

READING CARL SCHMITT: A THEORY OF THE STATE

A Master's Thesis

by

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September 2000

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**The Institute of Economics and Social Sciences
of
Bilkent University**

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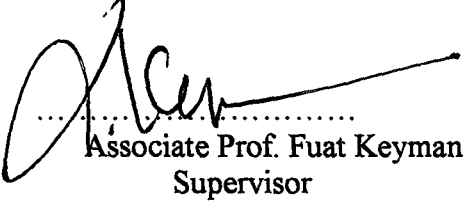
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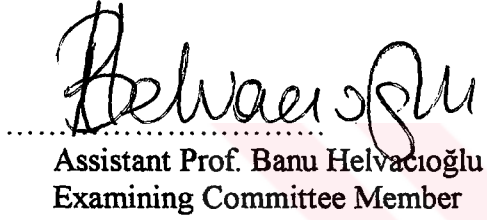
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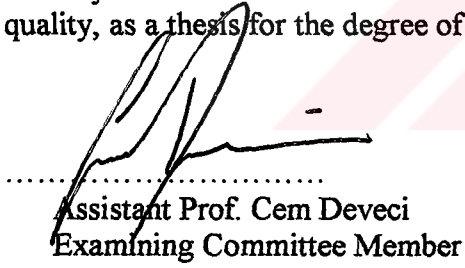
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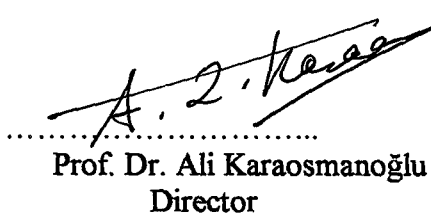
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ABSTRACT

READING CARL SCHMITT: A THEORY OF THE STATE

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September 2000

This thesis critically analyses some selected works of Carl Schmitt in order to open up new debates in the theory of the state. The nature of the state and the ways through which it governs society is the main theme that has been dealt with in this thesis. Carl Schmitt's theoretical concepts are examined and interpreted with respect to this question on the state. This thesis argues that Carl Schmitt's theory of the state provides political theory with new theoretical insights in studying the actual life of the state and his concepts are worth analysing to understand how modern societies are governed.

Keywords: State, Governing, Carl Schmitt, Sovereignty, Legitimacy, Norm and the Exception, Conceptualising the Political.

ÖZET

CARL SCHMITT'İ OKUMA: BİR DEVLET TEORİSİ

Şahin, Yelda

MA., Siyaset Bilimi ve Kamu Yönetimi Bölümü

Tez Yöneticisi: Doç. Dr. Fuat Keyman

Eylül 2000

Bu tez, devlet teorisinde yeni tartışmalar açmak amacıyla, Carl Schmitt'in bazı çalışmalarını eleştirel bir gözle incelemektedir. Tezde başlıca ilgilenilen konu devletin doğası ve toplumu yönetme yolları olmuştur. Carl Schmitt'in teorik kavramları bu devlet sorunsalı ile ilintili olarak incelenmiş ve yorumlanmıştır. Bu çalışmaya göre Schmitt'in devlet teorisi, modern toplumların nasıl yönetildiğini anlamak açısından incelenmeye değerdir ve devletin gerçek yaşamını çalışmak bağlamında yeni teorik anlayışlar sunmaktadır.

Anahtar Kelimeler: Devlet, Yönetmek, Carl Schmitt, Egemenlik, Meşrutiyyet, Kural ve İstisna, Politik Olanın Kavramsallaştırılması.

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CHAPTER I

INTRODUCTION

Modern world is marked with the international state system since the establishment of which every landmass of the earth falls under the authority of one state or another. The main aim of this study is to provide an understanding of the nature of this modern form of political organisation. We will argue that the separation of social and the political areas of life initiated both the emergence of the state as well as its inherent problem: problem of governing. The initial question that would be examined in the proceeding pages is to what extent the general trends in modern political philosophy can provide us with a clear understanding of the ways in which modern societies are governed. Following that we will mainly focus on Carl Schmitt's political theory with respect to our initial question. Main theme of this study is not to examine Schmitt's work in a comprehensive way and our aim is not to deal with every concept that has been developed by Schmitt in all through his academic career. It should also be underlined that we neither make a Schmittian argument nor do we embrace his theory of the state as an ideal form of government. However, in this thesis it is argued that some concepts that has been developed by Schmitt may help us in understanding the actual life of states and the ways in which they govern their societies. Within the limits of this study we hope to open up new debates the concerning the state's conditions of existence as well as its conditions of survival.

State is the modern form of political organisation, which has characteristics peculiar to itself (Morris, 1998: 3). After the religious wars that took place in Europe, the state appeared as the only institution that claimed central authority over territories and people living within them. Different than all previous political establishments, the hallmark of the state is its territorialised and highly centralised nature of governance (Morris, 1998: 37). State owed the monopoly of coercive power over its territory and everyday life of its citizens was organised through the establishment of all-binding laws. It was with the emergence of the state that a clear spatial and institutional separation between political and social was established. State clearly separated itself from the society over which it assumed far-reaching control and authority, a control that extended and continues to extend day by day. As Michael Mann notes:

The state can assess and tax our income and wealth at source, without our consent or that of our neighbours or kin (which states before 1850 were never able to do); it stores and recall immediately a massive amount of information about all of us; it can enforce its will within the day almost anywhere within its domains; its influence on the overall economy is enormous; it even directly provides the substance of all of us (in state employment, in pensions, in family allowances, etc.) The state penetrates everyday life more than did any historical state. (Mann, 1985: 334)

So how is it possible for the state to make people conform to its laws that coordinate even the most private issues of their life like from with whom they would sleep to in what ways they should educate their children. Joel Migdal (1997: 226) refers to Mitchell (1991: 91) who underlines the “ghost-like effect” of the state as something appearing beyond the society while coordinating every aspect of human life. How was it possible to justify these ghost-like effects? James Martin (1999: 158) notes that it was during the sixteenth and seventeenth centuries that the absolutist states

were formed and politics appeared as a realm distinct from the society and associated with the political centre, the state. *Raison d'état* of the state was defined as protection from external aggressors while it was also concerned with internal deviants in order to maintain state power and authority which was then directly associated with the person of monarch. In this period politics was perceived as “the art of governing” which refers to a “specific technique of administering power and maintaining social order.” The secularisation that was necessitated by the brutal religious wars that took place in Europe shifted the source of politics from divine to the earth and it was apparent that the new secular establishment needed a source of justification for its rule. Politics had lost its connection with ethics and religion, it appeared as an amoral activity. While the position of the state above society was necessary for the constitution of its authority, with this clear separation, this new political organisation faced difficulty in legitimising this authority. It was in need of showing itself as a part of that society because in order to make people conform to its rule, its authority should be justified. How was it possible to govern people on legitimate grounds? What kind of a justification did the state employ to legitimise its central authority over society? What is the relation between the state and society, which create a link between them that brings conformity and obedience? More to the point what is the real nature of the state, which makes government possible?

Since its rise as the new source of political power, the justification of the authority of the state appeared as one of the main concerns of modern political philosophy. The dilemma in the theory of the state was apparent. From then onwards, modern history has been marked with the struggle between the state and individual, the state and society. Christopher Morris (1998: 5) notes that modern philosophy

have characteristically defined the state as an *artifice*. Although modern philosophers provide different explanations for the end to be pursued through it, the general trend is to consider it as artificial that is created for some purposes, though it was an instrument to be used by the people. Modern philosophy found the justification of the state by assuming the creation of this political organisation as a result of an agreement made by the people. It is characteristic for contract theories to justify the state existence on the grounds of “mutual benefit” and to tolerate its agency as long as it is only concerned with “collective action problems” (Morris, 1998: 10). As James Martin (1999: 159) says, “The physical body of the sovereign no longer symbolised a divinely granted will to which society had automatically to submit. Political power came to be seen as an ‘empty space’, an office to be filled by an indeterminate will authorised by society itself.” There followed two different conceptions, namely individualists and collectivists, on the way in which “society” is perceived thus the state and politics is explained, is justified. Individualists (like Locke, Kant and Mill) give primacy to the rights of individuals who are conceived as rational private agents capable of choosing their own conception of good life. This line of argument has strongly inspired liberal political thought that define the content of politics on the basis of a minimal set of principles which they see as in the benefit of all apart from their individual preferences (Martin, 1999: 159). Liberal democrats handled the dilemma between the normative primacy of the individual on the one hand and the existence of a state that is to secure the rights and liberties on the other hand by introducing a representational government through which they wanted to guarantee that the state would not use its power at the expense of social and political freedoms of its citizens. The main idea behind representational system was to secure its members “against oppression at the hands of those functionaries which it employs

for its defence” (Held, 1995: 10). The concluding solution liberal democrats proposed to the struggle between the right and the might was the proposal of a referee state that would be the guarantor of the order so that individuals would be able to participate in market relations. The state was simply an *arena*, in which from the clash of different interests, a consensus was established according to which legitimate authorities were constituted. Political institutions that were centred around this problematic concept of the state had the essential function of coordination to ensure that the individual desires and interests did not cause disruptive social disorder (Martin, 1999: 159). In contrast to this individualist conception of politics and society, collectivists (like Rousseau and Hegel) emphasise the collective good and they argue that political domain is not a coordinative mechanism for the satisfaction of different needs but an “expression of substantive collective needs” that transcend the individual interest. Either by emphasising the “general will” or by emphasising the “ethical substance” Rousseau and Hegel noted that politics and the state should not be defined in individualist terms but instead they should search for the justification of the state in the rationality of society (Martin, 1999: 160). According to Hegel state is legitimate to the extent that it represents the final accumulation of human development as part of a general rationality within the community. The state was there to articulate the unity and coherence existing within the society (Walton, 1987: 128) Another objection to the liberal individualist contractual theories came from Marxist theory, which explained the state as a superstructure of an economic base, thus as a “reflection” of economic relations.¹ It

¹ Bob Jessop (1977: 334-337) notes that there are basically six different definitions of state and these are as follows: 1) State as a *parasitic* institution, which has no essential role in economic production or reproduction. It is an expression of irreconcilable interests in society. 2) State as *epiphenomena*, as a reflection of self-developing economic base. 3) State as a *factor of cohesion* and a *regulator* that moderates class struggle without undermining the reproduction of the dominant mode of production. 4) State as an *instrument* of class rule 5) State as a *set of institutions*, as a public power used by

is important to note that although they conceived society from a different approach, Marxists did not abandon the liberal conception of the state, which was collapsed in the relations within society. According to both liberals and Marxists, society defined the nature of the state, so that the state appeared as an extension of civil society. However, while liberals defined civil society as the kingdom of individual freedom, for Marxists it was the area of economic domination and the state was an integral part of this domination. The same holds for collectivists who conceptualised the state as an *artifice*. Even if their conceptions of society are different, both individualists and collectivists find the rationality of politics and the state in the rationality of society (Martin, 1999: 161).

For quite a long time state was not taken as a central concept in modern political theory apart from the society-centred explanations which either reduce the political and the state to the representation of socio-economic forces and interests or totally collapse the state and society. The state was defined as an arena for aggregation of different individual interests, as an ensemble of institutions under the direct dictate of conscious private business, as an expression of core values and the like, all of which took societal factors as a basis of their explanation. When the state was not conceived as a political actor with agency it was not hard to justify its rule. The state was not actually “governing” but instead it constituted the arena, the site where the people governed themselves. Huge infrastructural power of the state was recognised as far as it was conceived as a response to societal demands. Although state assumed far reaching control over the lives of individuals, society-centred

officials who are specialised in administration and/or repression. 6) State as a *system of domination* with specific effects on the class struggle. Jessop argues that these definitions result in different political implications and different conceptualisation of the nature of state. They do not result in a unified and coherent Marxist theory of state.

explanations underestimated this “impersonal power” as it was then taken for granted that states were no more capable to act arbitrarily and the might was defeated by right. Their main starting point was the principle of accountability through which they assumed to control arbitrary state power. According to Skocpol (1985: 6) this misunderstanding of the state, the reluctance of the society-centred analysis to speak of the state, or its true autonomy from the societal forces can be understood by the general motive in the social sciences to emphasise “civil society” against the outmoded monarchs and aristocratic states. Civil society appeared as the main locus of social transformation marked with industrial capitalism, which was on its way in “triumphing over the militarism and territorial rivalries of the state.” David Easton (1981: 304) says, “outside of lay usage, the state had all but been extirpated from our professional vocabulary for reference to internal affairs of the international units.” He notes that although the state as a concept was abandoned at one time with respect to internal politics, it was used to identify the unified actors in the international state system without any difficulty. Therefore, Easton (1981: 304) notes that state as a term had a “dual life,” one, with respect to domestic politics, as an extension of societal relations, and the other, with respect to international relations, as an agent, as the main actor of international relations. The political character of the state was recognised in the international relations theory but it was treated as a unified actor with a set of defined interests and it remained untheorised for quite a long time (Keyman, 1997: 54-55). Therefore, the theories of the state did not only differentiate among various society-centred explanations in terms of their different conceptions of society but there was also a general tendency either to neglect state’s life in a international state system or to leave it untheorised with respect to the society in which it is embedded.

Society centred ideas were still dominant during 1950s and 1960s (Skocpol, 1985: 4). Until recently there had been an uprising interest in the theory of the state. As David Easton (1981: 303) says "The state, as a concept that many of us thought had been polished off a quarter of a century ago, has now risen from the grave to haunt use once again." A couple of events have reasoned this interest. Twentieth century was marked by two world wars, which were more destructive and enormous from all of the wars that human civilisation had seen so far. Several armed conflicts had been experienced between states. Colonial era has shown one of the largest territorial conquests. Twentieth century was not marked with the peaceful market relations and intellectual debates. Instead of a spread in civil relations, world is still marked with political interests claimed by states and by territorial rivalries among them. Decolonisation period was followed with the formation of numerous new states in which state formation period and the following national development processes underlined the significant role of states as territorial structures that still act as agents in history. These developments were not unnoticed by scholars who studied in the area of policy making and who have seen that governmental leaders and agencies were active participants in policy making process and they were quite able to take decisions at the expense of demands and social groups (Skocpol, 1985). It was not only in newly established states but also in the "1st World" industrial countries in which the state assumed an active role in social transformation which was explicit in the post-Second World War reconstruction. It was in this period that the state appeared as a substantial economic actor (in terms of ownership, production, employment, regulation and reproduction) challenging the former "formal" and "passive" conceptualisations of state (Pierson, 1996: 103-125). Even

after the Keynesian era, the uncertainty and the intensity of world economic competition once again put pressure on states as actors in social transformation. Also it is important to underline the capacity of the state to preserve itself in the face of various conflicting demands that arouse from the society. The state was able to preserve the political unity of its diversified unity even within the democratic conditions of the twentieth century. Even after the turmoil of 1960s state was still there as something “stable, respected, trusted and strong” and more people on the conservative side appeared as willing to see the state as the reincarnation of the old-fashioned term sovereignty (Easton, 1981: 306). David Easton notes that on the one hand neo-liberal arguments claimed that state was *passe* and was the source for many of our “social woes” while on the other hand the demands for a strong, “sovereign” state was claimed to deal with the ever-worsening condition of modernity. They claimed that national was still important and it was something to be protected. According to Theda Skocpol (1985: 6) it was at this juncture “it became fashionable to speak of states as actors and as society-shaping institutional structures.” These observations have underlined a significant gap between the realities of the political and social formations on the one hand, and the dominant theories of the state on the other. Even if society-centred justifications for the authority of state negated its agency and conceptualised state as an extension of society, explanations for the reasonable justification for the authority of the state or for the ideal type of governance can not provide us with answers about the concrete happening of things. Therefore, instead of theorising for the reasonable justification, we need more clarity about the actual life of state and about the concrete ways through which it makes its rule legitimate in the eyes of its people. Political philosophy have once again returned to this old concept “state” to understand how state was able to solicit

obedience and loyalty even if it was not conceived as part of a meaningful order, as a part of a cosmic order. As it has been argued earlier, state was established through a process of secularisation whereby the source of politics was shifted from divine to earth and in deed this was what defined the emergence of state as well as its problem of legitimacy. This problem of legitimacy is the starting point of our research.

The main subject of this study is to have a better understanding of the ways through which the state was able to govern societies in the absence of a transcendent God, in the absence of a highest source of legitimacy. By examining some selected works of Carl Schmitt we will try to understand how state was able to constitute itself as a necessary, thus legitimate, entity in a society from which it had clearly separated itself, in a society over which it does not assume a rule based on a morality that is constitutive of individual and group identity. We aim to examine Carl Schmitt's work with respect to our question about the nature of the state and we argue that Schmitt's conceptualisation of the state is a challenging one that is worth analysing. In the second chapter of our study, after we give a brief knowledge about Carl Schmitt's life, we will mainly focus on what he defines as the crisis of modern state. It is this part of our study where we examine Schmitt's understanding of the nature of state, thus, the ways in which it gained capacity to constitute a reality both external and internal to its population. In the third part of our study we will examine how Schmitt theorised for the maintenance of the position of state as the sole political entity that stands above all other societal groupings even in the conditions of mass democracy and of the general acceptance of rule of law. This examination will also provide us with clues through which we understand the concrete life of state. The fourth chapter of our research will help us to understand the things we have

examined until there in a more comprehensive way. One of the most striking arguments in Schmitt's thought, his concept of the political, will be the major concern of this chapter. In this chapter we would be able to understand the dual life of state, namely its domestic and international reality, in relational terms. In the last chapter we will make the concluding remarks of Schmitt's theory of the state and the importance of his work in understanding how we are governed.



