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Carl Schmitt's radical democracy: Schmitt, Hobbes and the return to political identity

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CARL SCHMITT'S RADICAL DEMOCRACY:
SCHMITT, HOBBS AND THE RETURN TO POLITICAL IDENTITY

A Thesis
Submitted to the Graduate Faculty of the
Louisiana State University and
Agricultural and Mechanical College
in partial fulfillment of the
requirements for the degree of
Master of Arts

in

The Department of Political Science

by

Ndifreke Ete
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DEDICATION

This work is dedicated to God who grants me wisdom and endurance, for in Him I live, move and have my being; to the members of The Apostolic Church, Baton Rouge who guide me spiritually; and to my family. My parents, Dr. Aniedi Ette and Odot Ette introduced me to a house full of books. My brothers Ifiok and Edifon let me read them.

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This thesis celebrates the combined efforts of known, unknown, and imagined influences, of help from various quarters, of men, and women, who hewed the rock, crushed the ore, purified the molten metal, and finally shaped the product. I acknowledge the assistance of my teachers and collaborators, but plead their indulgence, if this exercise, shoddily expressed, resembles that of a man who only sees through a glass darkly.

Dr. Ellis Sandoz exposed me to the Political Science Department at LSU when he invited me to the Eric Voegelin Institute's lecture on Solzhenitsyn. Dr. William Clark served as my initial undergraduate adviser in the department. His fervor for comparative politics shows in his lectures and has left on me an indelible mark. My first class with Dr. Cecil Eubanks changed the direction of my intellectual pursuits. His intelligence, benevolence, patience, and direction contributed to the success of the thesis. Ms. Tara Montelaro navigated the byzantine rules of graduate school and enforced the staggered deadlines.

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Also I thank the staff at Tigertalk and the Reveille, the Nigerian community in Baton Rouge and the students at the Political Science department.

Lastly, I thank Dr. Owomumi Iledare for his advice and for his prayers. Sir, do not lose heart in doing good, for in due time you will reap a reward if you do not faint.

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ABSTRACT

Scholarly treatments of the controversial German jurist Carl tend to be bipolar: His writings are either scrutinized for totalitarian leanings or his flirtations with Nazism excused as unfortunately opportunistic. One of the more fruitful points to begin an exploration of Schmitt's thought is in his interpretation of Thomas Hobbes. Schmitt criticized Hobbes both for ignoring the historical backdrop to the Leviathan myth, and also for prefiguring liberalism with his distinction between conscience and obedience. In recruiting Hobbes, this paper suggests that though Schmitt's concern about the technologization of politics through liberalism was paramount, it was in support of a radical form of democracy. Schmitt appropriates Hobbes' state of nature and the initial founding contract to show the 'people' are sovereign, and therefore the only entity capable of politically distinguishing between friends and enemies. This critique intends to move beyond Schmitt the anti-liberal, to show him as a democrat, albeit one who retains subtle authoritarian undertones.

CHAPTER ONE

Introduction

The thesis of this paper is that Carl Schmitt was a radical democrat influenced by Thomas Hobbes. Schmitt was a German jurist and political theorist influential during the Weimar and National Socialist regimes in Germany, who espoused the politics of the exceptional situation, those events which are neither explicitly nor implicitly accounted for by the constitution. The exception exposes who is sovereign because the sovereign is the only one who decides on the existence, the exception and the steps needed to end it.

Schmitt's legal reasoning on the sovereign, by some accounts, assisted in the downfall of the Weimar Republic and marked the ascendancy of Hitler and the National Socialist state. He took up a political post with the new regime under the protection of Herman Goering. During his tenure, he justified some of the most egregious crimes committed by the Nazis.

Even with these imprudent affiliations, Schmitt is worth studying, for among other things, his concept of radical democracy. By radical democracy, Schmitt means a return to the essence of the political, which is rooted in the collectivity of a particular people. The political as an identity exists, for Schmitt, when such a collectivity determines who are its friends and enemies. Once this initial identity is made, the group chooses a form of government to adopt. At this point, it transforms into a state.

Schmitt uses Hobbes both to engineer his primordial form of politics, and also to bolster his critique of the liberal features of the modern democratic state. Schmitt proceeds from Hobbes' conception of the state of nature to show how a group of people can come together to enhance their security. These people then choose a sovereign who guarantees them protection from enemies and demands in return their unconditional obedience. Schmitt then argues that the

liberal right to conscience undermines the unity and security of the state by encouraging the growth of hidden groups. These groups by themselves are not political, but they harness the legislative process to achieve desirable political results. In so doing, these hidden groups pursuing special interests obstruct the people from wielding their original sovereignty.

Hamstrung by feuds among these groups, the state quits being the bearer of the identity of the people and the guardian of their security. Instead it becomes a playground of conflicting interests and a mechanism operating at the behest of the most powerful group.

This project is divided into two parts. The first part examines Schmitt's criticism of Hobbes' *Leviathan*. It compares Schmitt's analysis to other thinkers and shows how Schmitt tackles Hobbes in a concrete sense, not merely as a philosopher, but as a thinker concerned with the world as it exists. Schmitt decries "the superficial labeling of Hobbes as a rationalist, mechanist, sensualist, individualist, or any other 'ist.'" Instead in his reckoning, Schmitt sees "[Hobbes] as a theorist of political action who takes pains to present a political reality and whose writings are political action tracts, not systems of thought about general concepts."¹

This part also looks at Schmitt's separation of the leviathan into three symbols: a mortal god, a sovereign representative and a machine. In Schmitt's view, while Hobbes used the symbol of the mortal god for rhetorical purposes, the leviathan as sovereign representative was a symbol viable in the age of princes and constitutional monarchies. The leviathan as machine was a product of its epoch, the age of technicity. The conclusion of part one charts how the leviathan changed historically and legally from the sovereign-representative to a machine. Schmitt argues that by distinguishing between public expression of belief and private conscience, Hobbes paved the way for the eventual rise of the mechanistic constitutional state.

¹ Schmitt, *The Leviathan in the State Theory of Thomas Hobbes*, 11. All references hereafter will be LST.

The second part of this thesis integrates Schmitt's analysis of the *Leviathan* with his own ideas on democracy. The purpose of the integration is to reveal that Schmitt's reliance on Hobbes is not limited to one text, and secondly to provide a link between similar themes related to democracy among Schmitt's varied texts. Schmitt's radical democracy is contingent on his concept of the political and essential to his critique of liberalism and the constitutional state. By elevating the individual above the collectivity, liberalism diminishes the essence of the radical democracy, the foundation of the state.

Who is Carl Schmitt?

Carl Schmitt is the Medusa of political theory. Mere mention of his name halts discussion. This is obviously an unsurprising development given his relationship with the rise of National Socialism in Germany. Schmitt joined the National Socialist Party on May 1, 1933. A month before he had already begun defending the new regime's palace coup. As a major player in the legal circles of the National Socialist state, Schmitt excoriated German thinkers and artists who fled abroad to escape torture or death, praised Hitler for preventing anarchy during the Rohm Putsch and suggested "that all writings by Jews should be taken out of circulation in libraries and put in a carefully guarded 'Judiaca' section." By 1936, Schmitt was out of favor with the Party, following sustained attacks on his commitment to the racial mission of National Socialism.²

Despite Schmitt's short time at the helm of legal affairs, those three years as a hack tarnish his legacy. It is no wonder Schmitt's enemies suspect his influence, so look to stop it, while his friends acknowledge their debt to him and yet maintain their distance. Once described as "a mine that silently explodes," he is also a scorching flame. In a recent review of a legal

² Kitchen, *A History of Modern Germany, 1800 – 2000*, 268 – 270; Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt*, 178 - 182, 202, 207.

policy text in *The New York Times*, Harvard professor Harvey Mansfield dismisses Schmitt with the tiniest of mentions.³ A book on Schmitt is colorfully titled *A Dangerous Mind*, another *Theorist for the Reich*.⁴ One need not suppose sentiments of this nature are merely the result of Schmitt's flirtation with Nazism. Other thinkers have dabbled in reprehensible political causes or supported destructive manifestos. Paul de Man, Nishida Kitaro and Mircea Eliade are members of the rogues' gallery, yet their legacies none the poorer for their associations.⁵

It is possible for a brilliant thinker to subscribe to a questionable ideology. However, if that is the case, one must begin by charging the thinker with imprudence, and only thereafter investigate the import of his thought. This is where a study of Schmitt must begin. There is no doubt Schmitt is guilty of unfortunate political allegiances, questionable racial doctrines and strident philosophical postures. Nevertheless, these are incomplete supports on which to base an analysis of Schmitt's worth. Because his life, work and thought reject easy characterization, an engagement with Schmitt the political thinker must return to the works he wrote. All other approaches are embellishments on this singular theme; they sniff at the penumbra without attacking the crux.

Appraising Schmitt: A Literature Review

Schmitt is acknowledged as one of the most important political thinkers to come out of twentieth century Germany. His reputation rests on several key works published during the Weimar and National Socialist periods. Political theorists are unsure of how to classify him. To Guy Oakes,

³ "My advice to the authors is, first, to toss out Schmitt from their construction; they don't really believe (or know) him." Mansfield, *Is the Imperial Presidency Inevitable?*

⁴ Muller, *A Dangerous Mind: Carl Schmitt in Post-War European Thought*; Bendersky, *Carl Schmitt: Theorist of the Reich*.

⁵ Wiener, *Professors, Politics and Pop*, 16 – 22; Arisaka, *Beyond 'East and West': Nishida's Universalism and Post-Colonial Critique*, 237 – 252.

Manea, *On Clowns: The Dictator and the Artist: Essays*, 91 – 124.

Schmitt is a polemical writer who rose against the dominant positivistic jurisprudence of his time.⁶ Oakes maintains “Schmitt was the consummate prosecutorial thinker, and all his major works were developed as attempts to destroy positions he rejected.” George Schwab sees Schmitt as the father of the idea of the total state, the friend-enemy criterion of politics, and the mutual negation of democracy and liberalism. Elsewhere, Schwab explains that in his defense of the Weimar Republic, “Schmitt challenged a basic liberal assumption then widely held either for philosophical or tactical reasons, namely, that every political party, no matter how anti-republican, must be permitted freely to compete for parliamentary representation and for governmental power.”⁷

Jurgen Habermas describes Schmitt as a very German thinker who evinces no interest in the analytic concept of political power. To Habermas, Schmitt is a political theologian, not a social scientist interested in reviving “the concept of sovereign power in its full counterrevolutionary significance. Habermas asserts Schmitt’s fascination is the aesthetics of violence. Once Schmitt’s work is “Interpreted on the model of the creation *ex nihilo*, sovereignty acquires a halo of surrealistic meanings through its relationship to the violent destruction of the normative as such.” On the other hand, Stephen Holmes cites Schmitt as a prominent anti-liberal heartbroken over the loss of the Reich in 1918. Holmes links Schmitt’s Weimar writings to those from the Nazi period. Holmes acknowledges that Schmitt is less a racist than a cultural anti-Semite, though his anti-Semitism is “integral to his thinking, not merely decorative or a matter of political opportunism.” Moreover, “The task Schmitt set

⁶ McCarthy, *The Crisis of Parliamentary Democracy*, vii; Oakes *Political Romanticism*, xii.

