he needs his executors; and here the second agency mentioned by Stein comes to the fore—the bureaucracy. In the early 1930s, Schmitt returns repeatedly to a discussion of the professional, nonpartisan bureaucracy and its relationship to the development of the total state.⁸ Because the “traditional, static opposition of state, i.e. of a monarchy administrated by a professional public service, on the one hand and of society, i.e. of a ‘free’ sphere of life that is in principle distinct from the state, on the other is dissolving,” Schmitt declares, the “public service no longer stands above a ‘society’ that is separated from it” (Vinx 2015, 161). This of course is his now much-repeated lament. In a total, self-organizing society, the state cannot without further ado stand over against economic and other

social forces as an imposing, independent force. Through the party politics that dominate parliamentary decision making (or *lack* of decision making), social differences eviscerate the collective identity of the political whole. Nevertheless, in spite of the debilitating situation in which we find ourselves, Schmitt assures us that the professional bureaucracy is still “preserved as an impartial power,” and he finds support for this claim in the Weimar Constitution. Article 129 states that civil servants are appointed for life and can be removed from their duties only by way of legal proceedings, and Article 130 states emphatically, “Public officials are servants of the collective, not of a party” (Schmitt 2008a, 429–30). He reads in these explicit assurances the intention “to continue the great tradition of the German professional public service in the democratic state” (Vinx 2015, 161). A true democracy, in other words, does not allow the state bureaucracy to become the spoils of party-political battles and thus the mere plaything of social forces. However, within the now non-monarchical, democratic political order, the constitution must find a new home for this venerable institution. Schmitt therefore attaches great significance in the linkage of Article 46, which states that the president “names and dismisses civil servants” (Schmitt 2008a, 417), and Article 130, which places explicit emphasis on the bureaucracy’s service to the “collective,” the whole community, and not to party interests. On the one hand, it is “at least a remarkable restraint against party-political methods of appointment that it is not the party-comrade turned minister himself, but rather a head of state independent of parliament, and therefore of any political party, who appoints public servants.” More importantly, however, Schmitt lauds the “systematic connection between a state based on a professional public service and a president of the *Reich* who stands on a plebiscitary basis, and who controls the plebiscitary element of the constitution of the *Reich*” (Vinx 2015, 162). By linking an “independent” president with an equally “independent” professional bureaucracy (my scare quotes register, without explicitly endorsing, a necessary level of inquisitive skepticism), Schmitt hopes to establish a realm of presumed detachment from the daily round of party politics and sees this as the “only way to create an independent authority in a democratic constitution, without which there can be no guardian of the constitution” (162). Whether such an arrangement would be more successful than judicial review along the lines of an American-style supreme court remains an open question. Equally open is whether judicial review itself can seal itself off from the forces and pressures of party politics. Indeed, the American experience suggests otherwise. Court victories are always also political victories.

All these problems and postulated solutions came to an abrupt end on January 30, 1933. New, more terrifying and vicious problems arose, although Schmitt, after a brief hesitation, embraced the New Order with the hope that old problems had now been actually solved.

STATE, MOVEMENT, PEOPLE

In 1933, after the National Socialist takeover, Schmitt published a short book called *Staat, Bewegung, Volk: Die Dreigliederung der politischen Einheit* (*State, Movement, People: The Triadic Structure of the Political Unity*), which aspired to be a provisional constitutional theory of the newly erected National Socialist state.⁹ The third chapter of the text—“The dualistic construction of the state of liberal democracy and the German administrative state”—provides us again an example of Schmitt’s engagement with the nineteenth-century state/society dualism and its Weimar afterglow. It is worth reviewing the arguments, starting with Hegel.

Nineteenth-century German political theory (*Staatstheorie*, or theory of the state), Schmitt claims, resisted the dualistic division of state and society until the mid-century victory of liberalism and positivism. That Hegel originated the distinction, Schmitt neglects to mention, though he credits Hegel with positing a non-liberal solution. “For Hegel (*Theory of Right* §250f.), for example, the ‘corporations’ fashion the transition of bourgeois society to the state; for him, the state is in no way a bureaucratic apparatus, on the one hand, and, on the other, a free bourgeois society” (Schmitt 1933, 28). Recall that Hegel assumed that the professional corporations (modeled still on medieval guilds and not on political parties, interest groups, or capitalist corporations in the modern sense) would mediate between the ethical community of the family and the ethical community of the state by making individuals aware that the success of their pursuit of self-interest was facilitated by everyone else’s pursuit of self-interest. Hegel’s synthesis was in effect to achieve a higher, collective awareness of mutual citizenship in an ethical state by assuming that the pursuit of private vices eventually leads to public virtue; therefore, out of the coalescence of self-interest and duty, one’s higher allegiance is to the public good, namely the entire political community, the state. It is realized, in other words, that the devotion to self-interest (protected by rights) and to the higher good (demanding obligation) cohere. One may be both a privately acquisitive individual and a good citizen, for what was once seen as conflict has now been raised to collaboration.

With the collapse (or irreality) of the Hegelian synthesis, the stark divide remains unhealed and is encapsulated in the liberal ideal of a weak, limited state and a strong sense of individual liberty housed in the social sphere. Schmitt disputes the ideal by emphasizing the limits put on individual freedom not by the state but by economic associations and interest groups who orchestrate putative liberty. “*The liberal construction of state and constitution presupposes a simple and unmediated opposition between the state and the private individual. Only by way of this opposition is the effort to build a complete legal shelter [ein ganzes Gebäude von Rechtsschutzmitteln und -einrichtungen] a reasonable undertaking, aimed at protecting the helpless,*

exposed, poor, isolated individual person against the mighty Leviathan ‘state’” (Schmitt 1933, 24). But he quickly adds that this liberal narrative no longer makes sense because “strong collective associations or organizations occupy the extra-state, non-political private sphere and these non-state (but by no means unpolitical) ‘self-organizations’ group individuals together ever more forcefully.” These organizations, then, posing “as the people, as society, as the free bourgeoisie, as the productive proletariat, as public opinion,” oppose the state by hiding behind the protective wall of rights (*Schutzwall*) originally meant for individuals alone. Behind this *Schutzwall* of individual rights, “non-state but, as said, thoroughly political associations dominate both the state will (by way of legislation) and the individual (through social and ‘purely individual’ coercion).” Such organizations, then, become the agents of state power without, however, taking political responsibility for their actions. They can be political parties, unions, economic and industrial organizations, churches and religious societies, secret societies of whatever kind, and by virtue of their social strength they exercise political power and reap commercial benefits (24–25).¹⁰ It is easy, all too easy, to assume that Schmitt’s exclusive target here is the Jews, and they are mentioned (*Volksfremde*: aliens, not part of the people) in passing, as are the communists (*Staatsfeinde*: enemies of the state), but clearly the net is cast far and wide, as it always had been in his Weimar-era writings.

Schmitt even repeats his observations about the incoherence of the Weimar Constitution, constructed in two parts: the first along liberal lines, including inviolable basic individual rights, and the second, the so-called economic constitution, based on social-democratic economic principles.¹¹ The provisional economic council called for in Article 165 of the constitution failed to have any impact on German society during the 1920s and beyond; indeed, according to Schmitt, it had to fail because in its essence it contradicted the liberal part of the constitution. No ill will was necessary to render its work null and void. The barricade of rights manipulated by industrial organizations thoroughly protected their economic interests (Schmitt 1933, 27). Under these circumstances, even the famed German *Beamtenstaat* (administrative state) was no longer able to fulfill its two functions, first as an objective and neutral bureaucracy, and second as the center of political authority (“die [Funktion] einer politisch führenden, staatstragenden Schicht”). The administrative state in general and the bureaucracy in particular could no longer maintain its position outside of and over society, but rather found itself caught between the various levels and organizations of society, becoming thereby part of the pluralistic system itself, an association among other associations (30–31).

This entire analysis then ends with a dramatic declaration: “This past January 30th, the nineteenth-century Hegelian administrative state, characterized by the unity of the bureaucracy and the state’s center of gravity

[*staatstragende Schicht*], was replaced by another state construction. On this day, therefore, one can say that ‘Hegel died’” (Schmitt 1933, 31–32). The “Hegelian administrative state,” characterized by the “unity of the bureaucracy and the state’s center of gravity” (we will return to that phrase shortly), is the state we have been talking about, the state waging battle against the overreach of society. If “Hegel” died, is this cause for celebration? If so, what are we celebrating—the death or a new birth? The passage continues.

That does not mean however, that the great work of the German philosopher of the state had become meaningless, or that the idea of a political order transcending the egoism of social interests had been given up. What is timelessly great and German about Hegel’s powerful intellectual achievement remains effective in a new guise [*Gestalt*]. It is only that the forms [*Formen*] of the Hegelian administrative state which correspond to the domestic political conditions of the nineteenth century have been eliminated and replaced by those which correspond to our contemporary reality. (32)

In 1933, that new birth came, of course, in the swaddling clothes of National Socialism. Schmitt claims, in other words, that Nazi Germany succeeded where Hegel’s Prussia had failed, such that Schmitt’s own intricately argued attempts to rescue the state from demolition during the Weimar era also became obsolete.