CHAPTER II

RECOGNITION OF THE SITUATION

Carl Schmitt, known as the “Hobbes of the Twentieth Century,”² is one of the most controversial theorists of modern philosophy (Schwab, 1988: xiv). In all through his long life (1888-1985), he witnessed many political crisis and important turning points in German history. He witnessed the collapse of the monarchical system, the later crisis in which the Weimar Republic fell within, the Nazi Regime and the creation of the Federal Republic³. In all these periods, he gave his attention to the political questions of the times concerned, reflecting his understanding of the concept of the political.

He was born in 1888 into a modest Catholic family in the town called Plettenberg, which was predominantly Protestant (Schwab, 1976). The sectarian and regional contradictions were not resolved by the unification established in 1815 under the rule of Prussian State, but rather they were even more cultivated.⁴ Bendersky (1983) notes that, growing up in a peer group with a self identity of

² Contrary to this view, according to Stephan Holmes (1993: 42) Schmitt’s works remind more Mussolini than they do remind Hobbes as he notes that Schmitt is more concerned with the challenge of disorder than the order itself.

³ For a detailed biography look to George Schwab, *The Challenge of the Exception: An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936* (Berlin, 1970), George Schwab, “Schmitt Scholarship”, *Canadian Journal of Politics and Social Theory* 4 (1980): 149-55. For his political activity and his writings look to Joseph Bendersky, *Carl Schmitt: Theorist for the Reich* (Princeton, 1983)

⁴ Forces of liberalism and socialism, Protestant and Catholic conflicts on the one hand and the clash of traditional world view and the new materialist one on the other, Schmitt was born in a period in which a harmonious society was far beyond the Germany’s reach. Under these circumstances, Catholics were resisting to assimilation through their new establishment of what is known as *Kulturkampf* and this was the Catholic cause which have influenced Schmitt’s early writings.

minority “caught in a confessional struggle” have influenced Schmitt’s political theory, especially his conceptualisation of the political as friend and enemy groupings. He had his initial formal education in a Catholic school and following that, he continued his education in a Catholic institution. He entered the University of Berlin in 1907 and received his doctorate in jurisprudence from the same institution in 1910. It was in this period in which his Catholic identity was reconciled with national identity. The tension between a religious background and the materialistic philosophies, between the concepts of legal positivism and belief in the power of Catholic Church to declare *Recht* was reconciled in his mind by the concept of “higher law” which was introduced by the Neo-Kantian jurists in the early twentieth century.⁵ In these years, Schmitt conceptualised the state as an entity that realises the *Recht*, which was determined by the Church as the universal spiritual entity.

Due to Germany’s defeat in World War I. and instability experienced in the war period, due to the establishment of a new regime and a new liberal constitution following the collapse of monarchy, Schmitt turned his attention to concrete political problems of his time. As Bendersky (1983: 23) notes “beyond philosophical discussions of the purpose and the function of the state,” Schmitt started to confront concrete political issues and to search for tactical solutions. When he was at the peak

⁵ The existence of a higher law above the law of the state had eased Schmitt’s tensions and in his early writings, his conception of the state took its value from its “relationship to a higher value” (Bendersky, 1983: 10). The existence of a right law independent from the state’s power was represented in Schmitt’s early writings with a religious connotation. Bendersky (1983:11) notes that for Schmitt, it was the Catholic Church to decide on what is “law” or “right” in doubtful cases. The moral role of his earlier state conception was reflecting the authoritarianism of the Catholic Church as against the individualism of the liberal ideology. State’s moral role in establishing the right law was above the individual freedom and it was not to tolerate oppositions. Later, he was to declare that it was the Sovereign to decide in doubtful case in which diversity among groups were intense enough to make them engaged in an actual fighting. This was the intensity which Schmitt realised to be existing in the Weimar Republic before its fall to Nazi Regime.

of his intellectual creativity in 1920s he articulated the primacy of the state as the sole political entity to preserve order and security. His new concern was to establish order in a period of great diversities. His previous neo-Kantian approach and the concept of the “higher law” was substituted by his new conception of legality in which there existed a decisionist “Sovereign” from which all laws took their legitimacy from. He still kept his distance from legal positivism and faced with the problems of pluralism in a neutral and in his understanding, consequently in a weak state; he called for a strong state with a decisionist character. During the late 1920s, German political life was marked with diverse antagonisms and the Republican system was experiencing its hardest times under liberal parliamentary system. Schmitt (1932: 7-9), able to analyse the end waiting the Weimar Republic, argued that anti-republican parties should not be provided with the equal chance to participate in the political system, to compete for governmental power. He thought that the regime and the Constitution were under the threat of extremist left and extremist right who might utilise the weakness of the liberal neutral state and the value-free interpretation of the constitution to establish their own rule. They were accepted within the system as far as they proceeded legally and the Article 76 of the Weimar constitution has provided them with the necessary legality to make constitutional revisions easily. Faced with the threat coming from National Socialists⁶ on the one hand, and the Communists on the other, Schmitt called for decisionism under the Article 48 of the Weimar Constitution and he offered a “commissarial dictatorship” role for the president⁷ (Gottfried, 1990: 28). To save the

⁶ Schmitt wrote an article in *Tägliche Rundschau* on 19 July 1932, twelve days before elections that brought Nazis to power. There he said “Whoever provides the National Socialists with the majority on July 31, acts foolishly...He gives this still immature ideological and political movement the possibility to change the constitution, to establish a state church, to dissolve labour unions, etc.” (Cristi, 1998: 11).

⁷ Schwab (1988: xix) notes that Schmit (1921) in his *Die Diktatur* defined two different kinds of dictatorship. Accordingly, for Schmitt a sovereign dictator is he who utilises a crisis to substitute the

existing state, he was calling for a sacrifice of the liberal articles of the constitution, a demand which was not acceptable by the scholars of his time who were devoted to legalist thinking. What he was actually calling for was a popularly elected president with an extensive decisionist power. Hindenburg, the president of the time concerned, was not likely to follow the words of Schmitt, his favour for the legalist doctrines made him to remain within the boundaries described for him in the existing Constitution. By the Enabling Act of March 24 in 1933, Hitler came to power, confirming what Schmitt had taught to happen if necessary steps were not taken.

Following that, the defender of the Weimer Republic had collaborated with the new Nazi Regime. On May 1 1933, Schmitt became a member of the Nazi party. Following that he became the chairman of the Nazi League of German Jurists and the editor of *Deutsche Juristen-Zeitung* (leading law journal of the time). He was appointed as the Prussian State Councillor and he continued to teach in Berlin University as the Professor of the Public Law. Between 1933 and 1936, even anti-Semitic arguments appeared in his works.⁸ In 1936, a secret SS investigation was to declare that Schmitt was a political opportunist and he was not a proper Nazi follower.⁹ He was removed from party offices and from that time until his death in 1985, he involved only with his professional studies, keeping himself at a distance

existent constitution with a new one, whereas a commissarial dictatorship makes the necessary implementations to restore the order in which the existent constitution can function normally.

⁸ He had also organised a conference on 'Judaism in Jurisprudence' in 1936. The main concern in the conference was the ill effects of the influence of the Jewish legal scholars in the German constitutionalism. Later, Schmitt (1987a) would be arguing that this was only a professional debate.

⁹ Later, Schmitt would use this secret investigation to defend himself in the interrogations made by Robert Kempner in the War Crimes Trials. He stayed in interment camps between 1945 and 1947 and following that he was brought to Nuremberg where three interrogations were made with him. Kempner, US prosecutor attorney, was concerned with three main questions. He investigated Schmitt's position in decision-making, his relation to the Jewish question and the impact of his *Grossraum* studies on the expansionist policies of Hitler. He was not found guilty for any of these crimes and he was released without being charged. The Interrogation Reports of Carl Schmitt are

from domestic party politics. His involvements with the Nazi Regime between 1933 and 1936 have put his intellectual career under a dark reputation. For a long time he was perceived as the “Crown Jurist”¹⁰ and ideologue of the Third Reich and his studies were seen as the dangerous soil from where the fascist Nazi Regime was able to flourish. It was this perception that had reasoned the lack of interest in Schmitt’s works, at least until some of his books have been translated into English after late 1970s.

Since the late 1980s, many writers representing a great variety of different schools of political thought, reflecting Schmitt’s own controversial position, have examined his theory and his personal political involvements.¹¹ Even this high level of interest shows us that his theory and his critic of liberalism are worth analysing. Likewise, Tracy B. Strong (1988: xi) states that “Just as interestingly, a number of defenders of liberalism have found it necessary to single out Schmitt for attack, a need they do not feel with other critics of liberal parliamentarism who were members of Nazi Party.” There is still an important number of writers who consider him a fascist calling for perpetual war.¹² Holders of this view stressing Schmitt’s collaboration with Nazi Regime, find it very dangerous to reinterpret Schmitt’s study

translated into English by Joseph Bendersky and they are published in *Telos* 72 (Summer 1987): 97-130

¹⁰ Bendersky (1987c: 91) claims that Schmitt wanted to play the role of “Crown Jurist” of Hitler Regime but he never succeeded to do so.

¹¹ Tracy B. Strong (1988: xii) notes that thirty-six books are written about Schmitt since 1980, most of which were written after 1990. Between 1991 and 1996, sixty-three journal articles were written about him. Interest in Schmitt’s political theory, different approaches on his studies is well summarised by Paul Edward Gottfried, *Carl Schmitt: Politics and Theory* (Westport, Conn.: Greenwood Press, 1990).

¹² Gershon Weiler’s (1994) book on Schmitt exemplifies such an attitude as he argues that there is no inconsistency between Schmitt’s pre-1933 and post-1933 work. More to the point according to him there appears nothing critical of Nazis in these works. According to him there was nothing critical for Schmitt in the Nazi depiction of Jews as the internal enemy. Mark Neocleous (1996b: 17) also argues that rather than representing an inconsistency in his thinking, Schmitt’s collaboration was deeply rooted in the theoretical premises of his work. According to Neocleous (1996b: 23) Schmitt’s collaboration was “the bureaucratic baptism of an already essentially fascist argument.” For a brief

in order to open new debates in political theory. On the contrary, there are many others who argue that there are things to be “learned from” Schmitt, like Piccone and Ulmen (1987: 14). Contemporary conservatives return to Schmitt in order to strengthen their call for authority against liberal individualism, while many leftists study Schmitt to utilise his non-ideological concept of the political and his claims for the significance of homogeneity for democracy. The writers, who find Schmitt as one of the most significant and most brilliant political theorists of the twentieth century employ different justifications for Schmitt’s controversial political positions. Some try to separate the man from his work by arguing that he was unfaithful to his own ideas (for example, Freund, 1995), or by calling him a mere opportunist,¹³ or by seeing his involvement with the Nazi Regime as a personal weakness, as a result of his personal ambition for professional aggrandisement and public attention (Bendersky, 1987c: 96).¹⁴ Some argue that within the given conditions, Schmitt preferred Nazi Regime instead of going on with the existing chaos (like Hirst, 1999) while for others this involvement represents his concern for authority, for the relationship of protection and obedience.¹⁵ At this point, it is important to note that

discussion coming from a counter view see George Schwab (1991), “Carl Schmitt Hysteria in the US.” *Telos* 91: 99-107

¹³ If he was a mere opportunist, we should say that he was not a successful one. He could have collaborated with the Nazi regime more intensely than he did actually. However Bendersky (1983) argues that his references to *volk*, Jews and to such concepts that were favourable by the regime were scattered in his work and they were not fitting to the context of arguments in which they were placed. His theory of *Grossraum* was criticised on the grounds that it did not contain references to *volk*, race and it was even labelled as “harmful” and “inconsistent with National Socialism.” (Schmitt, 1987a: 111). Investigation kept by SS about Schmitt’s activities, friends, works and else and the article that was written to defame him in the SS organ *Das Schwarze Korps* all show that he was not a successful opportunist, if he had been opportunist at all. (Bendersky, 1987c: 93)

¹⁴ According to Bendersky (1987c: 96) while charges of mere opportunism or ideological conversion can not be taken explanatory at all, fear for himself and his family and his earlier desire to influence and possibly to tame the extremism of Nazis can only partially explain his collaboration. At this point he gives a lot emphasis to Schmitt’s ambition for public attention and rewards whereas from the overall argument of his book *Carl Schmitt: Theorist for the Reich* (1983), one gets the impression that the other two reasons are much more emphasised.

¹⁵ George Schwab (1988: xiii) says that it was “his belief in the need to support the legally constituted authority” that had made Schmitt collaborate with the Nazi Regime between 1933-36. According to Gershon Weiler (1994: 10) this kind of reasoning can support even the institution of slavery on Hobbesian grounds and he considers this argument on protection-obedience relation as the

from the early 1920s Schmitt was merely concerned with concrete political issues, he always proposed solutions to the problems that he saw in the concrete happenings of politics. Through his studies he aimed to direct the course of political instability and social fragmentation towards the re-establishment of the state authority and political unity. Instead of theorising for the ideal system of government, for the reasonable justification of the state's authority, in every political moment he searched for new means to enable the preservation of the state, thus its unity, and this is what makes his studies worth analysing. He called himself an “intellectual adventurer” as he argued, for whom thoughts and knowledge develop in this way. (Schmitt, 1987a: 103-104) He saw his membership to the Prussian State Council in a similar vein with the position that he held as a constitutional adviser in the late Weimar period.¹⁶ According to Bendersky (1983: 195-273), when the realities of Nazi Regime have shown themselves to Schmitt, it was too late to retreat especially under the Nazi suspicion about his pre-1933 position and in each case he felt obliged to determine his own limits of loyalty and compromised more.¹⁷ The compromises Schmitt made to Nazi regime and the real reason lying behind them is not the main theme of this work. Even if it is not proper to separate the man from his work, we would not be able to examine his collaboration with the Nazi regime until more of his studies, especially the ones between 1933-1936, are translated into English. In this study, we would be limited to the sources available to the English speaking world and we

rationalisation, not the reason, of his behaviour. See also Bellamy and Baehr, “Carl Schmitt and the contradictions of Liberalism” *European Journal of Political Research* 23(2) (February 1993): 163-185

¹⁶ Concerning his membership of the Prussian State Council, Schmitt (1987a: 126) says, “My friend Popitz and I thought it has great possibilities and hoped that it could become a forum for practical discussion of administrative questions and would thereby constitute a counterweight to the party.” Bendersky (1983: 200-201) also argues that Schmitt and his associates hoped to channel the constitutional developments through a conservative line, they wanted to “lay the foundations of a traditional authoritarian German state.”

¹⁷ Schmitt argues that when the situation becomes so abnormal that one can not even trust to his closest friend and when there is no one left to protect an individual from terror, one has to determine

would judge his work in the light of this knowledge. Rather, we will be searching whether there any significant argument in Schmitt's works that may help us in understanding the way in which modern societies are governed.

2.1: CRISIS OF PARLIAMENTARISM

In *The Crisis of Parliamentary Democracy*, which was published for the first time in 1923, Schmitt claims that the foundational principles of parliamentarism, as he claims to find in the works of Mill, Burke, Bentham, Guizot and Locke, are discussion and openness. Schmitt (1992: 49) claims that liberal philosophy found in these principles the means to prevent the emergence of naked power, "the way of beasts", and they assumed that the victory of reason, of "right over might" can be achieved through these principles. His claim was criticised by Richard Thoma (1992), a leading jurist of the time, on the ground that even if the principles of discussion and openness were outmoded, they were replaced by new principles as Thoma argued to be explicit in the works of Max Weber, Hugo Preuss and Friedrich Neumann¹⁸. On the contrary according to Schmitt (1992: 4, 7) the fact that these principles are outdated also renders parliamentary system as outdated and, according to Schmitt, there are no new principles for parliamentarism as Thoma has claimed to be. He argues that the intellectual foundations of parliamentarism have lost their validity and what have been left apart from them are only practical considerations,

his own limits of loyalty. According to Schmitt the obligation to "unleash a civil war, to engage in sabotage and to become a martyr" has its own limits (Bendersky, 1983: 267).

¹⁸ By noting that no rational people can really believe in these principles and hope such wonderful results from parliamentary debates any more (such as the achievement of "truth", "justice" or "at least relatively better legislation and policies) Richard Thoma (1992: 79) agrees with Schmitt on his argument about the obsolescence of these principles. However, he argues that Schmitt confined

“social technical justifications” which can in no way be considered as new principles. According to Thoma, from the works of Weber, Preuss and Neuman, it can be concluded that parliamentary system is a means to select the best political leaders. Accordingly, this is the new principle of parliamentarism. This was not what Schmitt might agree as an evident reality¹⁹. Against the claim that the basic liberal principle is the rule of people in its entirety, and due to practical problems involved in a direct rule, the parliament is constituted as a representative committee of that people, Schmitt (1992: 34) offers the plausibility of antiparliamentary Caesarism. For if we assume that a committee can decide in the name of people, following the same logic, we can also accept that a single trusted representative can decide in the name of people, an idea that is never permissible in the liberal thinking. Consequently, he returns to a point, that he finds evident in the works of Rudolf Simend (1919) and Guizot François (1851). By following these theorists, he comes to the conclusion that the main idea behind parliamentarism is the belief in a “dynamic-dialectic”, a belief which assumes that from the confrontation of different opinions and from the clash of differences the “real political will” would be synthesised (Schmitt, 1992: 35). Accordingly, discussion will bring out truth as a result of a harmony of conflicting views, whereas openness will enable people to control their representatives. Likewise it is assumed that the freedom of press will inform people so that they will be able to seek their own truth and to tell it to their representatives. Freedom of opinion, freedom of speech and the like, were all considered to be the guarantors of the discussion process. Legislation in parliamentarism was supported by the belief in

himself to certain justifications of parliamentary rule and neglected other justifications and principles that are, according to Thoma, still alive in both intellectual and in real political sense.