⁷ Schwab, *Political Theology*, xxxvii; Schwab, *The Concept of the Political*, 13.

himself as a political publicist who was to free the German spirit from its fatal attachment to a nefarious bourgeois constitutionalism imposed from abroad.”⁸

Mark Lilla considers Schmitt an “aging apocalyptic thinker,” in addition to being a practitioner of “the politics of theological despair.” An unorthodox Catholic thinker determined to reverse the modern liberal age, Schmitt’s “theological speculations are an entirely homemade brew of modern existentialism and pre-modern heresies that the Church suppressed centuries ago.” His “romanticizing of Catholic institutions, his praise of Mussolini, his attempts to salvage democratic legitimacy from the legalism of the Weimar system, and his work for Hitler, while not consistent, reflect a willingness to encourage any force that might do battle against the secularized liberal age.” Heinrich Meier declares, “Carl Schmitt cannot be adequately grasped if one does not grasp the center and the context of his thought as political theology.” And by political theology, Meier indicates that Schmitt’s primary resource of knowledge is founded in revelation, and not reason. Meier further explains political theology as “a position that can be grasped in no other way than by thinking it to the point – both aiming at and starting from that point – at which this position, in accordance with its own claim or confession, commands thinking to stop.”⁹

Tracy Strong argues that Schmitt accepts the legitimacy of democracy, by which Strong means Schmitt is no counter-revolutionary. Instead, Schmitt’s concern is retaining the human in politics; anything else added distorts its essence. “Those who would elaborate a set of rules by which decisions can be made take human life out of politics: Schmitt is concerned to keep them.” For Kam Shapiro, Schmitt intends to supplant the legally bound society with an executive capable of molding and directing disparate groups within the state. William Scheuerman focuses

⁸ Habermas, *The Horrors of Autonomy*, 128 – 130, 137; Holmes, *The Anatomy of Antiliberalism*, 37 – 38, 50.

⁹ Lilla, *The Enemy of Liberalism*, 8 – 10; Meier, *The Lesson of Carl Schmitt*, xiii – xiv, xviii.

on Schmitt's attempt to solve the 'crisis of legal indeterminacy'. It was Schmitt's search for an authoritarian alternative, which led to his misadventure with National Socialism. Scheuerman believes that Schmitt's critique of liberal jurisprudence is the clearest introduction to his thought. The theological aspersions now attached to Schmitt are further window-dressing to an elaborate legal-philosophical scheme fashioned by a difficult thinker. "Schmitt was a relatively secular-minded jurist, not a 'political theologian' concerned with waging an intellectual crusade against atheism." Scheuerman concedes, "Even though the current fashionable tendency in Germany to read Schmitt as a closet Catholic theologian has produced some illuminating results, it risks obfuscating the real significance of his ideas for contemporary political and legal theory."¹⁰

Schmitt and Hobbes: A Relationship

As shown in the previous section, eclectic and passionate opinions abound regarding Schmitt's writings. If, as Oakes contends, Schmitt is a polemicist attacking in print hidden and exposed enemies, a good way to burrow into his thought will be through the authors he relies on to make philosophical points.¹¹ In that case, the most recognizable and visible source associated with Schmitt is Thomas Hobbes. At other times, and in several texts, Schmitt does refer to Donoso Cortes, Joseph de Maistre and Max Weber; but of them all, Hobbes is the thinker he identifies with and returns to, again and again. Indeed, Hobbes' influence on Schmitt has not gone unnoticed. Given Schmitt's understanding of the state as the provider of security and the symbiotic nexus of protection and obedience, Schwab contends "Schmitt deserves to be called the Hobbes of the twentieth century." Not to be outdone, Holmes dispels the implied cross-

¹⁰ Strong, *Political Theology*, xxv, xix; Shapiro, *Carl Schmitt and the Intensification of Politics*, 4; Scheuerman, *Carl Schmitt, The End of Law*, 2 – 3.

¹¹ Oakes, xii.

fertilization between both men, noting “the conclusion that Schmitt is a modern disciple of Hobbes remains at best a half-truth.”¹²

Wherever one stands on the debate, if Hobbes serves as a weapon in Schmitt’s theoretical and rhetorical arsenals, then certain questions deserve to be asked? Where, how and why is Hobbes appropriated by Schmitt and what are the possible consequences of the appropriation?

How Schmitt marshals Hobbes will be shared shortly, but a review of the literature on Hobbes’ political theory is in order. Various thinkers are attracted to Hobbes for different reasons and they utilize him for different ends. As Johan Tralau asserts “Interpretations of Hobbes are very often, of course, not just interpretations, but political choices.”¹³

Situating Hobbes: A Literature Review

In the standard textbook interpretation, George Sabine regards Hobbes as the first modern political theorist, one who imbues political thought with the nascent scientific principles of his time. Sabine contends

Political theory was only one part of what [Hobbes] designed to be an all-inclusive of philosophy formed from scientific principles. The system would now be described as materialism. . . . It suggested the revolutionary idea that the physical world is a purely mechanical system in which all that happens may be explained with geometrical precision by the displacement of bodies relative to another.¹⁴

Hobbes, for Sabine, is an arch-individualist, an unabashed utilitarian and a cold-hearted rationalist, who considers all human behavior the result of individual self-interest. It is self-interest that drives man from the state of nature toward the security society provides.

Paradoxically, Sabine also asserts Hobbes’ political writings were written to support absolute government, and more especially absolute monarchy.

¹² Schmitt, *Donoso Cortes in Berlin*, 87 – 99; Schwab, *Political Theology*, lii; Holmes, 41.

¹³ Tralau, *Thomas Hobbes, Carl Schmitt, and Three Conceptions of Politics*, 269.

¹⁴ Sabine, *A History of Political Theory*, 456 – 457, 467.

In Eric Brandon's analysis "The fact that Hobbes was a political absolutist is not an issue of serious debate." Hobbes intends to show that absolutism is the best form of government and even suggest ways to discover and identify the absolute sovereign in a state. Brandon refers to the two halves of *Leviathan* as a stratagem by Hobbes, where he bases the first part on arguments from natural reason and the second part, on a materialistic scriptural exegesis.¹⁵ Brandon remarks that Hobbes' materialism is the glue that holds the *Leviathan* together. Of his recourse to Holy Scriptures, Brandon explains that "the point of Hobbes' materialistic interpretation of the Bible is to eliminate the spiritual plane altogether in an effort to reduce the field of theological and philosophical dispute to the material world."¹⁶ In the battle between king and pope, Hobbes pitches tent with monarchy.

Henry Rosenthal dismisses these appellations. Hobbes' secret, Rosenthal says:

is that he is not a political philosopher; nor a mechanist-materialist; nor a royalist, that is to say, not a die-hard one; nor a philosopher of law, natural or unnatural, in the way in which these oblique contraries have been traditionally implied, nor a religio-political scientist of Euclidean method who eventually finds himself in equivocal advocacy of a 'divine polity; nor most of the several other roles imputed to him by the variety of learned and able commentators that he has had the benefit of.¹⁷

Like a chameleon, Hobbes might have flashed various colors, but it was always in accord with the environment in which he found himself, and the audience he felt would read his work.

Hobbes, rather, is a "radical egalitarian ontologist." Hobbes posits all men to be equal because of their very being, which is granted them by the state. All talk of Hobbes' state of nature is a fabrication, an intellectual fiction to justify the state that already exists. Kinch Hoekstra agrees.

As he notes, "Hobbes writes less to persuade the apolitical to institute commonwealth than to

¹⁵ Brandon, *The Coherence of Hobbes' Leviathan*, 1 – 3. He explains Hobbes' materialism "relies on the foundational premises that bodies are the only things that exist and that all change comes about through the motion of bodies."

¹⁶ Brandon, 18 – 19, 63.

¹⁷ Rosenthal, *The Consolations of Philosophy: Hobbes' Secret, Spinoza's Way*, 31.

exhort those who are already citizens to a punctilious obedience. Salvation is already theirs; they need only to embrace it.” By Rosenthal’s sense, Hobbes cannot be considered a political philosopher, if it means a thinker “whose ideas, such as they are, one can develop an architectural rendering, if not a blueprint, of the actual, conceivable workings of a political community, large or small.”¹⁸

Geoffrey Vaughan maintains that there is a practical side to Hobbes. A political philosopher of merit, Hobbes is concerned with strengthening the foundations of created states. Therefore, “Hobbes’ philosophy, if it is to have a practical effect, must secure those states that already exist. Stabilizing existing governments without tinkering with the institutions of government is a very different task.” Because tampering with the form of government is the root cause of dissension and civil war, Hobbes dare not suggest overt changes to the present state. Rather, Vaughan introduces Hobbes as a political educator who prevents social discord, instilling obedience to the sovereign within the recalcitrant people. After all, everyone chafes at authority, especially when a victim of it. Hobbes’ exposes why the sovereign requires a strong hand. To pacify secessionist doctrines, “the people must be educated in the new politics; they must be taught their place in the commonwealth.”¹⁹

Leo Strauss undermines the identification of Hobbes as a mechanist or materialist. A careful reading shows that “The foundations of Hobbes’ political philosophy, that is the moral attitude to which it owes its existence and its unity, are objectively as well as biographically ‘prior’ to the mathematical scientific founding and presentation of that philosophy.” Strauss assumes that “Hobbes’ political philosophy is the first peculiarly modern attempt to give a coherent and exhaustive answer to the question of man’s right life, which is at the same time the

¹⁸ Rosenthal 35, 42; Hoekstra, *Hobbes on the Natural Condition of Mankind*, 113.

¹⁹ Vaughan, *Behemoth teaches Leviathan: Thomas Hobbes on Political Education*, 12, 31, 36 – 37.

question of the right order of society.” According to Strauss, Hobbes grounds his political theory on natural right – an unsubstantiated, subjective claim – instead of natural law of the ancients – an objective political order. Fear of violent death among individuals in a state is their natural right. By affirming this right, Hobbes merges both democratic and monarchical traditions.²⁰ The result: all political legitimacy comes from the unity of the sovereign people, yet this sovereignty is actualized through a monarchy.

What these varied, opposed and powerful examinations of Hobbes show, is how his thought can be folded to fit into many philosophical boxes. Hobbes is a *prêt-à-porter* thinker. At one time he can be a materialist, mechanist, except when he is not. In other situations, he is a monarchist, individualist, theist, atheist, authoritarian, absolutist or liberal. Schmitt is no different from these interpreters. The next session proposes to find out how Schmitt deploys Hobbes in *The Leviathan*.

Making Sense of Hobbes’ “Leviathan”

Schmitt begins *The Leviathan* by noting that the leviathan, as a symbol, is of greater renown than the actual contents of Hobbes’ text. Even those who lack an intimate knowledge of the treatise recognize the image. Schmitt believes that it is notorious because “The leviathan is not just any ‘corpus’ or just any kind of beast, it is an image from the Hebrew Bible, one garbed during the course of many centuries in mythical, theological and cabbalistic meanings.”²¹ Hobbes pitches the image in a different context. In a passage on punishment and rewards, Hobbes proclaims to:

have set forth the nature of man, whose and other passions have compelled him to submit himself to government, together with the great power of his governor, whom I compared to *Leviathan*, taking that comparison out of the last two verses of the one and fortieth of

²⁰ Strauss, *The Political Philosophy of Hobbes*, 5, 170, 1, viii, 65.

²¹ LST 6.