Briefly, because implausibly, the new solution entailed what Schmitt calls the tripartite structure of the new German state, as indicated by the title of the book: state, movement, and people. This is supposed to overcome the existing dualism, because each term of the triumvirate is to be thought through the lens of the other two: state through movement and people; movement through state and people; people through state and movement. What this means or might look like remains largely (and that qualifier is generous) unexplained. Indeed, try as he might, Schmitt could not help but place the state in an elevated position. In the above passage about the death of the state, I clumsily translated *staatstragende Schicht* as “state’s center of gravity.” Literally, *staatstragend* means “state carrying,” and *Schicht* can mean “stratum.” Schmitt is talking about where the weight of power lies in a given state form. In an absolutist state, it lies with the institution of the inherited monarchy; in a theocracy, with the relevant religious institution; in a liberal state, with the social forces whose interests are represented (Schmitt would say: advocated for) in debate—in other words, with the legislative body, parliament. Where does one find the “state carrying stratum” in the National Socialist state? One might suspect the people. After all, the Nazis used the adjectival form *völkisch* to denote the ethnically/racially defined German people, and Schmitt had made much of the people as constituent power in his reading of the Weimar Constitution. Schmitt does give the people a means of participation. For instance, he claims that the Reichstag election of March 5,

1933, was “in reality, looked at from a legal-theoretical perspective, a *Volk-sabstimmung*, a plebiscite, through which the German people acknowledged Adolf Hitler, the leader of the National Socialist movement, to be the political leader of the German people” (Schmitt 1933, 7), and elsewhere he accords a plebiscitary function to the people. But in fact Schmitt gives the people an explicitly passive and non-political role in this new state (12). Rather, the post-January 30 *staatstragende Schicht* is to be found in the movement, not the people, and the center of power of the movement and therefore the state lies with the leadership principle, bound not by law or constitutional constraints, but by one thing only—the *Artgleichheit*, or, to use the terminology he used a decade earlier, the homogeneity of the people. Recalling Schmitt’s discussion of homogeneity, we can say that the previous menu of possible options—history, culture, religion, virtue—had been replaced by one single choice, racial [*Rasse*] commonality. Without this principle of racial homogeneity, he goes on to claim, the National Socialist state would be immediately vulnerable, exposed to the customary withering critique of its liberal and Marxist enemies, and it would thereby cease to exist. Thus, all former metaphors for leadership—navigator, shepherd, horse and rider—fail to do justice to this new leadership principle, namely the “real presence” and absolute identity of leader and followers—a true metaphysics of presence (41–42). Whether this new definition of homogeneity represents an abdication from his former, more complex and varied menu of options open for determining commonality, or rather the final admission of what he meant by that term all along, will no doubt remain a matter for endless debate in Schmitt scholarship.

Nonetheless, none of this is particularly surprising. If he is to give an account of the National Socialist “constitution,” he must deal with the one-party state, the power or driving force of a movement, the racialized notion of the people, their relative political impotence, the radical limitation of the rule of law, and the leadership principle. In many ways one can see how he welcomed some if not all of these changes with relief. One-party rule was, for him, a respite from the disintegrative forces of party pluralism. Though rarely using race or ethnicity on his homogeneity menu, he embraced it in 1933, giving public vent to his vehement anti-Semitism. The erasure of the people as constituent power is surprising, but limiting the rule of law in order to elevate the leadership principle can with little difficulty be squared with his theorization of representation and acclamation. We are faced, then, with the heated dispute over which Schmitt, the pre- or post-1933 one, is the “real” Schmitt. Some believe that he dropped his disingenuous camouflage in 1933 and became the true Carl Schmitt, the Schmitt he always had been or had wanted to be; others claim opportunism, ambition, self-delusion. I claim not to care what or who the “real” Carl Schmitt was. The texts that sport the brand name “Carl Schmitt” are what interest me. I see no reason to interpret

the body of literature written between circa 1919 and the end of 1932 strictly through the lens of the texts written during the period between 1933 and circa 1936. There are distinct continuities as well as ruptures between the two collections of texts. Despite the continuities, I believe it possible to read the Weimar-era writings as representing a discrete body of thought written within a broad (modernity) and narrow (Weimar Constitution) context. That he is critical yet still in service of both the broadly understood modern predicament (“deism”) and the narrow confines of the newly constituted German republic of the 1920s and early 1930s seems clear to me. Equally true, though, is that he wished the horizon of thought to be broader, or at least different.

Though the Weimar Constitution is no longer in force and the modern condition has become ever more complex and indecipherable, Schmitt’s texts from that era, I maintain, still speak to us, and they do so in an expansive way, as I have tried to show by placing them within both a medieval (theological) and nineteenth-century setting. I have done this in the (all but vain) attempt to escape aspects of contemporary political-theoretical discourse I find too constricting. At the risk of being misunderstood, I will say that there is something refreshing about a time (the early 1920s) when it seemed that more than one political-organizational option made claims to represent the future of Europe and perhaps the world: liberal-democracy, syndicalist fascism, Marxian socialism. That by the 1930s, the latter two options had spawned nightmare regimes that willfully, even gleefully, set on a path to destroy tens of millions of lives quite reasonably removed them from most observers’ lists. Despite the ideological and theoretical allure of Marxism, in the post-1989 world we were once again left with one option—liberal democracy—and one option is not an option. It is more akin to a judicial sentence, hence the contemporary, twenty-first-century “populist” and authoritarian seemingly worldwide rebellion against liberal so-called elites. As an explicit non-believing but implicit fellow-travelling member of the educated liberal elite, I am not at all happy with the contemporary eruption of contempt for the authority of thought, debate, argumentation, and all the other conventions of our trade, but I am also not surprised that not all share these “elitist” values. Chips on shoulders are powerfully motivating devices; at least that is what my own chip tells me.

Be all that as it may, if Carl Schmitt enthusiastically embraced National Socialism in 1933, National Socialism with equal enthusiasm *dis*-embraced Carl Schmitt in 1936.¹² Protected from the more rabid persecutors in the party by a friendlier wing (in part through the intercession of his friend Johannes Popitz, who later joined a resistance group and was executed by the Nazis), Schmitt was stripped of his various governmental positions but was allowed to keep his professorship in Berlin and the right to publish. He learned to eschew (or camouflage) direct interventions in the domestic issues

of the day and directed his attention again to the history of the European state and, increasingly, to international law and world order.¹³ I do not mean to suggest that Schmitt turned his back on contemporary Germany or the Nazis. It is telling that Popitz joined the resistance, yet said nothing of this to Schmitt, his close friend, and there is no evidence that Schmitt knew about or sympathized with the attempts to overthrow Hitler.¹⁴ Still, there is one document that is too readily overlooked, one that gives testimony to the fact that, despite his obituary notice, Schmitt did not think Hegel had died in 1933 after all, or at least that Lorenz von Stein was still alive and kicking.

STEIN REDUX

In 1940, Schmitt arranged to have published in book form an almost totally forgotten essay by Stein, to which he added an appreciative afterword.¹⁵ The essay originally appeared in near anonymity (signed only by the letter “S”) four years after the failed 1848 revolution; the topic was whether Prussia was capable of hosting a genuine constitutional monarchy. The answer: not until Prussia was part of a united Germany. Stein wrote this from Vienna, where he was in the employ of the Habsburg monarchy and would remain until his death in 1890. A call to serve Prussia never came, which Schmitt notes with regret. Stein, Schmitt says, was the product of the intellectual awakening of the German bourgeoisie (*Bürgertum*, which has more than economic associations) and an heir of the creative explosion of German philosophy, who, with an eye on the political and social reality of the day, advanced Hegelian thinking. He was the first to recognize the “inner law” of the European social movements and thus was not surprised by the events all over Europe of 1848 (Schmitt 1995, 156). With great admiration, Schmitt cites the closing lines of the introduction to volume 1 of Stein’s *Geschichte der sozialen Bewegung in Frankreich von 1789 bis auf unsere Tage* (1921; originally published in 1850), to the effect that history has entrusted (mid-nineteenth-century) youth with the power and quickening of the times. It is the hour of history that will not be lost (Schmitt 1995, 156–57).

Schmitt uses the opportunity of this afterword to engage, however briefly, with his own nineteenth-century obsessions, mentioning as Stein’s contemporaries Bismarck, Wagner, Proudhon, Bakunin, Engels, Max Stirner, and Bruno Bauer.¹⁶ Bauer was an especial obsession of his, and he gives him a certain pride of place, but after a page of characterizing this important generation, all born and died within the confines of the century, he returns to Stein, noting that his eccentric position in the predominantly agricultural and multinational Habsburg empire resulted in a reduced impact of his thought on Europe as a whole and Germany in particular. Nevertheless, because his thinking was “concrete,” which I take to mean irrevocably linked to the

actual situation of the times he lived through (which could also be a self-portrait of Schmitt), the failure of the 1848 revolution hit him primarily as the theorist of state and society (Schmitt 1995, 158). The dynamic of the distinction, a dynamic that Hegel modulated into a satisfactory resolution, freezes in the post-1848 liberal confrontation with the state. The mobility Hegel described dialectically became, in idea and deed, the stalemate of trench warfare. Schmitt goes on to muse that it would be foolish to speculate what would have happened had Stein been able to exert his influence and press his ideas in Berlin rather than Vienna. Yet, he does speculate. Like all of his generation (excluding, again, Marx and company), Stein, Schmitt asserts, would have agreed with Bismarck's compromise with the National Liberals in 1866; it simply was part and parcel of the times. However, Stein's example—no, his fate—makes visible what historical meaning attaches to the fact that it was Prussia and not the Habsburg monarchy that executed German unity.

The intellectual command of the problem of state and society and, in continuation of Hegel's approach, the study of social movements that Stein began with great success in Paris, would with certainty have been made useful for Prussia and for Germany, had it not simply been transferred to Germany from the West. Speaking in a concretely European manner, the state we are dealing with was Prussia, which, after the "démission de la France," was next in line to provide the idea of the state with its last historical task and realization; and the concrete social problem left to be dealt with in Europe was the development of the German bourgeois-industrial society. In Vienna the great observer of the European fate of state and society stood outside of the actual force-field. (Schmitt 1995, 159)

Had Stein been able to serve the Prussian state rather than the backward-looking Habsburgs, so this narrative seems to suggest, Prussian Germany might have been able to establish the better, sleeker, more politically mature model of the modern state as a force representing the political community. Instead, the forces coming from the West, as we have seen in Schmitt's Weimar writings, were social, individualist, yet dominated by interest-group associations that were hostile to the state and politics, thereby undermining any notion of a collective entity standing united in the face of the nonpolitical politics of liberal moneyed individualism. Alas, Stein withered on the vine, writing tome upon tome of administrative law and practice.