¹⁹ Schmitt (1992: 4) observes that parliamentarism had already resulted in a situation whereby “all public business has become an object of spoils and compromise for the parties and their followers.” He adds that parliamentary system had produced a dubious class instead of an elite leadership.

reason and the universal in contrast to passion and the particular. The decisions that are taken throughout a process of argumentation were considered rational and they were posed polemically against the decisions that emanate from authority, against measures, concrete decrees, orders or commands. Openness was another foundational principle, which was defined polemically, against the secret rule of the monarch, against princely absolutism. In the principle of balance of powers Schmitt finds the same logic that he claims to be inherent in liberal thought. Schmitt (1992: 40) says, "This depends on a way of thinking that creates multiplicity everywhere so that an equilibrium is created from the imminent dynamics of a system of negotiations replaces absolute unity." Liberals believe that from the balance of powers, out of a clash among different organs of the state, among different opinions and interests, truth as well as "general will" would be synthesised. According to this principle political power of the state is divided into different organs (legislative, executive and judiciary) and they are all turned against each other in order to achieve the most reasonable outcome. Even the parliament itself is divided into opposition groups or by a bicameral system. Schmitt (1992: 45) argues that this kind of rationality adopted a kind of balance even between rational and irrational which was explicit in their distinction between legislative that functioned with discussion (reason) and executive that functioned with command, unity of decision (authority).²⁰ He argues that only universal laws that are made through parliamentary discussion can unite truth and justice but, accordingly this was not the case for executive or, for decision. Schmitt refers to Alexander Hamilton's (1788) *The Federalist Papers* to explain the reason behind the principle of separation between executive and legislative organs of state and he presents this argument as follows:

²⁰ Schmitt (1992: 102) also notes that similar points can be found in the works of Montesquieu and Sieyes who differentiated "legislation as advice and reflection and execution as action."

The executive may be in the hand of a single man because its energy and activity depend upon that; it is a general principle recognised by the politicians and statesmen that legislation is deliberation and therefore must be made by a larger assembly, while decision making and protection of state secrets belong to the executive, things which “decline in the same measure as the number increases”...Different opinions are useful and necessary in the legislative; but not in the executive, where especially in times of war and disturbance action must be energetic; to this belongs a unity of decision. (Schmitt, 1992: 45)

Schmitt argues that throughout the struggle between parliament and monarchy, the meaning of “parliamentarism” was changed, and, a particular kind of executive was applied to it. It was afterwards that legislative assumed to influence executive and the idea of a government influenced from the representation of people was accepted. Therefore, Schmitt (1992: 33) does not accept the validity of the concept of “parliamentary government” in his search for the fundamental principles of parliamentarism. As a “newcomer” it can not be a point of departure in his research. However, it is not an indifferent concept in his work either, because he argues that since the establishment of “parliamentary government,” parliamentarism has drifted way from its purpose and it appeared as a mere “facade” (Schmitt, 1992: 48). Since popular representatives have started to participate in government, the principle of division of powers was abolished. Schmitt argues that the idea of parliamentarism was born out of a struggle against monarchy, against might and secret politics. He says, “But how harmless and idyllic are the objects of cabinet politics in the seventeenth and eighteenth centuries when compared with the fate that is at stake today and which is the subject of all manner of secrets.” (Schmitt: 1992: 50) Since the establishment of parliamentary governments and mass democracies there are no more discussions in parliaments that can, aim to, establish “general will.” Parliamentary sessions are no more established to achieve the most reasonable truth, they do not aim to find the “general will” out of a clash among different opinions and

interests. Schmitt (1992: 5) says that a discussion presupposes the idea of persuading or being persuaded in the determination of the truth and justice. He argues that discussion involves persuading others in what you believe right and just, while at the same time it requires the openness of every participant to be persuaded. The willingness to be persuaded can not be seen as an attribute of those parliamentary members who are primarily concerned with their self-interests and who are tied with particular party command chains. There can be no discussion in a parliament where representatives, instead of representing the whole, are dependent on their particular party instructions and its particular constituency. For Schmitt (1992:1), people no more believe that there are many representatives who employ a kind of disinterestedness advocated by liberal parliamentarism. For him, even this distrust is a sign of the crisis of parliamentarism. The decisions are not made through discussion but they are made in party bureaus and in closed doors and they are even made by the outsiders of the parliament. The decision making process is not publicly known as the representatives vote in the parliament according to the decisions taken outside of the parliament. Parliament appears as a place in which parties compete with each other for the resources of the state. They mainly calculate their interests, their chance of winning a majority; and, to succeed they base their propaganda on the short run interests and on the passions of the people. Schmitt says that the same benefit analysis is also seen when the parties make coalitions, when they reach to compromise:

When two businessmen have agreed after a trade rivalry to talk about mutual business opportunities, both have an eye naturally on their own profits, but they can still arrive at a businesslike compromise... There has been deliberation and compromise, as has already been noted, everywhere in the world. People know that it is better most of the time to tolerate one another than to quarrel and that a thin settlement is better than a thick lawsuit. That is without a doubt true, but it is not the principle of a kind of state or form of government. (Schmitt, 1992: 6)

He notes that even if it can be accepted that there is no practical alternative to parliamentarism, one should recognise that it has abandoned its fundamental principles and, therefore, the whole system including freedom of speech, freedom of assembly and the press, public meetings, parliamentary immunities and privileges have started to lose their rationale (Schmitt, 1992: 49). How should we interpret these words? Should we abandon the freedom of speech and the press or the freedom of association and organisation, even if we accept the institution as the only alternative? Should we employ some restrictions on such freedoms? For what reasons we have to recognise these realities? What is the main drive behind his call for recognition of the crisis? Is he an anti-liberal who tries to defeat parliamentarism in its own terrain or is he calling attention to a crisis that has to be taken seriously? Rather than a direct criticism posed against the principles of parliamentarism, Schmitt seems to be directing the attention to the situation with which this system has faced as a result of the establishment of mass democracies and parliamentary governments. Instead of criticising these principles in and of themselves, he is more concerned with justifying the claim that they are not employed any more. Here we explored what Schmitt presented as the crisis of parliamentarism. However according to Schmitt (1992: 16) there are two more crises that have to be dealt with separately. These are the crisis of the state and the crisis of democracy. To understand the reason behind his call for the recognition of the situation, we will mainly focus on what Schmitt defines as the crisis of state. This examination will help us in understanding the main reason in his definition of democracy and its crisis.

2.2: CRISIS OF THE STATE

According to Schmitt (1992: 16), “the crisis of the modern state arises from the fact that no state can realise a mass democracy, a democracy of mankind, even a democratic state.”²¹ To understand what Schmitt articulates as the crisis, we should first focus on this ambiguous concept of the state. According to Schmitt state is the modern form of political unity that is based on the separation between political and non-political spheres of life. He argued that the main characteristic of this political form is its monopoly on politics:

The decisive question...concerns the relationship of...state and politics. A doctrine which began to take shape in the sixteenth and seventeenth centuries, a doctrine inaugurated by Machiavelli, Jean Bodin, and Thomas Hobbes, endowed the state with an important monopoly: the European state became the sole subject of politics. Both state and politics were linked just as indivisibly as *polis* and politics in Aristotle. (Schmitt, 1972: 23-24)

Schmitt (1932) distinguishes four different types of state configurations. These are the judicial, executive, legislative and administrative forms of the state, which correspond accordingly to feudal state, to the seventeenth and eighteenth century absolutist state, to the nineteenth century legislative state and lastly to the twentieth century administrative or “total state.” Accordingly what defines the first three configurations is the separation maintained between the state and civil society and it is the dissolution of this dualism that makes Schmitt argue that the administrative state is not merely a state but instead is “the portrayal of its dissolution” (Cristi, 1998: 182). The judicial state rests on the function of jurisdiction through which it

²¹ Although Schmitt uses the term “modern state” Gary Ulmen (1994: 129) argues that for Schmitt state was not a general category but as the main agent of secularisation, it was a particular European accomplishment that arose only in sixteenth century and started to decline at the end of nineteenth century. Ulmen (1994: 129) says that in a conversation with him, Schmitt said, “There is no modern state. There is only the state.”

manages to protect and maintain the social and economic order. The executive state rose out of the wars of religion that has taken place in Europe, it was characterised by its “sovereign personal will and the authoritarian mandate” (Schmitt, 1932: 9). Authority was centralised and the absolutist state maintained its monopoly on politics by command as the “decisionism of an immediately executable decree” was recognised juridically valid (Schmitt, 1932: 13). Personality of authority and the power of concrete orders provided the executive state with a strong capacity to govern. The legislative state of the nineteenth century brought an end to legal validity of assigned to the command of the monarch because the new constitutional developments were devised to protect individual freedom against what they interpret as the arbitrary rule of monarchy. However as we have earlier noted, the principle of balance of powers established a system whereby monarchy maintained its control over executive, its monopoly on politics even if it was “dislodged” from legislative functions. The dualist structure of the state, the balance established between executive and legislative assured the autonomy of the state from civil society as it was able to keep at bay many differences (religious, cultural, economic and the like) dividing society, thus to stay neutral with respect to these differences. According to Schmitt (1932: 78) neutrality of the state was a result of its strength, of its monopoly on politics with the virtue of which it was able to provide order and security so that state-free domains can function according to their own immanent principles. How could state provide security and order? As Jean Cohen and Andrew Arato (1992: 204) says, Schmitt noted that the neutrality of state depended on its being “strong enough threat to motivate the relativisation of other forms of social (economic, confessional, cultural) opposition and conflict and also the resulting self-constitution of a more or less unified “society.”” According to Schmitt (1998: 213) only a strong

state is able to “remove itself from non-state affairs.” Accordingly, only a strong state can maintain its monopoly on politics through depoliticisation, through relativisation of conflicts within the society.²² Therefore, the separation of the state and society is needed because it is through this separation that state remains above the societal conflicts and relativises them, depoliticise these domains.

This is indeed a Hobbesian argument whereby a transition from state of nature to a state of civilisation corresponds to a transition from a chaotic “war of all against all” to order and security maintained by the Sovereign. In the state of nature there is no impartial authority to judge in cases of conflict. Therefore, everybody acts with his/her own reason, with his/her own truth for self-preservation. Consequently right of nature which dictates the rightness of any action for self-preservation will always tend to “trump” the law of nature that calls avoidance from death and alignment towards peace (Mill, 1995: 453). But after the social contract, law of nature is turned into civil laws that bind individuals with certain obligations for the preservation of order and peace while right of nature, the freedom to act without any restrictions is turned into civil rights (Mill, 1995: 454). Sovereign as the ultimate lawgiver provides the necessary peace for the establishment of free domains. Sovereign is the only one left in the state of nature, thus who is the only one provided with the right of nature, to do anything in its own judgement and reason for self-preservation, preservation of which brings the condition of security and order in

²² According to Schmitt (1976: 65) conflicts within the society are so irreconcilable that partners to these conflicts face each other with strong commitments for their cause. In the absence of a strong state that has the capacity to decide, societal unity finds itself in the way of disintegration due to the totality of the claims made by each partner to any conflict. It is through this decision, conflicts are brought to an end thus relativised so that constitution of a political unity becomes possible. As it will become more clear in the proceeding chapters, according to Schmitt, the authority to decide on these conflicts brings

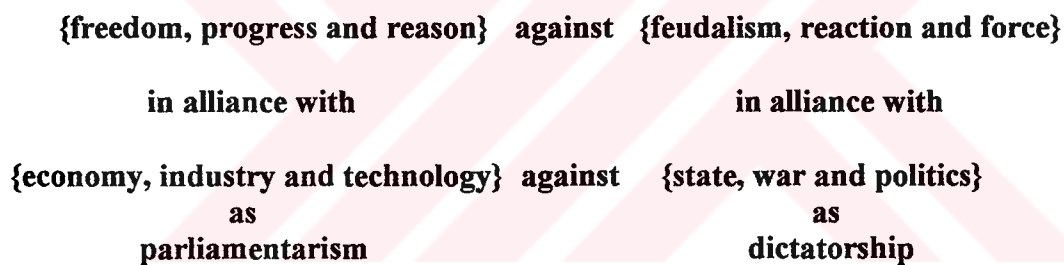
a power to the state to be able to “relativise” conflicts with respect to the political unity that it aims to establish as well as to maintain..

society. As far as state stands above the society, as far as a distinction is maintained between state and society, state is constituted as the ultimate lawgiver, as the guarantor of order in whose existence conflicts are relativised, decided; order and peace as well as free spaces of human existence are established. Leo Strauss (1976: 92) argues that unlike liberals who totally forget the state of nature, Schmitt returns to the founder of this thinking, to Thomas Hobbes to remind them the grounds from which their “culture” had flourished. Leo Strauss argues that pluralistic theories of the state find their root in the liberal understanding of “culture.” For Strauss, state’s appearance as one of the independent provinces of culture is a consequence of the liberal negation of the *status naturalis*. Liberals view the culture as an autonomous and a pure product of human spirit; they neglect the idea that culture is something cultivated:

What is still today, despite all challenges, the most obvious, genuinely liberal answer to the question of the genus within which the peculiarity of the political and, therewith of the state is to be defined is that genus is the “culture,” that is the totality of human thought and action which is divided into various relatively domains, into provinces of culture. (Strauss, 1976: 86).

Unlike Hobbes who recognises the dangerousness of human nature; liberals tend to forget the foundation of culture, the *status naturalis* and they base their philosophy of culture on *status civilis*, thus conceptualise the state as another association in a world of culture. The state lost its monopoly on politics, it was not any more the highest judge in a case of conflict. In other words the political power, the agent of neutralisation and secularisation was itself neutralised (Schmitt, 1993b: 138). Liberal negation of the *status naturalis*, its negation of the ever-present possibility of conflict, resulted in a total hostility towards the state and politics. They turned the state into society: “on the ethical-intellectual side into an ideological humanitarian conception of humanity and on the other into an economic-technical system of

production and traffic.” (Schmitt, 1976: 72). Schmitt (1976: 74) further argues that the enlightenment belief in the intellectual and moral perfection of humanity constituted the idea of the spiritual progress in the eighteenth century. When it was combined with the idea of economic-industrial-technological progress of nineteenth century, liberals have started with their discourse on pacification. They articulated that the age of politics and wars has come to an end, they aimed to replace war and repression by the terms of economy, by the peaceful exchange of goods. When economic thinking was combined with the technical thinking, it was assumed that technology would not only make all social and moral conflicts superficial but it would also solve the economic problems by the new techniques it would provide for production. Schmitt (1976: 76) outlines this neutralisation process in the following manner:



Schmitt claims, however that in the real sense of the word, this process did not pacify the world and it did not bring an end to conflicts. According to him, the world will not become devoid of conflicts with the aid of definitions and constructions, and says, “It will be more exact to say that politics continues to remain the destiny, but what has occurred is that economics has become political and thereby the destiny” (Schmitt, 1976: 78). For Schmitt a world based on economic relations is no more just or progressive than the previous establishments. Economic exchange of goods does not eliminate the domination of one side by the other, as there is always the possibility that one side of the contractor will be put on a disadvantageous position.

The deviants of this system will be punished by the methods of an economic system whereby every state has become dependent to one another (Schmitt, 1976: 79). Putting an embargo to the flow of raw material or food supply to the deviant country, destroying its currency or other economic sanctions are seen as peaceful means of force, thus non-political, although they may end up with severe economic conditions with violent death in the sanctioned country. When the exploited will try to alter its disadvantaged position, it will not be through economic means. As a result, every attempt to change this subordinate relation by extra-economic means will be considered as violence and crime, as resorting to "politics." The possessors of power positions will label him as the "disturber of peace" and by the usage of ethical discourse they will in deed engage in destroying their opponents, to protect or to expand their economic powers, to maintain the system (Schmitt, 1976: 76). For Schmitt the criminalisation of war that is at stake is a clear evidence of the decline of the negation of European sovereign state system whereby state used to have monopoly on politics, it used to direct human aggression on a territorial basis thus limited war. Today aggression, war itself has been criminalised (Ulmen, 1996b: 103) and this has brought an end to the previous formalisation of war and according to Schmitt, to the previous limitation on war. Schmitt (1976: 56) claims that Geneva League of Nations is not a league but possibly a new form of alliance which, by "legitimising and sanctioning certain kinds of war", by outlining the legitimate procedure to engage in war, eliminates many obstacles to war. The result will be the most bloody and violent war of all, because a war that is waged in the name of humanity and peace would call its opponent as the "disturber of peace" that is to be treated as a inhuman monster. As Schmitt (Schmitt, 1976: 36) says, it is no longer an

enemy that is to be “compelled to retreat into his borders, but it is to be eliminated totally:

Humanity as such has no enemies. Everyone belongs to humanity... “Humanity” thus becomes an asymmetrical counter-concept. If he discriminates within humanity and thereby denies the quality of being human to a disturber or destroyer, than the negatively valued person becomes an unperson and his life is longer of the highest value: it becomes worthless and must be destroyed. Concepts such as “human being” thus contain the possibility of the deepest inequality and become thereby “asymmetrical.” (Schmitt, 1987b: 88).

