

Demystifying Schmitt:

Outlining Schmitt's Use of Representation in his Broader Political Theory

Abstract

This paper explores the concept of representation in the work of Carl Schmitt. Schmitt generally understands politics in a manner similar to a 'conservative' Rousseau: the *volonté générale* (general will) has epistemic priority to the *volonté des tous* (will of the all) in determining how political decisions, those decisions on behalf of and affecting the community, should be taken. This *volonté générale* constitutes a political community by embodying the basic value(s) or identity of its constituents, rationalizing why they would allow an authoritative institution to determine questions of value and life on their behalf, and determining to what end that institution acts. Any political community's is premised on this animating the 'machinery' that is the state. Yet the *volonté générale*, the very glue of the community, does not phenomenally exist and, as such, lacks agency. It is even probable that individuals would perceive their particular values to be more important politically. Without actualizing the *volonté générale*, the chaos of Behemoth – as nihilism/value pluralism and the state-of-nature-type strife that naturally follows from this – would be reintroduced. Schmitt identifies representation as “existential...to represent is to make an invisible being visible and present.” Schmitt identifies representing the *volonté générale* as citizens' duty: citizens, as friends, must embody and act according to the constitutional values of their community. In doing so, the essential condition for 'friendship', as communal value-harmony, is sustained and the naturally undesirable state of nature is avoided. In this picture, representation is central to politics and locating it in the work of Schmitt is important for providing a more coherent picture of Schmitt's thought.

Introduction

Although Carl Schmitt has received a good deal of attention lately, his treatment of the concept of representation has gone under theorized. This is not particularly surprising, given that it figures at most in the background of his more significant discussions. It is common to find works dealing with Schmitt's various critiques, in particular his critique of liberalism, the rule of law, “technology,” and indecision, not to mention concepts such as political theology, the “concept of the political” and sovereignty – which, when treated in isolation, appear have such malleability as to apply to everything from literary criticism discussions of animal consciousness to history of the theological contemplations on the nature of miracles. It is less common to find works that attempt to construct a positive, holistic political-legal theory out of Schmitt's writings, although even here there have been significant ones. However, there is a gap in such reconstructions of Schmitt: representation. With the recent translation of his *Constitutional Theory*, as well as of some other significant texts such as *Leviathan in the State Theory of Hobbes*, discussing representation has become an easier task.

A basic question of political theory revolves around the issue of constitution: how is a legitimate political and legal order founded and maintained? This question has important derivatives as well: what is 'legitimacy', who orchestrates the founding, why and how was the founder authorized, what exactly is founded, why found at all, how does the order operate, etc. Schmitt's various writings seem to deal with the derivatives of this fundamental question – but the central question, serving to unify them, has not. His *Constitutional Theory* deals with exactly this question.

This paper will attempt to provide grounds in order to understand how Schmitt goes about solving this question – taking its cue from what Peter Caldwell identifies as 'the metaphysics of existence.'¹ He describes the 'metaphysics of existence' as that a willing people is presupposed as prior to the constitution, its constitution, and is asserted as prior to any political form because it must legitimate and continue to legitimate any political form of which it is a constituent. From this, further questions stem: How can a non-existent people be presupposed? How can disparate individuals become a unity? How do they come about ex post facto? Who presupposes this people anyway and how do the people, after being constituted, consider their actions legitimate? How does a legitimate foundation occur and how is it exactly that Schmitt understands this in the broader context of normalized politics and law? While many of the commentators on Schmitt have been correct in diagnosing how Schmitt discussing the limits of enlightenment and rationalist solutions, in particular the liberal rule of law, to provide a satisfying solution in the representation of a unity, it is unclear what positive solution Schmitt provides without getting lost in the vagaries of his esoteric language (pointing to the "political" or secularized theological concepts such as sovereignty will not complete the picture – and it can be completed!).

The answer to the above lies in understanding what representation means to Carl Schmitt. Representation is certainly not a philosopher's stone with which to unlock Schmitt's theory alone. However, when it is taken in conjunction with other well-developed aspects of his work, representation does illuminate a coherent thread throughout his work that allows a better understanding of his thought. Moreover, through the developments that come out of this paper, it should become clear that Schmitt is not quite the radical thinker that he has been made out to be. To the contrary, a secondary goal in discussing the relevance and centrality of representation to Schmitt's broader theoretical goals will be to show that he is a particularly conservative thinker who stands well within the long tradition of conservative thought. In fact, to compare and hopefully illustrate more fully this discussion, his major concepts and discussions will be contrasted with those of other important conservative thinkers, namely Aristotle, Hobbes, Rousseau, and Sieyès.

To discuss the solution to the problem outlined above, this paper will begin by outlining the fundamental problem that marks the point of departure. Next, it will elaborate what representation is for Schmitt. Then it will contextualize the role of representation in his theory of

¹ Caldwell, Peter. *Popular Sovereignty and the Crisis of German Constitutional Law*. (Durham: Duke University Press, 1997), 101.

politics, sovereignty, and the state. Then it will attempt to indicate that it is because of Schmitt's representation that the charismatic dictator is held to be the ideal solution to the problems of the modern state. Finally it will offer some possible shortcomings that his approach suffers by virtue of its take on representation.

John McCormick has discussed the role that representation has to play in Schmitt's theory already. However, his discussion is always made with reference to Catholicism. McCormick is correct when he concludes that Schmitt finds Catholic representation is legitimate because it avoids the mechanical, superficial politics by representing the 'essence' of a people, a trap that liberal institutions fall into.² But this analysis is incomplete. The questions of 'why the Catholic Church actually 'represents' and why liberalism fails precisely because it does not even understand what it would mean to represent' and 'why Catholic representation is a virtue at all' can be answered better and in a way to integrate this discussion more into his broader works – particularly not just to highlight Schmitt's rejection of liberalism but his positive contributions to political theory. Schmitt provides the tools to specify further what representation means, and McCormick's discussion can be pushed further by using them. It is the concept of representation generalized that matters for politics; the Catholic Church has been historically successful in understanding and actualizing representation. But the Catholic Church is not the only institution that can represent, according to Schmitt, it is merely illustrative of what true representation really is.³ The pope represents god and god's actual will by (ostensibly) embodying god, speaking on god's behalf on substantive issues, and deciding issues of the church as the agent authorized to act on god's behalf – but the will of god is something transcendent to the pope and which can never be completely contained in a real, tangible being.⁴ Understanding what it is about the pope's actions in embodying god is what Schmitt means when he appeals to the Roman Catholic Church as a representative institution. Liberalism, as Schmitt understands it, adopts either delegation or a severely perverted form of representation that of some "private" group's interests, rather than a transcendent entity (namely 'people'), as its mode of deliberation. As private interests are merely accumulated – the state is mechanized but incoherent. This is what results in its failure as a political form. Understanding what makes "Catholic" representation effective would provide a solution to the failure of liberalism.

To better understand what role representation plays in Schmitt's political theory, the term itself must be properly defined. Although more will be said below, it can be briefly put that Schmitt understands representation in a fashion that could derive from a conservative reading of Rousseau's *Du Contrat Social*, which is to say that what a representative aims to represent is the abstract *volonté générale* of the people he or she serves as an agent on behalf of. Schmitt himself alludes to the fact that parliament perhaps once served a proper representative role and alludes to

² McCormick, John P. *Carl Schmitt's Critique of Liberalism: Against Politics as Technology*. (New York: Cambridge University Press, 1997), 161 168-169, 188.

³ Schmitt, Carl. *Roman Catholicism and Political Form*. Trans. G. L. Ulmen. (Westport: Freenwood Press, 1996), 30-31

⁴ Schmitt, *Roman Catholicism*, 19.

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the possibility that, under different circumstances, it still could – but only insofar as it fulfills this representative function.⁵ The manner in which Catholicism represents is illustrative of the concept in Schmitt's thinking, but rebuilding Schmitt's political theory can only be completed by turning from the illustration to the concept itself.

In addition, Schmitt seems to be a 'methodological individualist'. Methodological individualism holds that "social phenomena must be explained by showing how they result from individual actions, which in turn must be explained through reference to the intentional states that motivate the individual actors"; this is neither motivated by a concern with individual atomism nor an attempt to reduce social phenomena to individual psychological functions, 'a social' is affirmed, but it is to guard against the fallacious postulation of a purpose without a purposive actor or inferring fallacies about the dynamics of collective action.⁶ This will come out more throughout the discussion – but this paper understands Schmitt to understand that institutions and reified entities, such as 'the state' and 'the people' do not have agency. This is bad metaphysics – and certainly one of which Schmitt would have been aware, having read Hobbes and Weber as carefully as he did. This may seem like a peculiar claim, but as the discussion progresses, it should become more clear that Schmitt does not attribute agency to anything but human beings.

The Problems Wrought by Modernity

Schmitt's point of departure seems to be from the problems modernity presents to classical political theory. Implicit in Schmitt's writings is the problem of the loss of transcendent authority, itself brought about by the epistemological advance of modern scientific method. A growing knowledge of causal relationships allows humanity simultaneously to understand and master phenomena and thereby realize that such mastery does not require supernatural power. The promulgation of this modern epistemological method has two interrelated results: the disenchantment of the world through progressive *rationalization* and the loss of political unity through individualism. Schmitt defines this as 'technologization.'

Despite his Catholic beliefs, Schmitt seems to take the problem of disenchantment very seriously. As humans increase our knowledge of 'scientific' facts, particularly causal laws, human life is increasingly robbed of objective transcendental meaning and authority while faith is pushed further into the realm of irrationality; moreover and simultaneously, the expansion of scientific knowledge results in increasing specialization when coupled with this annihilation of transcendent, unifying value results in plural irreconcilable value-spheres – warring gods – from which any individual must select one, knowing full well that there is nothing beyond his or her

⁵ Schmitt, Carl. *Constitutional Theory*. Trans./Ed. Jeffrey Seitzer. (Durham: Duke University Press, 2008), 334-335, 338; Schmitt, *Roman Catholicism*, 25.

⁶ Heath, Joseph. "Methodological Individualism." *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/methodological-individualism/>.

personal devotion to them to determine the legitimacy of its normative imperatives.⁷ That is, disenchantment does not annihilate the possibility of belief, but it does force it inwards by undermining external authority and erecting a fact-value divide.⁸ Once belief has been forced inward, it is pluralized democratically. Weber discusses his warring gods in a similar context – a completely individualistic source of valuation that cannot appeal to any transcendent authority.⁹ Value pluralism and nihilism are two sides of the same coin: there is nothing that compels one to believe in it by virtue of the undeniability of its reason, there is nothing to believe in on an objective level. All that remains is one's own affective conviction about some value sphere. Accordingly, subjectively, one finds oneself with a manifold of values among which one can choose freely – but they are all arbitrary values, merely a product of subjective discretion.