But here is the punchline: "*Seine Wirkung ist also keineswegs zu Ende*" (His influence is by no means at an end) (Schmitt 1995, 160). Far from being over and done with, the effect of his thought and his work still remains relevant today—and the "his" refers not only to Stein but implicitly to Schmitt as well. The nineteenth-century problematic and early twentieth-century intensification of the crisis of the state and the political was quite

obviously not solved by the *Führer-Prinzip* and the triadic structure of state, movement, and people after all. We still struggle, therefore, with the tensions Schmitt charted, the principled undermining of collective state action by group actors hiding behind the *Schutzwall* of individual rights, on the one hand, and, on the other—though Schmitt continues to downplay this threat, even after he lived through its realization—the danger of the oppression of the individual by the unbridled collective, or the charismatic representative of that body. Liberal theory is incapable of solving or even seeing the problem. The sad part of this whole story, however, is that, despite all the clever things I have ventriloquized through the voice of Carl Schmitt, I do not know what is capable of solving the problem either. Or even capable of *seeing* it as a problem.

Coda: 2019

The fortunes of liberal-democratic forms of governance over the past century resemble the trajectory of a roller coaster. Immediately after World War I, monarchies in Europe and elsewhere collapsed (Germany, Austro-Hungarian Empire, Ottoman Empire), and missionaries like Woodrow Wilson proclaimed a new dawn for (white) humanity. There were rivals, however: The 1917 Russian revolution and subsequent civil war introduced a different form of democracy, based more or less on Marxist principles, and in 1922, Fascism, putatively based on syndicalist principles, took hold in Italy. With the stock market crash in 1929 and subsequent global depression, doubt about the viability of at least economic liberalism arose, and even liberal theorists (except diehards like Hayek and von Mises) prophesied the “globalization” of planned economies identical with or vaguely resembling the five-year plan model of the Soviet Union. The roller coaster nosed downward. Anglo-Saxon and Russian victory in World War II divided the world in two, between a renewed and refreshed political liberalism (with social democratic or ordoliberal economic additives), on the one hand, and a triumphant Marxism, which could now claim the vast population of China, on the other. In retrospect, the collapse of liberal democracy’s rival seemed inevitable because it could never replace or link to the global capitalist economy, but “the West” was sporadically rocked by the Soviet Union’s technical feats (developing nuclear weapons, jumping into the lead in the “space race”) and by its own self-inflicted wounds (systematic apartheid in some of “democracy’s” chief representatives, not least the United States, and the failed US invasion of Vietnam). Nevertheless, with the “fall” of the Berlin Wall in 1989, the liberal-democratic trajectory aimed for the sun, moon, and stars. The triumph of global liberalism and the end of history was announced, the “indispensability” of the United States exultantly proclaimed. Thanks to overreaction

(2001) and overreach (2003), the intoxicating high did not last long, and now, anno 2019, we see a remarkable deterioration of the global liberal order. To be sure, capitalism still reigns supreme economically, though capitalist regimes seem bent on undercutting their own success with unsustainable income inequality and the specter of global trade wars on the horizon. As a consequence of some or all of the above, what we label autocratic or authoritarian regimes rule some of the world's largest and most powerful nations, and what we label "populism" propels some of the others, most notably the United States, outdoing its normal immodest global practices by running roughshod over time-honored domestic and international institutions, conventions, and political culture in general. All this too may pass, but adding the anger of Mother Nature (if I may be allowed this capricious personification) into the mix, what will be left in the wake of the opening few decades of the twenty-first century hardly appears promising.

The diagnoses of these phenomena are many and varied. Having done no empirical research among those attracted to and even blindly following "populist" leaders whose promises feed emotionally satisfying but unachievable demands, I feel much too incompetent to weigh in on the issue in any manner that would not embarrass me months, if not weeks from now. But I will venture a cautious peek at the problem through a narrow slit of the work of Carl Schmitt as presented in these pages.

Let us recall Schmitt's definition of the political as the binary distinction between friend and enemy, in which the enemy defines the friend. Schmitt clarifies first by stating that this distinction is one of many. The moral distinction is good and evil, the aesthetic distinguishes between what is beautiful and what is ugly, the economic domain between the profitable and the unprofitable. In so doing, he clearly channels Max Weber's notion of multiple, incommensurable value spheres. By "incommensurable" I mean simply that the distinctions are not coordinated in the sense that the profitable need not also be beautiful and so on. The pursuit of beauty can be perfectly worthless, from an economic point of view, and the pursuit of profit may be seen by some as one of the ugliest and most evil aspects of human life, and by others as the epitome of human freedom (such that the 300+/1 ratio of CEO to worker income is seen as evidence of God's goodness and grace). For society to function properly, each domain must follow its own code. However, Schmitt insists that the political is not a domain; it is an "intensity" that can be found anywhere and transformed into a political antagonism. Within the domains of religion or the economy, for example, disagreements can ignite the fiercest of antagonisms. By positing the potential ubiquity of the political distinction—friend/enemy—Schmitt can assert the primacy of the political. A dispute in any domain can be elevated to one in which a threatening enemy stands over against an uncompromising community of friends.

Drawing the line between compatriots and antagonists, Schmitt also asserts, is an existential endeavor, not a normative one and not one that can be determined by others. “Only the actual participants can correctly recognize, understand, and judge the concrete situation and settle the extreme case of conflict.” Survival is the issue. “Each participant is in a position to judge whether the adversary intends to negate his opponent’s way of life and therefore must be repulsed or fought in order to preserve one’s own form of existence” (Schmitt 2007, 27). Only a collective “We” can determine whether a collective “You” threatens its existence; no collective “They” can prohibit the “We” from making that determination or, conversely, force it to. It is evident that we are talking about grand politics, politics on a regional or global scale, “foreign affairs,” not domestic squabbles. Besides the geopolitical dance all states must perform to defend their autonomy, additional danger arises when domestic disputes rise to the level usually reserved for international conflict. Here, as we have seen, Schmitt worries about civil war.

The equation politics = party politics is possible whenever antagonisms among domestic political parties succeed in weakening the all-embracing political unit, the state. The intensification of internal antagonisms has the effect of weakening the common identity vis-à-vis another state. If domestic conflicts among political parties have become the sole political difference, the most extreme degree of internal political tension is thereby reached; i.e., the domestic, not the foreign friend-and-enemy groupings are decisive for armed conflict. The ever present possibility of conflict must always be kept in mind. If one wants to speak of politics in the context of the primacy of internal politics, then this conflict no longer refers to war between organized nations but to civil war. (32)

Schmitt’s overriding concern with civil war may strike us as overheated, but in the early and the final years of the Weimar Republic, civil war—violence in the streets between opposed political factions and parties—was an ever-present reality. Then again, in the years to come, it may come to strike us more and more as prescient.

Civil wars differ from state wars in many ways, but for Schmitt the crucial difference was intensity. The post-Westphalian states system (in Europe, not in the conquered colonial realms), labeled by Schmitt as the *jus publicum Europaeum*, regularized and rationalized the conduct of war between disciplined state armies to a degree that allowed for the development of a “humane” *jus in bello*, whose eventual principles of proportionality and discrimination were designed to minimize violence, protect the wounded and prisoner of war, and shield noncombatants. What allowed this containment of violence was loyalty to the basic structure, that so-called balance of power, of the European states system. The regularization of violence—the “laws of war”—rested *not* on Christian moral norms (which, in fact, demanded “just”

wars or wars of righteousness) but on participation in an overarching system. The unity of that system, the *jus publicum Europaeum*, Schmitt rightly or wrongly insisted, was Christianity, despite the post-Reformation riving of its unity. A “civilized,” Christian Europe stood over and against the pagan, “uncivilized” or “semi-civilized” world; thus, despite colonial and continental rivalry, European states treated each other differently (as reflected, for instance, in the conventions of eighteenth-century warfare) than they treated the external world. Alas, fissures in that order were opened up by the French Revolutionary and Napoleonic wars, and it was fully dissolved during and after World War I.¹ Despite reams upon reams of contemporary “humanitarian” international law, the wars of the twentieth and twenty-first centuries have massively violated the *jus in bello* principles of proportionality and discrimination. Schmitt’s idealized existential state wars of self-defense have become “people’s” wars, imperial wars, just wars of willful and joyous annihilation, in part because of technology (enhancing the destructiveness of warfare), but also in part because no new satisfactory structure has been established to fill the void of the destroyed European states system.

By analogy, then, we may surmise that with the rise of ferociously animated populist movements, something similar has happened internal to the state. We can get at this by examining one aspect of Chantal Mouffe’s theoretical project over the past three decades, her adaptation of Carl Schmitt’s friend/enemy distinction for domestic politics. And as above, I rely on the words of the author herself rather than offer a weak paraphrase, though I will add commentary.

Once we accept the necessity of the political and the impossibility of a world without antagonism, what needs to be envisaged is how it is possible *under those conditions* to create or maintain a pluralistic democratic order. Such an order is based on a distinction between “enemy” and “adversary.” It requires that, within the context of the political community, the opponent should be considered not as an enemy to be destroyed, but as an adversary whose existence is legitimate and must be tolerated. We will fight against his ideas but we will not question his right to defend them. The category of the “enemy” does not disappear but is displaced; it remains pertinent with respect to those who do not accept the democratic “rules of the game” and who thereby exclude themselves from the political community. (Mouffe 1993, 4)

First we note that Mouffe explicitly, if in muted fashion, accepts Schmitt’s “anthropology” of the political, that it must assume the human animal to be a problematic being, a corollary to his—and European modernity’s—rejection of falsely optimistic romanticism. Accepting the necessity of the political—as antagonism²—involves accepting the necessary rejection of utopian and chiliastic dreams of peace, love, and understanding (to quote a rueful song title).³ Second, we note that she doubles Schmitt’s basic distinction by add-

ing friend/adversary to friend/enemy, thereby softening enmity internal to the state to prohibit actual violence and thus civil war. Domestically, we respect our political adversaries as our brothers and sisters with whom we have fundamental disagreements, but also with whom we live under the same structure or set of political rules. Only those who reject the framework of discussion, the internalized “states system,” as it were, are subject to fiercer opposition, including banishment.