Liberals believed in the peaceful process of discussion and competition. But Schmitt claims that neither discussion nor ethical discourses on peace and humanity, neither economy nor technology are inherently apolitical but in contrast they are already politicised. Like his position against the belief in the neutrality of economic processes, Schmitt argues that European intellectuals’ belief in the neutrality of technology and in the impossibility of mastering it, is superfluous. Technology is thought to be absolutely neutral because it serves all, it is utilised by every nation, every race, every class and religion. Contrary to the general understanding, Schmitt (1993b: 139) argues that technology is not neutral precisely because as an instrument it serves all. In his own words: “Modern technology easily becomes the servant of this or that want and need...A marvellously rational mechanism serves one another demand, always with the same earnestness and precision, be it for a silk blouse or poison gas or whatsoever.” (Schmitt, 1996b: 14-15) It is open to the use of any kind of conflict as a powerful weapon. Schmitt argues that it is not only the pure technical weapons but also the religion of technology which would motivate any side to any dispute towards total determination and domination. Accordingly the mechanistic outlook of technology should not blind us to the spirit it promotes, the religion of technicity should not be confused with technology itself (Schmitt, 1993b: 141). The spirit of technicity, which promotes an anti-religious activism, is still spirit and even

an “evil and demonic spirit.” It is a belief in the domination of nature and even the domination over human nature; it is the belief in unlimited possibilities of progress. For Schmitt (1976:28), enmity among people that are grouped against each other with utmost intensity of association and dissociation is an ever-present possibility, and the realities of the life do not change with ethical and idealistic constructions, with abstractions and normative ideals. He argues that technological weapons, the “modern means of annihilation,” have been produced by great deals of investments of capital and intelligence and accordingly this is the clearest evidence to the fact that neither reason nor economic-technical thinking have brought us to the “world of culture” (Schmitt, 1976: 79). Accordingly state rose out of a condition of *status naturalis* and its “neutralisation” would bring us back to that situation. This is why Schmitt (1976: 65), considers Hobbes, as a powerful political thinker, who recognised that the conviction of each individual that it possesses “the truth, the good and the just bring about the worst enmities, and finally the war of all against all.” Concerning the state of nature Schmitt concludes:

As a result – with the exception of some radical anarchists- all presuppose that the state is the highest authority, the judge who prescribes over ‘mine and thine’, through whom the merely normative, and therefore judgeless, state of nature – a *status justitia* (more accurately *judice*) *vacuus*,²³ one in which each is judge in his own case, is overcome. Without an understanding of the state as a transcendent unity and power, all the practical results of the Kantian ethic of state are contradictory and weakened (Schmitt, 1999: 196).

For Schmitt (1999: 198) this is what liberals who aim to neutralise the state and the pluralist theorists (like G.D.H. Cole and Harold Laski) who aim to equate it to other associations existing within the society do not understand. Even if various religious, economic and cultural associations bonds may bind individual, there should exist a strong state to decide when there emerges a conflict between or within these bonds.

²³ This means ‘a state void of justice, more accurately of judges’ (Schmitt, 1999: 208)

State is the one through whose ultimate decisions conflicts are solved, and the condition of order and security, thus the condition of freedom and pluralism is established (Cristi, 1998: 20). So for Schmitt, state is the ultimate political organisation that stands above all other social institutions and associations, it is both above and different from others.

For Schmitt, this was the case until the end of eighteenth century and even throughout the nineteenth century, when the state at least stood above society. Neutralisation of state brought a process through which the state was lost to society, the separation between them was abolished, a process at the end of which there was no transcendent authority left to remain above the societal conflicts to decide and relativise them. Historically the state was qualitatively total in the sense that although it had monopoly on politics, it did not intervene in society unless there exist a threat to order and security. It did not intervene unless contradictions within society created a need for the state to show its strength, to judge as the highest authority and to relativise these conflicts in order to maintain political unity (Bendersky, 1996: 126). However, with the establishment of mass democracy and parliamentary government, state advanced through its own demise, as it became an administrative state that can be defined as a quantitatively total state. As Renato Cristi (1998: 23) notes, "Stepping beyond the limits that separated its interests from that of civil society, and becoming involved in what was the exclusive concern of civil society, meant that state lost its autonomy." Such a state meant only a weakening of the state, not a strengthening of it because by expanding in all directions state became total in pure volume not in its political energy (Schmitt, 1998: 27). While qualitatively total state is characterised with its ability to prevent the clash of antagonistic groups that are

committed to different claims of good, justice and truth, the quantitatively total state, due to its lack of autonomy and neutral position, provides the necessary grounds for the eradication of such pluralism (Schmitt, 1999: 206). Democratic claims for social homogeneity, social justice and equality contradicted with the reality of inequality and parties “formalised” these social contradictions (Kennedy, 1987a: 60). Democratic claim of identity was raised in every domain of human existence and in every domain different groups bring irreconcilable conflicts into the political agenda. Schmitt (1932: 96) says that in the absence of a qualitatively total state that is strong enough to keep itself neutral with respect to social contradictions and to tame these conflicts when necessary, what we today face with is a tendency towards a total politicisation of human life:

Much greater significance attaches to the recognition that democracy is the cause [*Ursache*] of the “total state” of today, or more precisely of the total politicisation of the totality of human existence...and that there is need of a stable authority in order to execute the necessary de-politicisation and so, out of the total state, to gain once more free spheres and areas of life. (Schmitt, 1932: 93)²⁴

As Schmitt argues that in the absence of a qualitatively total state each party realises in itself totality, they totally absorb their members and immerse in every sphere of their existence (Schmitt, 1998: 219). In the face of a competition between these total parties the result would either bring a civil war or the establishment of a totalitarian system whereby one party succeeds to establish its own total program through the eradication of all pluralism that had existed so far.

²⁴ Indeed Schmitt always kept a conceptual distinction between a qualitatively total state and a quantitatively total state. However in different contexts he used the term “total state” in place of both of these two distinct concepts. While in this quotation he used the term ‘total state’ to refer to his concept of quantitatively total state, later in his article called “Strong State and Sound Economy” Schmitt (1998: 217) uses the term total state to refer to qualitatively total one.

For Schmitt state was a historical reality that came at one time and would be diminished in another. But he admired this modern political form which appeared as “the best instrument for balancing freedom and order,” as a “tamer” of violence in the absence of which violence would be released from control (Gottfried, 1990: 114). European sovereign state system did not only tame violence domestically but through its neutralisations and containment of conflict on territorial basis, it established an international order that is devoid of wars of religion. Post-medieval territorial establishment which recognised the equality and sovereignty of each state led to a limitation of war. It was through the replacement of “just cause” with “just enemy” clear definitions between war and peace, between combatants and noncombatants were established (Bendersky, 1996: 103). More to the point, secularisation of politics constituted the state as the sole political actor who rendered politics to a territorial definition. War was considered legal, its monopoly was owned by the sovereign states who pursued limited geopolitical interests. Politics defined in secularised and territorialised terms replaced the conception of foe with the conception of “enemy” who was not to be hated personally or to be considered as “inhumane” (Schwab, 1976: 10). As we have noted earlier the administrative state of the twentieth century indeed represented the demise of the state, of a process of four centuries of neutralisation. In the absence of a “highest judge” to relativise contradictions inherent in society, the old gods and the old demons return from their graves and fight their old wars but this time “disenchanted” (Schmitt, 1996c: 20). Accordingly the process was subordination of state to society, it was indeed “secularising” the monism and universalism of the Roman Catholic Church into the universalism of Second or Third International: As Schmitt says:

From the intellectual historical perspective, however, the real surprise in the theoretical situation is that the arguments and viewpoints which

served the social philosophers of the Roman Catholic Church, or of other churches and religious sects, in their quest to relativise state against the church work from now on in the interest of a union or syndicalist socialism (Schmitt, 1999: 197).

According to Schmitt in the twentieth century different claims to universal truth and justice confront each other without any mediation, without any control that was once made by the state. All these tendencies show that modern form of political unity and the accompanying understanding of politics defined in terms of territorial unity and order has been declining. For Schmitt the European sovereign state system was preferable to the new democratic establishment that showed a tendency towards total state and total war because mediation between values and ideas was only possible under the sovereignty of each state through whose neutralisations international relations were cleansed from theological as well as ideological crusades.

2.3: REPRESENTATION AND IDENTIFICATION

We have noted that state derived its power from the distinction it maintained between itself and society and its self-preservation, the maintenance of order and unity was dependent on its power to tame conflicts within the society. However we have not completely explained how state was able to justify its authority, how its authority was legitimated. We have noted the words of Jean Cohen and Andrew Arato (1992: 204) who said that state's neutrality depends on its being a "strong enough threat" to relativise conflicts. However in his *Romantic Catholicism and*

*Political Form*²⁵ which appeared in 1923, Schmitt (1996b: 16) argues that politics is not a mere technique of manipulation and domination of fixed social and international power factors (as obtained in Machiavellian conceptualisation) because a political system that is simply based on such naked techniques of holding power would not last long. As Schmitt (1996b: 17) says, “To the political belongs the idea, because there is no politics without authority and no authority without an ethos of belief.” Idea corresponds something beyond the given reality of material things, something transcendence, which always means authority from above. It is for these reasons Schmitt was concerned with the definition of Leviathan as the “Mortal God” as well as its definition as a machine (Gottfried, 1990: 49) Schmitt concentrated on the symbolism in Leviathan through which the state was portrayed as representing both the temporal and the ecclesiastical powers. However, Schmitt (1996b: 22-23) argued that symbolism is human to the extent that it has a “language of its own.” According to Schmitt (1996b: 23) the ability to create form first of all depends on the ability to create “the language of a great rhetoric” which can in no way be discussion or debate but it is most decisively a “representative discourse.” We can say that “decisionism” which characterises Schmitt’s conception of the state derives its legitimacy from an ethos of belief and from a representative discourse by the virtue of which it acts as a transcendent unity and power, as the highest judge in a case of conflict. In *Romantic Catholicism and Political Form*, Schmitt posed the political idea of Catholicism and the visibility of church²⁶ (as a fundamentally public institution) against the Protestant ethics of private spirituality, and the economic

²⁵ As it has been noted by Francis Slade (1996: 115) in this study Schmitt’s concern was not that of a theologian but instead that of a political theorist as he aimed to show the necessity of politics and consequently the inevitability of idea of representation as will be explained below.

²⁶ What Schmitt called in 1917 in his essay “The Visibility of the church: A Scholastic Consideration” as visibility is what he called as representation in 1923 in *Romantic Catholicism and Political Form* (Ulmen, 1996a: xi-xii).

thinking of bourgeoisie liberalism (Ulmen, 1996a: xxi). The visibility of church is opposed to the Protestant principle of inwardness, which does not mean “otherworldliness” but precisely “worldliness” as Francis Slade (1996: 114) says “Otherworldliness takes the things of this world as real and their reality consists in their signifying, manifesting, or pointing to, other realities. Their being makes something other than themselves visible. Their own visibility is the visibility of what is other.” Accordingly Roman Catholic Church is capable of symbolism and representation:

The pope is not the Prophet but the Vicar of Christ...The fact that the office is made independent of charisma signifies that the priest upholds a position that appears to be completely apart from his concrete personality. Nevertheless he is not the functionary and commissar of republican thinking. In contradistinction to the modern official, his position is not impersonal, because his office is part of an unbroken chain linked with the personal mandate and person of the Christ. This is truly the most astounding *complexio oppositorum* (Schmitt, 1996b: 14).

Schmitt argues that unlike the dichotomous thinking of Enlightenment which creates binary oppositions everywhere (like reason and nature, rational and irrational) Church, neither as a higher third nor as the soulful polarity of soullessness, but as a *complexio oppositorum* (a complex of opposites) embraces any kind of antitheses without being defined by them. Church reconciles all antitheses but it does not abolish them. According to Slade (1996: 119) Schmitt’s definition of state as the political form of modernity needs more clarification. Because when we recognise Schmitt’s characterisation of state as the agent of pacification, as the agent of secularisation we come to the conclusion that state is in no way capable of being a *complexio oppositorum*. State is unable to embrace and sustain antitheses therefore, for the state “to embrace means to suppress” (Slade, 1996: 119). It acts independent of the claims made by the parts to the conflict concerning what the end should be. According to Slade, this argument comes to the conclusion that state is possible

when society defined by “end-*telos*” is rejected. Accordingly, for Schmitt sovereign is the one who decides, one who has the power to effect, one who rules independent of political community and that’s why “the political community is precisely the effect of rule as sovereignty” (Slade, 1996: 121). We can say that for Schmitt, state constitutes a political unity, indeed a societal order by providing an ethos of belief and a rhetoric that is capable of binding people to a common authority and to each other, regardless of the irreconcilable conflicts existing among them. As Francis Slade (1996: 118) notes representation is constitutive of society, it is “the visibility of human societies in terms of a constitutive reality” in the absence of which societies would be nothing more than collections. By virtue of this political idea state brings an end to the “state of nature” and creates a *status civilis* and it is again by the legitimacy derived from this representative discourse state is able to govern, to act as the ultimate judge in case of an intensification of antitheses that it left unresolved within the society. With this examination of the idea of representation, our argument on the “relativisation of conflicts” thorough sovereign decision become more substantiated. Because we understand that state is able to relativise the strong commitments of the partners to any conflict by making the necessary decision in the name of the political idea it represents. By referring to this ethos of belief that is defined on a territorial bases, by acting in the name of this nation-wide commonality state relativises these particular commitments and strengthens political unity with respect to these disintegrative tendencies. Indeed it is this claim to representation of an ethos of belief and the decisions that are taken by the virtue of this justification is what makes relativisation possible. However Schmitt’s chain of thought concerning the ways through which state govern societies is not limited to his emphasis on representation and decision. These points would be clearer when we examine his

concept of the political and its relevance for relativising conflicts. But for the context of our argument that we have developed so far, this brief explanation is enough in understanding how state establishes and maintains political unity through representation, decision and relativisation.

Schmitt (1996b: 36) notes that in the economic thinking of capitalists “Neither persons nor things require a “government” if the economic-technical mechanism is allowed its own immanent regularity.” This thinking, which characterises the ideal of big industrialists as well as Bolsheviks, wants an “electrified world” that is devoid of jurists and politicians (Schmitt, 1996b: 13). For them political ideas are either interventions in the liberty of individuals or mere “reflections” of relations of production. Economic thinking enunciates the loss of the idea of representation because especially when associated with the technical it calls for the actual presence of things (Schmitt, 1996b: 20). The political idea contradicts with economic thinking. Because to the political belongs the transcendence, the idea of representation and authority from above whereas economic thinking is governed by “immanence,” objectivity, integrity and rationality. As Schmitt (1996b: 21) notes once Leviathan is reduced to a simple machine²⁷ “it disappears from the world of representations.” In the nineteenth century, economic thinking was supported by the “religion of privacy,” by the Protestant ethics, which withdraws people into inwardness and accepts no public institution (Ulmen, 1996a: xxi). In the nineteenth century morality was privatised and there remained no *concept of truth* on about which people construct a common understanding of the world (Oakes, 1986: xx).

²⁷ Here Schmitt (1996b: 21) says, “Once a state becomes a leviathan, it disappears from the world of representations.” As he explains the loss of representation in a technical world in the previous lines and as he uses the words “once” and “becomes,” we can say that here his purpose is to underline the

Public life is expected to govern itself. Privatisation started with the freedom of religion that was followed by freedom of conscience, freedom of association and assembly, freedom of the press, freedom of trade and commerce. In the end everything became a private matter, nothing in this system remained public and representative (Schmitt, 1996b: 28). The political idea once represented by the monarch was negated because each individual was given the freedom to construct its own ethos of belief and morality. How was it possible to constitute a societal order without a common conception of *truth* and ethos of belief then? How was it possible to unite these subjective values into a commonality? Schmitt (1986) argues that it was only possible by renouncing a definite result, by aestheticising any kind of antitheses and dissolving them in an ever-lasting discussion. A discussion whose conditions of existence depended on a liberal order in which there existed a distinction between public and private realms, a distinction maintained not by discussion but by the concrete decrees of the monarch.

2.4: POLITICAL ROMANTICISM

For Schmitt (1993b: 133), concomitant with the transition from the humanitarian-moral thinking of the eighteenth century to the economic thinking of the nineteenth century was the rise of romanticism which was later to poeticise all intellectual life. Schmitt (1986: 3) says that a romantic is a type of human being with a specific characteristic of existence, with a distinctive conduct.²⁸ For a romantic the

way in which the Leviathan became the leviathan, how it appeared as simply a machine when the symbolism inherent in its definition was lost.

²⁸ Schmitt (1986: 3-10; 20-33) argues that romanticism should not be defined as the polar antitheses of rationalism or classicism, it should not be defined in relation to a certain collection of objects or

objects of interest are occasions for his/her emotional experience, they do not have any worth other than their capacity to invoke a mood in the emotive life of the romantic. Schmitt (1986: 17) traces the roots of romanticism to the tradition of philosophical occasionalism of the eighteenth century -like the philosophy of Malebranche- that explained the events in world as mere occasions for action of God. The distinctions of modern philosophy (mind and nature, soul and body, internal and external and the like) were not resolved but they disappeared into a higher third: they became an occasion for God. Due to the decline of the traditional idea of God, the romantic ego appeared as the fundamental metaphysical authority. Guy Oakes (1986: xx) says that the romantic movement not only represents a process of secularisation but it also signifies a process of subjectification and privatisation. This is what we have earlier noted as the “religion of privacy” whereby there existed no ground for publicity, for an ethos of belief that is constitutive of society. As Schmitt (1986: 20) says the roots of romanticism lies in the “private priesthood” whereby individual becomes her/his own poet, her/his own priest and “master builder in the cathedral of his personality.” In this “subjectified occasionalism.” world became an occasion or an opportunity for individual aesthetic imagination, for his romantic creativity. Schmitt (1986: 17) notes that the concept of *occasio* which refers to ideas such as occasion, chance, and opportunity negates the concept of *causa* that brings the force of calculable causality or the force of binding norm, consistency and order to life. According to him, subjectified occasionalism was different from the traditional philosophy of occasionalism in which law and order was recovered in God, in which God appeared as the objective absolute beside the disintegrative concept of *occasio*

themes but instead one should concentrate on the particular attitudes that a romantic adopts toward the world.