The most significant discussion of this derives from *The Concept of the Political*. In it, he discusses how the depoliticized world is one that has succumbed to nihilism – a world in which every nothing is matters and nothing is 'serious'.¹⁰ Politics here is intimately related to meaning, and liberalism, the antithesis of politics in many ways including in its mechanic-scientific epistemological basis. The liberal depoliticized world, for Schmitt, is a world wherein great accomplishments are indeed possible (perhaps it is even a "very interesting" world), but a world that comes at the cost of meaning in human life altogether.¹¹ The value antitheses that he raises implicate the various "demons" that one can opt to serve; they become political when the thesis-antithesis attains an existential quality.¹² The phenomenon of instrumental rationalization is related to this discussion. Despite rendering everything calculable and predictable, rationalization ultimately obscures ultimate meaning – and what has been rationalized becomes a machine running for its own sake.¹³ The very distinction Schmitt raises, in fact, in *Roman Catholicism* is between the nihilistic value pluralism that "economic-technical" thinking compels in its complete disregard for substantive ends writ large¹⁴ and how Roman Catholicism provides not only the basis by which to orient toward substantive value, rather than allowing itself to be

⁷ Weber, Max. "Science as a Vocation." In *From Max Weber: Essays in Sociology*. Trans. H. H. Gerth & C. Wright Mills. (New York City: Oxford University Press, 1959), 152-153.

⁸ Weber, Max. "Religious Rejections of the World and their Directions." In *From Max Weber: Essays in Sociology*. Trans. H. H. Gerth & C. Wright Mills. (New York City: Oxford University Press, 1959), 328.

⁹ Weber, "Science as a Vocation." 148; Weber, Max. "Between Two Laws" *Political Writings*. (Cambridge: Cambridge University Press, 1999), 99.

¹⁰ Schmitt, Carl. *The Concept of the Political*. Trans./Ed. George Schwab. (Chicago, The University of Chicago Press, 1996), 35-36; Schmitt, *Roman Catholicism*, 99; Cf. Meier, Heinrich. *Carl Schmitt & Leo Strauss: The Hidden Dialogue*. Trans. J. Harvey Lomax. (Chicago: University of Chicago Press, 1995), 40-42, 44-45.

¹¹ Schmitt, *The Concept of the Political*, 35; Bielefeldt, Heiner. "Carl Schmitt's Critique of Liberalism: Systematic Reconstruction and Countercriticism." In *Law as Politics: Carl Schmitt's Critique of Liberalism*. Ed. David Dyzenhaus. (Durham: Duke University Press, 1998), 24-25.

¹² Schmitt, *The Concept of the Political*, 23-28.

¹³ Schmitt, *Roman Catholicism*, 15-17.

¹⁴ Not to mention how "liberals" – here the proto-*homo economicus* that developed in the early Protestants – seek to dominate rather than cooperate with nature (Schmitt, *Roman Catholicism*, 13).

overruled by instrumental value, but it also provides an overarching value scheme that encompasses all of the plural value antitheses.¹⁵

The above points will be discussed further below. For now, it is enough to indicate that Schmitt did have a preoccupation about the effects of rationalization; the pervasiveness of nihilism and value-pluralism are alarming. A question that always seems to hover in the background of Schmitt's is 'Can politics create value in a world in which transcendental value and authority have fallen away and pluralized?' Schmitt discusses politics to investigate how one can reinsert value in the world. And he does so in the context of an apolitical liberalism that seems to undermine politics altogether.

Related to disenchantment is the simultaneous rise of liberal individualism and popular sovereignty.¹⁶ Although these are distinct phenomena, Schmitt does note the relation between the two: democracy leads to relativism when it is 'unprincipled' (i.e. when it is conceived according to 'liberal metaphysics').¹⁷ Naturalistic analyses of human nature, coupled with Enlightenment metaphysical notions such as human dignity, indicate at least some basic human equality. Schmitt is clear that no state has been able to withstand the extension of popular sovereignty in the form of democratic ideas and institutions; in other words, the notion of some basic level of equality among a people is pervasive.¹⁸ Natural and metaphysical assertions of equality coupled with a loss of a legitimate transcendent authority who can assert value entail that individuals' plural value systems are equally heterarchical and objectively arbitrary.

When every individual can determine basic questions of ontology and metaphysics, namely what is and what is valuable, according to his or her own discretion (or demon), the resulting value pluralism is tantamount to chaos. With this value pluralism, a pre-state condition of insecurity prevails because pluralism on these substantive and fundamental issues is divisive and drives their actions in myriad directions. In the state of nature, moral dilemmas – meaning conflicting and irreconcilable sets of values exist – emerge from this epistemological uncertainty: everyone claims that right and truth is on his side and there is no objective way to rank them.¹⁹

Schmitt has a particular reading of Hobbes and ties rationalization into his allegorical Behemoth. Behemoth is defined by Hobbes as the state of nature or civil war in which there is no sovereign authority who can dictate what is. Behemoth is a state of being lacking any clear and shared sense of what constitutes truth and justice, and accordingly implies value relativism on an

¹⁵ Schmitt, *Roman Catholicism*, 15, 19, 25, 30.

¹⁶ Schmitt, Carl. *The Crisis of Parliamentary Democracy*. Trans. Ellen Kennedy. (Cambridge: The MIT Press, 2000), 2, 32.

¹⁷ Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Trans./Ed. George Schwab. (Chicago, The University of Chicago Press, 2005), 44.

¹⁸ Schmitt, *The Crisis of Parliamentary Democracy*, 22, 24, 25, 26.

¹⁹ Schmitt, Carl. *The Leviathan in the State Theory of Hobbes: Meaning and Failure of a Political Symbol*. Trans. George Schwab and Elfa Hilfstein. (Chicago, The University of Chicago Press, 2008), 45.

individual level.²⁰ Individuals in the state of nature are left to their own devices to construct an account of what is and meaning about the world.²¹ And there can be no injustice in the state of nature because there is nothing. In other words, in the state of nature everything is justified and no one is just, because there is no basis to determine which account of justice is correct and everyone will, individually, claim to have right and truth.²² There is no coordinated, coherent view about a set of values in any temporal-spatial domain. Without coherent, non-contradictory law issuing from a singular superordinate voice, there can be no order. Behemoth – the absence of the state – is marked by individuals in a state of continual fear and danger of violent death whose lives are solitary, poor, nasty, brutish, and short.²³ But beyond this, Behemoth is a state of confusion, nihilism, and value-pluralism.²⁴ Behemoth is ultimately sheer chaos. Schmitt, like Hobbes, sees nothing desirable about this state of being and, accordingly, Behemoth should be mitigated at any cost.

The State as Solution?

‘Leviathan’ is the appropriate solution to the state of nature chaos in Behemoth. Schmitt says of Hobbes “the terror of the state of nature drives anguished individuals to come together; their fear rises to an extreme; a spark of reason (ratio) flashes, and suddenly there stands in front of them a new god”²⁵ The secular Leviathan is an entity endowed with its own creation-myth: in the beginning, there was chaos and nothing (notably absent are meaning, justice, law, and security); then, ex nihilo, the sovereign comes into visible being and fixes value, out of which arises justice, law, and security.²⁶ The sovereign’s arbitrary decision fixes the cosmos. This god is, however, a *secular* god: its omnipotence is not divine but the product of human agency.²⁷ And although Leviathan is the most powerful temporal being and is able to keep all other being in check, because it is human artifice it is a mortal god.²⁸ Its supremacy is constrained by its very nature.

The allegorical Leviathan is the most powerful institution on earth, ‘slaying’ Behemoth. State is fundamental in Schmitt’s ‘modern’ reading of Hobbes’ allegory of Leviathan. In modernity, like most institutions, the state has been rationalized. The rationalized state is an institution that has the ability to command and the ability to enforce through a monopoly of authorized, legitimate

²⁰ Schmitt, *The Leviathan in the State Theory of Hobbes*, 46-47.

²¹ Williams, Michael C. *The Realist Tradition and the Limits of International Relations*. (Cambridge: Cambridge University Press, 2005), 24, 39.

²² Schmitt, *The Leviathan in the State Theory of Hobbes*, 45-48.

²³ Schmitt, *The Leviathan in the State Theory of Hobbes*, 21, 31, 36.

²⁴ Williams, *The Realist Tradition*, 24,

²⁵ Schmitt, *The Leviathan in the State Theory of Hobbes*, 31.

²⁶ Schmitt, Carl. *On the Three Types of Juristic Thought*. Trans. Joseph W. Bendersky. (Westport: Praeger Publishers, 2004), 62.

²⁷ Schmitt, *The Leviathan in the State Theory of Hobbes*, 33.

²⁸ Schmitt, *The Leviathan in the State Theory of Hobbes*, 22.

power.²⁹ The state is “a means of compulsory psychological motivation and calculable functioning that can serve different aims and contradictory contents” – “state is a legally calculable functioning compulsory system.”³⁰ The state compels order through the exercise of power or the threat of violence: discordant individuals can be forced into concord – pluralism is overcome, at least superficially, by compelled coordination. Moreover, Schmitt recognizes that ideas and distinctions are weapons of indirect power: the ability to define and state *what is* and how it is gives the state power far beyond just the life and death of its constituents.³¹ The dictates of the state – issued as laws – *define* what value system comprises justice and truth for a state’s constituents, making it clear that there is a hierarchy of value and in what way individuals are to go about fulfilling them as well as providing a clear authority in cases of confusion. It also makes conflict due to opaqueness impossible. The state always has a solution to this, either through its dictates already issued or its permanent authority to arbitrate as new matters arise. And dispute is not an issue because the state can simply compel its constituents through psychological or physical force.³²

The problem of the loss of transcendent authority that science’s effect of disenchantment and its corollary increase in specialization imply is not necessarily debilitating for meaningful human life. The state can bring those individuals within its spatial domain out of the chaos and civil war of Behemoth by coordinating them through the threat of force. In conceiving of the state in this manner, Schmitt’s definition tacitly elides with Weber’s infamous definition of the state. State is defined by Weber in terms of its means – namely physical violence.³³ ‘State’ serves as secular substitute for transcendent power and authority. But in this picture as a rationalized entity, the state has only instrumental value and lacks both direction and agency. Schmitt needs to add more to his discussion to drive individuals out of Behemoth.

The Neutral State and the Concept of the Political

²⁹ Böckenförde, Ernst-Wolfgang. “The Concept of the Political: A Key to Understanding Carl Schmitt’s Constitutional Theory.” In *Law as Politics: Carl Schmitt’s Critique of Liberalism*. Ed. David Dyzenhaus. (Durham: Duke University Press, 1998), 39.

³⁰ Schmitt, *The Leviathan in the State Theory of Hobbes*, 68.

³¹ Schmitt, *The Leviathan in the State Theory of Hobbes*, 18, 85. Cf. Hobbes, Thomas. *Leviathan*. (Indianapolis: Hackett Publishing Company, Inc., 1994), 16-20; Hobbes, Thomas. *De Cive*. 262-263; Cf. Williams, *The Realist Tradition*, 31-32.

³² Cf. Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Trans. William Rehg. (Cambridge: The MIT Press, 1996), 115-116.

³³ Weber, Max. “Politics as a Vocation.” In *From Max Weber: Essays in Sociology*. Trans. H. H. Gerth & C. Wright Mills. (New York City: Oxford University Press, 1959), 78; Schmitt’s understanding of state also seems to elide with Weber’s infamous definition of the state as “a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory. Note that ‘territory’ is one of the characteristics of the state...The state is considered to be the sole source of the ‘right’ to use violence”, specifically in those essential terms of a) monopoly of the legitimate use of force, b) given territory, c) human community, and d) successfully.