Mouffe’s two distinctions—friend/enemy and friend/adversary—therefore seem calibrated to secure a nonviolent domestic space for a form of politics that is communal but not dependent on either anodyne or forced consensus. There is a space for the political that allows for fierce ideological, ideational, interested nonviolent battle within an inviolably respected ethical framework. “We need to conceive of a mode of political association,” she writes,

which, although it does not postulate the existence of a substantive common good, nevertheless implies the idea of commonality, of an ethico-political bond that creates a linkage among the participants in the association, allowing us to speak of a political “community” even if it is not in the strong sense. In other words, what we are looking for is a way to accommodate the distinctions between public and private, morality and politics, that have been the great contribution of liberalism to modern democracy, without renouncing the ethical nature of the political association. (Mouffe 1993, 66)

Now, I doubt that Schmitt would have celebrated the public/private and political/moral distinctions as *liberal* achievements, but celebrate them he certainly did. No matter. The type of neo-Schmittian politics Mouffe theorizes, centered on finely structured and structurally hedged disagreement, is what is currently in jeopardy. Domestic politics as an exercise in agonistics has either been forbidden by authoritarian regimes or has escalated into proto-civil war brush fires in many a formerly liberal regime, in which the *structure itself* is challenged, and seething enmity steps not so lightly over the bounds of mutually agreed-upon antagonism. What has gone wrong?

First, let us examine the notion of a common *structure* within which political difference can be argued and adjudicated. Mouffe credits Schmitt with acknowledging “that antagonisms can take many forms, and it is illusory to believe they could ever be eliminated,” but also credits the “great strength of liberal democracy,” which, “*pace* Schmitt . . . provides the institutions that, if properly understood, can shape the element of hostility in a way that defuses its potential.” Referring to Elias Canetti’s *Crowds and Power*, she notes that “the parliamentary system exploits the psychological structure of struggling armies and should be conceived as a struggle in which the contending parties renounce the killing of each other and accept the verdict of the majority on who has won.” The majority vote replaces the verdict of

battle. “If we accept such a view,” she cautiously notes, “it follows that parties can play an important role in giving expression to social division and the conflict of wills. But if they fail in their job, conflicts will assume other guises and it will be more difficult to manage them democratically” (Mouffe 1993, 5).

Now, Mouffe wrote this in the first flush of post-wall liberal triumphalism to temper rampant post-political, end-of-history conformism. Within and not opposed to the victorious liberal-democratic order, she wished to reinvigorate real political conflict in the face of smug apathy and politics as mere management. Rather than merging at the center, she urged political parties (Tory and Labour in the UK, Republican and Democratic in the United States, CDU/CSU and SPD in Germany, etc.) to represent “social division” and stage “the conflict of wills” in true, vigorous, parliamentary debate on the model of pitched battles with decisive outcomes, not namby-pamby, meaningless compromises that almost invariably favored the moneyed classes. Instead, in “the West,” we got centrist compromise, represented by the brand names Blair, Clinton, and Schroeder. That time has passed, at least for the moment, and once again the liberal-democratic structure, the ersatz battlefield of parliament, has revealed its fragility, and what we have now, at the end of the second decade of the twenty-first century, is something that is called “populism,” a term that the proverbial “liberal elites” use in a derogatory manner. To her credit, Mouffe is not afraid of that term. In *For a Left Populism* (Mouffe 2018), she embraces it. Most of the essentials remain the same—adherence to the liberal-democratic model of governance, faith in the possible cohabitation of equality and liberty, and belief in the necessity of adversarial conflict as the supreme mode of politics. However, she no longer has faith in the traditional left and center-left political parties (Labor, Democratic, Social Democratic). Instead, she now opts for the articulation of various single-topic social movements and minority parties like Die Linke in Germany, Podemos in Spain, and Syriza in Greece, even if in the latter case one might suspect that the bloom is off the rose. Whereas right-wing populism seems to use the institutions of liberal democracy cynically, Mouffe attacks the political and economic oligarchy from within the political structure that it has so deftly used to cement its power, all the while believing the liberal order can be repurposed for progressive ends. And perhaps she is right. However, if Carl Schmitt’s critique of both the *Weltanschauung* and the ideology of liberal governance as presented in these pages has any plausibility, something may be missing from the left populist agenda, something that the right has almost always manipulated all too successfully.

Therefore, while realizing that liberal governance, like a cat, has at least nine lives, let me cautiously posit that what liberal-democratic structure lacks is what Schmitt called “homogeneity,” and it is this absence that may be the source of contemporary troubles. Put another way, what liberal theory pro-

vides is *formal* homogeneity (integration), not what Schmitt called “substantial” homogeneity. Now, we can all agree that the term itself—homogeneity—ought to be dispensed with. It calls into being specters of what we wish to avoid. The same can be said for “substance.” Nevertheless, the absence of traditional notions of commonality is felt, even longed for by segments of any population. In general, the liberal establishments, the “elites” of so-called Western democracies (Western Europe and some of its former colonial outposts across the globe), no longer officially wish to use race or ethnicity, religion, gender, national origins (for immigrants), or other “substantial” markers of identity as rallying points around which a community may form. What one usually gets instead is a menu of values, a list of intellectual commitments to basic rights and duties of citizenship with perhaps some perfunctory knowledge of an idealized history of the nation-state in question and obeisance to symbols like a flag or national hymns. Currently, however, we seem to witness the weakness of ideological values in various formerly stable nation-states if these norms are thought to infringe on the categories of old. The ability to marshal explicit versions of previous “substantial” markers, especially race and religion, but also, implicitly at least, gender (men vs. women, hetero- vs. homosexual, etc.), proves stronger than evocations of equality, humanity, solidarity, and the like—just as Schmitt predicted. Put more bluntly, it seems that for many white American males, the notion of equality marks a distinct and deliberate *demotion*, and not every former field officer of Western civilization wishes to enlist as a private in the army of humankind.

If under the label “populism” we witness the desire for plebiscitary (authoritarian) leadership over liberal parliamentary structure, then perhaps it may help us to glance once again at my two non-Hitler models⁴ of such attempted leadership, Woodrow Wilson and Jimmy Carter. How do they differ, and is their difference instructive?

Recall the lineaments of Carter’s speech. First we are confronted with danger, a “fundamental threat to American democracy.” This threat is not aimed at our political system—“our political civil liberties”—nor is it an external military threat. Rather, it is a “crisis of confidence . . . that strikes at the very heart and soul and spirit of our national will,” a “growing doubt about the meaning of our own lives and in the loss of a unity of purpose for our Nation.” He diagnosed a loss of faith in the American people, an ennui, as it were, regarding self-government, and a “worship of self-indulgence and consumption.” The people, therefore, were confronted with a choice. Either the collective would choose not to act communally—that is, choose the path “that leads to fragmentation and self-interest,” which entailed a “mistaken idea of freedom, the right to grasp for ourselves some advantage over others,” a “constant conflict between narrow interests ending in chaos and im-

mobility”—or the American people could choose “the path of common purpose,” a path that “leads to true freedom for our Nation and ourselves.”

If a friend/enemy distinction governs this narrative, it is a distinction found within the people itself, not external to it. True, the global context of the speech was informed by the so-called oil crisis of the late 1970s and the Iran hostage situation, but the problem outlined and the remedy for it were only indirectly, if at all, related to external factors. The call was to renounce internal division, not only to keep the internal friend/enemy distinction within the bounds of the liberal/democratic compromise, but to minimize its effects altogether. The true background to the speech was the bitter civil war over political and economic equality for African Americans, fought during the decades after World War II. Carter was attempting to call the nation to unity, to a “common purpose,” rather than see it disintegrate into individual, self-interested pursuits precisely because large segments of the population refused to recognize a unity that included “heterogeneous” others. If that was in the background of his speech, in the foreground lay the role of the state. Carter’s eloquence resembled the rhetoric I used to explain Lorenz von Stein’s description of the role of the state in its relationship to society, the role of the people as a community walking a common path, working for a common aim, rather than acting as individual agents for personal gain at the expense of their neighbors. The enemy was greed, selfishness, self-interest, the source of social disintegration. The friend that was meant to be evoked by this identification of the “existential” enemy was the “we the people” that supposedly infused the idea not just of the constituent but also the constituted power of the people, the people who were willing and able to govern themselves as a community of common interest. As a plebiscitary leader Carter failed, because people who listened to and watched the speech did not recognize themselves as *the* people, or rather, did not recognize the “other” as part of the same people to which they belonged. Reagan took advantage of the moment, promised the ur-liberal virtue of self-interest, especially economic but also racial self-interest, and, as they say, the rest is history. Carter’s failure was, as it were, the failure of the state to represent something higher or other than self-interest.

Like Carter, Wilson was also an Evangelical Christian. Each, one could say, was a missionary, but Wilson was far more imperially so. As we saw, Wilson too was communally minded, seeing in the plebiscitary leader the catalyst for national unity of purpose and ultimate greatness. But his context was war, a war that did not affect the United States “existentially,” that did not call the United States into question, did not force the American people to confront their own survival. The war was not forced on the United States by an enemy but by its president. Whether as a necessary consequence of this fact or as a subsidiary means of calling the people to arms, the external friend/enemy distinction became an internal one as well. The external Ger-

man enemy became the German-American enemy, followed by a host of other domestic foes who needed to be combated, all hyphenated Americans (e.g., Italian-Americans, etc.), speakers of foreign languages (especially German), German cultural artifacts (e.g., Beethoven's music, the playing of which was banned), religious pacifists, conscientious objectors to selective service, socialist critics who saw imperialism in the declaration of war, Jews who were associated with the socialist enemy, striking workers and miners, African Americans, and on and on. The external war became also a civil war, a state-incited civil war, promoted by governmental and private agencies. For a short period (the duration of his second term), Wilson's call to unity through division was successful, even if the intoxication wore off after his death.