(Schmitt, 1986: 18). It is only by subjectified occasionalism that “everything really become the occasion for everything else”:

A world that is ever new arises from ever new opportunities. But it is always a world that is only occasional, a world without substance and functional cohesion, without a fixed direction, without consistency and definition, without a final court of appeal, continuing into infinity and led only by the magic hand of chance (Schmitt, 1986: 19).

There is no orientation in this individual kingdom, no unity is produced from dualisms but instead any kind of opposition is reduced to aesthetic or emotional contrasts so that romantic can fuse them in a higher third, can evade decision (Schmitt, 1986: 57). Schmitt (1986: 117) says “The root of romantic sublimity is the inability to decide, the “higher third”²⁹ factor they are always talking about, which is not a higher factor but a different third factor: in other words it is always a way out of the either/or.” Accordingly, every spoken word, every fixed direction, every decision is a limit to eternal becoming and possibilities.³⁰ A romantic turns politics into discussion and conservation whereby political values reduced to viewpoints or feelings and political conflicts appear merely as aesthetic contrasts that can be incorporated in a higher harmony. Because a political romantic would never make decision in the existence of which he would cease to be a romantic (Oakes, 1986: xxviii). Decision and action concern commitments, responsibility and indeed acknowledgment of a norm and these are not what characterise the political romantic who negates any decision, thus any action. For Schmitt (1986: 160) political romanticism is a contradiction in terms because there can be no political activity in

²⁹ Schmitt (1986: 91-92) notes that this “higher third” which romantics have employed in order to fuse distinctions was sometimes “idea,” sometimes Church, sometimes nation, or people and sometimes ego. They played one reality off against each other to remain in the world of sentiments and to preserve their “mood,” more to the point to evade any decision and commitment.

³⁰ According to Schmitt (1986: 72) the remote romantic object is aestheticised as to negate the present because romantic subject does not want to create any reality but instead it wants to play off one reality against the other to evade the necessary decision in the actually present and limited reality. Romantic escapes from the limited objective reality by paralysing the reality through aestheticisation and by

the existence of political romanticism. No social order can be established without a concept of normal and what is right and for the political romantic there can be no normal because every norm destroys her/his romanticism. Therefore, we can say that political romanticism can not itself establish a political, a legal and a social order itself but instead it depends on the order established by unromantic energies:

...its superiority over the present, which is taken in a purely occasionalist fashion, undergoes an extremely ironical reversal: Everything that is romantic is at the disposal of other energies that are unromantic, and the sublime elevation above definition and decision is transformed into a subservient attendance upon alien power and alien decision (Schmitt, 1986: 162).

According to Schmitt individual can appear as the ultimate metaphysical principle only within a liberal system whereby a distinction between public and private is maintained (Oakes, 1986: xxxi). Only under the protection of the private realm political romantic is able to turn political values and conflicts into simple viewpoints. Only the liberal detached, isolated and emancipated individual can appear as the absolute metaphysical principle, as the course of last resort. That is why Schmitt (1986: 12) defined the bourgeoisie as the bearer of the romantic movement:

The subject always claimed, however that his experience was the only thing of interest. This claim can be realised only in a bourgeois order based on rules. Otherwise the "external conditions" for the undisturbed occupation with one's own mood are not satisfied. Psychologically and historically, romanticism is a product of bourgeoisie security (Schmitt, 1986: 99).

Guy Oakes (1986: xxxv) notes that Schmitt's critique of political romanticism is indeed an attack on the "modern, romanticised bourgeois order." According to Schmitt (1992: 35) the belief in eternal discussion is the metaphysics of liberalism through which it renounces any definite result. That's why he says that liberal religion resides in freedom of speech and of the press, it is the religion of privacy.

evading the ultimate decision, by reserving all possibilities, s/he preserves her/his own "inner/genial freedom."

(Schmitt, 1988: 62). However as we have noted the existence of a romanticised bourgeois order depended on unromantic energies, on the capacity of some others to decide and to act in order to maintain the public-private distinction, to guarantee that freedom in private realm is not disturbed. This belongs to the executive who does not discuss but decides and in the nineteenth century it was still the monarch who guaranteed that issues pertaining to the private realm do not become public, the irreconcilable conflicts within the private realm would not become politicised. Nineteenth century bourgeoisie, at least in times of crisis, stood insecurely between monarchy and the socialist proletariat (Schmitt, 1986: 13). Schmitt refers to Lorenz von Stein³¹ who says:

The hatred of monarchy and the aristocracy drove the liberal bourgeoisie leftward; the fear of being disposed of his property, which was threatened by radical democracy and socialism, drove him in turn toward the right, to a powerful monarchy that could protect him. He thus oscillated between his two enemies and wanted to fool both (Quoted in Schmitt, 1988: 61).

Indeed for Schmitt dependence of the bourgeoisie, of the “discussing class”³² on the security provided by monarch is not surprising because economic thinking and the religion of privacy can not constitute any social order on its own. Any social order depends on a norm, on a decision about what is right and what is wrong and in a context whereby metaphysics and morality has been privatised, whereby a fixed definition and a concept of *truth* is negated there remains no basis³³ for any ethos of belief, for any “great rhetoric” with the “assertion” of which people can be united on common grounds (Schmitt, 1986: 12-13). Liberal bourgeois order has destroyed the traditional culture and form but it did not replace them with others but according to

³¹ Schmitt does not make clear references but they are probably from Stein’s *Geschichte der sozialen Bewegung in Frankreich* as he refers to this book in his evaluation of Stein’s ideas.

³² Schmitt (1988: 59) notes that Donoso Cortes defined bourgeoisie as a “discussing class” that shifts all political activity onto the plane of conversation. Schmitt find this observation striking.

³³ As will be explained later, according to Schmitt the political idea and the great rhetoric of the Sovereign is derived from state of consciousness that a certain epoch forges. Accordingly from the

Schmitt (1986: 14) no era lives without political form “regardless of the extent to which it comforts itself in an economic fashion.” As far as some unromantic energy was maintained within the system, the liberal order was secure. However with the acceptance of neutral state and parliamentary government there remained no one to depoliticise the societal conflicts, to maintain the distinction between public and private realms. In a system defined by the rule of law and the neutrality of state, parliament was extended to the executive dissolving it into discussion (Schmitt, 1992: 45). It is this neutralisation what caused the crisis of state as well as the crisis of parliamentarism. It is in this context Schmitt reminds his contemporaries that the fundamental principles of discussion and openness have lost their meaning and there is a need for decision not discussion. Democratic claims for equality were raised in every domain of human existence and there was no area left unpoliticised. The religion of privacy and the consequent recognition of freedoms like freedom of conscience, freedom of opinions, freedom of association and organisation constituted the necessary grounds through which economic, social, religious and cultural antitheses were politicised by political parties that compete each other in the name of different total projects. Liberal hope to dissolve these conflicts as well as the mythical movements into discussion was not reliable because conflicts that were once suppressed in the private realm can not be reconciled and democracy have brought them out of their place in the most intense forms. As Schmitt (1992: 76) quite ironically says, liberals will let all this happen around them, patiently waiting until discussion can be resumed. As the bearer of romantic movement, the fate of bourgeois order depends on the decision of some unromantic power but this time monarch would not be able decide for the protection of the separation that used to

“religion of privacy” and the economic thinking of the nineteenth century no political idea, no ethos of belief can be derived.

exist between public and private realms. On the contrary it would be militant ideologies that would decide, but this time against the liberal bourgeois order, for the establishment particular totalitarian regimes. And this is what constitutes the crisis of parliamentarism.

Parliamentary system is in crisis because it abolished the means through which it was secured. State, the agent of neutralisation, was itself neutralised. Modern state is in crisis because, it is reduced to society in the sense that it lost its capacity to stay above the society. According to Martin Jay (1987: 16) "The only anxiety manifested in Schmitt's account of the obsolescence of liberal communicative rationality was produced by his concern that it was not fading fast enough." In contrast to Martin Jay we would take Schmitt's (1992:2) words seriously: "belief in openness and discussion are outmoded is also my fear." Because for him this was the clear evidence of the truth that new political actors do not want to discuss but they want to, worst of all they are given the right to decide. Schmitt neither celebrated the decline of the nineteenth century liberalism nor did he welcome the democratisation process that was at stake. Schmitt would have certainly preferred nineteenth century liberalism to the succeeding process of democratisation. Even if representation was lost in the religion of privacy, the principle of balance of powers was still capable of preserving the monarch above the society. As Schmitt (1928: 56) says, "it was possible to observe, in cases of conflict, who was the subject of state power and the representative of political unity able to decide: monarchy." However with the new establishments monarch was dethroned and four centuries of neutralisations found its last point: the state. As Schmitt (1999: 195-196) says "When the 'earthly god' falls from his throne, and the kingdom of objective reason and

ethics turns into a '*magnum latrocinium*'³⁴, then political parties slaughter the mighty Leviathan, and each cuts from its corpse a piece of flesh for itself." Schmitt (1992: 16) thought that no state could realise a democracy of mankind, even a democratic state. With the democratic establishments societal conflicts raised their voice for actual presence of things, for the direct enactment of their own will. However no state can answer all these demands. Because it is neither possible to resolve societal conflicts, nor it is possible to answer them all in one political unit. Political unity, indeed a societal unity is possible only in the condition of state's capacity to prevent these conflicting demands from direct confrontation as well as from direct enactment. Even if its authority is not simply based on pure power techniques, but more importantly, is based on representation and a representative discourse, in the final analyses state governs through suppression. It governs through preventing any particular party to any conflict from establishing its own truth, through relativising these commitments with respect to, thus dissolving them into, the symbolised territorial political unity. State governs not through realising whatever is demanded by the society. Its rule depends on its capacity to dissolve differences into a unity, to dissolve real-life conditions into an idea of transcendence. Thus its rule depends on its legitimacy to decide on real life conflicts and to relativise them by emphasising thus strengthening, this political idea that transcends all particular existence. In following pages we will examine the ways in which Schmitt aimed to reconcile the authority of the state, as he conceptualised it, with new constitutional as well as democratic developments and, how he tried to protect the Leviathan from "the democratic onslaught." For our purpose we will focus on his conception of Sovereign as well as on the last crisis that he claims to be existing in modern societies, crisis of democracy.

³⁴ Schmitt (1999: 208) notes that it means 'a large band of robbers.'

CHAPTER III

NORMATIVISM AND DECISIONISM

As we have noted earlier, after the establishment of Weimar Republic Schmitt turned his attention from abstract conceptions of right and the neo-Kantian notion of “higher law” to the crisis of parliamentary system in Weimar Republic and his theoretical and constitutional studies aimed to propose solutions to actual social and political problems of his time. As Bendersky (1983: 35) argues, his *Political Theology* contained many phrases like “philosophy of real life,” “an adequate expression of reality,” and the “*juristisch Konkreten*.” Therefore, it is not surprising to find his main argument through which he wanted to reconcile law and authority, abstract and concrete, norm and the exception in his *Political Theology*. It is also his *Political Theology* where we find the clues through which we understand how Schmitt proposed a solution to the legitimacy crisis of the state in an age in which deistic world-view was totally abandoned.

3.1: NORM AND THE EXCEPTION

According to Schmitt the defining characteristic of the state is its capacity to decide as the ultimate judge in cases of conflict. This was what had defined the rule of absolutist monarch of the seventeenth and the eighteenth century whose personal command was the law within the territory over which he claimed authority. In the

legislative-executive state of the nineteenth century, even if he was dislodged from the legislature monarch maintained his position above the society. As we have noted earlier, Schmitt (1932: 186) argued that state in the nineteenth century was at the same time a legislative state and an executive state; it was a state “ruled by impersonal, general and predetermined norms, by lasting norms of determinable and measurable content, where the law is detached from its application to the concrete case, where the legislator is detached from the officials that execute it.” In these terms it was able to recognise the distinction between law and its execution, between normativism and decisionism (Cristi, 1998: 186). In the twentieth century, with the establishment of *Rechtsstaat* the decisionist character of the state was lost and normativism was emphasised as the expense of decisionism. According to Schmitt this normativist, “legalistic” thinking can be followed in the works of Neo-Kantians such as Hans Kelsen and Hugo Krabbe whose ideas are examined extensively by Schmitt.³⁵ In these terms, state appears as a pure reflection of the constitution itself. These establishments were made in the name of liberating people from the arbitrary rule of men, particularly from the personal rule of the monarch. To accomplish this, they wanted to eliminate all personal elements from the theory of the state (Schmitt, 1988: 29). Against the subjectivism of the command they posed the objectively valid norm, thus wanted to replace the personal by the impersonal, the concrete by the abstract, the individual by the general, rule of man by rule of norm. According to

³⁵ As one of the strong criticisms of Schmitt’s conception of normativism, William Scheurman (1996: 315) notes that Schmitt was not clear on what he called normativism. Accordingly Schmitt subsumed various distinct liberal ideas under the category of normativism and has made things so simple for himself by ignoring much of what has been said by Enlightenment liberal theorist and by simply focusing on Kelsen. Scheurman (1996: 318) says “Locke and even Kant would have been worried about Kelsen’s view concerning value-relativism; one can imagine Montesquieu shaking his head in disbelief at Kelsen’s view that an empirical analysis of political power has no right place within jurisprudence.”

Kelsen³⁶ all sociological concepts must be taken out of the juristic concepts. In the hierarchy of laws, all authorisations emanate from the “higher law” which constitutes the last point of ascription. However, this highest competence is not equated to the personality of the Sovereign. Instead, the last point of ascription is to the system itself. In this legal thinking, state is no more seen as the sole creator or, as the omnipotent lawgiver, but rather, it is conceptualised as the legal order itself. Likewise, Krabbe (1919: 39) says that “We no longer live under the authority of persons, be they natural or artificial (legal) persons, but under the rule of laws, (spiritual forces). This is the essence of the modern idea of the state.” According to this view it is no more the state but instead it is the law which is sovereign. It was in this context Schmitt aimed to introduce his conception of “exception,” thus, his decisionist conceptualisation of Sovereign subject to juristic consideration. He wanted to introduce the concept of Sovereign to modern constitutional developments (Schwab, 1988: xvi-xvii).

In *Political Theology*, Schmitt (1988: 5) states that “Sovereign is he who decides on the exception.” Accordingly, in a given antagonism within the state, everybody wants the general good but sovereignty “thus the state itself” resides in this decision, in putting an end to the controversy and defining where the general good lies (Schmitt, 1988: 9). The exception implies a crisis situation in which there exists a dangerous threat to the existence of the state, a conflict that threatens interest of the state as well as public interest, public safety and order. In the exceptional situations, it is essential to decide and to eliminate the threat, to restore the normalcy. The concept of the exception concerns three main questions. Who is to decide on

³⁶ Schmitt follows Kelsen’s ideas from his works called *Das Problem der Souveränität und die Theorie des Völkerrechts* and *Der soziologische und der juristische Staatsbegriff* but he does not give

whether an exceptional situation exists or not? Who is to decide on the measures to be taken in an exceptional case? Who is to decide on the time in which exceptional case has come to an end and order is re-established? (Schmitt, 1988: 10) For Schmitt, there is only one answer to these questions and it is the Sovereign. Schmitt says:

The exception, which is not codified in the existing legal order, can at best be characterised as a case of extreme peril, a danger to the existence of the state, or the like. But it cannot be circumscribed factually and made to conform to a performed law... The precise details of an emergency cannot be anticipated, nor one can spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated. The precondition as well as the content of jurisdictional competence in such a case must necessarily be unlimited (Schmitt, 1988: 6).