The opening sentence in *The Concept of the Political* reads “the concept of the state presupposes the concept of the political.”³⁴ Schmitt would later elaborate that because ‘state’ cannot be defined a priori in terms of its ends, an actual state may hold virtually any substantive end.³⁵ This can be read to mean that the concept ‘state’ has no inherent end. Again, Schmitt’s understanding of state elides with Weber’s. Weber famously said that to define ‘state’ according to its ends would therefore be to adopt a normative, rather than sociological (empirical), definition of state.³⁶ Schmitt seems to agree with Weber’s conclusion, if not also the reasoning behind it, when he says, “the machine, as all of technology, is independent of every political goal and conviction and assumes a value-and-truth neutrality of a technical instrument”³⁷ Schmitt conceives of the state as a technically neutral instrument, completely lacking in agency, and pliable according to the will of whatever agent wields it. As a neutral instrument, state lacks moral accountability and responsibility.³⁸ It is an independent and versatile instrument for the sake of its human inhabitants.³⁹

Schmitt opens his *Constitutional Theory* complementing the concept of state with that of ‘constitution.’ Historically, a constitution has not merely been the fundamental, often written series of laws and statutes that define the quotidian legal mechanisms of a political unity. Schmitt points to several criteria, which are all different aspects of the same underlying view, with which to understand the conceptual significance of the constitution. First, a constitution is a set of written laws; Schmitt does not deny that the written constitution has always had a role to play in state.⁴⁰ In fact, state as nothing more than an institution is exactly that; the explicit written laws, including the written constitution, provide the basis for the institutional operations of the positive, rationalized state. Thus, constitution as written constitution contributes to the sense of state as a rationalized institution.

But Schmitt cautions against limiting how one understands constitution to merely this written sense. The de facto existence of a written constitution already raises a question about its origin and its legitimacy – and to answer this question *positively* would be misleading or even sophistry. Law codified in and by the constitution is legitimate for reasons beyond the fact that they were the product of positive enactment by some political body. To claim that it is legitimate because an institution positively enacted those laws (e.g. parliament) presupposes the legitimacy of that very institution doing the enacting. But this institution is itself a product of the constitution. Thus, to make an argument about a law’s legitimacy that rests on its legality is

³⁴ Schmitt, *The Concept of the Political*, 19.

³⁵ Schmitt, *The Leviathan in the State Theory of Hobbes*, 43-44.

³⁶ Weber, “Politics as a Vocation.”, 77-78.

³⁷ Schmitt, *The Leviathan in the State Theory of Hobbes*, 42. For the relationship between Schmitt’s understanding of “state” to Weber’s famous definition, see Böckenförde 39, 42-43 and Kennedy, Ellen. “*Hostis Not Inimicus*: Toward a Theory of the Public in the Work of Carl Schmitt.” In *Law as Politics: Carl Schmitt’s Critique of Liberalism*. Ed. David Dyzenhaus. (Durham: Duke University Press, 1998), 99.

³⁸ Schmitt, *The Leviathan in the State Theory of Hobbes*, 50.

³⁹ “The *protego ergo obligo* is the *cogito ergo sum* of the state” Schmitt, *The Concept of the Political*, 52.

⁴⁰ Schmitt, *Constitutional Theory*, 65-66, 68-69.

ultimately to enter into a circular argument. To pursue this argument is problematic, both historically and logically. From this circularity, Schmitt moves to account for the legitimacy of a written constitution by looking to its source exactly where positivism falters – by trying to provide a elementary framework accounting for its logical and historical origins in five additional definitions.

The second definition of constitution Schmitt raises provides a start to the fuller sense of constitution – which will serve as the conceptual engine to understand how Behemoth can be averted. A constitution must also be some value that transcends the written constitution and provides its institutional legitimacy; this value is akin to Kelsen’s *Grundnorm*: the validity of a positive legal document cannot be explained by its factual existence but presupposes the validity of the process by which it was created; in other words a norm cannot be validated by its mere facticity because one cannot logically derive norms from facts.⁴¹ But Kelsen’s *Grundnorm* is merely a transcendental-logical deduction and constitutions are factual, historical entities. Kelsen does not escape the trap of positivism’s fact/value divide because the *Grundnorm* is derived from tangible phenomena, whereas the relationship should move in the opposite direction.⁴² The underlying normative basis of a rationalized state can be derived, however, and the third definition Schmitt provides points us in that direction. The constitution was and remains the product of a founding will, not unlike Rousseau’s *volonté générale*.⁴³ This will asserts the existential character of the political unity. A constitution cannot simply come into being on its own but presupposes some agent who materializes it. This agent, presumably, is convinced of the legitimacy of whatever substantive values the material constitution purports to embody.

However, a political unity is a significantly broader institution than merely whatever principles underlie its constitution; constitution spans beyond the founder. Those foundational values must retain their validity over time from the perspective of the constituents of the political body, who themselves are in a constant state of change. Constitution also signifies the hermeneutic process by which the values of a political body are habituated into its constituents and how they come to perceive these values as legitimate – namely how the state is and becomes itself, which is Schmitt’s fourth definition of a constitution.⁴⁴ The values in a constitution are not a priori; the constituents of a state must be internally obliged by these values, to see them as legitimate for their own sake if they are to be oriented by them.⁴⁵ From this internalization, the constitution of the state is perpetuated in the daily practice and actions, even the lives, of its constituents. The fifth definition states that “the constitution is the way in which a state is formed” – that the

⁴¹ Schmitt, *Constitutional Theory*, 62-64; Cf. Kelsen, Hans. *The Pure Theory of Law*. Trans. Max Knight. (Berkeley: University of California Press, 1970), 198-208, 323-324, 328.

⁴² Paulson, Stanley L. “The Neo-Kantian Dimension of Kelsen’s Pure Theory of Law.” *Oxford Journal of Legal Studies*. (1992, 12.3), 323, 326; Cf. Grayling, A. C. “Transcendental Arguments.” *A Companion to Epistemology*. Eds. Jonathan Dancy and Ernest Sosa. (Cambridge: Blackwell Publishers, 1992), 506.

⁴³ Schmitt, *Constitutional Theory*, 64-65.

⁴⁴ Schmitt, *Constitutional Theory*, 61-62.

⁴⁵ Cf. Hart, H.L.A. *The Concept of Law*. (London: Oxford University Press, 1961), 55, 220.

constitution is the essence of the state.⁴⁶ It is vital for the values of a constitution to be hermeneutically constructed in the minds of its constituents as without the constitution the unity of a political body, no matter how minimal, would collapse into factionalism – the constitution is what serves to make the state into a unity. No matter how minimal its values are, the substantive values of constitute a basis for what one might call an overlapping consensus.

Finally, constitution means the normative, existential principle(s) that define the *raison d'être* and *telos* of a political unity.⁴⁷ This definition of constitution is explicitly Aristotelian: “the concrete collective condition of political unity and social order of a particular state...the constitution is its soul...a component of this order is its living goal (τέλος).”⁴⁸ Aristotle has a narrow sense of what *telos* means. In his *Metaphysics*, Aristotle defines *telos* as “that for which a thing is done”⁴⁹; the *telos* is the goal, end, or purpose of a process and whatever it is that has a *telos* moves toward that end.⁵⁰ This indicates that there is something lying beneath the surface of any political body, particularly it’s legal code, with which that political body cannot part with as what sort of behavior can be expected of it. Bearing in mind the rationalization of the state, Schmitt’s appropriation of Aristotle can become more significant. Any state is an institution applied toward some definite reason; in this sense, the normative validity of the state is predicated on its actual and active efforts toward the realization and maintenance of that teleological goal, whatever it may be. Schmitt equivocates ‘the political’ and ‘*telos*’ as defining that soul of the state. Both words shed a different light on the same underlying notion. It is constitution, in this broad sense articulated by the above six definitions, that defines the substantive value that the state is instrumentalized to obtain. Accordingly, the positive written laws of the state should be established to suit and complement the constitution in its broad sense.⁵¹

From this broad sense of constitution, the definition of state can be refined. The instrumental rationale of the state is more than just self-preservation, in a narrow sense as not denying, but the preservation of its *specific type of existence*.⁵² This account of constitution, therefore, entails that there must be some unifying principle underlying any real state, otherwise that entity cannot be state: it is instead Behemoth again because it cannot overcome the value pluralism that results in dissociating chaos, confusion, and fear. State is for the sake of this principle.

⁴⁶ Schmitt, *Constitutional Theory*, 60-61.

⁴⁷ Schmitt, *Constitutional Theory*, 59-60.

⁴⁸ Schmitt, *Constitutional Theory*, 60; Cf. Schmitt, *Constitutional Theory*, 170; Aristotle. *The Politics*. Trans. C.D.C. Reeve. (Indianapolis: Hackett Publishing Company, 1998), 1288b23-1289a21.

⁴⁹ Aristotle. *Metaphysics*. 194b33.

⁵⁰ Cohen, S. Marc. “Aristotle’s *Metaphysics*.” *Stanford Encyclopedia of Philosophy*. (2008).

<http://plato.stanford.edu/entries/aristotle-metaphysics/> Cf. Falcon, Andrea. “Aristotle on Causality.” *Stanford Encyclopedia of Philosophy*. (2008). <http://plato.stanford.edu/entries/aristotle-causality/>

⁵¹ Aristotle, *The Politics*, 1289a11-20.

⁵² Schmitt, *Constitutional Theory*, 77.

From the concept of constitution, one can turn back to the concept of the political. Schmitt defines the political in a near identical manner to constitution, when constitution is taken in its broad sense. But his discussion of the political also moves in a very different direction. Thus, the two concepts seem to be different facets of the same phenomenon. In discussing the political, his definition of the state presupposes a unified legal system, which must be complemented factual grounds against dissociation and a positive association direction.⁵³ Here, the political is also the substantive end denoting the *raison d'être* of a particular state and providing grounds against its dissociation. Schmitt defines political concepts as secularized theological concepts.⁵⁴ Ergo, politicized values behave like secularized theological values, having a substantive metaphysical basis, an existential intensity, and an element of faith (of one's believing in whichever 'demon' it is that one has opted to serve), even if these lack a specifically theological quality.⁵⁵ Politics, in this definition, evokes the same sensation that genuine religiosity will in individuals: it is an intense, associative feeling.⁵⁶ It is associative because it involves individuals living together purposively, coordinated by shared beliefs in how things are and how things ought to be. The intensity of affection one experiences about politicized phenomena drives one naturally toward association or dissociation.⁵⁷ Thus, although for both Weber and Schmitt the legitimacy of a value is indicated by an adherent's passionate devotion to a cause, characterized best by Luther's disposition of "Here I stand, I can do no other."⁵⁸ For Schmitt, however, this attitude of passionate devotion can only take place in the context of a group because politics is about the community. Accordingly, Luther's quotation could conceivably be reworded to say, "Here we stand, we can do no other."⁵⁹

Schmitt defines politicized values as *existential* for the community.⁶⁰ In addition, he has called them "ontological-existential", a phrase implying questions of both 'what is?' and 'what is one and what does one mean?' within that.⁶¹ Like the existentialists' response to the disenchantment of the world, one cannot objectively deduce *who* one is or what values one ought to follow; these simply consist in those values that one perceives or feels oneself to be most fundamentally and most 'authentically' – which are ultimately publically held and derive from the norms tradition

⁵³ Schmitt, *Constitutional Theory*, 94-95; Schmitt, *The Concept of the Political*, 26-27.