But the pattern lived on. I submit that successful "populism," whether state sponsored (and the grand example of course *is* Hitler's) or aimed from the outside against the liberal state apparatus, operates as civil war, identifying domestic enemies, often aligned with perceived external threats. The menu is large. Look around you. Who are the enemies? Depending on where you live, each reader can devise her own list, though currently there are some constants—for example, Muslim immigrants from the Middle East or Africa, and then by extension descendants of families who immigrated decades, even a half century or more ago, and, in the United States, Hispanics and of course African Americans, who are told to go back to their imagined origins, even though in most cases they can trace their ancestry in North America further back than can the majority of European Americans.

Schmitt, who in the late 1920s and early 1930s sounded more like the Jimmy Carter of 1979, ended up enlisting in Hitler's manufactured civil war. The homogeneity of friends was constructed by an explicit heterogeneity that included the internal enemy. Inclusion was based on exclusion not just of the external world, but of the external within the internal. The friend/enemy distinction was domesticated, and "the people" became a unity by expunging those who were presumed not to share the same physical, intellectual, or cultural space of the populace of populism. In such a situation, no preaching of integration, pluralism, tolerance, global citizenship, or humanitarianism—no evocation of a "common path"—has any effect. In a situation such as this, the common path is explicitly rejected, or rather, it is reserved for the chosen few, and if this is what is happening in the contemporary, twenty-first-century world, then no glib articulation of values (no matter how valuable), no well-framed *Leitkultur* (leading or guiding culture) can act as substitute.

Perhaps this time the world really is moving on. Perhaps the liberal economy and private pursuit of wealth by the wealthy, which will undoubtedly survive, may finally scrape off for good the barnacle that is the state. Or, conversely, the state will no longer be the carnival fun house of liberal mirrors, but the director of a perpetual war of some against some. The popu-

lace of populism will cheer loudly and lustily. By now, the reader of these pages will be able to anticipate what word Lorenz von Stein would use to describe either of the two alternatives. What Carl Schmitt would say is up for grabs.

Notes

INTRODUCTION

1. Dylan Thomas, “Do Not Go Gentle into That Good Night.”

POLITICAL THEOLOGY OF THE STRONG STATE

1. For a manageable review of the literature that does an admirable job of synthesis, see Spindler, *Die Politische Theologie Carl Schmitts* (2015).

2. See “Science as a Vocation” in Weber, *The Vocation Lectures* (2004), 1–31; *The Protestant Ethic and the “Spirit” of Capitalism and Other Writings* (2002), 120–22, 356–69; and *The Protestant Ethic and the Spirit of Capitalism: The Revised 1920 Edition* (2011), 176–79. (Weber 2002 includes the translation of the first version of *The Protestant Ethic*; Weber 2011 includes the revised 1920 version, hence references to both.) The most well-known and influential reworking of Weber’s rationalization thesis is Lukács’s concept of reification. See Lukács, *History and Class Consciousness* (1971), 83–109. For a comparison of the responses to Weber by Lukács and Schmitt, see McCormick, “Transcending Weber’s Categories of Modernity?” (1998), 133–77.

1. CONCRETE REASON

1. Meier, *Carl Schmitt & Leo Strauss* (1995); *Leo Strauss and the Theologico-Political Problem* (2006); and *The Lesson of Carl Schmitt* (2011).

2. Mehring, the scholar who knows more about Schmitt’s life than anyone else, charts Schmitt’s conflictual relationship to Catholicism, even doubting that Schmitt was a convinced believer. See Mehring, *Kriegstechniker des Begriffs* (2014b), 20–29; *Carl Schmitt* (2014a), 66–67, 77–83, 124–30, 162–63. I will grant Schmitt qualified piety, or at least the semblance of piety, as a way of structuring some of his thoughts. The issue is not belief but familiarity with patterns of thought.

3. Meier is the editor of Strauss’s collected works in German.

4. The lecture, “Reason and Revelation,” is included in Meier, *Leo Strauss and the Theologico-Political Problem* (2006), 141–80.

5. Though see Strauss, *Spinoza’s Critique of Religion* (1997), 29, cited at the beginning of part I in this volume. See also Meier’s attempt to deal with this passage in *Leo Strauss and the Theologico-Political Problem* (2006), 3–43.

6. On Strauss and Nietzsche, see Lampert, *Leo Strauss and Nietzsche* (1996). Strauss’s essay “Note on the Plan of Nietzsche’s *Beyond Good and Evil*” (1996) is included in that volume. See also Strauss, *On Nietzsche’s “Thus Spoke Zarathustra”* (2017).

7. See the similar charge by Schmitt in *The Concept of the Political* (2007), 37–45.

8. See, for instance, Strauss, *Natural Right and History* (1953), 35–80.

9. See Mehring *Carl Schmitt* (2014a), 101.

10. Lyotard, *The Differend* (1988). See “Preface: Reading Dossier” (xi–xvi) for a brief overview.

11. For perhaps the easiest immediate access, see “Answering the Question: What Is Modernity? An Interview with Niklas Luhmann,” in Rasch, *Niklas Luhmann’s Modernity* (2000), 195–221.

12. See Strong, *Politics without Vision* (2012, 1), for the reference.

13. The twentieth-century poet and literary critic, Yvor Winters, devoted a series of essays to charting what he felt to be the degenerating effects of this loss of faith in the moral understanding of the universe. See especially his essay on Henry Adams, in Winters, *In Defense of Reason* (n.d., 374–430), in which the rationalist/voluntarist distinction, to be discussed below, is clearly defined.

14. The relevant passage begins on page 9 in Plato, *Complete Works* (1997).

15. My account of the history of this distinction relies heavily on Courtenay, *Capacity and Volition* (1990), and Oberman, *Harvest of Medieval Theology* (2000). To my knowledge, Mika Ojakangas, “*Potentia absoluta et potential ordinate Dei*” (2012) was the first to recognize in print the relevance of this distinction for Schmitt’s constitutional thought.

16. See, for example, Dumont, “The Origin of Scotus’s Theory of Synchronic Contingency” (1995); den Bok, “Freedom in Regard to Opposite Acts and Objects in Scotus’ *Lectura I 39*, §§45–54” (2000); and Veldhuis, “Ordained and Absolute Power in Scotus’ *Ordinatio I 44*” (2000).

17. Oberman, 1963, 36–38.

18. In addition to Courtenay, *Capacity and Volition* (1990), see Oakley, *Omnipotence, Covenant, & Order* (1984), and *Natural Law, Laws of Nature, Natural Rights* (2005).

19. I cite from the introduction to Duns Scotus, *Contingency and Freedom* (1994, 19), written collectively by the editors, who also comment on the text throughout.

20. I again cite from the introduction to Duns Scotus, *Contingency and Freedom* (1994), 27. The discussion of the modal logic of possible worlds takes place on pp. 30–32.

21. The passage comes from the Latin version of *Leviathan*, chapter 26. See Hobbes, *Leviathan* (2012), 431. The English version more specifically refers to sovereignty: “yet it is by the Sovereign Power that it is Law” (Hobbes 2012, 430). On Hobbes, Schmitt, and this phrase, see Rhonheimer, *The Common Good of Constitutional Democracy* (2013), 142–60.

22. A term that has become fashionable again in recent continental theory. See, for example, Agamben, *The Coming Community* (1993), Esposito, *Communitas* (2010), and Nancy, *The Inoperative Community* (1991), although theirs is a decidedly more broken, more fractured, more cautious view of community than the one presented by the Catholic Church.

23. Ulmen translates *Verbindung* (Schmitt 1984, 13) as “union” (Schmitt 1996d, 8), ignoring the term’s primary meanings. I believe “connection” or “association” to be more accurate in this case.

24. Interestingly, the medieval movement to assert papal infallibility was not meant to provide the pope with “arbitrary” power, but rather to constrain the power of sitting popes by binding them to the decisions of past pontiffs. See Tierney, *Origins of Papal Infallibility* (1972) and Tierney, *Rights, Laws and Infallibility in Medieval Thought* (1997), chapter XVI.

25. I steal this tandem injunction from Frederick the Great, as channeled by Kant, *Practical Philosophy* (1996, 18).

26. See Schmitt, *On the Three Types of Juristic Thought* (2004), 86–89; Schmitt, *Glossarium* (1991a), 13, 33, 108, 110, 132, 134, 179.

2. MODERNITY AND ITS DISCONTENTS

1. Reference is to Gillespie, *The Theological Origins of Modernity* (2008); Weber, *The Protestant Ethic and the “Spirit” of Capitalism and Other Writings* (2002); Agamben, *The Kingdom and the Glory* (2011); and Whitman, *The Origins of Reasonable Doubt* (2008).

2. See Tierney, *Foundations of the Conciliar Theory* (1955), for a still authoritative account on the aims and effects of the conciliar movement.

3. See German original in Schmitt, *Politische Theologie* (1996c), 50–51. The confusion (if there is one) is in the use of the pronoun *ihr*.

4. See Mannheim, *Ideology and Utopia* (1936), 264–311.

5. I retain the German term *Rechtsstaat* (which could clumsily be translated/interpreted as “liberal rule-of-law state,” to avoid confusion). In his translation, Schwab uses “constitutional state,” which works well for the Anglophone reader. However, as we will see, equating the concept of a constitution (German: *Verfassung*) solely with a *liberal* constitution is precisely a notion against which Schmitt polemicizes.