Schmitt (1988: 13) argues that legal order is concerned with day-to-day questions and the details of an exception can not be known before it actually takes place in the real life. It is impossible to know the content of the exception and that's why it is an "exception" and that's why it can not be subsumed in a constitution. The norm is helpless in deciding for what it can not define; it is not able to decide whether an exception exists or not. Therefore, sovereignty resides in deciding for the cases for which there exists no positive stipulation, no constitutional provision. The constitution can only indicate who can act in such a case but it can not determine the actions to be taken. Sovereign has the authority to decide on the measures to be taken, even if it means to suspend the existing constitution in its entirety (Schmitt, 1988: 9). In the exceptional cases, the omnipotent power of the Sovereign is to appear in its purest form as to owe this ultimate power is what makes him the Sovereign. Some may attempt to circumscribe the exception by imposing time limits, by defining, thus limiting the measures to be taken, as it has been in the case of liberal constitutional procedure. Schmitt (1988: 12) says that by defining the emergency situation and the measures to be taken in that case, they may avoid the

question of sovereignty but, in that way, they can not avoid the exceptional situations. At this point it is significant to note the relation between norm and exception. According to Schmitt decision on the exception is not a simple act that takes place where there is no stipulation in the law, it does not constitute a simple support for the legal order but instead the decision on the exception is the condition of all law and legal order. He claims that all law is actually “situational law” and their applicability depends on the existence of a particular order within which they can function (Schmitt, 1988: 13). Accordingly, in an exceptional case whereby the norm is helpless there appears the ultimate need to restore the situation whereby legal prescriptions can again become valid and it is the sovereign who “produces” and “guarantees” this situation:

Every general norm demands a normal, everyday frame of life to which it can be factually applied and which is subjected to its regulations. The norm requires a homogeneous medium. This effective normal situation is not a mere “superficial presupposition” that a jurist can ignore; that situation belongs precisely to its immanent validity. There exists no norm that is applicable to chaos. For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation actually exists. (Schmitt, 1988: 13)

Schmitt argues that legal theory should not be based on abstractions or on “superficial presuppositions” but it should be based on the concrete realities of life and the ways in which how this normal situation can be established. Demanding for the application of laws without any exception and consequently to equate the state to the existing legal system is a radical denial of the realities of concrete life. It is inevitably dangerous to substitute the authoritativeness of the command by the authoritativeness of the law because in deed all law is “situational” and it is the state, it is the command based on authority, which produces this situation through “normalisation.” As we have noted above, for Schmitt (1988: 9) in a “given antagonism” it is the Sovereign who brings an end to the controversy whereby

everyone claims to know where the general good lies. This “antagonism” is then defined as an “exception” whereby there exists “a danger to the existence of state” (Schmitt, 1988: 6). With the sovereign decision through which the danger to the existence of state is eliminated, a “homogeneous medium” is established. What Schmitt called an “exception” has become clearer now. When there emerges an intense conflict within the society, sovereign decides that there is an exceptional case, sovereign declares that there exists a threat to public safety and interest. With this justification sovereign takes necessary steps, normalises the situation and restabilises the homogenous medium. However as we have noted earlier, Schmitt (1988: 213) claims that only a strong state that is capable maintaining itself apart from the societal forces and conflicts can establish peace and order. Therefore, in *Political Theology*, he cites the words of Jean Bodin and Samuel von Pufendorf to argue that in a given antagonism, it would be meaningless to make Sovereign subject to the checks and balances of the people, thus to “let his subjects dispense with him.” (Schmitt, 1988: 9) Schmitt says that the sovereign should not share his right to decide on the exception with any other entity and, indeed, the main target of his statement is parliament, where societal conflicts are formalised. As a result we can say that based on its calculation of the intensity of antagonisms that exist in society, the norm is “destroyed” on the basis of “state’s right of self-preservation,” and, hence, on the basis of normalisation (Schmitt, 1988: 12). Sovereign decides on the exception and transgresses the rule of law. Indeed according to Schmitt two concepts, the norm as well as the exception both belong to legal order, to the juristic framework therefore, Sovereign decision should not be regarded as “transgression.” As he says, “In such a situation it is clear that the state remains, whereas law recedes. Because the exception is different from anarchy or chaos, order in the juristic sense still prevails even if it is

not of the ordinary kind” (Schmitt, 1988: 12). The legal order prevails because the decision of Sovereign also aims the establishment of an order within which relations among individuals as well as groups are governed by legal laws, not by the possibility of war.

Schmitt (1988: 12) notes that if laws were able to establish order themselves, indeed if they were able to realise themselves, then there would have been no need for a state. Accordingly, existence of the state is enough evidence for the fact that it is superior with respect to the legal norm. According to Schmitt (1988: 31) legal idea can not translate itself into reality, “thus a translation takes place every time.” However in every actualisation, which is never a straightforward application, norm is transformed from its original abstractedness as it does face with the pressure of reality (Ananiadis, 1999: 131-132).

Out of the contraposition of the norm and the legal empirical world follows the positing of the state as the crossing point of the one world into the other. In it as a construct, law as a pure thought turns into law as a worldly phenomenon. The state is accordingly the legal institution [*Rechtsgebilde*] whose meaning consists exclusively in the task to realise law (Schmitt, 1914: 52)

So, we can say that state is the point where concrete reality and abstract norm is mediated, and this mediation between the norm and the exception is what brings order and continuity in government. However, we should not interpret Schmitt’s definition of Sovereign as a conceptualisation through which he called for the establishment of a state that controlled every aspect of human life through continuous application to some cases of exceptions. As we have noted earlier, according to Schmitt (1998: 217) the administrative state of the twentieth century was a weak state precisely because it expanded in all directions. The basic role of Sovereign and its reference to exceptions was to maintain order, to normalise but

never to coordinate, administer, manage or direct. This was not what Schmitt saw to have happened throughout the four centuries of state's history. Renato Cristi (1998: 5) claims that Schmitt harmonised the idea of a sovereign state and a free civil society by using the distinction between the substance and the exercise of the sovereignty. Cristi (1998:5-6) notes that "Normally, the exercise of state sovereignty was juridically ordained and was thus limited. But the substance of its omnipotence was unlimited and remained in a state of latency, waiting to be roused in exceptional cases."³⁷ Although Schmitt did never talked about making the exception the norm, in his conceptualisation of exception as something more important than the law, he was criticised on the grounds that he aestheticised horror, romanticised the exception or that he called for irrationalism and the like (Holmes, 1993: 44; Wolin, 1992: 427, 433, 443).³⁸ We should note that Schmitt can not be called a political romantic who aestheticised certain concepts if we were to judge him with his own definitions. He was not concerned with an everlasting discussion that is typical of a political romantic but instead he was mostly concerned with decision not because he was obsessed with exception but precisely because his main concern was to contain and suppress the cases of exception (Hirst, 1988: 274). He thought that it is only by deciding in extreme antagonism that horror, violence and indeed war among people can be prevented from happening. According to Schmitt (1988: 15) "a philosophy of concrete life" must especially be interested in the exception not because of a "romantic irony for the paradox" but because exception signifies the "seriousness of

³⁷ Although exceptional cases are not declared frequently, in our final analyses we would see that state's capacity to bring order is not only based on its power to decide in the exceptional cases. According to Schmitt state did not rule every aspect of human life. But we should also note that establishment of such an order have also some costs for the liberty of individuals within the society. This is an issue to which we would return in our examination of the things that go beyond the exception, where we would examine the implications of state's claim to representation.

³⁸ For a contrary argument see Joseph Bendersky (1987) "Carl Schmitt and the Conservative Revolution" in *Telos* 72.

an insight” that is not comprehensible by the clear abstractions that are inferred from what ordinarily repeats itself.

Schmitt (1988: 13) says, “Therein resides the essence of the state’s sovereignty, which must be juristically defined correctly, not as the monopoly to coerce or to rule, but as the monopoly to decide.” State does not coerce or force but it acts as the ultimate judge. However, as we have noted earlier, state’ authority to act as the ultimate judge rests on the political idea, which it represents. Schmitt thought that political authority necessarily needs a point of justification, an ethos of belief to establish a political unity out of collections of people as well as to legitimate its actions that are made for the preservation of this unity. Therefore, we will now focus on his sociology of juristic concepts where Schmitt finds the clues for the sources of legitimacy, for the sources of representation in modern democratic conditions.

3.2: REPRESENTATION AND SOVEREIGNTY

In connection to the theological roots of the central political concepts Schmitt comments:

All significant concepts of the modern theory of the state are secularised theological concepts³⁹ not only because of their historical development-in which they were transformed from theology to the theory of the state, whereby, for example, the omnipotent God became the omnipotent lawgiver-but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts (Schmitt, 1988: 36)

³⁹ Those who prefer to pick up Schmitt’s words from his overall arguments prefer to interpret this sentence as if Schmitt was equating the state with God. The labelling process of Schmitt as a theologian stems from such statements. Our argument would defend a different position and for a similar rejection of those who consider Schmitt as theologian see Paul Piconne, Gary Ulmen and Paul Gottfried’s (1996) “Ostracising Carl Schmitt” in *Telos* 109.

Schmitt examines the sociology of legal concepts in relation to theology and metaphysics to argue that jurisprudence is a reflection of what a certain epoch understands of the world. Schmitt (1988: 43) does not find the methods that construct a contrast between spiritual and materialist phenomenon convincing. It is not convincing to explain the relation between theology and jurisprudence either by explaining political change as a result of change in thought (spiritualist explanation of material processes) or by attributing a change in thought to a change in political and social conditions, by seeing everywhere the “reflections” of economic relations (materialist explanation of the economic phenomenon). These contrasts try to explain one side of the opposition by reducing it to the other, rendering the former into nothingness. Instead his sociology of concepts looks for a relation between the state of consciousness of the people in a certain epoch and the concepts used by the juristic construction of the historical political reality of that epoch:

The metaphysical image that a definite epoch forges of the world have the same structure as what the world immediately understands to be appropriate as a form of its political organisation. The determination of such and identity is the sociology of the concept of sovereignty. (Schmitt, 1988: 46)

He claims that, to understand the conceptually “represented” social structure of an epoch, to understand the concept of Sovereignty defined in a given period, it should be studied in relation to the particular world explanation that epoch employs. It is not saying that thought creates historical reality or historical reality constructs thoughts. It is the correspondence between two spirituals and at the same time two substantive identities existing at the two sides of the opposition, state and society. How this correspondence which explains the sociology of the concept of sovereignty happens? Indeed his word “determination” gives us the necessary clue to understand how come such an identity, such a correspondence appears. However we need more clarity. As

we have noted earlier, according to Schmitt (1996b: 17) there can be no politics without authority and no authority without an ethos of belief. To the political idea belongs the representation, belongs symbolism to which belongs “a great rhetoric,” a representative discourse.⁴⁰ Here we understand on what bases state constructs its political idea so that its authority gains legitimacy in the mind of its people. As Schmitt (1988: 46-47) says through the “politicisation” of theological concepts, psychologically as well as phenomenologically, a complete identity is constituted:

But it is a sociology of the concept of sovereignty when the historical-political status of the monarchy of that epoch is *shown* to correspond to the general state of consciousness that was characteristic of Western Europeans at that time, and when the juristic construction of the historical political reality *can find* a concept whose structure is in accord with the structure of metaphysical concepts. Monarchy thus *becomes* as self-evident in the consciousness of that period as democracy does in a latter epoch. (Schmitt, 1988: 45-46).⁴¹

In the seventeenth century the monarch was identified with God, he was *shown* to correspond with the general state of consciousness of that epoch, monarch *found* a concept through which he *became* self-evident. He appeared as the omnipotent lawgiver and just like the God, who established laws in nature, monarch was to establish his laws in his kingdom. As we have noted earlier according to Schmitt (Gottfried, 1990: 49) Hobbes’ Leviathan was defined as a “mortal God” as well as a machine, it was theorised in a way to represent both the ecclesiastical and the temporal powers because it was through this symbolism representation, thus authority was possible. Now Schmitt (1988: 47) once again notes that in addition to his decisionism, it was the methodical and systematic postulate of his juristic thinking that had made Hobbes to postulate an ultimate deciding instance (personal)

⁴⁰ It is important to note that the first edition of *Political Theology* (1922) contains a note indicating that Schmitt wrote his *Political Theology* together with an essay called “The Political Idea of Catholicism” that appeared with the title *Romantic Catholicism and Political Form* in 1923 (Ulmen, 1996a: xxxi). Therefore, the correspondence between the arguments made in these studies are not surprising.

as well as to heighten his Leviathan “into an immense person and thus point-blank straight into mythology.” According to Schmitt the aim was to find a concept, a political idea, so that psychologically as well as discursively an identity between Sovereign and its between people is established, so that the authority of Sovereign became self-evident in the consciousness of that period and in this way legitimated. The idea of the sole Sovereign as the world architect, as the sole creator and the legislator “which means the legitimising authority,” corresponded to the state of consciousness of the people throughout the seventeenth and the eighteenth century (Schmitt, 1988: 49). Beginning with the nineteenth century, the concepts employed by jurisprudence was to change once more due to a change in the way people think. Exclusively scientific thinking altered the deistic worldview that at least maintained God as the “engineer of the great machine,” now the machine runs itself (Schmitt, 1988: 48). The remaining moral and metaphysical conceptions were all abandoned and as we have noted earlier, economic thinking of the age negated any kind of political idea because it demanded the actual presence of things (Schmitt, 1996b: 20). Nineteenth century experienced an aestheticisation of all intellectual life whereby the metaphysics of the age became discussion through which a final determination, a concept of *truth* is negated. Therefore, the liberal neutral state corresponded to the dominant thinking of the age, of the call for subjectification and privatisation of metaphysics and morality. However we can say that this was a transitory period whereby the monarch lost its representation but continued to decide, whereby monarchical legitimacy was negated but it was not replaced with a new. The democratic movements that took place in the second half of the nineteenth century, as Schmitt (1988: 51) specifies as after 1848, brought about another juristic conceptualisation, that of sovereignty of the people. According to Schmitt (1988: 51)

⁴¹ Emphasises are mine.

nineteenth-century theory of the state displays two characteristic moments: “the elimination of all theistic and transcendental conceptions and the formation of a new concept of legitimacy.” Monarchical notion of legitimacy was replaced by the democratic notion of legitimacy, which declared people as the new *puovoir constituant*. The notion of transcendence was replaced by the conceptions of immanence. Schmitt (1988: 48) argues that throughout the nineteenth century the philosophy of immanence⁴² spread out everywhere: the democratic identity of the ruler and the ruled, identity of state and sovereignty, than identity of sovereignty and the legal order (Krabbe), the identity of state and legal order (Kelsen) and the like. Like the previous sovereign entities, “people” were seen all virtuous, its will was considered to be the supreme law. The infallibility of God was then turned into the infallibility of people. The will of the people was always good and it is always the supreme law. However, throughout the process the most evident characteristic of the Sovereign was lost. Rousseau’s concept of general will correspond to the general will of the new sovereign however this will contains a quantitative determination with regard to its subject (Schmitt, 1988: 48). Therefore, the personal and decisionist element in the concept of the Sovereign has been lost. As Schmitt argues the necessity that what sovereign wills is always good is not identical with the rightness of the people. Because the former implies that the command of a personal sovereign that has been ordered to bring an end to conflicts is always right independent of the truth claims made by the partners to the conflict. However the latter implies that although people appeared as the new possessor of sovereignty, throughout the process the decisionist element of the concept of sovereignty was lost, and in this

⁴² This involves a series of identities that call for the actual presence, actual identity of things. While the previous notion of legitimacy is based on a transcendental idea, on a transcendental source of justification, the democratic notion of legitimacy is self-referential, it is governed by “immanence.”

way there remained no single entity that decides on the general interest when there appeared an intense conflict:

But the necessity by which the people always will what is right is not identical with the rightness that emanated from the commands of the personal sovereign. In the struggle of opposing interests and coalitions, absolute monarchy made the decision and thereby created the unity of the state. The unity that a people represents does not possess this decisionist character; it is in an organic unity, and with national consciousness the ideas of the state originated as a whole. The theistic as well as the deistic concepts of God becomes thus unintelligible for political metaphysics. (Schmitt, 1988: 49)

Schmitt (1999: 196) thought that in the absence of an ultimate judge, people would return to the state of nature and society would dissolve into warring groups. To prevent this from happening state decides on the basis of its claim to authority. As Gary Ulmen (1996a: xvi) says, "The question of "who decides?" is not one of truth but of authority." However even if not truth or reason, such an authority to decide is not derived from mere force but from its claim to representation. Schmitt argued that although the economic thinking of the age destroyed monarchical legitimacy, monarch continued to decide in the extreme cases. However with the establishment of parliamentary government and mass democracy state lost its monopoly on decision. Schmitt wanted to make his concept of Sovereign subject to modern constitutional theory, but he knew that no authority could be established without a legitimating discourse. From his sociology of juristic concepts we have also noted that according to Schmitt sovereign authority becomes self-evident in the eye of the people by the application of some concepts through which its historical-political status is *shown* to correspond to the general state of consciousness. As Paul Gottfried (1990: 107) says, "Schmitt related the functioning of sovereignty to emotional and historical preconditions that he designated by the term legitimacy." We would come to the conclusion that Schmitt would not be late to engage in a work to construct

such a correspondence on the basis of democratic notion of legitimacy. In his *Roman Catholicism and Political Form* in a few sentences he noted that even if democratic age negates transcendental conceptions, it is still compatible with representation. As he says, “God or “the people” in democratic ideology or abstract ideas like freedom and equality can all conceivably constitute a representation. But this is not true of production and consumption.” (Schmitt, 1996b, 21) However in *The Crisis of Parliamentary Democracy*, his attempt to theorise a correspondence between democracy and sovereign authority as well as his attempt to make democratic notion of immanence and sovereign representation compatible is more explicit. It is worthy to note that *The Crisis of Parliamentary Democracy* was published for the first time in 1923, in the same year with his *Roman Catholicism and Political Form*’s first appearance.

3.3: REPRESENTATION AND DEMOCRACY

In *The Crisis of Parliamentary Democracy* Schmitt (1992: 24) claims that since democracy appeared with many different political aspirations (like liberalism, socialism and conservatism) it should be defined as an “organisational form” which does not owe any political content. Accordingly, this form is merely identity, identity of the ruler and the ruled. He argues that the identity of the subject and object of authority, the identity of law and the will of the people, the identity of people and their representatives in the parliament, the identity of the state and law, all belong to democratic arguments. In deed the main problem underlying the definition of democracy on the basis of the “will of the people” is that in the given heterogeneity

of modern societies, in a world of subjectified morality and in a society defined in individualistic terms, it is hard to know where the “general will” lies, if it exists at all. Although at first sight it may be surprising to find the theorist of representation and symbolism in defence of a philosophy of immanence, in defence of “identity” his real concern becomes clearer in his defence of a democracy based on merely “identification.” Schmitt says:

All of these identities are not palpable reality, but rest on a recognition of the identity. It is not a matter of something actually equal legally, politically or socially, but rather of identifications...they can never reach an absolute, direct identity that is actually present every moment. A distance always remains between real equality and the results of identification (Schmitt, 1992: 27).