⁵⁴ Schmitt, Carl. *Political Theology: Four Chapters on the Concept of Sovereignty*. Trans./Ed. George Schwab. (Chicago, The University of Chicago Press, 2005), 36.

⁵⁵ Schmitt, *Political Romanticism*, 23, 99; Schmitt, *Political Theology*, 44, 64- 65; Cf. Meier 62, 74.

⁵⁶ Schmitt, *The Concept of the Political*, 26; It is worth bearing in mind that Schmitt suggests, still within the Weberian (and pseudo-existentialist) vein, that there are no objective values and no objective authority; an ultimately irrational commitment to a value is all that one can have. There are no rational criteria by which to determine when something is politicized.

⁵⁷ Schmitt, *The Concept of the Political*, 38.

⁵⁸ Cf. Weber, "Politics as a Vocation", 127.

⁵⁹ However, and importantly, despite his affinity with Weber in this regard, Schmitt's understanding of 'passionate devotion' should be conceived of in terms of Weber's ethics of ultimate ends because of politics' *existential* quality. See Scheuerman, William. *Carl Schmitt: The End of Law*. (New York City: Rowman & Littlefield Publishers, 1999), 47.

⁶⁰ Schmitt, *The Concept of the Political*, 27, 33.

⁶¹ Meier, 55 (with reference to the 1933 edition of Schmitt's *The Concept of the Political*).

or society in which I find myself.⁶² One simply is whoever one feels oneself to be on a fundamental level which can be investigated no further. This has a certain affinity with the sense of internal obligation to these values that cannot be further explained: eventually one exhausts justifications, reaches bedrock, and can only paraphrase Luther, saying ‘this is what I must do.’⁶³ This is to say, one ultimately reaches a point where they can no longer justify or rationalize a belief but must simply accept it on faith – in this regard political values have a quality similar to theological values.⁶⁴ To say that politicized values are existential, means they represents those qualities of existence that are so determinative of one’s existence/identity that to be deprived of them would render life not worth living; politics gives life meaning and direction in a disenchanted world.⁶⁵ But because the world has been disenchanted, whatever value is posited remains ultimately utterly arbitrary. To be politicized or to become existential entails that some value becomes so fundamental for the identity of a political body, namely constitutive of the individuals within that body but also constitutive of that body itself, that this sense cannot be divorced from the life of the political body itself. A meaningless existence is tantamount to death in this picture.

From this discussion of the political, the meaning of the reference above to the state’s role in ‘preserving a specific type of existence’ can be elaborated upon: the state is the instrument for the sake of self-defense in its robust existential sense. The state is the institution which protects the existence, integrity, and security of the constitution, most fundamentally characterized by that concrete teleological, existential concept.⁶⁶ But the state itself is merely instrumental, neutral and malleable toward whatever end is posited. The value of this instrument is only how functional it is in realizing this end. Despite having been rationalized, the state is uniquely positioned to contribute to its constituents leading a meaningful existence and keeping Behemoth at bay. In Schmitt’s reading, the institution state is complemented by the underlying political-existential basis (as body and soul) constitute Leviathan.

Insofar as a state is merely for the sake of ending value pluralism by institutionalizing some constitutive value, the state and its constitution must possess at least some minimum authority or validity in the eyes of its constituents. So this definition of state and its underlying telos only raises further questions: ‘from where do political concepts arise?’, ‘how are they adopted?’, ‘how is makes them legitimate?’, and finally, ‘who exactly applies the instrument of the state toward whatever political value has been adopted?’ Although the institution state can positively assert a telos, this does not have any implication of its normative legitimacy. These questions are all

⁶² Cf. Crowell, Steve. “Existentialism.” *Stanford Encyclopedia of Philosophy*. (2010).

<http://plato.stanford.edu/entries/existentialism/>

⁶³ Cf. Wittgenstein, Ludwig. *Philosophical Investigations*. Trans. G.E.M. Anscombe. (Malden: Blackwell, 2001), §217 (72e).

⁶⁴ Meier, 42.

⁶⁵ Schmitt, *The Concept of the Political*, 65.

⁶⁶ Schmitt, *Constitutional Theory*, 76-77.

interrelated and answering them is essential for further understanding exactly what it is that Schmitt is doing here.

The Problem of Democratic Legitimacy and the Political

As an institution without agency, the state needs to have real individuals acting for its sake. And to do this, a state needs to possess a significant amount of legitimacy in their eyes if they are to act on its behalf. Yet, as a rationalized institution, state cannot claim anything more than the ability to affect violence on its constituents. However, when complemented with a constitution, in the broad sense, state would partake in the normative validity of whatever principles the constitution embodies. In terms of legitimacy, therefore, state and constitution are conceptually unified, insofar as the state can reasonably purport to be an instrument of its constitution.

Legitimacy entails that the constituents of a state must feel subjectively obligated to that state – that it is more than just a power relationship.⁶⁷ Schmitt identifies a shift since the 19th century, “no state in the Western European cultural world withstood the extension of democratic ideas and institutions.”⁶⁸ When the identity of ruler and ruled merged as democratic consciousness arose and democratic legitimacy came about, the “traditional” forms of legitimacy, such as monarchical legitimacy, lost their validity.⁶⁹ It is the case now that state and its underling constitution must possess democratic legitimacy. Schmitt makes no claim about objective legitimacy – the world is disenchanted. Even if this were not the case, as long as the a sufficient amount of the constituency do not themselves believe to be under a legitimacy authority it does not matter what degree of objective legitimacy a state possesses. A general democratic will united against a political form will undermine it.⁷⁰ There is legitimacy where [sovereign] power resides in the *pouvoir constituant* of the people.⁷¹

The essence of democracy, and democratic legitimacy, lies in that the valid political decisions are contingent on collective agreement on what regulates the collective, meaning an *identity obtains between the rulers and ruled*.⁷² In fact, conceptually there is really no longer a distinct ruler and ruled, the people is simultaneously both, resulting in is a perfect identity of the state and sovereignty.⁷³ In being identical, every individual within the political body is considered to be equal to every other individual on some substantive level: identity and equality are synonyms. Equality means that the constituents of a democracy can be conceived of as homogeneous on this substantive political level. So, although many tangible and ideological inequalities pervade the

⁶⁷ Weber, Max. *Economy and Society*. Eds. Guenther Roth and Claus Wittich. (Berkeley: University of California Press, 1978), 34.

⁶⁸ Schmitt, *The Crisis of Parliamentary Democracy*, 22.

⁶⁹ Schmitt, *Political Theology*, 51.

⁷⁰ Schmitt, *Constitutional Theory*, 131.

⁷¹ Schmitt, *Political Theology*, 51.

⁷² Schmitt, *The Crisis of Parliamentary Democracy*, 14, 26.

⁷³ Schmitt, *Political Theology*, 49-50.

body politic, such as different religions, different socio-economic classes, different ethnicities, different secular political values, and even different languages, a state can be conceived of as unified under such a principle.

However, equality is not unprincipled. Identity entails possession of principled traits that are distinguishing if they are to be meaningful. Membership in a community is premised on whether one possesses some tangible qualities and thus merits that membership and the benefits it entails. “Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second – if the need arises – elimination or eradication of heterogeneity.”⁷⁴ Being granted privileges simply by virtue of one’s existence is completely unprincipled and, as such, is nihilistic.⁷⁵ Insofar as a community is teleologically oriented, it possesses substantive conceptual criteria by which to determine membership and the benefits it accords.⁷⁶ Schmitt has already discussed how criteria of value can be virtually anything: what matters is that the community is affectively compelled by it. Justice within that community obtains when equality is had among its members – and justice obtains in democracy when it is had among equals. The extent to which members of a community share certain core values also reflects the extent to which justice can be had in the politic.⁷⁷ Membership in a democratic political community is just, for Schmitt, when some identity trait that distinguishes constituents of a political body is shared and exclusive to that community.

Schmitt famously defines the corollary of shared political identity as ‘friendship’ in *The Concept of the Political*.⁷⁸ The legitimacy of a democratic community hinges upon this notion of friendship. Importantly, Schmitt’s friendship bears significant resemblance to Aristotelian friendship from the *Nicomachean Ethics*, which may shed light on Schmitt’s own discussion of it. For Aristotle, friendship is what binds a political community together, reducing the problem of factionalism.⁷⁹ It occurs among individuals who identify over certain values, and these warrant their membership within a political community.⁸⁰ No citizen belongs to himself *in se*. By virtue of the political community’s role in constituting the identity of the individual citizen and providing meaning to his or her life, every individual within a community is indebted to that

⁷⁴ Schmitt, *The Crisis of Parliamentary Democracy*, 9.

⁷⁵ Schmitt, *The Crisis of Parliamentary Democracy*, 10-13.

⁷⁶ Schmitt, *The Crisis of Parliamentary Democracy*, 89. Politics 1280a: “For all men cling to justice of some kind, but their conceptions are imperfect and they do not express the whole idea. For example, justice is thought by them to be, and is, equality, not, however, for all, but only for equals. And inequality is thought to be, and is, justice; neither is this for all, but only for unequals.”

⁷⁷ Schmitt, *The Crisis of Parliamentary Democracy*, 9-11, 16 ; Cf. Aristotle. *Nicomachean Ethics*. Trans. Terence Irwin. (Indianapolis: Hackett Publishing Company, 1985), 1159b30; Schmitt, *Constitutional Theory*, 62.

⁷⁸ It is important to bear in mind the importance of the criterion of enemy for this (there can be no friends without enemies for Schmitt). For the purposes of outlining the positive or associative aspect of this notion of identity, only friendship will be dealt with here.

⁷⁹ Aristotle, *Nicomachean Ethics*, 1155a24; Aristotle. *The Politics*. Trans. C.D.C. Reeve. (Indianapolis: Hackett Publishing Company, 1998), 1262b7

⁸⁰ Aristotle, *Nicomachean Ethics*, 1156b20, 1159b3

community on a basic level for making them who they are.⁸¹ Political friendships are for the sake of the pursuit of shared goals – for Aristotle this is virtue, while for Schmitt (preoccupied with disenchantment) this can be anything insofar as it is affectively associative.⁸² The underlying value(s) of the friendship also provides the substantive end toward which the state is ‘applied’ as an institution. Friendship is achieved when all members are oriented by the well-being and telos of the political community and what affects their lives as a collective.⁸³

Having granted popular sovereignty, a feature of legitimacy in modernity is the state’s inability to retract it. If order is to be had, the constituents of Leviathan must respect the institution of the state to which they submit their individuated power. Democratic identity means that decisions by government are perceived to be legitimate because they are perceived to be decisions made by those who are affected by them. In other words, by virtue of this identity, the decisions made by government are perceived to be decisions every single individual in the state would have made themselves if they were to deliberate reasonably about the issue in question – the ruled can purport to have determined their own political policies because of the transitive properties of identity insofar as it is political.⁸⁴ This works because all within the state are “friends”, having the same identity, history, and, accordingly, telos. The government of a political community is legitimate because those ‘ruling’ share the identity – are equal to – the ruled and are, therefore, friends possessing the same telos and the same conceptions of what is good for the community.⁸⁵ Accordingly, by virtue of that identity, the ruled believe that, if they were to rule, they would rule in a similar fashion to those currently ruling.⁸⁶ Democratic legitimacy comes about because all the constituents of a community subjectively perceive themselves to be a part of something that is actively realizing their interests, insofar as they are political.