Job, where God, having set forth the great power of *Leviathan*, calleth him King of the Proud.²²

Schmitt goes beyond Hobbes' citation. He reveals the mythological historical origin of the beasts as originally Babylonian and Syrian legends. Schmitt is interested in two exegeses of the leviathan relating to Christian and Jewish mythologies.²³ The Church Fathers explained that the leviathan is the devil overcome. In this narration, God is a fisherman, Christ the bait on a cross, and the leviathan, a gigantic fish hooked on the bait. At Calvary, God-as-man defeated the 'hater of mankind,' enticing him with the lure of the bait.²⁴

According to Schmitt, the Jewish representation of the leviathan dwells on the "heathen world powers that were hostile to the Jews." Schmitt attributes these interpretations to cabbalists who envision the end of world history as a battle among heathen. The Jews as the only survivors gather to eat the flesh of those slaughtered. Heathen writers later appropriate these cabbalist interpretations, which unbeknownst to them retain a dependence on eschatology. With such historical background before and beyond the biblical mention in Job, Schmitt wonders, "whether Hobbes, who is considered the 'prophet of the leviathan' has in this connection, and with this symbol staked out a clear and definite position."²⁵

This is a worthwhile inquiry. Hobbes makes only four references to leviathan: the first is the frontispiece image of the book, while the other three are references within the text. Yet these scant mentions turn out to be the title of Hobbes' book, as well as the object of attack by his critics. Schmitt unravels Hobbes' 'clear and definite position' by attending to each allusion.

²² Hobbes, *Leviathan*, 210.

²³ Mastnak, *Schmitt's Behemoth*, 279. Tomaz Mastnak alerts us to the possible consequences of Schmitt's interpretation. "My impression is that Schmitt only needed a specter of 'Christian interpretation' of Leviathan and Behemoth as the foil to a specter of 'Jewish interpretation', and that he construed both for political reasons."

²⁴ LST 6 – 8.

²⁵ LST 10; Untea, *Leviathan and his Prophet: a Biblical Monster turned into Political Messiah*. Ionut Untea provides some biblical exegesis of the leviathan, which goes beyond Hobbes' singular reference to Job.

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Schmitt starts his analysis with a look at the copperplate engraving on the first English edition of the book.²⁶ In it is an image of a gigantic man, composed of innumerable, indistinguishable midgets, pressed together in solid form. The giant has a sword in the right hand and a crosier in the left. Below each arm is a column of five drawings, which depict spiritual and secular authority. Given that Hobbes refuses to dwell on the import of his illustration, the image has given rise to varied interpretations. For Schmitt, “These illustrations represent the characteristic means of using authority and power to wage secular-spiritual disputes. The political battle, with its inevitable and incessant friend-enemy disputes that embrace every sphere of human activity, brings to the fore on both sides specific weapons.” Though these weapons are not interchangeable, they are wielded by the same person. To the degree that the giant loses control of either weapon, to the same degree the giant loses power to fight and maintain order. What Hobbes reveals in his frontispiece is “that ideas and distinctions are political weapons, in fact, specific weapons of wielding ‘indirect power.’” As Schmitt points out, the drawing shown in Hobbes’ text does not match popular depictions of the leviathan. Instead of a deadly serpent, a massive sea monster or a terrifying dragon, Hobbes envisions leviathan as a huge man. Indeed, the powerful imagery evoked overshadows the book’s content.²⁷

Hobbes’ first textual reference occurs when he declares, “By art is created that great Leviathan called a Commonwealth, or State (in Latin *Civitas*), which is but an artificial man, though of greater stature and strength than the natural, for whose protection and defense it was

²⁶ Springborg, *Hobbes’ Biblical Beasts: Leviathan and Behemoth*, 364 – 367; Bredekamp, *Thomas Hobbes’ Visual Strategies*, 35. Patricia Springborg observes “commentators have focused considerable attention on the iconography of the engraved frontispiece to *Leviathan*, believed to have been produced by the printer Andrew Croke, under Hobbes’ supervision, and perhaps the work of Hobbes’ acquaintance and Charles’ former tutor in drawing the engraver Wenceslaus Holler.” She suggests the image might be an appeal to the myth of Gallic Hercules. For Horst Bredekamp the frontispiece is inspired by the hermetic *Asclepius*.

²⁷ LST 18.

intended.” Earlier in his text, Hobbes asks, “Seeing life is but a motion of limbs, the beginning whereof is in some principal part within, why may we not say that all *automata* (engines that move themselves by springs and wheels as doth a watch) have an artificial life?”²⁸ With this query Hobbes equates the Commonwealth or Leviathan with *automata*, insofar as it is an artificial man exhibiting characteristics of artificial life. By combining the frontispiece with these statements from Hobbes, Schmitt identifies the Leviathan as comprising three images of a huge animal, a huge man and a huge machine.²⁹

Hobbes’ second mention of the leviathan is in Book II, Chapter 17, when he constructs his origin of the state. A covenant of consenting individuals designates a representative who elevates individuals to a unified person, which combined is the state. Once the covenant occurs,

The multitude so united in one person is called a Commonwealth, in Latin *Civitas*. This is the generation of that great Leviathan, or rather (to speak reverently) of that Mortal God to which we owe, under the Immortal God, our peace and defense. For by this authority, given him by every particular man in the commonwealth, he hath the use of so much power and strength conferred on him that by terror thereof he is enabled to conform the wills of them all to peace at home and mutual aid against their enemies abroad. And in him consisteth the essence of the commonwealth And he that carrieth this person is called Sovereign, and said to have Sovereign Power, and every one besides, his subject.³⁰

With the addition of a mortal god, Schmitt now attributes the symbol, as conceived by Hobbes, to be a totality of god, man, animal and machine

The final allusion to the leviathan occurs in Chapter 28. Hobbes quotes from Job 41: 33, “Upon the earth there is not his like.” To which Schmitt comments, “The explanation is brief and does not correspond to the great expectations that a mythical blending of god and animal, animal and man, and man and machine evokes.”³¹ The same could be said of Schmitt’s exegesis.

²⁸ Hobbes 3.

²⁹ LST 18.

³⁰ Hobbes 109.

³¹ LST 20.

The reliability of Schmitt's analysis of the leviathan as a symbol rests on a resolution of Hobbes' diversions. Given the varied feints Hobbes consciously discharges, Schmitt determines Hobbes' usage of leviathan to be a literary idea conceived in English humor. Schmitt also notes: "A textual examination of the meaning of leviathan in Hobbes' *Leviathan* reveals that the leviathan is an efficacious citation from the Bible, illustrating, by means of an animal, the strongest temporal power, whose overarching strength keeps all the weaker ones in check. The meaning of the image seems to be limited to the utility of the concept."³²

As will be explained below, Schmitt intends to show that Hobbes' leviathan fails on two levels. The first is because the machine overthrows the mortal god and the second, because Hobbes is unaware of the weight of the leviathan myth. It is Schmitt's contention that by adopting a political myth, Hobbes invoked all its elements, those seen or unseen.³³ Schmitt maintains that even if Hobbes appropriated the leviathan for the notoriety of its imagery, it nevertheless remains a fixture of his state theory and must be accounted for as such. The next section returns to Schmitt's analysis of the Hobbesian state, the entity designated as the leviathan.

Schmitt's Analysis of Hobbes' State Theory

Schmitt's conclusion from the previous section warrants a question: If Hobbes limits the leviathan to its utility as a concept, then how does it fit within Hobbes' state theory? Schmitt starts his analysis by identifying the foundation of Hobbes' state theory as the fear of the state of

³² LST 27 – 29, 22; Tralau, *Three Conceptions of Politics*, 269. Tralau supplies a different take on Hobbes' intentions. "If *Leviathan* is read as such a mythological monster, then, we see that the apparently enigmatic image of the monster that is at the same time a god, a machine, a man, a state and a sovereign actually serves to show the most important theoretical assumption in Hobbes' construction of political obligation." Indeed the reason Hobbes invokes the grotesque imagery of the leviathan is because "The sovereign is supposed to be different, he is supposed to be other, and he is supposed to be a source of fear."

³³ LST 81.

nature. The terminus of the theory is the security of the civil, stately condition.³⁴ Hobbes describes the state of nature as a time when men are equal in “faculties of body and mind.” Of course, men of different sizes and intellects exist but it is possible for the weak or less intelligent to band together temporarily to defeat a stronger or wiser foe. This equality means all men can potentially obtain the ends they want. However, it also means the possibility of enjoying that end is minimal because resources are scarce.

With this equality of means, scarcity of ends, struggle for reputation, and anxiety for safety, men are engaged in a state of war. Hence every man is against everyone else. But this war resides not only in the fighting, but more importantly includes the tendency toward it. “For war consisteth not in battle only, or the act of fighting, but in a tract of time wherein the will to contend by battle is sufficiently known All other time is peace.” During a state of war, moreover, nothing can be unjust. All notions of right and wrong, justice and injustice, legality and illegality have no place because there is no law. Indeed, “Force and fraud are in war the two cardinal virtues.”³⁵ Contrary to the classical philosophers, Hobbes maintains that the *Summum Bonum* is meaningless. As man is always in motion, his senses in flux, his imagination strident, the greatest good implies a summit, a point at which there is a cessation of pleasure. To Hobbes a cessation of any sort is death. Consequently, there is “A general inclination of all mankind, a perpetual and restless desire of power after power that ceaseth only in death.” It is this desire for power, this hankering after ease, a fear of death, which makes solitary men disposed to obeying a common power. Such men come to recognize the impossibility of securing their ease and safety

³⁴ LST 31.

³⁵ Hobbes 76 – 78, 28 – 29, 57.

alone. Terrified of oppression, of sudden, violent death, these men seek aid from each other, which is the origin of society.³⁶

Schmitt maintains that it is the terror of the state of nature which drives anguished individuals together and with their fear *in extremis* “a spark of reason flashes and suddenly there stands in front of them a new god.” Hobbes has finally set up the conditions for a shift away from the state of nature. He asserts, “It is manifest that during the time men live without a common power to keep them all in awe, they are in that condition which is called war.”³⁷ Only in the presence of a common, awe-inspiring power can there be peace.

Schmitt contends that Hobbes’ mortal god can be viewed in three distinct ways. The god can be (a) “the notorious mythical leviathan, that has assimilated god, man, animal, and machine,” or (b) a “juristically constructed covenant to explain the appearance of one sovereign person brought about by representation” or, finally, (c) the transfer of “the Cartesian conception of man as a mechanism with a soul onto the ‘huge man,’ the state, made by him into a machine animated by the sovereign-representation.” Given that Hobbes’ mortal god can be the leviathan, the sovereign representative, or the dreadful machine of state, Schmitt advances “That the state is characterized as ‘god’ has no particular meaning in Hobbes’ construction of the state.” Obviously, it does not mean that it is completely useless as a rhetorical device. Schmitt intimates that it would be a tactical blunder for Hobbes, as a defender of the rights of the state against the pope, to cede divinity to his opponents.³⁸

Hobbes, meanwhile, turns divinity on its head with his justification of the state. He grants divinity to the state because it is sovereign and omnipotent. In Schmitt’s interpretation, the state no longer receives sovereignty from the divine. Indeed, “Because state power is

³⁶ Hobbes 58 – 59.