6. Schmitt’s characterizations closely resemble Weber’s. See again the famous closing passages of Weber, *The Vocation Lectures* (2004), 30–31, and *The Protestant Ethic and the Spirit of Capitalism* (2011), 176–79.

7. See Schmitt, *Der Begriff des Politischen* (1963), 79–95, and *The Concept of the Political* (2007), 80–96.

8. See Schmitt, *The Concept of the Political* (2007, 82), for how he hedges his bet on the question of progress or decline.

9. Schmitt, *The Concept of the Political* (2007, 83), translation altered; see Schmitt, *Der Begriff des Politischen* (1963, 82), for German original.

10. Other, more philosophically sophisticated, accounts point rather to sixteenth-century origins of the epochal shift, marked by the invention of the modern subject (Descartes) and triumph of empirical science. On the “domination of nature” theme, see of course Horkheimer and Adorno, *Dialectic of Enlightenment* (2002). See also Husserl, *The Crisis of European Sciences and Transcendental Phenomenology* (1970; for a short overview of the entire work, see Appendix I, “Philosophy and the Crisis of European Humanity,” 269–99), and Heidegger’s “The Age of the World Picture” (2002, 57–86). Neither graces us with a simple temporal schema, so you will have to sketch your own. Above all, however, see Funkenstein, *Theology and the Scientific Imagination from the Middle Ages to the Seventeenth Century* (1986), and Osler, *Divine Will and the Mechanical Philosophy* (1994, especially 1–35). In the latter two, you will recognize the importance of the absolute and ordained power distinction for understanding the origins of modern empirical science, which greatly complicates the narratives in this chapter, Schmitt’s and mine.

11. Among the myriad sources one could consult to complexify this rather comic-book version of Kant et al., see, for our purposes, Funkenstein, *Theology and the Scientific Imagination from the Middle Ages to the Seventeenth Century* (1986), 346–63, and Schneewind, *The Invention of Autonomy* (1998), 483–554.

3. SOVEREIGNTY

1. See his “Speech on the Situation in Europe,” which Schmitt admired, in Donoso Cortés, *Selected Works of Juan Donoso Cortés* (2000), 75–88. “England needs a foreign policy that is monarchic and conservative. But that would be nothing more than a palliative. . . . In order for

the palliative to become a remedy, it would be necessary, gentleman, that England, besides being conservative and monarchic, also be Catholic” (84).

2. With the help of Leibniz, I briefly examined this rejection of the transcendent view of sovereignty in Rasch, *Sovereignty and Its Discontents* (2004), 24–25.

3. A variant reading has “supreme and absolute” instead of “absolute and perpetual.” See footnote (marked by *) on the same page.

4. The reader is to be reminded that Schmitt was not a disinterested scholar attempting to reconstruct the entire body of an author’s thought. His reading of Bodin here seems narrowly eccentric, which means that Schmitt’s is an opportunistic and instrumental reading to serve particular political-theoretical purposes, not a dispassionate analysis of Bodin’s oeuvre. For a more comprehensive reading of Bodin, consult Franklin, *Jean Bodin and the Rise of Absolutist Theory* (1973), and Franklin’s introduction (with helpful bibliography) to Bodin, *On Sovereignty* (1992), ix–xxxiv.

5. For this discussion I rely on Kant’s initial definition and the entry *Grenzbegriff* in Ritter, *Historisches Wörterbuch der Philosophie* (1974), columns 871–73. For definitions of the less relevant English-language “borderline case” and “limiting case,” see Audi, *The Cambridge Dictionary of Philosophy* (1999), 96, 504–5. Following Schmitt’s translator, I will use the phrase “borderline concept,” referring, however, exclusively to the German (Kantian) meaning.

6. For a fascinating discussion of “reality per se” in the context of the empirical reality articulated by quantum physics, see d’Espagnat, *On Physics and Philosophy* (2006); see also Rasch, “Luhmann’s Ontology” (2013), which relies heavily on d’Espagnat.

7. He explicitly mentions Kelsen (to be discussed in the next subsection of this chapter) and Krabbe (see Krabbe, *Die Lehre der Rechtssouveränität* [1906], and *The Modern Idea of the State* [1922]). Duguit (“The Law and the State” [1917], and *Law in the Modern State* [1919, translated with an introduction by Harald Laski]) can be added to the list.

8. See Schmitt’s succinct judgment in *The Concept of the Political* (2007), 42–43. It reads: “Also, the nineteenth-century German doctrine of the personality of the state is important here because it was in part a polemical antithesis to the personality of the absolute prince, and in part to a state considered as a higher third (vis-à-vis all other social groups) with the aim of evading the dilemma of monarchical or popular sovereignty.”

9. On the concept of the juristic concept of the state, see Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (1928b), and *Concepts of State, Sovereignty and International Law with Special Reference to the Juristic Conception of the State* (1928a), 97–120. See also Emerson, *State and Sovereignty in Modern Germany* (1928), 51–59. The discussion of Albrecht and the Hanoverian crisis is based on Koschorke et al., *Der fiktive Staat* (2007), 319–51. The cited section was written by Thomas Frank (see p. 13 for clarification).

10. Just as God, I might add, binds Himself by way of a covenant with His creatures to the order He ordained.

11. On Cohen’s influence on Kelsen, see Pascher, *Einführung in den Neukantianismus* (1997), 151–73. For an early twentieth-century critique of neo-Kantian legal theory, see Kaufmann, *Kritik der neukantischen Rechtsphilosophie* (1921). For a relatively recent exploration, see Müller, *Die Rechtsphilosophie des Marburger Neukantianismus* (1994), who focuses mostly on Cohen, Stammler, and Natop.

12. Though most precisely worked out in the *Reine Rechtslehre* of 1934 (English: Kelsen, 1992), the rudiments of Kelsen’s reasoning were clearly in place by 1920 (the date of the first edition of Kelsen, *Das Problem der Souveränität und die Theorie des Völkerrechts* [1928], which is an unrevised reprint).

13. The classic account of this transformation is Cassirer (1953, 3–346), first published in German in 1910.

STATE VERSUS SOCIETY

1. The *katychon* is a figure found in 2 Thessalonians 2:6. He or it delays the advent of the Anti-Christ and thus the second coming of Christ. Schmitt believed that only by way of this figure do we have history and thus secular politics. See, for instance, Schmitt, *Glossarium* (1991a), 62–63, entry dated December 19, 1947.

2. The grammatical third-person singular is intentional and will be used throughout to distinguish “the people” as a political unity from “people” as a collection of individuals.

3. For Luhmann’s take on the state/society distinction, see *Soziologische Aufklärung 4* (1987), 67–73, and, in English, *Political Theory in the Welfare State* (1990b), 168–70. Luhmann’s is the most bracing and intellectually satisfying account of modern society as it is, functionally efficient, warts and all, which is to say, the most satisfying account of why modern society *has to be* the way it is. I write this book *despite* what I have learned from Luhmann. Whereas Luhmann’s social theory provides an external description of the political, political theory provides a self-description. The outside observer can see what the insider cannot, but the insider—political theory—scratches the itch that observation cannot feel.

4. Patriarchy is assumed by Hegel, not explicitly argued for. Nevertheless, we must take note of its presence.

5. On the significance of Jellinek’s text, see the splendidly complex article by Duncan Kelly, “Revisiting the Rights of Man” (2004).

6. The term is of course taken from Rudyard Kipling’s famous children’s book, *Just So Stories*, which invents fanciful origins, primarily of animals. The phrase (with the hyphen) has been taken over by anthropologists as a label for the unverifiable and unfalsifiable narratives of a culture’s practices and their origins.

7. We note here “civilization’s” inextinguishable contempt for, or at least neglect of, nomadic peoples.

8. See, for example, Schmitt, *Dialogues on Power and Space* (2015), 48.

4. THEORIZING STATE AND SOCIETY

1. Finley refers to Joseph Schumpeter’s *Capitalism, Socialism, and Democracy* ([1942] 2008), but the term “oligarchy” also signals the earlier work by Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* ([1911] 1962).

2. Agamben, *State of Exception* (2005), 57.

3. I surmise that Benjamin’s distinction between the mythic and the divine is partially (but only partially) motivated by the lack in German of the verbal distinction between “force” and “violence” that both French and English have.

4. See also: “A distinction should be drawn between the *force* that aims at authority, endeavouring to bring about an automatic obedience, and the *violence* that would smash that authority” (Sorel 1999, 170).

5. See Benjamin, “Critique of Violence” (1996), 251, and *Gesammelte Schriften* (1980), 201–2.

6. For research on Hegel’s distinction between state and society, see the essays collected in Pelczynski, *The State & Civil Society* (1984); see also Riedel, *Between Tradition & Revolution* (1984), 129–56, and Hardimon, *Hegel’s Social Philosophy* (1994), 174–227. More generally see the essays collected in Pippin and Höffe, *Hegel on Ethics and Politics* (2004).

7. References are to paragraph numbers, not page. In all citations of Hegel I have deleted the bracketed additions and references to Nisbet’s translation. For our purposes they are not necessary.

8. The passage from Paul reads: “For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves:

Which shew the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another” (Romans 2:14–15). The reference to Weber is of course to his *The Protestant Ethic and the “Spirit” of Capitalism* (Weber 2002 and 2011).

9. The use of the masculine pronoun is both conventional and historically appropriate, for in the early nineteenth century it was rare for a non-property-owning, poorly educated “angel of the house” (to use Virginia Woolf’s phrase) to achieve the status of personhood as Hegel defines it.

10. An odd choice of agent on Hegel’s part, for it is really the state, through taxation, that provides, for instance, for public education. See §239, Addition (H, G), in which the state is explicitly mentioned.