How is it, then, that a plurality of people can associate and agree on some unifying principle with which they identify and can serve as the political (associative) basis for the state? This point is particularly salient when one realizes that deliberative democracy cannot be had in a meaningful way due to the practical limitations raised by authors like Rousseau. While deliberative democracy can be had in a *πολις* or a city-state, the constituency of a modern state cannot actually gather to deliberate. There are far too many of them and they are dispersed far too broadly to arrive democratically to practical conclusions.⁸⁷ The constituents of a state must perceive a unifying principle of identity, a constituting principle of ‘friendship,’ as legitimate yet the constituents themselves are not in a position to discursively arrive to this principle by virtue of the problem of dissent, deliberation, and temporality.

⁸¹ Schmitt, *The Concept of the Political*, 33, 46; Aristotle, *The Politics*, 1337a28-9; Cf. Schmitt, *Constitutional Theory*, 61-62 (the fourth definition of ‘constitution’ above).

⁸² Aristotle, *Nicomachean Ethics*, 1164a12 ; Schmitt, *The Concept of the Political*, 37.

⁸³ Aristotle, *Nicomachean Ethics*, 1167b2-3; Cf. Schmitt, *Constitutional Theory*, 259-260.

⁸⁴ Schmitt, *The Crisis of Parliamentary Democracy*, 25-26.

⁸⁵ Schmitt, *Constitutional Theory*, 249, 259.

⁸⁶ Aristotle, *The Politics*, 1287b33

⁸⁷ Schmitt, *Constitutional Theory*, 302, in general see 302-306.

Identity through Sovereign Decision

Schmitt gestures toward Hobbes' allegory to push the discussion forward. Hobbesian sovereignty is ostensibly the solution to the problem of how a single, unifying principle of identity is obtained that manages to also possess democratic legitimacy. Although the state itself is a value-neutral technical instrument, sovereign is not. The state is mechanical, animated by the sovereign-representative person – the state is body, the sovereign is mind.⁸⁸ The sovereign conceptually embodies those principles that existentially constitute the constituent individuals of the polity and orders the state accordingly.

For Hobbes, the original social contract unifies the powers of every constituents wills into the sovereign-legislator.⁸⁹ The outcome of this is sovereign power, which is the ability of the sovereign to decide on value *legitimately*: to decide what constitutes one's communal self, when that essential self is jeopardized or may be jeopardized, and what to do in reaction to such threats.⁹⁰ Sovereign-power, or the *pouvoir constituant*, is capable of bringing itself into existence. Schmitt aptly notes the relationship between the *pouvoir constituant* and Spinoza's *natura naturans*, both signify an Aristotelian unmoved mover.⁹¹ Because there is no objective value that inheres to the world any longer (if there ever was), the sovereign decision is precedent to both norm and order.⁹² The sovereign raises itself out of nothing and only out of the sovereign does anything else arise. Sovereign power allows the sovereign-representative to determine what subjects believe; the sovereign-representative person dictates *what is*.⁹³ That is, the sovereigns' decisions *define* what justice and truth are, making it clear how individuals are to fulfill its substantive principles – and any accidental ambiguities or willful violations can be compelled into line with sovereign will by the institutions of the state. The sovereign power utilizes the institution of the state, particularly its monopoly on violence to enforce the dictates and commands the sovereign issues. But the sovereign power also purports to legitimacy by virtue of the contractual basis of its existence. Thus, although the disenchanting world lacks objective value, the secularly-authorized sovereign can posit an arbitrary value for its constituency and compel them toward coordination with that by using the instrument of the state – thereby creating factual and legitimate value ex nihilo.

The enforceable sovereign decision replaces the condition of disorder and incoherence with order; the decision and introduces rationality into social and enables all subsequent social

⁸⁸ Schmitt, *The Leviathan in the State Theory of Hobbes*, 34.

⁸⁹ Hobbes, *Leviathan*, 109.

⁹⁰ Hobbes, *Leviathan*, 113-114; Schmitt, *The Concept of the Political*; Note: there is an additional aspect of sovereignty that is not present in the first sentence of *Political Theology*; Williams, *The Realist Tradition*, 41.

⁹¹ Schmitt, *Constitutional Theory*, 128.

⁹² Schmitt, *On the Three Types of Juristic Thought*, 62.

⁹³ Schmitt, *The Leviathan in the State Theory of Hobbes*, 53, 55-56.

phenomena.⁹⁴ “[The sovereign] seeks to create from a tabula rasa an order and community, out of nothing.”⁹⁵ Leviathan establishes peace, security, and order.⁹⁶ And it is the ability to achieve this alone that authorizes the sovereign: *summa auctoritas* and *summa potestas*: in sovereign form, *auctoritas* and *potestas* cannot be meaningfully distinguished. The unity of the sovereign decision overcomes the problem of indefinite deliberation because the sovereign does not suffer contradiction (overcomes the law of non-contradiction) and issues forth a coherent direction for the state, which then filters to its actual constituency. And this should successfully navigate the dilemma of value and identity, on the one hand, and democratic legitimacy, on the other. Sovereign obtains legitimation from all, who rationally perceive their interest in it regardless of whatever its ultimate decisions on value and identity might be. Only a unitary figure can achieve this, moreover, because any dissent over the substantive values would be factionalism and to reintroduce Behemoth.

Thus, the Scylla and Charybdis of democratic legitimacy and identity among the demos is overcome through their voluntary unification under one sovereign will. Hobbes solution seems to be a viable one: a stable and homogenous political community of friends can be formed that overcomes the problem of disenchantment in modernity.

A Paradox: Behemoth and the Sovereign Guarantee

Schmitt exposes a fundamental flaw in Hobbes’ conception, however. He says, “The “contract” that produced the state is, however, only possible through a sovereign guarantee of the order thereby established and only through the state whose power just arose from this general consent. The sovereign is omnipotent through the consent he himself produced and made possible through the omnipotence and decision of the state.”⁹⁷ What this means is that the contract that produces the sovereign presupposes a sovereign guarantee of legal efficacy for that initial contract to obtain. Without some antecedent sovereign guarantee, the original contract would have to be founded on mutual trust and understanding, which are exactly the qualities in which state of nature individuals are deficient. Hobbes’ state is founded around the sovereign authority, but

⁹⁴ Schmitt, *On the Three Types of Juristic Thought*, 62.

⁹⁵ Schmitt, *On the Three Types of Juristic Thought*, 74.

⁹⁶ Schmitt, *On the Three Types of Juristic Thought*, 61, 73.

⁹⁷ Schmitt, *On the Three Types of Juristic Thought*, 74. Habermas would also note this, developing it beyond Schmitt in his *Between Facts and Norms* (pp. 91-92). He says, very much in the vein Schmitt first noted, that “On Hobbesian premises, these subjects may not assume the very standpoint from which each of them could first judge whether the reciprocity of coercion, which limits the scope of each’s free choice according to general laws, lies in the equal interest of all and hence can be willed by all.” Hobbes must morally impregnate the state of nature in order to allow an escape from it, but this is a premise that he denies (and a premise that we find to be compelling for the sake of political theory), and thus Hobbes cannot construct a “system of well-ordered egoism on the sole basis of the enlightened self-interest of any individual.” The assumption of amoral self-interested individuals without any meaningful moral or legal means of compulsion toward coordination and harmony cannot result in a contract that produces a sovereign entity that can issue forth general law, even in Hobbes minimal system.

does not seem capable of overcoming the paradox in its inception – its logic undermines itself.⁹⁸ Some further explanation is necessary if Leviathan is to be generated and then unify and direct its constituents. This points toward a generative paradox. Hobbes' *Leviathan* must overcome this paradox but it does not provide the grounds by which it can be.

To restate the problem, a people must be presupposed as existent by the very process by which it will be generated.⁹⁹ Hobbesian-type sovereignty must be produced through universal democratic legitimation by the individuals, but as a people, who would constitute it as its subjects. The sovereign who *would* posit values for the political community must be legitimated by the constituents of that community first. Yet this sovereign political community must first be constituted, as friends, for there to be something more than atomic individuals retaining their right of nature out of fear for themselves without some transcendent guarantee of this power. The problem of disenchantment remains: the community must be constituted by the positing and enforcement of some value by the sovereign through the instrument of the state, but the sovereign cannot exist until the people affirm it as legitimate. Without a decision on value and existence and without the power to enforce that, the people themselves cannot form. Appeal to a causally nonsensical *natura naturans* is deeply unsatisfying.

As it is, this paradox does not appear to be one that can be solved. Yet the problem of popular sovereignty remains – the people cannot be compelled externally by this, they must believe themselves to be creating, as agents, this sovereign power.¹⁰⁰ To take a step back from Hobbes' allegory, what this means is that there still remains a problem of identity and value: how can a democratic state be unified around some principle if there is no clear identity already amongst its real constituent individuals? Why do not individual continue to perceive one another as 'other' and reject the state as an external institution (or abuse the state as a mechanism to compel the realization of their private interests).

Schmitt charges Hobbes with providing an incomplete solution to the problem of order. The problem of how a plurality of people can associate and agree on some unifying principle with which they identify and can serve as the political (associative) basis for the state has not been solved through Hobbes' original contract. Something more must be said to overcome this generative paradox. "Everything depends on how the will of the people is formed."¹⁰¹ But what is the will of the people anyway?

The *Volonté Générale*

⁹⁸ Williams, *The Realist Tradition*, 28; Schmitt, *Constitutional Theory*, 101.

⁹⁹ Schmitt, *Constitutional Theory*, 127.

¹⁰⁰ Schmitt, *The Crisis of Parliamentary Democracy*, 31.

¹⁰¹ Schmitt, *The Crisis of Parliamentary Democracy*, 27.