³⁷ LST 31, Hobbes 76

³⁸ LST 32.

supreme, it possesses divine character. But its omnipotence is not at all divinely derived: it is a product of human work and comes about because of a ‘covenant’ entered into by man.”³⁹

Schmitt distinguishes Hobbes’ theory from those of classical and medieval thinkers: Hobbes’ god is transcendent only in a juristic sense, not in a metaphysical sense. The state is not a man, but a machine and in no conceivable way can a machine be metaphysically transcendent. In its historical import, Hobbes’ state, Schmitt declares, “may even be regarded as the first product in the age of technology.” Schmitt adds, “With that state was created not only an essential intellectual or sociological precondition for the technical-industrial age that followed, but also the typical, even prototypical, work of the new technological era – the development of the state itself.” Even if the sovereign-representative is the soul of the state, its body is a machine, which means that the state flourishes as a *homo artificialis* – a construct whose maker and material are men. “The leviathan thus becomes none other than a huge machine, a gigantic mechanism in the service of ensuring the physical protection of those governed.”⁴⁰

The result of this mechanization is the general neutralization of truths and the transformation of the state into a technical, neutral instrument. Schmitt here refers to all forms of truth, about existence, politics, morality, religion essences and concepts. Any advocacy of a position, especially one based on its inherent truth, could serve as the site for the possible eruption of war.⁴¹ As such, those positions are relegated to facts or subjective knowledge which only ends up creating disputes. Of this tendency toward neutralization, Schmitt notes,

The decisive first step in the process occurred in one century that was filled to the point of despair and nausea with religious and theological strife, disputes and bloody wars. After

³⁹ LST 33.

⁴⁰ LST, 34 – 35.

⁴¹ LST 42; Schmitt provides an exhaustive account of the phenomenon in *The Age of Neutralizations and Depoliticizations*; LST 44. “For example, the famous question of Pilate ‘*quid est veritas?*’ may equally be an expression of a considerate tolerance as of a general, weary skepticism or of ‘open’-ended agnosticism. Also, it is possible to see it as an expression of state-administrative neutrality vis-à-vis the religious beliefs of subjugated people.”

a century of fruitless theological strife in which each party defamed the other and none managed to convince the other, the endeavor to find a neutral territory in which it would be possible to arrive at an understanding or reach a compromise leading to security and order is utterly comprehensible. At first, the search for foundations and order was centered in ‘natural’ metaphysics, whose foundations and concepts were clear to everyone and whose mathematical accuracy was supposed to have been demonstrated by proof.⁴²

The state then uses religious, metaphysical and political distinctions as artificial constructs, like an efficient computer spitting out results regardless of the quality of input data. The state serves as a machine for both Western liberals and Bolshevist Marxists. As a tool, it “is independent of every political goal and conviction and assumes a value-and-truth neutrality of a technical instrument.”⁴³

At this point, the state emphasizes neutrality through laws issued as commands, instead of pursuing truth and justice. According to Schmitt, Hobbes’ dictum *Auctoritas non Veritas* “thus becomes a simple, objective expression of value-and-truth neutral, positivism – technical thinking that separates the religious and metaphysical standards of truth from standards of command and function and renders them autonomous.” Hence, a technical neutral state can be tolerant or intolerant, religious or agnostic, just or unjust. Regardless of its choice, at any instance, the state remains neutral. As the state possesses no content independent of its technical perfection, it maintains order only as long as the status quo is undisturbed. No other basis exists to define truth. After all, as Schmitt deftly points out, “everyone claims that right and truth is on his side. But the assertion of right does not lead to peace. Instead, it is designed to contravene the decisions of a well-functioning legal force that was created to end strife.”⁴⁴

While this situation described by Schmitt appears bleak, it is precisely the form and role of the state that Hobbes envisions. Hobbes is explicit in tying the notion of justice to the

⁴² LST 43.

⁴³ LST 42.

⁴⁴ LST 45.

commonwealth through an appeal to covenants. Hobbes says, “Before the names of just and unjust can have place, there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant and such power there is none before the erection of a commonwealth.”⁴⁵ The leviathan is set up to provide peace and security for individuals within the commonwealth. In furtherance of this goal, all means to achieve this end are considered good. The sovereign must, therefore, not only be police, but also censor.

Schmitt shows how the machine overthrows the mortal god. He identifies the absence of a right to resistance in the Hobbesian state as the seed of that failure. Given that a state exists to maintain order and peace, and is the sole and highest lawgiver, its laws, as commands, must be obeyed or it falls apart. “Against the irresistible, overpowering leviathan state which subjugates all law to its commands, there exists neither a discernible stance nor a resistance.”⁴⁶

According to Schmitt’s account, Hobbes provides an escape route for those who are unable to resist the sovereign. Hobbes distinguishes between inner and outer, between thought and act, between conscience and obedience. The leviathan as a monstrous configuration of god, man, animal and machine safeguards the peace of a frightened people. To achieve security, the leviathan demands absolute and unconditional obedience. The power to require obedience from a subject is the warrant for the state’s sovereignty. “Based on his sovereign power, he alone determines by law in questions of justice, what is right and proper and, in matters pertaining to religious beliefs, what is truth and error.” Through law, the sovereign commands what is right. With this ability to enforce obedience, the sovereign also determines what is or is not a miracle. The significance of miracles spills into the political realm, where it has a “concrete, direct”

⁴⁵ Hobbes 89.

⁴⁶ LST 56.

meaning.⁴⁷ *Auctoritas non Veritas* – Authority, not truth – is the purview of the sovereign. As a miracle is what the sovereign authority commands its subject to believe, once a sovereign declares miracles to cease, subjects are obligated to cease belief.⁴⁸

More than just miracles, to Schmitt, Hobbes' sovereign possesses authority over confession by subjects. By his power over confession the sovereign unifies politics and religion. Nevertheless, Hobbes' undermines his state theory by weakening the sovereign's power to demand public confession. Because Hobbes differentiates between the private reason of the individual and the public reason of the state, he lays the groundwork for the eventual overthrow of the mortal god.⁴⁹ The subject must obey the sovereign. What he believes in his heart is of no public consequence. A man's heart, indecipherable as it is, can harbor whatever doubts it pleases about a sovereign's command. Here, private reason rules uncontested. Once there is a public confession, the subject's actions must align with the sovereign's, as only the sovereign can profess truth.

In Schmitt's account this contrast between public and private reason has several consequences for Hobbes' theory. "The juristically (not theologically) constructed modern, individualistic right of freedom and thought embodied in the liberal constitutional state began here, as did the evolution of the state from one inherently void of substantive truth into a justifiable external power of the nineteenth and twentieth century."⁵⁰ Schmitt paints the transformation of Hobbes' theory as an overturning of Hobbes' intent by individualist philosophers like Spinoza.⁵¹

⁴⁷ Tralau, *Hobbes contra Liberty of Conscience*, 67.

⁴⁸ LST 54 – 55.

⁴⁹ LST 56.

⁵⁰ LST 56; Stanton, *Hobbes and Schmitt*, 2.

⁵¹ LST 57 – 58.

Hobbes' state rests on the premise that it can guarantee peace for its subject and prevent the return to a state of nature. Unconditional obedience is necessary. Freedom of thought serves as a corollary, only if it remains private. Pushed to the extreme, the modern liberal state arrives at the inverse: Individual freedom of thought begins the foundation for the modern state. Protection from the state of nature and absolute sovereignty of the state become secondary concerns, 'mere provisos.' The individual is now unchained and free.

Schmitt expands on the effects of separating inner and outer:

At precisely the moment when the distinction between inner and outer is recognized, the superiority of the inner over the outer and thereby that of the private over the public is resolved. If public power and force be ever so emphatically recognized and loyally respected but only as a public external power, it is hollow and already dead from within. Such an earthly god has only the appearance and the *simulacra* of divinity on his side. Nothing divine lets itself be externally enforced.⁵²

Since the inner conscience is indeterminable, it now turns to a refuge, a retreat for those subjects who disagree with their sovereign, but recognize their incapacity to oppose it. Subterfuge becomes the *modus operandi* of the inchoate opposition, who band together and hatch plans for the slaying of the mortal god.

Schmitt notes that those who appropriate myths are unable to harness them. After their creation, myths gain autonomy, with no person in possession of their use or misuse. "Neither textually or etymologically or in a conceptually systematic accuracy or as a mainstream of ideo-historical logic has the last word on where the political fate of a mythical image resides been written." Breaking out of the mold cast by its author "The leviathan can unfold in unexpected historical situations and move in directions other than those plotted by its conjurer." Schmitt faults Hobbes for using a symbol that he is unaware is backed up by "the invisible forces of an old, ambiguous myth." By misappropriating the myth, Hobbes' work is "overshadowed by the

⁵² LST 61.

leviathan, and all his clear intellectual constructions and arguments were overcome in the vortex created by the symbol he conjured up.”⁵³

Divided Interests, Divided State

By Schmitt’s estimation, Hobbes vitiates his political theory by using the leviathan because the path traced by the symbol conforms to the narrative of the Jewish myth referred to earlier in the passage. The eschatological presumptions of the cabbalists, the ferocity of the world-historical battle between the Chosen Jews and their enemies, were parts of the myth ignored by Hobbes, which returned to haunt him. Consequently, “That image was inadequate to the system of thought to which it was applied in historical reality and it perished as a result of its encounter with the forces arrayed behind the traditional Jewish interpretation of the leviathan.”⁵⁴

But what are these forces? Schmitt claims that secret interest groups, not only secret societies, leveraged Hobbes’ allowance to destroy the state.⁵⁵ These forces became powerful, and because they reside in the inner, they were much more dangerous and difficult to eradicate. “All the mythical forces embodied in the image of the leviathan now strike back at the state that Hobbes had symbolized.” Schmitt maintains that the mortal god is slain by these groups and replaced by a lifeless machine. The state transforms into a hapless tool of these feuding factions, parties and cults. The myth of the divinity and omnipotence of the state implodes, supplanted by a functional, lifeless machine, unable to differentiate between the friends of the state and its

⁵³ LST 53, 80 – 81.

⁵⁴ LST 82.

⁵⁵ LST 62.

enemies. “The new symbol left nothing to remind people of a huge man and a god created by human reason.”⁵⁶

In Schmitt’s elaborate sketch, Hobbes’ adversaries, the church and interest groups, reappear as forces of society. They take advantage of the distinction between inner conscience and outward confession and end up as invisible powers that indirectly control the political arena. These invisible powers are available to direct the action of the state in other avenues beside politics – be it religion, culture, economy, or private whims. This development troubles Schmitt. As he understands it, political power disperses within the state, but becomes so diffuse that no one can claim responsibility for any action or respond when an exception outside the norm occurs. Schmitt explains:

It is in the interest of an indirect power to veil the unequivocal relationship between state command and political danger, power and responsibility, protection and obedience, and the fact that the absence of responsibility associated with indirect rule allows the indirect powers to enjoy all the advantages and suffer none of the risks entailed in the possession of political power.⁵⁷

As can be seen from his engagement with Hobbes’ leviathan, Schmitt is interested in the cause of the instability of the liberal constitutional state. During his lifetime, he had already witnessed the fall of the Weimar Republic and the Second Reich under Wilhelm II. Schmitt settles on Hobbes because in him he sees the father of the modern state.⁵⁸ Hobbes’ leviathan was picked from a biblical verse, a Jewish myth that overran its user. Hobbes required unconditional obedience from a subject who was guaranteed protection by the sovereign. By allowing the subject to privately question the sovereign’s motives or wisdom, Schmitt holds Hobbes liable for

⁵⁶ LST 63. Fischer, *Hobbes, Schmitt and the Paradox of Religious Liberty*, 405. Fischer disputes Schmitt’s connection of the inner/outer division with the Jewish myth. Fischer contends Schmitt is dissatisfied because “Hobbes’ public confession implies a private, interior faith that is unknowable and hence beyond the grasp of political power. Of course, this is the kind of dissatisfaction that only a totalitarian grip on society could assuage.”