Schmitt’s concern is not about actual identities and equalities. Instead he conceptualise in the name of “identification” which can be defined only as a claim to identity. At this point Schmitt (1992: 26) notes that for an abstract logic it does not make any difference if one identifies the will of the people with the will of the minority or with the will of the majority. Because it can never be the “absolutely unanimous will of all citizens” that may include those not eligible to vote, in each case there remains a distance between the real equality and the results of identification. Accordingly, the essence of democratic principle is the “assertion” of an identity between law and the will of the people (Schmitt, 1992: 26). He says that “the various nations or social and economic groups who organise themselves “democratically” have the same subject, ‘the people’, only in the abstract (Schmitt, 1992: 25). In *concreto* the masses are sociologically and psychologically heterogeneous.” Logically it does not matter whether this “assertion” is made by a privileged group, by a dictator, by political parties and the like because it is always only an assertion of identity. In each case the claim is made in the name of representing the will of the people. None of the various ways is more democratic than

the other because the will of the people is always the same with the will of the people no matter how it is expressed (Schmitt, 1992: 27). The will of the people can be expressed even without a ballot system, it can be expressed through acclamation, it is always the will of the people. Schmitt (1992: 29) concludes that given the pluralistic nature of society there exists no “general will,” but only identification and the main “practical question” is who owns the means with which the will of the people is constructed.

At this point, we have to ask why democracy is not about real-life equalities but merely about “identification.” It is true that modern societies are socio-economically and psychologically plural. But this does not bring us to the conclusion that democracy is simply an identification that is nothing to do with actual social, economic or political equality. Within the context Schmitt claimed these ideas, democratic claims for identity were not made to dissolve differences into a common concept “people,” they were not made to abstract a general will at the expense of the *concreto*. But on the contrary democratic claims for equality as well as identity were made on the basis of *concreto*, on the basis of real life differences that existed within society. It was actually this observation which defined Schmitt’s all theoretical work. When state lost its monopoly to decide, antagonisms within the society were formalised and each party wanted to realise its own claim to truth in the name of its own particular constituency (people) whose democracy, whose actual identity it wants to establish. Schmitt (1976: 32) thought that when internal antagonisms are intensified through party politics this would lead to a crisis in the political unity and, finally, to civil war. It was on the basis of this observation that Schmitt (1992: 16), in *The Crisis of Parliamentary Democracy*, also claimed that no state can realise a mass

democracy, even a democratic state. There, besides his argument on democracy, he noted that parliament became a mere facade through which parties who organise their constituencies along different “immediate” interests and passions and indeed along ideological crusades, compete for government (Schmitt, 1992: 7). He wanted to reverse the process and wanted to find a concept through which there could be established a correspondence between two identities that of historical-political reality and society. Accordingly his conceptualisation of “identification” would serve as the necessary concept through which antagonistic tendencies of democratic demands would be neutralised and state’s authority would again be self-evident in the eyes of the people. His main concern was to reach conceptions which will enable us to overcome differences in society and they could be bound together with a belief that transcended all particularities. He searched for an ethos of belief in the visibility of which would be constituted necessarily by the state as a “public” institution. As we have noted earlier Schmitt (1996, 21) argued that “the people” in democratic ideology can constitute representation and this was only possible by replacing the democratic demands for real political, legal and economic equalities with an identification that is established psychologically as well as discursively. The conceptual construction was through arguing that democratic identities are not “palpable reality” but they rest only on “assertion” and “recognition” of the identity. To accomplish this state should deal with the “single practical question” that is to construct “general will” through identification and more specifically to control the means through which it is constructed (Schmitt, 1992: 29). We will return to this aspect of Schmitt’s argument and examine the techniques of mass manipulation that should be owned by state in our final analysis. In the following pages we will mainly focus on “identification”

under two headings: 1) homogeneity: democratic notion of legitimacy 2) identification and Weimar.

3.3.1: HOMOGENEITY: DEMOCRATIC NOTION OF LEGITIMACY

In *The Crisis of Parliamentary Democracy* Schmitt (1992: 24) claims that as long as democracy was a polemical concept used against the rule of monarch, not only liberalism, but also various different political aspirations were able to reconcile themselves with it. However, when one side of the polemic was destroyed, when the success of democracy over monarchy was evident, it became clear that there were inherent tensions between liberalism and democracy. According to Schmitt, besides the crisis of modern state,⁴³ there are two more crises that have to be distinguished: crisis of democracy and the crisis of liberalism. To start with according to Schmitt democracy is the identity of the ruler and the ruled and this identity should be established on the basis of their substantive homogeneity. By referring to Rousseau's *Social Contract*, Schmitt (1992: 26) argues that "general will" can be inferred only from homogeneity, which is essentially unanimous. Contrary to other interpretations, Schmitt (1992: 13) argues that Rousseau's *Social Contract* does not argue that state rests on a contract (defined in individualistic terms), but instead it finds the base of state in homogeneity. Accordingly, the idea of a free contract in which partners to the contract are defined in individualistic terms, in which differences, egoism and opposing interests are assumed indeed comes from a liberal framework (Schmitt,

⁴³ In *The Crisis of Parliamentary Democracy*, Schmitt (1992: 16) refers only once to the crisis of state and he only notes that no state can realise mass democracy. However as we have argued so far we claim that what had Schmitt theorised in the works examined in this paper are mainly concerned

1992: 13). However, Schmitt (1992: 14) argues that where unanimity, where “general will” does not exist contract does not help. He comes to the conclusion that it is through the recognition of a substantial homogeneity that the rule of the state is established and so that the general will can be known and applied in the laws of that state. In his “Constitutional Theory of Federation” which appeared in his *Verfassungslehre* in 1928, Schmitt follows a similar argument that is important to note. In this piece Schmitt (1991: 47) argues that the confusion of social contract with constitution results in conceptualising the contract as a “particular type of *pactum sociale* (whereby a number of people bind themselves together in a society)”, as a constitution whereby the civil unity first originates.” Accordingly, there is a general tendency to confuse social contract with constitution, the difference between which was also recognised by Rousseau. Schmitt argues that Rousseau distinguished between a social contract underlying the state and a constitution, which presupposes the political unity of that people, a constitution that establishes fundamental principles, which regulate the exercise of state power (Schmitt, 1991: 47). If people are to be taken as the constituent power, their political unity must be presupposed before the constitution, not through it. Schmitt argues that liberal positivist theory of state, which equates state with the constitution, is meaningless because it gives the impression that constitution founded the state. On the contrary, according to Schmitt, it is the political unity of people, the establishment of state on the basis of their homogeneity, which makes people the constituent power. After that they establish a constitution on the basis of this homogeneity, on the basis of this “general will.” Schmitt says:

with the maintenance of the order and stability provided by the state, thus to save the Leviathan from democratic onslaught.

The democratic principle of the people's constituent power implies that the constitution is brought into being through an act of the people in its political capacity... On no account is the social contract identical with the constitution in the positive sense, ie. in the sense of concrete political decisions taken by the agent of the constituent power with respect to the type and form of political unity (Schmitt, 1991: 46)

For this reason, social contract is different than the constitution, it does not imply that individuals who have different interests, demands and claims come together and found a society through a contract, indeed through a civil constitution. Accordingly, social contract implies that state is based on homogeneity and precisely from this reason he argues that state theory of *Social Contract* proves that democracy is about identity of governed and governing, identity of "general will" and the laws (Schmitt, 1992: 14). This is indeed where Schmitt significantly engaged in a work to show a correspondence between the historical-political reality and democratic thinking of the epoch. In the sociology of juristic concepts Sovereign finds its new definition in democratic "identification." At this point we would agree with Renato Cristi (1998: 8) who says that Schmitt's constitutional treaty was also a "political tract." Although we would be dealing with his constitutional theory in more detail in the following pages, it is important to make a brief discuss at this point where it is posed against liberal contractual theories. In his argument about the social contract first of all Schmitt comes to the conclusion that it is not the constitution but the state which represents the political unity therefore, the democratic identity of people. Thereby Schmitt finds a democratic basis to legitimate the Sovereign decision that is codified outside the existing legal order, thus the constitution. With its claim to represent the original political act of the people, to represent their democratic identity Sovereign is given the authority to act independent of the constitution understood in the positive sense, in other words independent of what is written in the constitution. In an exceptional case Sovereign is not bound with the constitution and more importantly

it is the Sovereign who defines whether a situation is an exception or not, whether a threat to the democratic identity, to the political act and indeed to the political unity, thus the “homogeneity” of the people is threatened or not. Schmitt’s application of this political tract to the politics of Weimar Republic will be examined later but in *The Crisis of Parliamentary Democracy* he gives a clue that would help us understand how Sovereign would be able to act in the “exceptional cases” in the name of democratic identity:

As democracy, modern mass democracy attempts to realise an identity of governed and governing; thus it confronts parliament as an inconceivable and outmoded institution. If democratic identity is taken seriously, then in an emergency, no other constitutional institution can withstand the sole criterion of the people’s will, however it is expressed. Against the will of the people especially an institution based on discussion by independent representatives has no autonomous justification for its existence, even less so because the belief in discussion is not democratic but originally liberal (Schmitt, 1992: 15).

Schmitt (1992: 14) says that democracy is in crisis “because the problem of a substantial equality and homogeneity, which is necessary to democracy, can not be resolved by the general equality of mankind.” Indeed, this is not the crisis of democracy but it is a solution proposed to the crisis of state. As we have noted earlier, for Schmitt, society had never been a complete unity but for the establishment and maintenance of such unity, there had always been a need for a strong state to neutralise antagonistic differences. It is because he was aware of the fact of pluralism and ever-existing possibility of conflict that he conceptualised democracy as merely “identification” that was based on “homogeneity.” Identifications are never real and we argue that precisely because they are constructed to replace actual socio-economic claims of equality that they can never be real. It is through this “identification” state would be able to unite people around a common understanding of themselves as a unity and through that understanding, in

the name of such unity and homogeneity state would declare exceptional cases to neutralise conflicts. Schmitt (1992: 89) makes reference to Aristoteles (Politics: 1280a) who says that "In democracies...Justice is considered to be equality...It does not mean equality but equality for those who are equal, not for all." Following this line of argument, Schmitt concludes:

Democracy requires, therefore first homogeneity and second -if the need arises-elimination or eradication of heterogeneity...A democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and unequal that threatens its homogeneity...Finally one has to say that a democracy-because inequality always belongs to the equality- can exclude one part of those governed without ceasing to be a democracy (Schmitt, 1992: 9).

He argued that the substance of homogeneity, the criteria through which a democracy can define its equals might differ from one epoch from another, from place to another (Schmitt, 1992: 9). Accordingly substance for democracy can be common religious convictions as it had been in the democracy of English sects during the seventeenth century. It can be common moral qualities as it had been so in classical democracy or it can be membership in a particular nation as it has been so far since the nineteenth century. Schmitt's words are mostly interpreted as a call for fascist government, especially when his words are taken to be compatible and even supportive of Nazi policy towards Jews. Even if this call for the elimination of heterogeneity may be interpreted in these terms, Schmitt never referred to a genocidal policy in his studies. As it has been summarised above, we argue that Schmitt's definition of homogeneity and substantive equality in relation to unequals is not related to actual equals or unequals. They are mere "identification" that are to be used discursively⁴⁴ for

⁴⁴ If we were to take these identities as the definition of concrete equals and unequals, governing the state becomes impossible. Because when a state bases its legitimacy on nationality for example, it would not be able to decide on the exception when two groups who belong to its own nationality fight in the name of two different economic programs. In these terms each side to the conflict belongs to the group of equals so the state can not decide to eradicate unequals, thus to neutralise (depoliticise) the conflict.

homogenisation, indeed for the establishment of a homogeneous medium. In Schmittian terms, given the total politicisation of human existence, the definition of equals and unequals are changed in each case depending on the areas of human life from which conflicts rise, depending on the issue which people politicise.⁴⁵ They are merely antagonisms to be neutralised, democratic equality and inequality is only rhetorical for Schmitt, which he thinks to be necessary for any symbolism, for any representation. For Schmitt identification on the basis of homogeneity was needed not to divide people among different groups but to unite them intensely around a common identity so as to maintain order. Although Schmitt criticised liberal recognition of general mankind, this criticism did not stem from his fascist or militarist inclinations but rather it stemmed from his concern to maintain state as the sole political actor to tame violence.

Schmitt (1992: 17) argues that there is an inherent contradiction between liberalism and democracy, between liberal individualism and democratic homogeneity, between “a liberal individualism burdened by moral pathos and a democratic sentiment governed essentially by political ideals.” Liberal politics aim to stay neutral towards different conceptions of good, thus different identities, they claim that “politics should never be about identity and to that degree that policy decisions effect what it means to be person those decisions are decisive and dangerous.” (Strong, 1988: xxvi) However, Schmitt thought the way to legitimate sovereign decisions was to assert an “identification” between state and society in the absence of which each party would fight in the name of what they believe right, just

⁴⁵ This point will be more clear in the context where we will be arguing that the concepts of equals and unequals of a democracy are not very different from other concepts used by previous political ideas because in any period state had to deal with internal antagonisms and in each case it found a

and moral. Accordingly liberal democracy is not compatible with such an establishment because, in its negation of a substantive homogeneity it was not able to create such an intense identification between ruler and the ruled and the latter among themselves. It is defined on the basis of an individualist conception of society and therefore, it negated any political idea that could once more unite people under the legitimate authority of state. In the absence of a political idea "a liberal individualism burdened by moral pathos" is not actually an obstacle in the way of democratic process but instead it is an obstacle in the way of state's capacity to turn the democratic process on its head and again unite society by representation which is now based on democratic notion of legitimacy. Indeed liberal individualism and liberal recognition of formal equality was also a threat to its own existence, which Schmitt defined as the crisis of parliamentary democracy. As Jean Cohen and Andrew Arato (1992: 233) says, Schmitt thought that "Given the very differences of parliamentary notables and outside constituencies, and of the latter among themselves, the illusion of necessary homogeneity and unity within society and of society with parliament could rise on the face of an enemy: untamed state power." However when democracy won the struggle, when monarchy was abolished, it was clear that in the absence of a monarch who "decided," there existed no such unity within the society. Therefore, Schmitt (1992: 15) says that the crisis of parliamentary system springs from the circumstances of mass democracy, threatened from both sides by Bolshevism and Fascism, liberal democracy must decide between its own elements and establish its own democracy, thus its own equality of equals.

formula to declare domestic "enemies" and to gain the necessary legitimacy to take necessary steps to depoliticise, to neutralise these conflicts.

Schmitt (1992: 9) says, "The question of equality is precisely not one of abstract, logical arithmetical games. It is about the substance of equality." Accordingly, the "general will" which is to be found in the substantive definition of homogeneity can not be determined in a qualitative manner; it can not be known by counting votes. For Schmitt (1992: 16), public will can be expressed in many different ways and acclamation is considered even as a good means of public expression. Schmitt argues that Bolshevism and Fascism, like all dictatorships, can not be considered necessarily anti-democratic even if they are necessarily anti-liberal. As he says:

The stronger the power of democratic feeling, the more certain is the awareness that democracy is something other than a registration system for secret ballots. Compared to a democracy that is direct, not in the technical sense but also in a vital sense, parliament appears as an artificial machinery, produced by liberal reasoning, while dictatorial and *Caesaristic* methods not only can produce the acclamation of the people but can also be a direct expression of democratic substance and power (Schmitt, 1992: 16-17).

As Schmitt (1992: 27) notes, everything depends on "identification" and how the "general will" is formed, on how it is constructed. Schmitt is not late to note that from the very beginning of modern democracy radical democrats were anxious about the possibility that people may be deceived with the techniques of propaganda and the manipulation of public opinion. From this "democratic-dialect" radical democrats come to the conclusion that democracy has its own value and that as soon as democracy is used to defeat democracy a radical democrat can no longer remain a democrat (in the formal sense). Schmitt (1992: 28) notes that this is no way "an abstract dialectic or sophistical game" but a remarkable fact and necessity. He concludes that an educational dictatorship may "suspend democracy in the name of a true democracy that is still to be created," without ceasing to be democratic (Schmitt, 1992: 28). In educational dictatorships that are based on absolutist rationalism people

are educated in a way through which they gain the necessary knowledge and capacity to be able to recognise and express their real will correctly. Although the educator is to identify the will of the people with his own will, there is still identification, thus theoretically it does not destroy democracy, it shows that dictatorship is not antithetical to democracy (Schmitt, 1992: 28). Schmitt (1992: 59) accounts for a similar kind of educational dictatorship in Marxist use of Hegelian “dialectics.” In this kind of thinking it is argued that some people have the necessary consciousness to evaluate the history of their time much more easier than the others. If without any doubt, they believe that a certain epoch has come to an end, this state of consciousness will constitute the reliable evidence for them to be sure on it (Schmitt, 1992: 61). They may continuously employ what they believe as the real public interest and in this way educational dictatorship may continue forever without ceasing to be democracy as the essence of democratic principle, namely “identification” is preserved (Schmitt, 1992: 26). According to Schmitt the recognition that, theoretically, dictatorship is not antithetical to democracy is not a simple excuse for dictatorship. For Schmitt this recognition is important because it is on the basis of this recognition, by the help of conceptualising democracy on the basis of “identification” that he is able to show a correspondence between the two substantive identities, that of the state and that of society.

To conclude our argument we have given a long quotation from *The Crisis of Parliamentary Democracy*. It is exactly at this point, Schmitt (1992: 30) only for once notes that neither the theory nor the practice of any constitution can get along without a concept of legitimacy. Accordingly it would be foolish to deny that today democratic concept of legitimacy has been universally accepted. Therefore, he

argues that the democratic principle must claim an important analogous to the monarchical one and he concludes:

Theoretically, in critical times also practically, democracy is helpless before a Jacobin argument that is when faced with the authoritative identification of a minority as the people and with the decisive transfer of the concept from quantitative into the qualitative. Interest is then directed toward the criterion and shaping of the popular will, and the belief that all power comes from the people takes on a similar meaning to the belief that all authoritative power comes from God. Both maxims permit various governmental forms and juristic consequences in political reality. A scientific study of democracy must begin with a particular aspect that I have called political theology (Schmitt, 1992: 31-32).