To understand the will of the people, it is worth taking a step back and looking at one of the authors to whom Schmitt appeals in his construction of his constitutional theory: Sieyès. Most modern political theorists accept that, in the modern state, the actual constituent people is too numerous and broadly dispersed to be a tangible entity. This corresponds to Sieyès' third epoch, in which the political community is the legitimate and actual center (the political agent, so to speak), but the community's constituency has become too large and dissociated to be able to have meaningful interaction among its constituent individuals (i.e. the members themselves, in their entirety, can no longer exercise the common will simultaneously). Therefore, there is no longer a real common will that deliberates and acts, but a representative common will that attempts to reproduce what can no longer be.¹⁰²

What distinguishes the third epoch from the second is that, in the second, it is feasible for all the constituents to congregate to deliberate politically. However, both epochs are characterized by abandoning their particular willing for the sake of determining the *volonté générale*. To do this every individual is normatively required to self-transcend and think what is good for the community, regardless of how that bears on my particular self. That is, Sieyès second epoch is the shift from individuals contracting for themselves (their own self-interest to escape the uncertainty of Behemoth) to individuals deliberating about the interests and goals of the community writ large. Those deliberating do so on behalf of an entity that has no phenomenal existence yet has enormous conceptual and ideological import. Likewise, the citizens of a political body are also idealizations. Citizens are individuals who have discarded their particular selves and embody this abstraction in political interaction. The identity consistent among citizens is "the object of the common will and the aim of the common association" but this identity as citizen is not something found in a pure state in any of real individual constituent because they also are constituted by private interests, interests and identities that may well run contrary to their political identity. A genuine citizen has no reality except in the imagination of real individuals.¹⁰³ Citizen is a second-order identity in which individuals transcend their first-order particularized identity. And conversely, only those characteristics that individuals hold in common are the ones that constitute citizenship – and only by virtue of the possession of this can an individual demand political rights.¹⁰⁴

Individuals imagining what that generalized identity would do embody the criteria by which the community orients itself. It is the basic condition for the equality of its members and regenerates is amongst its constituent individuals. In political deliberation, constituent individuals imagine the *volonté générale* and deliberate according to that, and in doing so they become citizens. To do otherwise (to deliberate on behalf of one's particular, private interests) would be to introduce factionalism into the body politic and would be a corruption of community – and this would be

¹⁰² Sieyès, Emmanuel Joseph. "What is the Third Estate?" In *Political Writings*. Ed./Trans. Michael Sonenscher. (Indianapolis: Hackett Publishing Company, Inc., 2003), 134.

¹⁰³ Sieyès, 154.

¹⁰⁴ Sieyès, 156.

to become an enemy.¹⁰⁵ They follow Hobbes on this account: to undermine the unity of the general will, actively by going against its interests or passively by attempting to utilize it for particularized interests would be to revert to Behemoth. To this end, Sieyès second epoch seems to correspond more or less to Rousseau's discussion in *Du Contrat Social*.

Sieyès third epoch does nothing more than introduce a nuance Rousseau did not anticipate there: that political bodies larger than the city-states could have representative democracy. The aim and interest of this transcendent *volonté générale* is still the goal of politics. The procedure remains the same: individuals become citizens and attempt to ascertain the transcendent *volonté générale* through their faculty of imagination. But taken as a whole there is a practical limitation to democratic participation in this deliberative process. However, both share in common that citizens do not vote their interests at all but transcend their particular self through the imagination and this is the key to understanding why the shift to representative democracy is legitimate at all anyway. This imaginative leap is representation.

Authority and Representation

The concept of representation and authority are interlinked. Hobbes has a discussion of the concepts in *Leviathan* that links them to methodological individualism and how they relate to politics in general. Hobbes makes a distinction between artificial and natural persons: Natural persons are real people that can be accorded agency – they can act in accordance with the intentions that they have reasoned out; Artificial or fictional persons, on the other hand, lack agency and the capacity to take responsibility for actions (if they can even act in the literal sense of the word).¹⁰⁶ This can be for one of two reasons. An artificial person is biologically human but has lost 'natural' status. These grounds could be described as normative if the person is, for example, too young, insane, or too stupid to form intentions rationally or to act upon them. Or this biological person could have commissioned another person to act in his or her name, thus becoming an artificial person. Alternatively, an artificial person can be an object that could never have had agency to begin with, such as a building, a corporation, or a concept. Artificial persons encounter situations in which they need to deliberate and act yet they lack agency and the capacity to think, deliberate, and act.

Authority overcomes situations in which artificial persons need to exercise agency. Authority and authorization are linked etymologically to the verb 'to author.' To authorize is to enable another to act on one's behalf with the accompanying obligation to take responsibility for whatever that other does as if one were the actual author of those actions.¹⁰⁷ Thus the authorized imputes acts to the author, even though the author did not actually do those acts. There is a direct

¹⁰⁵ Sieyès, 157.

¹⁰⁶ Hobbes, *Leviathan*, 101; Cf. Skinner, Quentin. "Hobbes and the Purely Artificial Person of the State." *The Journal of Political Philosophy*. (7.1, 1999), 11-14.

¹⁰⁷ Hobbes, *Leviathan*, 101-102; Skinner, 8.

inverse correspondence, moreover, between the verbs to author and to represent in following form: Author:Authorized::Represented:Representative. In other words, the authorized represents the author.¹⁰⁸ “Representation allows those who are incapable of acting otherwise to be capable of having words and actions truly attributed to them.”¹⁰⁹

In cases where the represented has explicitly authorized the representative to act on his or her behalf, there is no serious trouble. However, in cases where the artificial person lacks even the agency to do this, a serious normative dilemma arises: what makes this representation valid and by what criteria does the representative determine what the represented would do? For Hobbes, the solution would seem to be legitimate representation occurs when authorized acts in the best interests of the artificial person. In the case of the state, for example, Leviathan was constituted for the sake of mitigating the fear and insecurity of the state of nature – so insofar as Hobbes’ sovereign fulfills that end without violating the limits set forth, Hobbes’ sovereign retains legitimate authorization (and thus the sovereign’s acts are attributed instead to the multitude constituting it).

Hobbes discussion of representation is a valuable and important contribution to the discussion of state theory – and it seems to figure into Rousseau’s distinction between delegate and representative as well as Sieyès. Also importantly, it shows how agency can be attributed to institutions like the state without violating the constraints methodological individualism imposes. Abstractions like the *volonté générale* cannot act but must have actions attributed to them – and it is the duty of individuals to think as a citizen in order to obtain this. Through representation what is actually an amalgamation of individual acts by a multitude can become allegorically “capable of acting as a single person in the sense that it is possible for one single action to be attributed to it.”¹¹⁰ But this does not fully resolve the problem Schmitt pointed to above. Hobbes solution does not figure for Schmitt for several different reasons. The problem remains that the leap from atomic individuals to the unified body remains and is now further complicated by the fact that the unified political body does not seem to be a real thing at all. Furthermore, the state itself is rationalized, so the question of representation is more complicated for Schmitt.

Schmitt on Political Representation

According to the above reading, the constitution of the body politic is not done or premised by a real entity but is instead ideal, created by the representative faculties of the constituents (or representatives of the constituents) of the political unity. The *volonté générale* is an entity that is not actually centered in any individual but something that somehow is and transcends any

¹⁰⁸ Hobbes, *Leviathan*, 102; Skinner, 7.

¹⁰⁹ Skinner, 16; Hobbes, *Leviathan*, 104.

¹¹⁰ Skinner, 5; Hobbes, *Leviathan*, 104.

individual as the most fundamental aspects of their identity.¹¹¹ This unreal entity turns out to be constitutive of the body politic according to the above discussion. It is the duty of individuals to represent the *volonté générale* in order to maintain and perpetuate the political unity as well as avoid regressing into Behemoth.

Schmitt is in line with this reading when he defines ‘the people’ as only being a public entity: one in need of representation.¹¹² He says explicitly that “There is no state without representation...even all active state citizens, taken as a whole, are not the political unity of the people. They merely represent the political unity, which transcends an assembly convened at a particular time and place.”¹¹³ Schmitt adds nostalgically that “elementary truths have been lost and are apparently unknown in contemporary political theory...the people exist only in the sphere of publicity. The unanimous opinion of one hundred million private persons is neither the will of the people nor public opinion.”¹¹⁴ The simple meaning of the principle of representation is that the members of parliament are representatives of the whole people and thus have an independent authority vis-à-vis the voters. Instead of deriving their authority from the individual voter, they derive it from the people.¹¹⁵ This account approximates Rousseau’s distinction between the *volonté générale* and the *volonté des tous*: the state can be abused even when 100% of its real constituent individuals deliberate and agree to use it to realize some particular interest. A will is wrong when it fails to discern the existential principle constituting a people – even if every individual will within that political unity is agreed. Delegation is a meaningless method of conducting politics because it is inherently particular. What matters to Schmitt is how one votes. A vote is legitimate only if it is done in the general interest, according to that shared substantive value that constitutes the group’s and every constituent individuals’ identity.

Building upon this, Schmitt coyly defines representation in terms of ‘making present what is not actually there’. He says, “Representation is something existential. To represent is to make an invisible being visible and present through a publicly present one. The dialectic of the concept is that the invisible is presupposed as absent and nevertheless is simultaneously made present.”¹¹⁶ Literally, to ‘represent’ means to present again. But the need or drive to make something present again entail its current absence. Insofar as it is existential, one must refer back to what that means in Schmitt’s understanding. Political representation is to make visible the invisible unitary entity that is “the people” through public advocacy of its existential equalities that constitute it as a unitary entity, but such that it diffuses to its constituent parts.¹¹⁷ To make this more intelligible,

¹¹¹ Schmitt, *Roman Catholicism*, 26-27.

¹¹² Schmitt, *Constitutional Theory*, 239, 242; Schmitt, *The Crisis of Parliamentary Democracy*, 16; Cf. Schmitt, *Constitutional Theory*, 241.

¹¹³ Schmitt, *Constitutional Theory*, 240.

¹¹⁴ Schmitt, *The Crisis of Parliamentary Democracy*, 16.

¹¹⁵ Schmitt, *Roman Catholicism*, 26.

¹¹⁶ Schmitt, *Constitutional Theory*, 243; Cf. Böckenförde 49-50.

¹¹⁷ Of course, Schmitt adds to this that representation cannot be wholly abstract. He pairs it with the concept of identity, noting that both are essential conditions for maintaining political unity (Schmitt, *Constitutional Theory*, 239). Without identity, a state would become a total state that has no regard for the actual constituency (it would act

it should be recalled that the constituent individuals of a people are a series of individuals who identify themselves as equal according to some existential principle. Representation for Schmitt is when individuals deliberate according to their existential constitutive principle. Existential, for Schmitt, entails that some value is so constitutive of the identity or being of certain individuals in a community that they are willing to risk their destruction, individually, for the sake of perpetuating that community.

Schmitt says of this identity that “[Identity] is not a palpable reality, but rests on a recognition of identity. It is not a matter of something actually equal legally, politically, or sociologically, but rather of identifications... They can never reach an absolute, direct identity that is actually present at every moment. A distance always remains between real equality and the results of identification.”¹¹⁸ Of course, this is just a different way to restate the above conclusion: unity is premised on some abstract ideal characteristic, not something tangible. What matters is that whatever principle by which the constituents of a body politic perceive to be their constitutive feature is what institutions use as their most fundamental guideline. This perpetuates the identity that does not ‘palpably’ exist. It is telling that it is here that Schmitt’s famous line “Everything depends on how the will of the people is formed” occurs and he discusses wherein lies “the true will of the people,” whether in the majority, a minority, or whether everyone has been deceived through public manipulation.¹¹⁹ The task of the representative is, ostensibly, to make present the identity that is the true will of the transcendent people, but one which also the people recognize as their existential political identity – what constitutes them as friends.

The invisible and nothing-but-public existential character of the people is important because it necessitates representation. ‘The people’ in the singular sense, as an invisible, absent entity, cannot act or deliberate: it is “unorganized” and “unformed”.¹²⁰ Only a human person can deliberate, decide, and act; something invisible and unreal is, obviously, as brainless and voiceless as a building or bridge would be – and accordingly completely incapable of deliberation, decision, and action.¹²¹ It is something real individuals attempt to deduce as a guide for their political behavior, but it is nothing more than a transcendental deduction of sorts.