⁵⁷ LST 74.

⁵⁸ LST 86.

the eventual demise of the liberal state. Unscrupulous philosophers transformed the state from one maintaining order to one existing only to protect fundamental rights of liberty. This was the avenue exploited by social groups who usurped legislative power, using the state as a tool to achieve various ends. The state as machine is neutral with respect to these groups, making it dangerous and inherently unstable. The state collapses from the internal dissension generated by them.

Ironically, the modern state, founded on liberal concepts and institutions, is destroyed by hidden forces within these same institutions. The state is undermined by those it sets out to protect. Indeed, “The leviathan, in the sense of the myth of the state as a huge machine, collapsed when the distinction was drawn between the state and individual freedom.”⁵⁹

⁵⁹ LST 73.

CHAPTER TWO

Introduction

The first part of the thesis dwelled on Schmitt's interpretation of the Leviathan as a key to understanding Hobbes' political theory. By Schmitt's account, Hobbes' theory failed because the myth he used as its groundwork was unstable. In the course of time, the leviathan, in the form of the machine of state, overpowered the leviathan embodied by the absolute sovereign.

The second part now proceeds to incorporate Schmitt's analysis of the Leviathan into a synopsis of his thoughts on democracy. In his introduction, Schmitt informs us that his book is a product of two lectures given in 1938. Schmitt explains "Several thoughts and formulations taken from earlier articles and lectures have been incorporated into this work."⁶⁰ The attentive reader picks up the hint that this particular work is a pointer, a herald to his past thoughts on politics and the state. Such a reader will supplement Schmitt's *Leviathan* with his other texts. In all, they retain a close affinity with Hobbes' thought. It will be seen that Schmitt's democracy is radical because it attempts to split democracy from liberalism to get to its core, which is the originary identity of a mass of people. From the radical democratic ideas of Schmitt can be traced his concept of the political and his critique of liberalism.

This part will begin with an elaboration of Hobbes' theory of state. The state of nature is the basis for the existence of the state. However, before the state comes to being, a mass of individuals must make a contract, one that binds them together with interests extending beyond mere security.

⁶⁰ LST 2.

Democracy and the State of Nature

Schmitt depicts Hobbes' theory of state in these terms: "A representative person is designated or a corporation comes into being by way of a covenant between individuals. For its part the individual or corporation elevates those that entered into the covenant to a unified person, namely the state."⁶¹ There are two movements occurring here. For the first movement, individuals come together in a covenant to designate a representative entity. With the second movement, the representative entity elevates the participants of the covenant to a state. These events point to a question of sovereignty. Where does power reside: Is it with the people or the state? It is in answering this question that we see Schmitt as a radical democrat. By proceeding along these lines we can return to his treatment of Hobbes.

Hobbes explains that all men are inclined not only to procure, but also to assure themselves, a contented life. These desires are amplified in the state of nature, where "Competition of riches, honor, command, or other power, inclineth to contention, enmity, and war; because the way of one competitor to the attaining of his is to kill, subdue, supplant, or repel the other." In this initial state of nature, everyone is equal, not in strength, nor in intelligence, but in ability to achieve favorable results in any endeavor. "From this equality of ability ariseth equality of hope in the attaining of our ends. And therefore, if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their end . . . endeavor to destroy or subdue one another."⁶² Men gauge the strength of their enemies and exploit opportunities to dispossess them of objects of mutual interests. A David recognizes that he cannot fight Goliath alone, so he recruits his family to serve as support or

⁶¹ LST 19.

⁶² Hobbes 75.

relies on his superior intellect and subterfuge. Once the fight is over, the family members can return to ignoring each other, dispersing to their various sojourns.

The desire for ease and sensual delight prompts men to obey a common power. This is because “Fear of oppression disposeth a man to anticipate or to seek aid by society; for there is no other way by which a man can secure his life and liberty.”⁶³ Therefore, for Schmitt, “the starting point of Hobbes’ construction of the state is fear of the state of nature.” Schmitt continues, “In the state of nature, everyone can slay everyone else In respect to posing and carrying out this threat all are equal To this extent ‘democracy’ prevails in the state of nature.”⁶⁴ What Schmitt alludes to is that his notion of democracy is not antithetical to the state of nature; democracy actually begins within this state.

In opposition to the state of nature, where fear is palpable and existence depends on a clash of interests between individuals, Schmitt imagines “In the ‘civil,’ stately condition all citizens are secure in their physical existence; there reign peace, security and order.” Schmitt hints at the state’s maintenance of order. Whereas previous theories of the state appealed to institution by a god or discovery from nature, Hobbes declared the state to be fashioned by man for the sole purpose of guaranteeing peace and security. Schmitt explains “The ingenuity of Hobbes’ theory of the state lies in the rejection of the ‘medieval conception of an existing commonwealth forged by God and of a preexistent natural order’ and replaces it with the ‘product of human work,’ the result of a covenant made and executed by men.” Schmitt continues, “The state as order and commonwealth is the product of human reason and human inventiveness and comes about by the virtue of the covenant.”⁶⁵

⁶³ Hobbes 58, 59.

⁶⁴ LST 31.

⁶⁵ LST 33.

Schmitt ties the existence of the state to a preexisting covenant. This is the foundation of Schmitt's theory of democracy. It begins with an original position of equality. Individuals can only enter the covenant as equals. If not, there would be a natural monarchy – the strongest would be king. A covenant is unnecessary in an unequal society as a power already exists to maintain order.

In chapter XIV of the *Leviathan*, Hobbes traces how the scattered mass of individuals obtains their sovereign representative. Hobbes concedes that individuals have a right to preserve their lives with whatsoever means available, and yet, as a general rule, it is to the benefit of the individual to pursue peace and leave war as the last resort. From this observation, he concludes “that a man be willing, when others are so too, as far-forth as for peace and defense of himself he shall it necessary, to lay down the right to all things, and be contented with so much liberty against other men, as he would allow other men against himself.”⁶⁶

Hobbes begins from absolute liberty in a state of nature to diminished liberty in a civil condition. Peace is only achieved when each man renounces or transfers some part of his natural and unconditional right to self-preservation which would limit harm to others. Hobbes' considers such a transfer to be a selfish act, beneficial to the safety of the individual and necessary to the advancement of the community. When these men gather together and mutually transfer their natural rights, they have entered into a social contract.⁶⁷

In Schmitt's anarchic state of nature, these individuals then make a group. Schmitt explains that “Fear brings atomized individuals together. A spark of reason flashes and a consensus emerges about the necessity to submit to the highest power.” By reason, the individuals decide on the cost of submitting to a higher power. It is reason that drives these

⁶⁶ Hobbes 80.

⁶⁷ Hobbes 82.

individuals toward a consensus. After all, no one needs to be convinced of the superiority of safety over peril. It is at this moment that an identity of individuals in a group exists. This is what Schmitt referred to as democracy. It is obvious that Schmitt's use of the term is idiosyncratic.

This democratic identity as a group remains inert until the group transfers its security to another entity capable of maintaining law and order. "The assemblage of men gathered together by the fright of fiends cannot, from the presuppositions of their gathering, overcome hostility." Schmitt warns such consensus does not equal a state:

The construction of the covenant, which enabled Hobbes to render a juristic interpretation of the sovereign representative person, did not suggest the totality of the state. The indecisiveness that appears in the otherwise consistent train of Hobbes' thought occurs at the juristically decisive point, an observation that has already been noted, namely, in the legal explanation of the foundation of the state as a covenant entered into by individuals.⁶⁸

Indeed, the only way a common power can defend a group against foreigners is if all members of the group confer "their power and strength upon one man, or upon one assembly of men, that may reduce all their wills, by plurality of voices unto one will." Schmitt is in accord with Hobbes who emphasizes that his agreement is "more than consent or concord; it is a real unity of them all, one and the same person, made by covenant of every with every man, in such manner as if every man should say to every man *I authorize and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorize all his actions in like manner.*"⁶⁹

Democracy might be a starting point, yet it remains an inchoate form of social power, and nothing more. As Schmitt puts it, "Even though a consensus of all with all has been achieved, this agreement is only an anarchio-social, not a state covenant. What comes about as a result of

⁶⁸ Carl Schmitt, *The State as Mechanism in Hobbes and Descartes*, LST 97.

⁶⁹ Hobbes 105, 109.

this social covenant, the sole guarantor of peace, the sovereign-representative person, does not come about as a result of but because of this consensus.”⁷⁰ Schmitt claims that democracy can serve as handmaiden to almost any political form. The people might affirm a monarchy, a parliamentary system, a class-based dictatorship without it being at odds with the democratic foundation, one based on an identity between the governing and the governed. Schmitt explains, “A democracy can be militarist or pacifist, absolutist or liberal, centralized or decentralized, progressive or reactionary, and again different at different times without ceasing to be a democracy.”⁷¹

To reiterate, Schmitt says “The sovereign-representative is much more than the sum total of all the participating particular wills. To be sure, the accumulated anguish of individuals of who fear for their lives brings a new power into the picture: the leviathan. But that affirms rather than creates this new god.”⁷² Schmitt, like Hobbes, is noncommittal about the particular political form a people can choose.

Democracy, the Political and the State

The identity spanning the governed and the governing cannot be taken as a matter of fact, but must be investigated further. For Schmitt, that relationship is encapsulated in what he considered to be the defining characteristic of a political existence.

In a description of the copperplate engraving in Hobbes’ *Leviathan*, Schmitt says “The political battle, with its inevitable and incessant friend-enemy disputes that embrace every sphere of human activity, brings to the fore on both sides specific weapons.” The illustrations of fortresses and cannons by Abraham Bosse “correspond to the contrivances and intellectual

⁷⁰ LST 33; Hobbes 76. The covenant hangs in the middle between the state of nature and the civil state.

⁷¹ Carl Schmitt, *The Crisis of Parliamentary Democracy*, 24. All further references to the text will be CPD.

⁷² LST 33

methods of the other side, whose fighting ability is by no means inferior.”⁷³ From the first page of *Leviathan*, Schmitt advances, “The important realization that ideas and distinctions are political weapons, in fact, specific weapons of wielding ‘indirect’ power.” Schmitt contends that the friend-enemy distinction, the foundation of the political, pervades all areas of human activity. The enemy, in this case, is at least an intellectual equal, one capable of advancing and maintaining powerfully dangerous ideas and disguising the form and ends of its power.

Schmitt originally used the ‘friend-and-enemy grouping’ in *The Concept of the Political*. This is Schmitt’s first pointer to a text beyond his *Leviathan*. The cornerstone of Schmitt’s political theory, *The Concept of the Political*, is essential to any exegesis of *Leviathan*. Ernst-Wolfgang Bockenforde advances “The central message as well as the academic significance of Schmitt’s concept of the political can be seen in the fact that it focuses on the phenomenological criterion not of politics but of ‘the political’ or, more precisely, the degrees of intensity within the political. To know and recognize this criterion is a precondition to any meaningful political action.”⁷⁴

Schmitt opens the text with a provocative statement: “The concept of the state presupposes the concept of the political.”⁷⁵ The statement implies the political is prior to the state. If the state is a modern creation, a descendant, or a replacement, of other political entities such as the Greek *polis*, the Islamic kingdoms, and commonwealths of the medieval period, then one is hard pressed to equate the political with the state. There were stateless societies that were immensely political.⁷⁶ Schmitt considers the equation of the state and the political accurate only

⁷³ LST 18.