11. See Hegel’s discussion of division of labor in *Elements of the Philosophy of Right* (1991), §290.

12. For an introduction to Stein’s works in English, see Böckenförde, “Lorenz von Stein as Theorist of the Movement of State and Society towards the Welfare State” (1991); Kästner, “From the Social Question to the Social State” (1981); Pasquino, “Introduction to Lorenz von Stein” (1981); Sluga, *Politics and the Search for the Common Good* (2014), 91–94; and Mengelberg’s lengthy introduction to Stein, in Stein’s *History of the Social Movement in France, 1789–1850* (1964). In German, there is no lack of secondary literature. I mention only a few, in alphabetical order by author/editor: Blasius and Pankoke, *Lorenz von Stein* (1977); Böckenförde, *Die verfassungstheoretische Unterscheidung von Staat und Gesellschaft als Bedingung der individuellen Freiheit* (1973); Grünfeld, *Die Gesellschaftslehre von Lorenz von Stein* (1908); Koslowski, *Zur Philosophie von Wirtschaft und Recht* (2005); Koslowski, *Lorenz von Stein und der Sozialstaat* (2014); Schnur, *Staat und Gesellschaft* (1978); and Vogel, *Hegels Gesellschaftsbegriff und seine geschichtliche Fortbildung durch Lorenz Stein, Marx, Engels und Lasalle* (1925). For a more general overview of the state/society distinction from Plato to neoliberalism, see Koslowski, *Gesellschaft und Staat* (1982). For a different view, in which the political, as social and protest movements, make an important impact on (civil) society, see Cohen and Arato, *Civil Society and Political Theory* (1992); they do not mention Stein.

13. For Anglophone analyses and critique of Stein during the heyday of the resurgent interest in Marx, see Marcuse, *Reason and Revolution* (1960), 374–88. Dupré, *The Philosophical Foundations of Marxism* (1966), 78–79, and Tucker, *Philosophy and Myth in Karl Marx* (1961), 114–17, 154–55, emphasize Stein’s influence on Marx; Avineri, *The Social and Political Thought of Karl Marx* (1968), 53–56, and Hook, *From Hegel to Marx* (1962), 199, deny it.

14. Because the translation has been so radically abridged (even at the sentence level), I will cite the German original and the general location in the translation if the exact phrase or sentence is not available.

15. See Daw-Yih Jang, Kuo-Ching Hsu, and Stefan Koslowski, “Lorenz von Stein und China,” in Koslowski, *Lorenz von Stein und der Sozialstaat* (2014), 183–220.

16. See Constant, *The Political Writings of Benjamin Constant* (1988), 183–93.

17. See Hintze, *Beamtenum und Bürokratie* (1981), 16–77.

18. See, for instance, the opening chapters (pp. 1–37) of Gneist’s *Der Rechtsstaat und die Verwaltungsgeschichte in Deutschland* (1879), but also the critiques of nineteenth-century Prussian administrative reform in chapter XI (278–320).

19. German original, *Der Staat*, 1912; English translation, 1914. Here I summarize the English translation of Oppenheimer’s *The State* (1914), 257–73.

20. Duguit, “The Law and the State” (1917), and *Law in the Modern State* (1919); Krabbe, *Die Lehre der Rechtsouveränität* (1906), and *The Modern Idea of the State* (1922). We dealt with Kelsen’s argument in part I.

21. For an overview and appraisal, see the anthology edited, with a valuable introduction, by Paul Q. Hirst, *The Pluralist Theory of the State* (1989). For a roughly contemporary account of Guild Socialism, see Carpenter, *Guild Socialism* (1922).

22. See Gierke, *Political Theories of the Middle Ages* (1958, with introduction by Frederic William Maitland); *Natural Law and the Theory of Society* (1957, with introduction by Ernest Barker); and *Community in Historical Perspective* (1990, with an introduction by Antony Black). See Maitland, *State, Trust, and Corporation* (2003). See also Black, *Guild and State*

(2009), esp. 210–19, and the exceedingly helpful Runciman, *Pluralism and the Personality of the State* (1997).

5. LIBERALISM

1. I take the liberty to point you to the passage in Benjamin R. Barber, *The Death of Communal Liberty* (1974), 274, that, under Hegel and Stein, adorns the opening of Part II of this volume (p. 64). The reader may also wish to consult Barber, *Strong Democracy* (1984) for further hesitation about the standard view.

2. See Lasserre, *Le romantisme français* (1907).

3. Hulme fought and died in 1917 in World War I. The essay was first published in Hulme, *Speculations* (1924), 111–40. I cite from Hulme, *The Collected Writings of T. E. Hulme* (1994); see p. xx of the editor's introduction for more information. The critique of romanticism dominated early twentieth-century Anglophone literary modernism.

4. Or, as Schmitt says in *The Crisis of Parliamentary Democracy*, “not a state form but an individualistic-humanitarian ethic and *Weltanschauung*” (1985a, 13).

5. The famous line from the *Communist Manifesto* reads, “All that is solid melts into air.” See Tucker, *The Marx-Engels Reader* (1972), 338.

6. Reference is to Constant's novel *Adolphe*.

7. What follows is a summary of Hasbach, *Die Moderne Demokratie* (1912), 15–19.

8. Reference is to Humboldt, *The Limits of State Action* (1969), a passage from which was used by J. S. Mill as an epigraph to *On Liberty*.

9. See Arnold, *Culture and Anarchy and Other Writings* (1993), esp. 117–25.

6. DEMOCRACY

1. For the best description (to my knowledge) of how this is supposed to work, see O'Neill, *Constructions of Reason* (1989), 28–50.

2. On a democratic pedagogical dictatorship, see Schmitt, *The Crisis of Parliamentary Democracy* (1985a), 28.

3. See Lowy, *Georg Lukács* (1979), 37–43.

4. See, for instance, what Lukács wrote just a month or so later in *Tactics and Ethics* (2014), 3–11.

5. The reply to Richard Thoma's review of the 1923 edition of *Crisis* appeared in 1926 as an article in the journal *Hochland* and as the preface to the 1926 second edition of *Crisis*. See Kennedy's introduction to Schmitt, *The Crisis of Parliamentary Democracy* (1985a), xv.

6. On the two examples, see translator's footnotes 25 and 26 in Schmitt, *The Crisis of Parliamentary Democracy* (1985a), 89–90. On the Turkish/Greek “population transfers,” sanctioned and mediated by the League of Nations, see also “Population Exchange between Greece and Turkey,” Wikipedia, en.wikipedia.org/wiki/Population_exchange_between_Greece_and_Turkey. On the history of Australia's constitution and the 1901 immigration restriction legislation, see “Immigration Restriction Act of 1901,” Wikipedia, https://en.wikipedia.org/wiki/Immigration_Restriction_Act_1901. On the constitutional history of Australian race relations in general, see the Reconciliation Australia website at <http://www.reconcilise.org.au/wp-content/uploads/shared/uploads/assets/html-report/1.html>.

7. For recent accounts of both events, see Douglas, *Orderly and Humane* (2012) and Hajari, *Midnight's Furies* (2015). More examples could be given, but I have already touched too many sensitive nerves. Please understand, I endorse none of these examples but in fact deplore them. I just point out that they do not seem to have damaged the “democratic” reputation of any of those involved.

8. See the discussion of equality in Schmitt, *Constitutional Theory* (2008a), 255–64, especially the occasional “menus” of qualities that may serve as criteria for identification (for instance, pp. 258, 262).

9. The discussion of Smend is based on *Verfassung und Verfassungsrecht*, in Smend, *Staatsrechtliche Abhandlungen und andere Aufsätze* (2010), 118–276. His discussion of integration in this work is primarily found on pp. 142–86. See also the short article “Integration-slehre,” written in 1955, on pp. 475–81 in the same volume. The citation, in my rough translation, is taken from p. 145. To be fair, Preuß’s talk was delivered in 1917, when a monarch still ruled Germany. But it does lend Preuß’s support to Schmitt’s views on the importance of the Weimar *Reichspräsident*.

10. Smend, *Staatsrechtliche Abhandlungen und andere Aufsätze* (2010), 149, referring to the once famous, now forgotten study by Karl Bücher, *Arbeit und Rhythmus* (1896). On Bücher and the German discourse of work, see Campbell, *Joy in Work, German Work* (1989), especially chapter V, “The Science of Work before the First World War” (73–106).

11. See also Schmitt, “The Liberal State” (2000a).

12. Note the anti-voluntarist jab at divine omnipotence. Even God must respect the good as represented by bourgeois rights.

13. Schmitt was no doubt as homophobic as the next man or woman of his time, but I can imagine that he would have been delighted by the absurdity of the claim to have a pre-political right to restrict the pre-political rights of others.

14. Oddly, given its importance in Schmitt’s analysis, the preamble is omitted in the copy of the constitution reproduced in *Constitutional Theory* (Schmitt 2008a), 409–39. Translations available on the internet tend inexplicably to butcher the crucial sentence, sometimes using “adopted” (from whom, one might ask), even “adapted,” though that may just be a typo. Feel free to search “Weimar Constitution” to see what you find.

15. The much-maligned German term *Volk* has the virtue of serving as a grammatically singular term (the plural, *Völker*, means “peoples”), and not, like “people,” also as the plural of a separate singular noun (i.e., “person/people”). As previously stated, my use of verbs following “people” in the third-person singular (e.g., “The German people . . . has”) is thus deliberate.

16. See, for instance, Mouffe, *The Return of the Political* (1993), *The Democratic Paradox* (2000), and *On the Political* (2005).

17. See the opening of part II in this volume.

18. For Schmitt on Sieyès, see Schmitt’s *Dictatorship* (2014a), 137–41; and *Constitutional Theory* (2008a), 126–29. I am fully aware that Sieyès cannot be limited to the uses Schmitt makes of him, that there are aspects of his thought that Schmitt neglects. For more complex appraisals, see Sewall, *A Rhetoric of Bourgeois Revolution* (1994), and Bates, *Enlightenment Aberrations* (2002), 98–137. See also Kelly, *The State of the Political* (2003), 205–8, and, for a more acerbic view, Scheuerman, *Carl Schmitt: The End of Law*, 69–71.