It is the task of ‘genuine’ government to represent exactly this unity as a whole if it is to be anything more than a continuation of the rationalized administrative state. “The government... presents and renders concrete the spiritual principle of political existence.”¹²² He

entirely on a principled ideal). Without representation, there would be no political unity, but merely a people leading a sub-political existence. (Schmitt, *Constitutional Theory*, 248).

¹¹⁸ Schmitt, *The Crisis of Parliamentary Democracy*, 26-27.

¹¹⁹ Schmitt, *The Crisis of Parliamentary Democracy*, 27.

¹²⁰ Schmitt, *Constitutional Theory*, 271.

¹²¹ This does not mean it is wholly impotent, however. Schmitt is careful to note that there are significant conditions when it does have agency. However, this agency is the almost mindless agency of a mob – ‘the people’ in its abstract, sovereign sense, asserts itself through individuals within the people in spontaneous, unorganized political acts and violence, and it speaks through individuals within the people only through acclamation, tacit or vocal, of real human decisions; Schmitt, *Constitutional Theory*, 272.

¹²² Schmitt, *Constitutional Theory*, 245.

goes on to make a claim about legitimacy and representation: “every genuine government *represents* the political unity of a people, not the people in its natural presence” and this claim is forwarded in distinction to the illegitimate power of a pirate.¹²³ A pirate or gang may have the power to compel (and may even be able to command “law” based on this compulsory ability), but will never possess the objective legitimacy that Schmitt gestures toward in this claim about how genuine governments must represent the spiritual essence of a people.

Communal unity alone can be represented. If it is not some principle to which every individual can reasonably agree, then legitimacy is lost because it is no longer communal but a particular sub-group perpetuating a power relationship. Representation of a particular interest factionalizes because it signifies a realignment of unity. Thus, representation is exactly the attempt to present and act upon those existential principles that make a group of individuals more than a series of individuals occupying the spatio-temporal domain, and instead provide a directed telos that provides meaning to their existence. Insofar as an individual is a citizen, that natural particularity of the individual is annihilated in the process of political representation – it is the categorical duty of the ‘citizen,’ when taking part in political affairs on any level, to represent this existential identity of ‘the people’ in his political behavior (be it voting, deliberation, decision-making, etc.).¹²⁴ These principles are the basis for the constitution of a political community. The sovereign-representative is the entity who has agency and attempts to present the sovereign and determine what the sovereign would will in order to be able to instrumentalize the state apparatus for the sake of that end. In the representative of the existential conditions for the political unity of a people does that people actually find its ability to realize its telos – because the people is not a real being, but merely an ideal operating, in a way, behind the backs and in the minds of the real constituency.¹²⁵

Overcoming the Generative Paradox through Sovereign-Representation

To restate the paradox, Leviathan’s sovereignty must be legitimated democratically by those who would constitute it as its subjects. Yet, for there the distrustful atomic individuals to move beyond the jealous and fearful retention of their right of nature there must already be a sovereign to guarantee transcendently that they won’t be taken advantage of by the others with whom they would contract: atomic fearful individuals cannot cohere or agree to begin with. It seems impossible for a nonentity to be presupposed as present and be simultaneously present.¹²⁶ Nonetheless, Schmitt believes that the problem of Behemoth must be overcome in this very fashion.

¹²³ Schmitt, *Constitutional Theory*, 245.

¹²⁴ Schmitt, *Constitutional Theory*, 240.

¹²⁵ Schmitt, *Constitutional Theory*, 140.

¹²⁶ Schmitt, *Constitutional Theory*, 101, 102.

Through his reading of Rousseau and Sieyès, Schmitt finds that there *is* never a tangible, empirical, unitary *people*. People as a unit is only an idea¹²⁷ and the problem of accord is a serious problem insofar as this a people can only be the sum of its parts - individuals. However, by considering the existential basis, a people can be more than the sum of its parts and be unified and coordinated toward some telos. Politically formative, legitimate meaning can be posited despite disenchantment. Real agents' faculties of representation allow this. The solution to Behemoth and the phenomenon of sovereignty can be better understood through a conceptual bifurcation between the human agents who do deliberate on behalf of the sovereign and the constituent individuals who can acclaim this on behalf of the sovereign. Behemoth is overcome and Leviathan generated when actual agents *represent* whatever existential unifying principle which is perceived to be legitimate by individuals as their constitutive basis.

With this conceptual bifurcation in mind, Schmitt conservatively appropriates Rousseau's *volonté générale*: Hobbes' generative paradox is overcome through real agents who represent the general will. What the *pouvoir constituant* seems to be, when conceptually bifurcated, is some group of real individuals who can actually deliberate on some existential constitutive principles of identity and then promulgate them to a people *in statu nascendi*. This bifurcation preserves the self-constituting nature of the *pouvoir constituant* without masking its origin in bad metaphysics.¹²⁸ If the atomic individuals acclaim them because they perceive these existential principles to represent their identity, then a people *has been* born by that act of promulgation and acclamation. Importantly, the locus of sovereign power resides democratically in the constituent individuals of the body politic, who still must generally feel the institution to be legitimate – thus they retain the status as the highest, legally independent, underived power and can deny or withdraw the authority of the representative through mob demonstration, action, and even violence.¹²⁹ If the sovereign-representative fails on political-existential affairs, according to the sovereign will, then the sovereign manifests and corrects the exceptions (typically through violence). Yet the decision itself cannot be left between the pre-political individuals because they are not yet.¹³⁰ The sovereign-representative, on the other hand, is a tangible being that is present to the actual constituents of the state – it must be a being with agency and, therefore, have a personal quality. To do so would be to abandon the decision in a sort of deliberative limbo because no consensus would be reached. Through representation of a unity, Leviathan can be constituted. The sovereign can be approximated according to whatever that abstract existential principle of unity is – rather than through actual appeal to potential individual constituents (who cannot exist yet). Accordingly, a sovereign-representative can re-present the terms of the contract that the sovereign-representative believes to be characteristic of the people, to which the

¹²⁷ Schmitt, *Roman Catholicism*, 27.

¹²⁸ Cf. Schmitt, *Constitutional Theory*, 128.

¹²⁹ Schmitt, *Constitutional Theory*, 131-132; Cf. Schmitt, *Political Theology*, 17.

¹³⁰ This discussion of representation seems to indicate that the phenomenon of constitution is ultimately grounded in epistemological issues: once the people recognize their shared identity, they are – but until that point they are not. It takes an external agent to present their identity to them and make them aware of it, but they actually constitute once they themselves recognize and agree that this is who they are.

sovereign-representative believes the individuals who would potentially constitute the people will acclaim as their legitimate existential constitutive principle.

The sovereign-representative faces a rather difficult hurdle, however. The people is not yet constituted and, even when constituted, the people is always an invisible, noumenal entity. The sovereign itself resists rationalization and this is why it always remains invisible – rationalization can only be applied to phenomena (via scientific method) and sovereignty is non-phenomenal and irrational.¹³¹ The sovereign's invisibility makes it difficult to ascertain its existential locus until a decision is actually (successfully) made. The sovereign is not apparent until the successful exercise of decision, power, and authority in the face of the exception.¹³² The *pouvoir constituant* is a pre-legal being and cannot be normalized; the people are unstable and non-existent and therein lies the source of their power; and as an unrationalizable entity, the people can manifest whenever they affectively feel exceptions to occur.¹³³ This is ultimately up to actual agents who feel themselves to be among that people and act in concert based on shared existential principles; those actual agents are the real constituent people with the power of popular sovereignty and will.¹³⁴ As sovereign, agents make the decision through acclamation (or tacit agreement once a decision has been institutionalized). Yet the sovereign is a unitary entity that is not apparent until such decisions are made.

What this points to is an insurmountable epistemic uncertainty regarding the ontological constitution of the sovereign (i.e. what the existential basis of the sovereign is) until decisions actually manifest. Taken abstractly, the sovereign-representative cannot have certainty of whether or not representation or bad judgment has occurred. If the constituent individuals feel that the purported principle of existential identity genuinely reflects who they are, then they acclaim it and the sovereign is. If the constituent individuals do not perceive the purported principle of existential identity to be something with which they can identify, they do not acclaim the principle and the sovereign does not act in accordance with the sovereign-representative. However, there is no certainty in constitution and representation and it carries risk of failure. In this way, the *pouvoir constituant* remains the individual constituents at all times but also retains that transcendent significance. Moreover, this provides a clearer account of what is going on for Schmitt and the role that both representation and acclamation have to play for him in overcoming the problem of generation. The people acclaim themselves. They *must* do so – otherwise no people can come about and no state supporting them would have obtained the necessary popular sovereignty to exist.

There are two categorically distinct 'moments' where such representation occurs. The first is the actual generation of the political community. The second is in the regeneration of that community through ongoing 'political' interaction. Regarding the first moment, a political

¹³¹ Schmitt, *Roman Catholicism*, 20-21.

¹³² Schmitt, *Political Theology*, 5, 7.

¹³³ Schmitt, *Constitutional Theory*, 131, 140-142, 271.

¹³⁴ Schmitt, *The Crisis of Parliamentary Democracy*, 26; Schmitt, *Constitutional Theory*, 143.

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community is not a phenomenon that arises naturally.¹³⁵ It requires deliberate human agency through the decision to constitute a unity out of chaos – to escape Behemoth through constitution. Ergo, the original constitution of a body politic presupposes a *founder*.

Schmitt alludes to foundation explicitly only briefly. He says, “Every political unity must somehow be integrated because such unity is not by nature present. Instead, it rests on a human decision.”¹³⁶ A human decision to integrate need not be deliberatively democratic due to practical constraints. Instead, “it is possible that political unity is first brought about through the presentation itself”¹³⁷ – which means that the presentation of the existential principle, insofar as it is acclaimed by the plebiscite actions of the constituent individuals, can precede the unity.¹³⁸ The people itself is never present but always represented – and it is the task of the sovereign-representative to deliberate in a meaningful way about what principles of unity a political being could be constituted upon. Schmitt is less concerned with foundation than he is with how politics works in already constituted political communities.

Sovereign-Representation and the *Pouvoir Constitué*

One of the facets of the concept of constitution that Schmitt outlines in his six definitions is constitution as the renewal of the unity in the consciousness of the constituent individuals. Constituting a political community is not a task that can be forgotten once it is ‘accomplished’: community is a dynamic being continually in need of reinforcement.¹³⁹ Political unity “must continuously preserve and reconfirm itself through the actual cooperation of the people in question.”¹⁴⁰ Because there is no actual unity, the constitutional principles need maintenance and reconstitution in the identities of individuals within the community, if the community itself is to retain its unity – normal, banal, quotidian political decisions are a part of this. The *volonté générale* is an entity, in a sense, always at ends with the particular wills of the actual constituents, particularities that weigh more heavily because of their immediacy to the agent.