⁷⁴ Bockenforde, *The Concept of the Political: A key to Understanding Carl Schmitt’s Constitutional Theory*, 38.

⁷⁵ Schmitt, *The Concept of the Political*, 19. All other references to the text will be denoted CP.

⁷⁶ Read Morgan, *Ancient Society; Or, Researches in the Lines of Human Progress from Savagery, Through Barbarism to Civilization*; Owusu, *Democracy and Africa -- A View from the Village*; Yashar, *Democracy, Indigenous Movements, and the Postliberal Challenge in Latin America*.

when the state possesses a monopoly on politics, which in this sense means that the state stands above society or opposes it as an antithesis. However, Schmitt notes, “The equation state = politics becomes erroneous and deceptive at exactly the moment when state and society penetrate each other. What had been up to that point affairs of state become thereby social matters, and, vice versa, what had been purely social matters become affairs of state Heretofore ostensibly neutral domains – religion, culture, education, the economy – then cease to be neutral in the sense that they do not pertain to state and to politics.”⁷⁷ When the state seeps into the society what emerges is a total state that allows the political to flourish from any domain. This total state retains a monopoly on politics; more importantly it now possesses the Midas touch – anything it handles turns political.

Schmitt attempts a definition of the political when he notes that “The specific political distinction to which political actions and motives can be reduced is that between friend and enemy.” Schmitt, however, retreats from asserting the definition as comprehensive, noting instead that it is only a “definition in the sense of a criterion and not as an exhaustive definition, or one indicative of substantial content.”⁷⁸ He explains “The distinction between friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.” The political proves independent of other normative criteria of morality, of economics, aesthetics, legality or religion. It is not based on these domains and its criteria cannot be transferred to other domains and vice versa. Schmitt adds that, “If the antithesis of good and evil is not simply identical with that of beautiful and ugly, profitable and unprofitable, and cannot be directly reduced to the others, then the antithesis of friend and enemy must even

⁷⁷ CP 22.

⁷⁸ CP 22, 26.

less be confused with or mistaken for the others. The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.”

Wherever a gathering of like-minded individuals exist, there rests the possibility that it might transform itself into the political. An association is not political because it is a political party – even some political parties are not political, insofar as they claim to be universal and thereby refuse to recognize enemies – it emerges as political once the bond linking individuals within it is strong enough to potentially establish a distinction between friends and enemies. Bockenforde explains “The political does not consist in a determined sphere of objects, but rather is a public relationship between people, a relationship marked by specific degree of association or dissociation which can potentially lead to the distinction between friend and enemy; the content underlying this relationship can originate from any sphere or area of human life.”⁷⁹

If the political involves the differentiation of friends and enemies, the question presents itself: Who is the enemy, and who is a friend? Schmitt’s answer is “An enemy exists only when, at least potentially, one fighting collectivity of people confronts a similar collectivity.” This definition provides the nexus between Schmitt’s concept of the political and his idea on identity. A ‘collectivity of people’ points to the fact that ‘the people’ can only be identified as a singular entity, and not as a mass of individuals. The enemy must also be a singular entity and a public one as well, opposed to another collectivity of men, and potentially inimical to their way of life. Schmitt emphasizes that “The enemy 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.” The enemy can therefore be viewed as existential; until a confrontation emerges, it remains absent and unnoticed.

⁷⁹ Bockenforde 38.

By his concept of the political Schmitt shows how the collectivity of people can be elevated to the state. Because the state is the preeminent organized political entity in the contemporary age, it decides by itself the friend-and-enemy distinction.⁸⁰ The caveat still remains that the two are not interchangeable. It has not always been the case that state established or maintained this distinction.

Even before the historical emanation of the state, the primordial organizations of individuals identified what brought them together and what could potentially tear them apart. “The friend, enemy and combat concepts receive their real meaning precisely because they refer to the real possibility of physical killing. War follows from enmity. War is the existential negation of the enemy.” War is fought to preserve a collective identity, not merely to avenge a seeming slight. If a man kills his enemy, it is murder, a crime deserving of punishment. Consequently, the possibility of war is the reason that the political cannot be founded on an individual basis. “Never in the thousand-year struggle between Christians and Muslims did it occur to a Christian to surrender rather than defend Europe out of love toward the Saracens or Turks,” Schmitt asserts. “The enemy in the political sense need not be hated personally, and in the private sphere only does it make sense to love one’s enemy, i.e., one’s adversary.”⁸¹

War is not praiseworthy, neither is it desirable or even necessary. Nevertheless, once enmity surfaces, there is the potential that it could ignite and expand beyond its immediate domain. Schmitt does not luxuriate in war; at times he puts on the guise of a doctor delivering bad news. Contrary to several of his interpreters who believe that he aestheticizes violence as the essence of politics, Schmitt says “War is neither the aim, nor the purpose nor even the very content of politics. But as an ever present possibility it is the leading presupposition which

⁸⁰ CP 28 – 30.

⁸¹ CP 33, 29.

determines in a characteristic way human action and thinking and thereby creates a specifically political behavior.”⁸²

Schmitt asserts, “Only the actual participants can correctly recognize, understand and judge the concrete situation and settle the extreme case of conflict. 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.”⁸³ The level of intensity determining friends and enemies is expressed by their willingness to fight to preserve that distinction. That is why the political “can neither be decided by a previously determined general norm nor by the judgment of a disinterested and therefore neutral party.” A previous norm is unable to establish an association, is in no position to distinguish friends from enemies, and has no legal effect. Meanwhile, at the point of highest intensity, no party to a conflict can be neutral; once an association is formed, everyone is aligned either for or against it. “If a part of the population declares that it no longer recognizes enemies, then, depending on the circumstance, it joins their side and aids them. Such a declaration does not abolish the reality of the friend-and-enemy distinction.”⁸⁴

All questions of sovereignty are answered only within the political. Schmitt remarks, “If such an entity exists at all, it is always the decisive entity and it is sovereign in the sense that the decision about the critical situation, even if it is the exception, must always necessarily reside here.” Given that war emanates from the distinction of friend and enemies, this critical situation reveals sovereignty. The sovereign entity typically establishes the ultimate distinction and is thereby the decisive entity, even though the sources for the distinction may differ. Friends and

⁸² See Wolin, *The Conservative Revolutionary Habitus and the Aesthetics of Horror*; Scheuerman, *Carl Schmitt and the Road to Abu Ghraib* ; CP 34.

⁸³ CP 27.

⁸⁴ CP 51.

enemies change after all, their very nature depending on the reason for the conflict.⁸⁵ In most instances this sovereignty belongs to the state. Schmitt points out, “The state as the decisive political entity possesses an enormous power: The possibility of waging war and thereby publicly disposing of the lives of men.”⁸⁶

On the Absence of Resistance to the Civil State

Schmitt extends the concept of the enemy, from purely an external basis to include the domestic front. If peace is the end of the state, then enemies identified, from within and beyond, must be eliminated. “As long as the state is a political entity this requirement for internal peace compels it in critical situations to decide also upon the domestic enemy.” Lest we forget, Schmitt reminds us “Not the representation by a person, but the factual, current accomplishment of genuine protection is what the state is all about.”⁸⁷

By emphasizing peace to be the most important criterion for a properly functioning state, Schmitt and Hobbes downplay and even deny the existence of a right of rebellion within the state. Hobbes imagines that the unity producing the sovereign leaves no right for individual or collective resistance. As “the right of bearing the person of them all is given to him they make sovereign by covenant only of one to another, and not of him to any of them, there can happen no breach of covenant on the part of the sovereign; and consequently none of his subjects, by any pretense of forfeiture, can be freed from his subjection.”⁸⁸ The agreement between every man and every man is a contract, which Hobbes describes as “the mutual transferring of right.” Within the contract, the sovereign is absent, nonexistent, and, most importantly, is not party to

⁸⁵ CP 38, 43.

⁸⁶ CP 46.

⁸⁷ LST 34.

⁸⁸ Hobbes 111.

the terms. The contract is the basis for creating the identity of the collectivity of the people. At this point, the people abandon some of their natural right to self-preservation in exchange for unanimity within the collectivity.

After the contract, there is a covenant between the collectivity and the sovereign who now appears from without. Hobbes differentiates a contract from a covenant by noting that “one of the contractors may deliver the thing contracted for on his part, and leave the other to perform his part at some determinate time after (and in the meantime be trusted).”⁸⁹ If the former event could be considered immediate, the latter can be taken as dynamic process. By designating the covenant to follow the contract, Hobbes severs the direct connection between the people and their sovereign. The people promise total obedience to the sovereign, who likewise promises to protect them from external and internal enemies. However, no particular individual agreed to the terms of the covenant. Rather, the sovereign agreed to the terms with the people as a whole. The sovereign has no contact with the covenanters, so he is not required to guarantee protection. The sovereign justifies himself.

Hobbes’ weak point is that he is unable to give a suitable account of how individuals in a state of nature make a contract in the first place. Hobbes notes that “the force of word being (as I have formerly noted) too weak to hold men to the performance of their covenants, there are in man’s nature but two imaginable helps to strengthen it. And those are either a fear of the consequence of breaking their word, or a glory or pride in appearing not to need to break it.” Neither sentiment can be counted upon within this fractious state. Indeed, Hobbes had earlier identified in man’s nature “three principal causes of quarrel: first, competition; secondly, diffidence; thirdly, glory.”⁹⁰ By implying that the propensity for violence and incivility lies in

⁸⁹ Hobbes 82.

⁹⁰ Hobbes 87, 77.

man's very nature, Hobbes cannot make a convincing case why men should congregate and give up some of their rights. Even if it could be imagined that a rational case could be made by an individual, such a transaction would have to be based on trust – a commodity in short supply.

Schmitt rectifies this slight discrepancy in Hobbes' theory. For Schmitt the collectivity originates with a contract between men, when they determine what their identity is and what the connecting bonds which unite them are. The contract specifies that individuals suspend the right to protect themselves by any means necessary, as well as gives them the impetus to fight other factions as a group, if their identity is threatened. This gathering is not a state. It only becomes so when there is a covenant between the people and the representative person, where the person promises protection to the group in exchange for unconditional obedience. Just like Hobbes, Schmitt's covenant does not give a right of resistance to the individual because a failure to establish order on the part of the sovereign means sovereignty no longer exists and the state has returned to a state of nature. Any act of rebellion in a well-ordered state is a crime against the state and is punishable by the laws determined by the state. Such a position presents a paradox. As Schmitt explains, "To create tranquility, security, and order and thereby establish the normal situation is the prerequisite for legal norms to be valid. Every norm presupposes a normal situation, and no norm can be valid in an entirely abnormal situation."⁹¹ The only legitimate, not even legal, time to rebel will be when the state no longer exists.