19. The reference to natural law in this passage echoes a similar reference in Bodin. In neither case is the constituent power (monarch or nation) limited by natural law, though violations may have consequences in the hereafter. See Bodin, *On Sovereignty* (1992), 31–32.

20. I have altered the translation for greater clarity; compare with the original German in Schmitt, *Verfassungslehre* (1993), 76–77.

21. The preposition *vor* in German, like the English “before,” can be interpreted both spatially and temporally.

22. Andreas Kalyvas has alerted us to the importance of distinguishing these three moments of the people as constituent power before and next to the constitution, and as constituted power within it. See Kalyvas, *Democracy and the Politics of the Extraordinary* (2008), 79–186, and “Carl Schmitt and the Three Moments of Democracy” (2000). The English translation obscures this spatial imagery by translating *neben* as “in comparison with” in the most important passage (Schmitt 2008a, 271), though elsewhere (125, 140) it comes closer by using the word “alongside.”

23. This, I assume, would be the reading favored by Giorgio Agamben. See Agamben, *State of Exception* (2005), which also contains the largely fictional claim that there was a hidden conversation between the angelic Benjamin and demonic Schmitt during the 1920s. On this, see Mehring, *Kriegstechniker des Begriffs* (2014b), 137–52.

24. The duties of the Reichstag are spelled out in Articles 20–40 of the constitution; the duties of the president, in Articles 41–59. See Schmitt, *Constitutional Theory* (2008a), 413–18. A third branch of the government, the *Reichsrat*, representing the interests of the individual provinces, will not concern us.

25. Article 48 gives the *Reichspräsident* extraordinary powers during a national emergency. See Schmitt, *Constitutional Theory* (2008a), 417. See also the appendix to Schmitt, *Dictatorship* (2014a), 180–226, which reproduces Schmitt’s (in)famous endorsement of the president’s emergency powers.

26. The discussion that follows is based on Schmitt, *Volksentscheid und Volksbegehren* (2014b), originally published in 1927. Translations are my own. The Germany of today has elided the word *Volk* from such constructions, preferring the word *Bürger* (citizen), as in *Bürgerinitiative*.

27. Schmitt was influenced by Erik Peterson’s *Heis Theos* (2012; originally published in 1926), a study of the function of the “One-God” acclamation in antiquity. For a recent study that offers mild critique of Peterson and is centered on the use of the phrase (variably *heis theos* or *eis ho theos*) in Paul’s letters as one that includes Jews and Gentiles under the one God, see Bruno, “*God Is One*” (2013). For a nontheological example of acclamation, see Tacitus’s description of a Germanic practice in *The Agricola and the Germania* (1970): “When the assembled crowd thinks fit, they take their seats fully armed. Silence is then commanded by the priests. . . . Then such hearing is given to the king or state-chief as his age, rank, military distinction, or eloquence can secure—more because his advice carries weight than because he has the power to command. If a proposal displeases them, the people shout their dissent; if they approve, they clash their spears” (111).

28. Pitkin too labels the representation of people who have interests “liberal.” See Pitkin, *The Concept of Representation* (1967), 190–208.

29. See further examples of mimetic analogies on p. 61 in Pitkin.

30. The British textbook from which Pitkin cites is Hiram Miller Stout’s *British Government* (1953). The second quotation is from our old friend Rudolf Smend. See Pitkin, *The Concept of Representation* (1967), 269n2–3, for details.

31. The example is given by both Schmitt, *Roman Catholicism and Political Form* (1996d), 19, and Pitkin, *The Concept of Representation* (1967), 105.

32. Compare with Hobbes’s *Leviathan* (1996): “A Multitude of men, are made *One* person, when they are by one man, or one Person, Represented; so that it be done with the consent of every one of that Multitude in particular. For it is the *Unity* of the Representer, not the *Unity* of the Represented, that maketh the Person *One*” (114).

33. See also Nadia Urbinati’s fleeting references to Schmitt in *Representative Democracy* (2006, 22, 235n25), also associating him with fascism.

34. Fear not, I will choose my examples from the relatively remote past.

35. Geuss, *History and Illusion in Politics* (2001), 69. See the introduction for the complete passage from which this phrase has been plucked.

36. See Schmitt, *The Crisis of Parliamentary Democracy* (1985a), 3–8, 48–50.

37. See Schmitt, *The Crisis of Parliamentary Democracy* (1985a), 39–41; and *Constitutional Theory* (2008a), 220–24.

38. See Schmitt, *Constitutional Theory* (2008a), 369–72.

39. Though the more poisonous Section was eventually repealed, the Espionage Act remains in force and was apparently used by former president Barack Obama more than all previous presidents combined. Classic studies of Wilson-era oppression include Murphy, *World War I and the Origin of Civil Liberties in the United States* (1979); Peterson and Fite, *Opponents of War, 1917–1918* (1957). More recent work includes Capozzola, *Uncle Sam Wants You* (2008); McCoy, “President Wilson’s Surveillance State” (2009), 293–346; and Thomas, *Unsafe for Democracy* (2008).

40. See Posner and Vermeule, *The Executive Unbound* (2010), who argue the inevitability of strong, unchecked executive power in the modern administrative world.

41. Video clip available at <https://www.youtube.com/watch?v=kakFDUeoJKM>; text available at the American Presidency Project, “Address to the Nation on Energy and National Goals:

“The Malaise Speech,” <https://www.presidency.ucsb.edu/documents/address-the-nation-energy-and-national-goals-the-malaise-speech>. Accessed June 28, 2019.

7. ETHICAL STATE, TOTAL STATE

1. Of course, others will say, *if* the state, then the idea and existence of the individual is dead. This is the dilemma we keep circling around.

2. On this, see Schmitt, “The Liberal State” (2000a), 47.

3. This text has been translated in abridged form in Vinx, *The Guardian of the Constitution* (2015). Also included in this volume are other texts by Schmitt and texts by Kelsen, all representing the early 1930s debate about whether judicial review or executive leadership should be the “guardian of the constitution.” My concern is not with that debate but with Schmitt’s description of the total state (self-organizing society).

4. See Hintze, *The Historical Essays of Otto Hintze* (1975), 267–301; and Schmitt, *Dictatorship* (2014a), 34–79.

5. For a very different and far more critical account of what Schmitt meant by total state, see Scheuerman, *Carl Schmitt* (1999), 85–112. Scheuerman situates his discussion primarily in the final years of the Weimar Republic, with no reference to the nineteenth century (i.e., Hegel or Stein).

6. An English translation of Jünger’s essay “Total Mobilization” can be found in Wolin, *The Heidegger Controversy* (1993), 119–39.

7. Recall it was Preuß in 1917 who saw the pre-Weimar monarch performing this duty.

8. See, for instance, “Konstruktive Verfassungsprobleme,” “Starker Staat und gesunde Wirtschaft,” and “Absolutismus,” with detailed annotations by Günter Maschke, in Schmitt, *Staat, Großraum, Nomos* (1995), 55–101. See also Schmitt, *Verfassungsrechtliche Aufsätze aus den Jahren 1924–1954* (1958), 174–80.

9. See the discussion in Schmitt, *Staat, Bewegung, Volk* (1933), 5–11. In particular, note his reference to the March 24, 1933, *Ermächtigungsgesetz* (enabling act or law) as “ein vorläufiges Verfassungsgesetz des neuen Deutschland” (a provisional constitutional law of the new Germany) (7). All translations are mine. There is an English translation of this text (Schmitt, *State, Movement, People* [2001]) against which you may check the translations I have provided.

10. Denizens of the United States think immediately of the so-called super PACs that now control campaign spending after the *Citizens United* Supreme Court decision.

11. For an enthusiastic contemporary appraisal of the Economic Council established by this second half of the constitution, see Finer, *Representative Government and a Parliament of Industry* (1923), esp. 98–120. In truth, this section of the constitution remained ineffective, inert.

12. On Schmitt’s post-March 1933 enthusiasm, see Mehring, *Carl Schmitt* (2014a), 291–327; Mehring, *Kriegstechniker des Begriffs* (2014b), 73–98. For the 1936 attacks on Schmitt and their aftermath, see Bendersky, (1983), 219–42, and Mehring, *Carl Schmitt* (2014a), 346–48.

13. On his turn to discussions of the history of the state and the origins of the *jus publicum europaeum*, see Schmitt, *The Leviathan in the State Theory of Thomas Hobbes* (2008b); many of the essays collected in Schmitt, *Staat, Großraum, Nomos* (1995); and of course Schmitt, *The Nomos of the Earth* (2003).

14. See Mehring, *Carl Schmitt* (2014a), 384.

15. A copy of the text that Schmitt presented, with dedication, to a young colleague in 1948 was the basis for a recent reprint. See Stein, *Zur preußischen Verfassungsfrage* (2002). Schmitt’s afterword also appears in Schmitt, *Staat, Großraum, Nomos* (1995, 156–65), with annotations by Günter Maschke. References are to this volume. On Stein’s essay, see also Koselleck, *Futures Past* (2004), 58–71.

16. Marx is conspicuously absent, but that may have something to do with the times in which this afterword was written.

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1. See Bell, *The First Total War* (2007), and Rasch, “Against Perpetual Peace” (2018).
2. Mouffe has developed the agonistic/antagonistic pair to distinguish legitimate (with a given political structure) from illegitimate domestic conflict. Here I will follow the distinction she uses in the cited paragraph—enemy/adversary.
3. Nick Lowe’s “(What’s so Funny ’Bout) Peace Love and Understanding?” The answer to the musical question is of course that there is nothing wrong with peace, love, and understanding, but, again, see Schmitt on the “anthropology” of the political.
4. Avoiding Hitler’s model is to avoid the nuclear option. It would obliterate the possibility of making fine, or even crude, distinctions. Hence Wilson and Carter.

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