Although the maintenance of the political community was paramount, it was also the most easily neglected task and the easiest to lose sight of – and for this reason it was not by accident that

¹³⁵ Although humans are taken to be naturally communal, the actual formation of a community hinges upon a positive decision – which as such is not natural. A political community is a function of human agency and the deliberative qualities that speech endows them with. “A political body is a creation of human intelligence.” – so despite our natural inclination to community we cannot do so without an external agent assisting that natural drive: Miller, Fred. “Political Naturalism.” *Stanford Encyclopedia of Philosophy*. (2002). <http://plato.stanford.edu/entries/aristotle-politics/supplement3.html> Cf. Aristotle, *The Politics*, 1253a1-39.

¹³⁶ Schmitt, *Constitutional Theory*, 241.

¹³⁷ Schmitt, *Constitutional Theory*, 241.

¹³⁸ Schmitt, *Constitutional Theory*, 240.

¹³⁹ Schmitt, *Constitutional Theory*, 61.

¹⁴⁰ Schmitt, *Constitutional Theory*, 334; Böckenförde, 40.

classical political theory considered education and legislation to be intimately related tasks.¹⁴¹ The constituting principles of identity are more than just a shared principle, however. They are a value. Insofar as this is the case, value is not something that naturally pertains to constituent individuals but is something that must be educated in individuals.¹⁴² How this public consciousness, as an awareness of the reasons for unity and its telos is a matter of education in civic values – originally the domain of the original legislator/founder.

Part of this relationship of regular legitimacy and public constitution takes place through everyday ‘political’ acts of the people. Duncan Kelly reintroduces Sieyès’ distinction among *pouvoir constituant*, *pouvoir constitué*, and *pouvoir commettant* to facilitate discussion of Schmitt’s work. It is particularly illuminating in outlining how there are two notions of people at work in Schmitt’s writings – that which underlies the founding (an exceptional situation) and that which underlies normal politicking. The *pouvoir constituant* founds: its role, though significant, is too extraordinary and demanding to be routinized.¹⁴³ Obviously, when ordinary citizens go out to vote for their prime minister, they are not exercising a power that can meaningfully be identified with the power that was exercised in the constitution of a political body, its values, law, constitution, and even its people. Regular voting by individuals, still ‘the people’, is done by what is now categorized as the *pouvoir commettant* – a power that is still possessed solely by the people, but here as the citizenry of a *constituted* polity, and this power is merely over their representatives at the level of the nation-state.¹⁴⁴ It is a power that is normalized and occurs in a manner tamed by law to reflect a constituted people’s will in governance in normal circumstances and, as such, this “committing” power is categorically distinct from the “constituting” power that cannot be normalized and decides on the exception, lying dormant, as it were, until such circumstances occur.

Thus, one political power is normalized, the other is pre-legal and irrational. Two distinct powers of the people are exercised yet both are important for the body politic and its underlying political existence: for both moments, the abstract constituted ‘people’ retains its sovereignty.¹⁴⁵ Normalized political institutions continue to have a constituting role for the body politic and their relevance should not be downplayed. Corruption and factionalization within the normalized institutions, such as the *pouvoir constitué* have blowback into the heart of the body politic because it undermines the dynamic nature of the (re)constitution of the political community.

The *pouvoir commettant* ostensibly authorizes the quotidian political life and therein lies its legitimacy, but in cases where actual individuals cease to recognize the reasons or legitimacy of

¹⁴¹ E.g. Cf. Aristotle, *Nicomachean Ethics*, 1179b32-1181b24. This topic is a fascinating one and well worth investigating, but unfortunately falls far beyond the scope of this particular article and cannot be treated here.

¹⁴² Schmitt, *Constitutional Theory*, 62

¹⁴³ Kelly, Duncan. *The State of the Political: Conceptions of Politics and the State in the Thought of Max Weber, Carl Schmitt, and Franz Neumann*. (Oxford: Oxford University Press, 2003), 207.

¹⁴⁴ Kelly, *The State of the Political*, 208.

¹⁴⁵ Kelly, *The State of the Political*, 206-207.

public institutions, such as the law, the apparatus of the state is position to compel them back toward the interests of the unity. Moreover, in constantly and consistently enforcing and reinforcing coherent unity, the state is instrumental in reconstituting the underlying people. However, the state is merely an institution and is mechanical. If the sovereign-representative uses the state to issue and enforce incoherent laws and, worse, the written (or relativized) constitution becomes a means of promulgating particular interests through the institution of the state, then the state's instrumental role has undergone a profound change. When abused by a sovereign-representative who is no longer representative as such, the state becomes an institution that aggravates pluralism. That is, the state becomes an institution of Behemoth rather than Leviathan.

Parliamentary Democracy in Crisis as a Representative Institution

Schmitt's well-known critique of liberalism and parliamentarism can be elaborated upon through the above discussion of representation. Schmitt identifies the crisis of parliament as deriving exactly from its inability to *represent* the sovereign – as the abstract principle(s) of identity that idealizes the actual community of constituents – any longer. The reasons for this are already well developed in many of Schmitt's writings, in particular *The Crisis of Parliamentary Democracy* and *Legality and Legitimacy*. Briefly spelled out, however, Schmitt follows the diagnosis of the decline of parliamentary politics that Weber spelled out. This diagnosis is the rise of both bureaucratized politics and party politics – neither of which, in Schmitt's view, attempts to deliberate about what is best for the nation-state writ large or the existential being of the people, but instead, respectively, either mechanically run the legislative dictates according to the whim of the state's administrative machinery without regard to the substantive values for which the administration is ostensibly acting or use parliament as a mechanism by which to further a particularized or factionalized interest group's agenda – and if possible codify particular interests into the legal form of constitutional law, thereby institutionalizing the state as a way to compel the unity according to the will and interests of some group of sub-‘people’.¹⁴⁶

Modern parliamentary governance has lost sight of its *raison d'être*: to represent the underlying existential principle of the political unity on whose behalf it derives its authority. Parliament has become an institution that reflects and even aggravates a latent disharmony in ‘the people’. According to the above definition, a political unity cannot survive, let alone tolerate, incoherence in the form of a cacophony of interests and directions in its representative institution. Circumstances of severe factionalism can give rise to crises in which a state of emergency – in which the *pouvoir constitué* endangers the very existential principle(s) on which it was founded by the *pouvoir constituant* and according to which the entire body politic is in danger of

¹⁴⁶ Schmitt, *Constitutional Theory*, 341-342; Schmitt, *The Crisis of Parliamentary Democracy*, 6, Schmitt, Carl. *Legality and Legitimacy*. Trans. Jeffrey Seitzer. (Durham: Duke University Press, 2004), 19-20, 23, 24.

reverting back to a state of nature, where the initial problem of value pluralism and nihilism, as Behemoth, would run rampant. This is because constitution is not just a single foundational act but a dynamic process that requires continuous regeneration. Insofar as the institutions which would represent the unity of the people become plural, so too can this plurality reconstitute the identity of the actual underlying individuals.

To perpetuate Leviathan, the underlying existential identity of the body politic must continue to be represented and made apparent to its real constituency. Insofar as parliament has been victimized by pluralism and cannot be salvaged as a representative *unifying* institution, an alternative institution is warranted. The reason for the collapse of parliament as a representative institution can point to its replacement: deliberation is private; interest groups and parties make legislation unrational and undeliberative; parliament has become a bureaucratic/administrative machine and are thoroughly rationalized (realize more bureaucracy rather than the purported substantive end of bureaucracy); the media manipulates the masses; in sum, it no longer aspires to arrive to the truth or justice qua representing those existential values.¹⁴⁷

Schmitt is convinced that these problems cannot be eliminated. Any institution that mediates between the people and the state by deliberation would succumb to exactly the same problems. Schmitt's final diagnosis is that parliament cannot be, or is not worth being, repaired.¹⁴⁸ Schmitt proposes to go around it: a dictator becomes the ideal solution to the problem of sovereign-representation. Insofar as the dictator receives popular acclamation, it is a *better* approximation to the ideal sovereign-representative because it does not have the structural limits that parliament suffers. The dictator is authorized by virtue of the masses acclamation of its ability to represent the existential principles that serve to unify them into a political community of friends. The dictator can overcome the problems of bureaucratization and realize at least in part principles of substantive justice. As long as the dictator sustains popular acclamation, then it is fair to say that the dictator acts as a unifying public figure and is representing some unifying principles

Schmitt anticipates an objection to dictatorship. Dictatorship will be described by some as “a state of siege.” This is true – but it is also very misleading: the ‘siege’ of the dictatorship is only part of the story. Schmitt agrees that dictatorship implies unfreedom in one sense – it does mean the loss of political autonomy by the individual people of the constituted unity; yet he adds that dictatorship is actually liberation in another important sense as liberation from the nihilistic terror and anxiety, which arises from that the uncertainty, incoherence, and plural cacophony of Behemoth.¹⁴⁹ Importantly, for Schmitt, dictatorship is not a return to the state of nature but maintains Leviathan against the inevitable outcome of an atomizing liberal constitutionalism.¹⁵⁰ Therefore, dictatorship constrains some freedom but it is the lesser of two evils – the other being

¹⁴⁷ Schmitt, *The Crisis of Parliamentary Democracy*, 5-7 ; Cf. Weber. “Politics as a Vocation” 97-99, 107.

¹⁴⁸ Schmitt, *The Crisis of Parliamentary Democracy*, 8, 30.

¹⁴⁹ Kelly, *The State of the Political*, 177-178; Schmitt, Carl. “Diktatur und Belagerungszustand. Eine staatsrechtliche Studie.,” *Zeitschrift für die gesamte Strafrechtswissenschaft*. Jg 38 (1917), 160.

¹⁵⁰ Kelly, *The State of the Political*, 178.

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the return to chaos, nihilism and state of insecurity, which is ultimately an even greater state of unfreedom than any dictator could hope to impose. Admittedly, dictatorship is a second-best solution, but it is far superior to the return to Behemoth.

Conclusion

The above discussion purports to show how, by elaborating on Schmitt's understanding of the concept of representation, one can trace a unifying thread throughout Schmitt's somewhat disparate writings. Understanding political representation as embodying the underlying constitutional principle for a specific people clearly places Schmitt within an established conservative tradition. Moreover, it shows exactly what role the concept of the political plays in his theory of the state and provides a more robust account of why liberalism is a deficient political form.

Schmitt understands the basis of any political community to be some existential principle that is sufficiently affective to coordinate the behavior of every individual within that community. This existential principle provides the telos for which a political community arises and is perpetuated among individuals. The state provides the institutional backing to this basic existential principle. The duty of the citizen is to represent this constitutional principle – that is, when individuals are involved in politics, their particular individualistic concerns should be subordinated to this abstract identity. To do otherwise would factionalize the community according to private interests – and in doing so reintroduce the state of nature into the community through value pluralism.

This comprehensive reconstruction of Schmitt can serve two different ends. First, it can help to outline an interesting and original contribution to political thought that Schmitt made. Schmitt's discussion of Leviathan, representation, and Behemoth, while strongly related to their common understandings, do provide original nuances that can contribute to further theoretical innovation within this vein. In addition to this, by outlining Schmitt's account and the role that representation of the *volonté générale* plays in his general theory of politics, a basis for a strong critique of Schmitt exactly along these criteria can hopefully be developed.