Schmitt therefore considers all rights to resistance implied in medieval conceptions of the commonwealth as nonexistent for the modern state. "The endeavor to resist the leviathan, the all-powerful, resistance-destroying and technically perfect mechanism of command, is practically impossible There are no points of departure for a right to resist, irrespective of

⁹¹ CP 46.

whether it is an objective or a subjective right.”⁹² Schmitt argues that all law is subject to the sovereign, so in an objective sense the state cannot will against itself if it will lead to nonexistence. The leviathan exists as a state and “In that case it functions as an irresistible instrument of quietude, security and order and has all objective and all subjective rights on its side because, as the sole and highest lawgiver it makes all the laws or it does not exist and therefore cannot fulfill its function as the defender of peace.” Schmitt argues for a unified sovereign, one who is the giver, the executor and the interpreter of the law. Any division of power, in form of a balance, or through confrontation, weakens the state by denying the sovereign the tools he needs to maintain order.

The individual cannot resist because as part of a consensual group – the seed of the state itself – he is incapable of resisting himself. Within this framework only one option exists: he renounces the identity that connects his individuality to the group. Nevertheless, even this act is not resistance as all that it does is mark the individual as an outcast, a stateless being. Of such a man, Aristotle remarks “He must be either a lower animal or a god.”⁹³

The Inner/Outer Distinction and the Rise of the Constitutional State

Schmitt’s dismissal of rebellion against the state was part of his attempt to support his critique of certain liberal aspects of the constitutional state. He observes that the leviathan suffered a fate Hobbes never foresaw: its destruction by elements within the state.⁹⁴ As a rational construction, the state can take irrational paths in its continual growth or eventual demise. During Hobbes’ time, the state was represented by the absolute prince. This arrangement lasted until the liberal distinction was made between an outer expression of obedience and an inner right to conscience.

⁹² LST 46.

⁹³ Aristotle, *Politics*, 1253a.

⁹⁴ LST 38.

Schmitt maintains that “The question of faith and miracle” was the state’s misfortune. Schmitt believes that liberalism killed off the state as the preeminent political entity by elevating law above personal authority, as well as the universalized liberty of the individual above the binding norms of the localized community.

Schmitt traces the beginning of the state’s downfall to Hobbes’ skepticism about miracles. “Hobbes’ position on the especially sensitive question of the belief in miracles was purely agnostical. He maintained that nobody can know for certain whether an occurrence is or is not a miracle.”⁹⁵ Hobbes sets a high standard for what can be considered a miracle. In the *Leviathan*, Hobbes says “And when that is done, the thing they pretend to be a miracle, we must both see it done and use all means possible to consider whether it be such as no man can do the like by his natural power, but that it requires the immediate hand of God.”⁹⁶ Earlier in the text, Hobbes argued that God cannot be a body, since if the cause of sense is the external body, or object, which affects the organ related to each sense, it would imply an admission to God’s finitude. Consequently, no prophet exists who can assert that he speaks to God directly. There is no recourse to the supernatural in understanding miracles; all a person needs is greater knowledge of bodies and how they interact.

Moreover, because miracles are inexplicable except by supernatural knowledge, a miracle is what the sovereign – Hobbes calls them God’s lieutenants – in his capacity as protector of the land, says it is. The sovereign, as the embodiment of public reason, determines what a miracle is; once such a ruling is given, no room is admitted for appeal. Hobbes tells us that in questions related to miracles, “we are not every one to make our own private reason or conscience, but the

⁹⁵ LST 54. The question of whether Hobbes’ believed in miracles is entirely separate from the question of whether Hobbes was a Christian. It is possible to be a Christian without believing in miracles. On miracles, read C. S. Lewis, *Miracles*; on Hobbes as a Christian, read Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Politics and Religion*.

⁹⁶ Hobbes 299.

public reason (that is, the reason of god's supreme lieutenant), judge."⁹⁷ Of this authority, Schmitt notes, "Sovereign power has thus achieved its zenith. It is God's highest representative on earth."⁹⁸

Unfortunately, at this point of supreme power, at the confluence of religion and politics, Schmitt explains that sovereign unity ruptures with the distinction between miracles and beliefs. Hobbes might have declared, "The question of wonder and miracle to be a matter of 'public' in contrast to 'private reason'," but as a believer in the universal freedom of thought, Schmitt asserts Hobbes permits the individual his skepticism, as long as it is unvoiced. Indeed, Hobbes says, "A private man has always the liberty (because thought is free) to believe or not believe, in his heart, those acts that have been given out for miracles, according as he shall see what benefit can accrue, by men's belief, to those that pretend or countenance them, and thereby conjecture whether they be miracles or lies." Nevertheless, Hobbes concedes that "when it comes to confession of that faith, the private reason must submit to the public, that is to say, to God's lieutenant."⁹⁹

To legitimize the sovereign, Hobbes says that public reason is the supreme judge because "We have given him a sovereign power to do all that is necessary for our peace and defense." Wars can be fought over the interpretation of miracles, therefore to preserve peace within the state; the sovereign has the sole power to determine what a miracle is. An example Hobbes gives is the Eucharist. If a man delivers an incantation over a loaf of bread and a cup of wine, then calls these items the flesh and blood of a living man, of a living God, one is apt to take such person as deranged. Were the state to make the same assertion, no one can outwardly deny it to be so. Hobbes leaves a gap for those who challenge the veracity of the state's claims. The

⁹⁷ Hobbes 300.

⁹⁸ LST 55.

⁹⁹ LST 56, Hobbes 300.

truthfulness of transubstantiation can only be doubted in silence. Schmitt says that this allowance paves the way for the eventual rise of the modern state. In Schmitt's view, "The distinction between private and public, faith and confession, *fides* and *confessio*, is introduced in a way from which everything else was logically derived in the century that ensued until the rise of the liberal constitutional state."

Schmitt takes issue with the constitutional state because he sees it as the triumph of the leviathan as mechanism over the leviathan as the sovereign representative.

The distinction of inner and outer became for the mortal god a sickness unto death. But his work, the state, survived him in the form of a well-organized executive, army, and police as well as administrative and judicial apparatuses and a well-working, professionally trained bureaucracy. To an increasing extent the state was perceived as a mechanism and a machine. As that perception became widespread so did the development of the concepts of right and law.¹⁰⁰

The appellation 'constitutional state,' Schmitt believes, is purely a polemical construct. "Hidden here under the name 'constitutional state' is a legal system that is based on a 'constitution' made by men, one that operates with written laws, especially codified laws. In reality, the bourgeois constitutional state is a state based on law." Schmitt emphasizes the bourgeois aspect of the modern state because he believes all states are constitutional states by the very fact they have been made and are independent. If every state is founded on a covenant, then "Every state is also a constitutional state because within the confines of a state extralegal laws or laws aimed against the state cannot exist."¹⁰¹ Political representation carries with it responsibilities, which can only be achieved within the political. The formation of an order already imbues it with its own legality; its legitimacy is tied to the fact it is capable of creating its order. The moment of creation of a state is also the moment of its constitution. Therefore, having the adjective 'constitutional' before state is superfluous, insofar as it identifies what is

¹⁰⁰ LST 65.

¹⁰¹ LST 66, 68.

already innate to the state. The term ‘constitutional,’ actually points to limited government, a position Schmitt rejects because the constitution cannot be supreme. The constitution does not create the state; once the state is created, it is constitutional.

The constitutional state, in other words, is the triumph of legality against legitimacy. By Schmitt’s reading of Hobbes, the state is the result of a covenant of all-with-all, a democratic consensus. The state formed is constitutional, democratic individuals constitute it. On the other hand, a constitutional state requires a constituent assembly, a form of representation, once removed from the people. Schmitt maintains that “Only a state established by such a constituent national assembly is constitutionally a law-and-constitutional state.” The difference between a ‘constitutional’ state and every other state is that the former is run by written law. By instituting private rights, which then became part of the law through inclusion in the constitution, Hobbes became “a spiritual forefather of the bourgeois law-and-constitutional state that materialized in the nineteenth century on the continent of Europe.”¹⁰²

Liberalism and Pluralism within the Constitutional State

Once the inner is separated from the outer, the absolute free individual is created. This creation assumes powers greater than those of the state. Freedom of thought grants the individual unheard of powers, because the state cannot enforce what goes on in the individual’s heart. “Historically considered ‘privatization’ had its origin in religion. The first right of the individual in the sense of the bourgeois social order was the freedom of religion.”¹⁰³ Once religion was privatized, anything else could be privatized, from conscience, to association, to press, even trade, because “whatever place is assigned to religion, it always and everywhere manifests its

¹⁰² LST 68, 67.

¹⁰³ Schmitt, *Roman Catholicism and Political Form*, 28.

capacity to absolutize. If religion is a private matter, it also follows that privacy is revered.” By this event, Schmitt intimates that if “Public power and force may be ever so completely and emphatically recognized and ever so loyally respected, but only as a public and only on external power, it is hollow and already dead from within.”¹⁰⁴ By granting individual rights the constitution has killed the state.

Schmitt explains the importance of the distinction between inner and outer:

If looked at from the perspective of constitutional history, a dual beginning was made here: first, the juristically (not theologically) constructed beginning of modern, individualistic right of freedom of thought and conscience and thereby the characteristic individual freedoms embodied in the structure of the liberal constitutional state; and, second, the evolution of the state from one inherently void of substantive truth into a justifiable external power.¹⁰⁵

Once the freedom of conscience is admitted, then “general legalization is the main feature of this development, and the state itself changes into a positivist system of legality.”¹⁰⁶ In Schmitt’s account, the constitutional state and its dependence on written law masks the fact that the absolutist states of the 17th century were also bound by law. For every subject, civil laws are “those rules which the commonwealth hath commanded him (by word, writing, or other sufficient sign of the will) to make use of, for the distinction of right and wrong, that is to say, of what is contrary, and what is not contrary to the rule.”¹⁰⁷ Whatever the sovereign commands becomes law and must be obeyed. The constitutional state radicalizes this notion of law to “tame the leviathan.”

To protect its subjects, the state requires unlimited obedience to its commands promulgated through law. Initially, the state made the law, interpreted it, and enforced it as it saw fit. All these powers were concentrated in the sovereign. Hobbes confirms this relationship

¹⁰⁴ LST 56.

¹⁰⁵ LST 56.

¹⁰⁶ LST 65.

¹⁰⁷ Hobbes 173.

when he notes, “The sovereign of a commonwealth, be it an assembly, or one man, is not subject to the civil laws.”¹⁰⁸ His analysis is that the state has power to enact and repeal laws, including those that are offensive to it. A state capable of changing laws according to its prerogative cannot be bound by them. The laws as applicable in the constitutional state, envisioned by the tenets of liberalism, deny the state its elevation over the constitution. It shrinks the power of the state over the individual and it makes the state subservient to law.

In order to protect the individual, sovereign power within the government is divided up among distinct executive, legislative and judicial branches. In diagnosing what weakens a commonwealth, Hobbes explains “There is a sixth doctrine plainly and directly against the essence of a commonwealth, and it is this: that the sovereign power may be divided. For what is it to divide the power of a commonwealth, but to dissolve it; for powers divided mutually destroy each other.”¹⁰⁹ Schmitt builds on the critique, noting that the notion of a balance of powers brings to mind a spring balance and further points to the idea of a state as a mechanism. The sovereign-representative cannot guarantee protection; it requires “an effectively functioning mechanism of command.”¹¹⁰ The police might be an arm of the leviathan, but to work properly it must be disengaged from the sovereign. “The leviathan thus becomes none other than a huge machine, a gigantic mechanism in the service of ensuring the physical protection of those governed.” The executive assumes itself to be the de facto political entity, choosing friends and enemies, but in reality, power is handed over to the legislature.

The covenant setting up the state was made by individuals, but only within a consensus of shared interests; by positing the supremacy of the individual, liberalism aborts the state’s ability to maintain order, secure peace, and sustain the livelihood of its citizens. The state quits the

¹⁰⁸ LST 74.

¹⁰⁹ Hobbes 213.

¹¹⁰ LST 67, 35.

political, because its ability to decide on friends and enemies is hampered, and it has already relinquished to the individual the power to sacrifice one's life for the benefit of the community.

What begins as individual rights extends beyond individuals to larger groups, which then form alliances; the private sphere transforms into a social one. Special interests and indirect powers seize the political process to further their own agenda. Political parties, churches, trade unions and social organizations manipulate the legislative arm of government. Once individual rights are enshrined in the constitution, they extend to more than individuals. The private sphere becomes pluralistic, with different powers advancing legislation to their profit.¹¹¹ These groups grow powerful, yet they veil their influence on the political process, making them more dangerous to the state and less accountable to its citizens.

According to Schmitt, "Party pluralism has perpetrated the destruction of the state by using methods inherent in the liberal law state That happened when the organizations of individual freedom were used like knives by anti-individualistic forces to cut up the leviathan and divide his flesh among themselves." Schmitt faults pluralism derived from liberalism because it makes the state hostage to various interest groups. Schmitt paints a picture in which the state appears "if not altogether the servant of instrument of a dominant class or party, to have become the mere product of an equilibrium between several conflicting groups, at most *pouvoir neutre* and intermediary, a neutral mediator, a moment of equilibrium between the conflicting groups, a kind of clearing house, a peacemaker."¹¹² Under these conditions, the state is incapable of making a decision on political issues, lest it offend a powerful interest group. Schmitt says the old adversaries of the state,

¹¹¹ Caldwell, *Popular Sovereignty and the Crisis of German Constitutional Law: The Theory and Practice of Weimar Constitutionalism*. 112; Geyer, *The Nazi State: Machine or Morass*, 36 – 37.

¹¹² Schmitt, *Ethic of State and Pluralistic State*, 196, 198.

[T]he ‘indirect’ powers of the church and of interest groups reappeared . . . as modern political parties, trade unions, social organizations, in a word as ‘forces of society.’ They seized the legislative arms of parliament and the law state and thought they had placed the leviathan in harness. Their ascendancy was facilitated by a constitutional system that enshrined a catalog of individual rights.¹¹³

These entities realize that it is easier to control the lawmaking process for their own benefit.

In the state of nature everyone fights everyone else. Individuals gather together, create an identity for themselves, and accept the representation of a higher power.

This sovereign-representative guarantees protection and order and begins to rule. With the mechanization of politics, the legislative/law-enforcement strands of the state are separated from the executive. Schmitt isolates the state-forming and state-ruling moments from Hobbes, as well as the succession of politics by law. It is at this point, that “Hobbes’ concept of the state became an essential factor in the four-hundred-year-long process of mechanization, a process that, with the aid of technical development, brought about the general ‘neutralization’ and especially the transformation of the state into a technically neutral instrument.”¹¹⁴

Schmitt is dismayed by what he terms the ‘technization’ of the state, what he sees as its value-and-truth neutrality. In matters of life and death, in situations that involve the essential nature or identity of the governed, the state cannot be neutral, or at least should not be. The state thereby abandons its primary function, weakened by its inability and unwillingness to decide between friends and enemies. The sovereign, rendered powerless by law, watches idly as the state relinquishes all hold on truth, right and virtue. “All other concepts of truth and justice are absorbed by decisions promulgated in legal commands.”¹¹⁵

¹¹³ LST 73.

¹¹⁴ LST 42.

¹¹⁵ LST 45.

CONCLUSION

Schmitt notes that “Every actual democracy rests on the principle that not only are equals equal but unequals will be treated unequally.” Equality must rest on a substance and not arithmetic calculations. Religious convictions, ideas of nation, tribal affiliations or race can serve as substances of equality and homogeneity. Schmitt also contends that “a democracy – because inequality always belongs to equality – can exclude one part of those governed without ceasing to be a democracy.” That in fact, “until now people who in some way 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.”¹¹⁶ In other words, democracy is not about numbers or universal political rights. Blacks and Indians might not have voted in Apartheid South Africa, more importantly, the Afrikaans were the minority, yet neither condition stopped the state from being democratic.

Schmitt draws the tension between the equality identified by democracy and that espoused by liberalism. Schmitt says, “The equality of all persons as persons is not democracy but a certain kind of liberalism, not a state form but an individualistic-humanitarian ethic and *weltanschauung*. Modern mass democracy rests on the confused combination of both.”¹¹⁷ The liberal aspects of mass democracy ensured the adoption of closed ballot voting, universal suffrage, political parties, as well as separation of powers. The reasoning is that closed ballots protect an individual’s right to free expression, while universal suffrage proceeds from a belief in the natural equality of all men. Political parties spring up under the rubric of group interests,

¹¹⁶ CPD 9.

¹¹⁷ CPD 13.

while a division and balance of power aims to pit interest against interest – the concentration of power in one branch being considered dangerous to the security of individual rights.

Radical democracy, as conceived by Schmitt, opposes liberalism.

The unanimous opinion of one hundred million private persons is neither the will of the people nor public opinion. The will of the people can be expressed just as well and perhaps better through acclamation, than through something taken for granted, an obvious or unchallenged presence, than through the statistical apparatus that has been constructed with such meticulousness in the last 50 years. The stronger the power of democratic feeling, the more certain is the awareness that democracy is something other than a registration system for secret ballots.¹¹⁸

This ‘obvious and unchallenged presence,’ this democratic identity, needs no separation of powers. “In a democracy, where those who command and those who obey are identical, the sovereign, that is, an assembly composed of all citizens, can change laws and change constitutions at will.”¹¹⁹

The rise of the machine of state and the collapse of the sovereign representative can be attributed to the liberal aspects of modern democracy. The crisis of modern democracy springs from “the contradiction of a liberal individualism burdened by moral pathos and a democratic sentiment governed essentially by political ideals.”¹²⁰

In looking at Schmitt’s ideas of democracy and his reaction to liberalism, some supporting points can be acknowledged. Schmitt reemphasizes the agonistic foundation of the modern state by returning to the people, not as philosophical abstraction, but as a concrete, politically active entity. Furthermore, he identifies the adaptability of democracy to various governing forms.

By positing the political as the distinction between friends and enemies, Schmitt explains the viability of the modern state. As the guarantor of our peace and security, the state possesses

¹¹⁸ CPD 16

¹¹⁹ CPD 14

¹²⁰ CPD 17

the authority to make the political distinction. Even if the state functions mainly to preserve our individual and collective rights, its foundation is grounded in conflict. Moral ideals are worthless if one is unwilling to fight for them. An example Schmitt gives concerns pacifist hostility toward war. If pacifists feel strongly enough about stopping war, they will have to fight to do so. By this point, they have become political and can form a state.

The concept of the political rediscovers the people as the fundamental political entity manifested in history as a concrete identity. The people as a collectivity are democratic. The universal adoption of modern democracy disregards this fact in the face of history. After all, on what basis can one claim that modern democratic practices can be adopted in a feudal society? Schmitt explains, “For radical democrats democracy as such has its own value without reference to the content of the politics pursued. If the danger exists that democracy might be used in order to defeat democracy, then a radical democrat has to decide whether to remain a democrat against the majority or give up his position.”¹²¹ In other words, democracy is suitable only for people who are democratic. Democracy can abide with various forms of government amenable and preferable with the people. It may be socialist, communist, liberal or even a dictatorship. Since democracy is at heart, a political form, and not a form of government it does not specify how an election should be set, how suffrage should be exercised or what the branches of government may be, and what powers they may have. Democracy ultimately rests on an identity.

Nevertheless, Schmitt’s radical democracy still presents certain conceptual difficulties. First, radical democracy is conceived within a liberal framework, so it is conceivable to consider conflicting interests as integral to democracy. Second, the identity of a people is not static. It is dynamic, changing in substance and form within history.

¹²¹ CPD 28.

Schmitt is unable to escape the liberal foundation inherent in his ideal democracy. By following Hobbes, Schmitt begins with autonomous individuals entering into a contract. These free individuals are the kernel for the liberal idea of man as a free being. Even if such an individual enters a contract, this individuality is not dissolved, but rather is enhanced. Men did not enter into a contract to be indistinguishable from their peers; instead, the contract provides the freedom to exercise their uniqueness. This means that Hobbes' distinction between inner conscience and outer confession is not an oversight. It is a consequence of the initial conditions within the imagined state of nature.

Therefore, Schmitt's historical diagram showing how the distinction led to the rise of the constitutional state, while logically consistent, ends with the wrong conclusion. When Schmitt claims that in defending the natural unity of spiritual and secular power, Hobbes "opened the door for a contrast to emerge because of religious reservation regarding private belief and thus paved the way for new more dangerous kinds and forms of indirect powers," the question to ask is: Could the door ever be shut? If answered in the negative, then perhaps modern democracy is not a contradiction, but merely an inherently unstable edifice. Unless Schmitt argues that the collectivity is natural, like the Aristotelian *polis*, then it is surmised that the free individual lies at the core of his theory.

Moreover, if individuals are left to pursue their own well-being in what way they desire, they will generate different interests, not all of them harmful to the existence of the state. Once the state has designated by law what is legal or illegal, an individual or group is free to operate as long as it does not run afoul of those laws. Schmitt is so terrified by the threat of civil war that he shortchanges the importance of pluralism to the life of the state. The economic, intellectual and political flourishing of the state are products of the various interests clashing and

compromising, and not the result of an enforced, organic unanimity actually which eventually leads to sterility.

Also, even if the state begins as a democracy with a particular identity in history, this identity is dynamic and can change with time. Some of the political changes Schmitt criticized resulted from alterations in the way the society viewed itself. A state founded only on the interests of land-holding white adults can imagine itself to be a better, more moral state, one more interested in securing the well-being of the less privileged within it. In that case, the state could expand the suffrage to include women and persons of other races. The state is still democratic, only the substance of the identity had changed. Schmitt's theory is mired in the origin of the state; he lacks the political imagination to see how the state exists in history.

An absence of political imagination exhibits itself in a less benign sense. A state might discover and change its historical mission with inconceivable results. Nazi Germany succeeded Weimar Germany, and in addition to geographical expansion, it promoted the extermination of undesirables within the state. When Schmitt urged the preservation of an unspecified homogeneity, and if necessary, the eradication of heterogeneity, as the basis of democracy, he should have realized that such statements could be and were taken at face value. He built part of the intellectual apparatus for the Nazi state; his concept of the political became a rallying cry for a people who believed they were surrounded on all sides by enemies hell-bent on their destruction. He therefore is complicit in the death of millions during the Second World War. A possible lesson that can be learned from Schmitt's theory of radical democracy is that political ideas can have drastic historical consequences. Another is that theories of politics which begin with a pessimistic conception of human nature usually end up confirming these assumptions once they are put in practice.

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I list here only the writings that have been of use in the making of this master's thesis. This bibliography is by no means a complete record of all the works and sources I have consulted. It indicates the substance and range of reading upon which I have formed my ideas, and I intend it to serve as a convenience for those who wish to pursue the study of Carl Schmitt.

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