As Schmitt says democracy can be lived qualitatively whereby the substance of equality, the substance of democratic identity and unity can be “represented” as well as “protected” by the state. Because when such an analogy is claimed between democratic and monarchical legitimacy, when the authoritative power of God which was once represented by the monarch is recognised analogous to the constituent power of people that is to be represented by the Sovereign, governmental forms and juristic conceptions once again become possible. According to Schmitt if states in modern societies shall not renounce their claim to govern, if they shall not renounce their monopoly on decision, they should base their authority on the new conception of legitimacy therefore, they should recognise that the political idea, the new ethos of belief in modern societies is democratic “identification.”

3.3.2: IDENTIFICATION AND WEIMAR

Although it was something desirable for Schmitt, he knew that monarchical principle was abolished and he had to deal with democratic claims and institutions. Here we will have a brief discussion on Schmitt’s constitutional theory in late 1920s

when parliamentary democracy in Weimar was threatened from both sides, as Schmitt says on the one side by Fascism on the other side by Bolshevism. It was in this context where Schmitt tried to re-introduce sovereign representation by employing democratic concepts to his own political tract, namely the preservation of the unity of state. In his *Versfassungslehre*, which appeared in 1928, Schmitt theorised the sovereign action on the bases of democratic legitimacy, on the basis people's constituent power. According to Schmitt, constitution is the result of the collective political will of a people, it is not based on reason or discussion but on a pure decision. As we have noted earlier according to Schmitt (1991: 46) the equation of state with the constitution gives the wrong impression that constitution founded the state and it blurs the distinction between social contract and constitution. He argues that it is not constitutional mediation among isolated individuals that bring political unity. Instead he argues that the *social contract* underlines the state but the constitution which is brought into being by the act of the people in its political capacity presupposes the political unity of people (Schmitt, 1991: 48). As Cristi (1998: 114) argues that Schmitt was not late to argue that the Weimar Constitution was based on the political act of the German people made in 1919 to confirm its unity and to decide its political form of existence. According to Schmitt Weimar Constitution presupposed German people as a unity in its capacity to act, to express its will as well as to unite to create its authority above antagonist divisions when the need arises (Preuss, 1987: 99). It was there, where Schmitt found a room to, an "opening" to introduce his concept of sovereignty. Schmitt (1928: 121) claims that the constituent power of the people necessarily stood outside and above the constitution, it transcended the constitution. As a *natura naturans* (generating source) its activity can not be prescribed constitutionally but it can only be codified

after it has been expressed by the people (Cristi, 1998: 121). According to Schmitt (1928: 92) the constituent power of people “retains the ability to preserve in its existence,” it can not be destroyed or repressed totally. According to Schmitt inalienability, indivisibility and the absoluteness of *pouvoir constituant* should be taken seriously. Therefore, he argues that no procedures, no devices, no parliament and not even a constitution which has been accepted as a temporary instrument can constitute an obstacle against this will (Scheuerman, 1996: 311). As Cristi (1998: 123) says, “The positive constitution, as an accident supported by constituent power, could be born, suffer alterations and eventually die, but alongside and above it the *pouvoir constituant* would continue to exist.” Accordingly, this power can not be prescribed by the precepts of the constitution because it is the source where the constitution as a whole takes its legitimacy. Schmitt was then able to locate the powers he designated for his Sovereign to the position held by the *Reichspräsident*. According to Schmitt *Reichspräsident* was the only one who could escape the centrifugal forces of society, who could unify society (Cristi, 1984: 529). As Ellen Kennedy (1992: xxxvi) says “By stressing the constitutional interpretation of the people’s legislative power in the Republic and linking this to the office of the president, Schmitt thought that another basis for the Republic can be developed, one not dependent on the tenets of legal positivism.”

In deed Schmitt considered the President as representing the democratic principles of the Weimar Constitution and therefore, as the Sovereign who was to decide on the exception (Bendersky, 1983: 124-125). For him, Weimar constitution was a mixed one that contained two principles as he depicts as liberal and democratic that can be identified respectively with *Reichstag* and *Reichspräsident*. When he

analysed the democratic element in Weimar constitution –especially the first article that stipulates “people” as the source of state power and the cases in which constitution recognise for the use of a plebiscite- he came to the conclusion that the essence of Weimar constitution is its democratic principle which is to be protected by the *Reichspräsident* when its threatened (Kennedy, 1992: xxxii). He defended article 48 of Weimar Constitution, which stated that president is provided by exceptional powers when there exists a threat to public order and security. Schmitt was anxious about the political antagonism that defined the Weimar politics in the 1920s, and from the early 1920s until Hitler’s coming to power, he called for a commissarial presidential dictatorship (Gotfried, 1990: 28).⁴⁶ According to Schmitt a commissarial dictatorship works to restore order in a time of crisis so that a normal situation is established for the proper functioning of the existing constitution (Schwab, 1988: xix). Accordingly, article 48 of the Weimar Constitution accorded such a dictatorship for *Reichspräsident*. It is on the basis of this interpretation Schmitt argued that Weimar constitution can be protected “at the expense of its letter” (Kennedy, 1992: xxxviii). In his *Verfassungslehre* Schmitt proposed a mass-based plebiscitary regime (Scheuerman, 1996: 312). Schmitt argued that the people choose their leaders to be governed by them, they do not themselves continuously decide on the difficulties of their leaders as well as on their differences of opinion (Cristi, 1984: 525). In his proposal, the reflection of his ideas that he developed in *The Crisis of Parliamentary Democracy* was explicit. In the latter Schmitt (1992: 26) noted that a citizen even agrees to the law that is against his own will because “the law is the General Will and, in turn, the will of the free citizen.” More importantly Schmitt (1992: 26) says that “Thus a citizen never really gives his consent to a specific content but rather in

⁴⁶ Schmitt’s interpretation of article 48 of Weimar Constitution as providing such a commissarial role to the *Reichspräsident* is reflected in his defence of the legality of the coup that has been made by the

abstracto to the result that evolves out of the general will.” In his *Verfassungslehre* Schmitt says that people can only engage in acts of acclamation, it can only say ‘yes’ or ‘no’ to the questions prepared for them. He argued that people can not counsel, they can not deliberate or discuss, they can not govern themselves and it can not place a question, it simply says yes or no to a question that is put (Scheurman, 1996: 312). Therefore, it is often noted (Preuss, 1987: 109, Scheurman, 1996: 312-13) that Schmitt’s plebiscitarian model of democracy in deed makes people “powerless” and “voiceless” because the only role they assume in this system is to say to acclaim or to complain an already constituted political will. Schmitt proposed an “unorganised, formless popular will” that is best expressed through acclamation (Preuss, 1987: 105). According to Schmitt it was possible to preserve monarchical representation in a system of delegate representation, to introduce notion of sovereign in the mass democracies without throwing its decisionist element. His pro-democratic statements were in deed tactical, they were made for the maintenance of sovereignty, for the re-introduction of state’s monopoly on the decision. His defence of plebiscitary democracy did not stem from his being a political majoritarian but instead it aimed to hold German state together by freeing president (a figure of sovereignty) from governments that depended on changing popular opinion while at the same time legitimating it on the grounds of a new definition of democracy (Gottfried, 1990: 80). Although the manifestation of sovereign was made in the name of people’s constituent power, in the name of their sovereignty, these acts constitute a rule similar to the one under monarchical sovereignty, they are made in the name of the unity of the state under the rubric of democracy.

federal government against Prussia in 1932. See David Dyzenhaus (1997) p: 121-134.

To conclude, we can say that, although Schmitt argued for such an active sovereign in the political crisis of Weimar Republic, his conceptualisation of Sovereign was not to establish a permanent case of exception, but instead it was to maintain a homogeneous medium within which legal order can function. He directed the attention to the relation between the norm and the exception and argued that, the relation between the written constitution and its actual life should be taken into consideration. According to Schmitt sovereign acts can not be totally eliminated, they always make themselves manifest:

What has suffered the most under this fiction [rule of law] and this method of avoidance is the concept of sovereignty. In practice, apocryphal acts of sovereign are exercised, which are characteristically performed by non-sovereign state officials or bodies who, occasionally and with tacit tolerance, make sovereign decisions. (Schmitt, 1928: xii)

Renato Cristi (1998: 124) says that those apocryphal acts of sovereignty corresponded to the acts that violated the constitution as the manifestation of the constituent power of the people, which is then kept alive. They happen in the “daily ordeal of constitutional business,” they violate some constitutional norms in order to safeguard the substance of the constitution. These acts are justified by references to particular abnormal and transitory situations. Accordingly, these situations showed the superiority of the existential over pure normativity and they forced for the recognition of sovereignty. Cristi (1998: 124) says, “Sovereignty manifested itself when the legal order was violated. According to Schmitt, whoever had the faculty to violate, and thus relativise, the legal order as a whole was sovereign” Schmitt argued that as a “utopian worldview,” normativism lacks political efficacy and therefore, its decline is both necessary and inevitable. For him, liberals are forced to replace their normativism with more modest versions of normativist thinking that would provide them with necessary openings for “decisions” when the need arises

(Scheuerman, 1996: 302). For Schmitt modern liberals are increasingly tolerating such openings through which exceptional cases may be handled, that are less committed to the generality of the legal norm. As Scheuerman⁴⁷ says:

In Schmitt's account, the proliferation of open-ended, vague law in our century suggests that legal action today tends to an ever greater extent to take the form of highly discretionary, situation-oriented, "power decisions," most of which have little relation to the ambitious ideals of the early liberal rule of law...illiberal legal trends are little more than a concrete manifestation of a fundamental failing inherent in normativistic liberal thinking (Scheuerman, 1996: 302)

Like Stephan Holmes (1993: 57), Scheuerman also argues that when liberals face "political" realities, they also act politically and transgress their normativistic worldview. Although they are hostile to dictatorship and to the concept of sovereignty, they do not refrain from using state power, from providing state authorities with far reaching powers in existential emergency situations. According to Scheuerman (1996: 307) even if liberal aspirations, liberal legalism is normativist in ideal, liberal constitutional governments have never taken an exclusively normativistic form; they had always been mixed with supranormative, "existential" elements, that function to guarantee political self-preservation in an unavoidably violent political universe. In deed this was not the case in Weimar and Schmitt was in a polemic against neo-Kantians like Hans Kelsen and others who insisted on pure normativism and purely legalistic interpretations in a period when constitution was threatened by extremist rightists and extremist leftists. However, Schmitt's observation on the interactions between norm and the exception, between universal laws and political instructions of a state is important to understand how, even in countries ruled by "constitutional states", rule of law is transgressed in the name of

⁴⁷ Here Scheuerman does not give direct reference but concerning Schmitt's polemics against non-classical forms of law he offers Schmitt's *Unabhängigkeit der Richter, Gleichheit vor dem Gesetz, und Gewährleistung des Privateigentums nach der Weimarer Verfassung* (Berlin: Walter de Gruyter, 1926)

state's self preservation, as well as to understand why normativism had never taken a pure form. Our understanding of the ways in which states legitimise its actions that fall outside the existent legal order will be more clear when we analyse Schmitt's "concept of the political" and this is the main subject of our next chapter.



CHAPTER IV

TERRITORIAL IDENTIFICATION

So far we have argued that Schmitt tried to accommodate the rule as Sovereign into modern constitutional developments. For him, Sovereign decision is mediation between idea and reality, norm and exception, constitutional normativity and its real life conditions. According to Schmitt decision is legitimated by the new political idea of the age and it is through this decision equals and unequals are defined, normalcy and the “homogeneous medium” in which laws can function is established. Although we have analysed Schmitt’s main argument there is still another concept that we left out in Schmitt’s argument: the concept of the political. Schmitt’s concept of the political does not only embrace his main theoretical argument, but it also provides us with new points that are important in understanding Schmitt as well as in understanding how governing is possible in modern societies. In *The Concept of the Political*, which was published in 1932, Schmitt argues that in political theory we can not find a clear definition for the concept of the political. In every attempt, the state and the political are defined in relation to each other, and Schmitt (1976: 20) says, “the state thus appears as something political, the political as something pertaining to the state –obviously an unsatisfactory circle.” Also, the equation of politics and the state is meaningful in the earlier times when the state had the sole monopoly on politics, confronting non-political groups and affairs. Schmitt (1976: 22) argues that this was the case in the seventeenth and eighteenth century

when state did not recognise society as an antithetical force and it was even the case in nineteenth century when state at least stood above society as a distinct force. As we have noted earlier in the nineteenth century, it was still possible to observe who the Sovereign was. "In cases of conflict, [the sovereign] was the subject of state power and the representative of political unity able to decide: monarchy" (Schmitt, 1928: 56). In the last four centuries of Western European history, state owned the monopoly on politics, thus it owned the monopoly on the decision in cases of conflict. However, when the state and society penetrate each other, as it had been so since the establishment of mass democracies, the equation of state and politics become erroneous. Schmitt (1976: 23-4) says that in a democratically organised unity whereby the identity of the state and society is sought what had previously been considered as social matters appear within the affairs of state, every issue appear something pertaining to the state. Therefore, when the distinction between political and non-political, between the state and society was blurred, state is turned into a total state, which knows nothing absolutely social. As we have noted earlier, according to Schmitt this administrative, quantitatively total state is especially weak as it steps beyond the limits that separates it from the society (Cristi, 1998: 23). So we need a new definition, a new concept to define the affairs that still concerns the decision as Sovereign. Schmitt argues that a particular criterion for the concept of the political will enable us to know whether an issue is political or not. This criterion should be used as an ultimate distinction, which will embrace all actions with a specific political meaning. It should be a distinction binding only political affairs, thus it should be independent from any other distinction used in other domains of

human life, particularly good and evil in the moral sphere, beautiful and ugly in the aesthetic sphere and the profitable and unprofitable in the economic sphere.

4.1: CONCEPT OF THE POLITICAL

Schmitt (1976:26) claims that “The specific political distinction to which political actions and motives can be reduced is that between friend and enemy.... The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation.” Like all other distinctions, friend and enemy distinction is not reducible to any other antitheses. When we say that something is morally evil it is not necessarily to say that it is ugly in the aesthetic sense or unprofitable in the economic sense. Likewise, when groups are organised around the common identities of friend and enemy, this distinction can not be traced to or based on any other antitheses. It is not only viewed as an independent antithesis, but also as a distinction above all others because it denotes an existential negation, a conflict where opponents negate each other’s way of life. What Schmitt (1976: 28) calls as enemy exists only “when, at least potentially, one fighting collectivity of people confronts a similar collectivity, something existentially alien with whom in the extreme cases conflicts are possible.” In *The Concept of the Political* Schmitt (1976: 28) enmity is defined as political if it exists between organised groups. Enemy is a public enemy and unlike the individual fight of Hobbes, Schmitt refers to a real possibility of war between organised groups. Thus, he uses the term “enemy” instead of the term “foe.” Accordingly, every antithesis may appear as political when the intensity of the antagonism in these domains reach to a high level that makes

people to group along friend and enemy identities. Likewise he also argued that although the political friend and enemy distinctions may appear in any domain of human life where there rise an intense association and dissociation, he argued that “political” still owes its “objective nature and autonomy” because it is able to “treat, distinguish, and comprehend the friend-enemy antitheses independently of other antitheses” (Schmitt, 1976: 27). It means that when an issue in the moral domain for example becomes political, it would not be “treated” as an evil in itself any more, it becomes an enemy. Enemy should be understood in existential terms because it refers to the real possibility of physical killing. Schmitt (1976: 33) says “War follows from enmity. War is the existential negation of enemy.” War is not something ideal or something to be cherished but as the extreme consequence of enmity, it is still an ever-present possibility.⁴⁸ Schmitt (1976: 29) adds, “In its entirety the state as an organised political entity decides for itself the friend-enemy distinction.” And accordingly right of *hostis* declaration belongs to the state. The ever-present possibility of war and especially its definition in relation to “state” as the sole political entity is the most important implication of Schmitt’s concept of the political and, we will now elaborate these implications. As we have noted earlier, in *The Concept of the Political*, Schmitt (1976: 78) argued that world would not be “depoliticalised” with the aid of constructions and ideals. He argued that economy and technology are not neutral domains and they did not bring a world of peace and culture but instead what had happened is that economy became destiny and therefore, political. As he says:

⁴⁸ According to Mark Neocleous (1996a) Schmitt, whom he depicts as a fascist and defender of the total state, not only tried to understand society through the idea of war, but also defined it as life-affirming action and called for “war and war again.” On these grounds he compares Schmitt and Foucault as he argues that in both of the thinkers’ work we see a universalisation of warfare and rejection of civil society-state distinction.

The concern here is neither with abstractions nor with normative ideals, but with inherent reality and the real possibility of such a distinction...rationally speaking, one can not deny that nations continue to group themselves according to the friend and enemy antithesis, that the distinction still remains actual today (Schmitt, 1976: 28)

According to Schmitt (1976: 53) there will be no more any friend and enemy distinctions and consequently no more states and wars only when there would remain no distinction strong enough to group people along actual fighting. This can only happen when different states, religions, classes, and other groupings on earth are so unified that conflict among them is impossible. According to Schmitt world is still governed with the possibility of conflict among groups and the attempt to make politics safe means only the abandonment of state to society, to private interests, which would only mean to open politics to more dangerous and intense conflicts of every kind (Strong, 1988: xv).

4.2: STATE AS THE POLITICAL ENTITY

According to Schmitt decision on friend and enemy groupings signify the utmost intensity of association and dissociation and the state, as the modern form of political unity, must decide on the friend and enemy distinction for itself. As we have noted We can say that political distinction of friend and enemy work in two interrelated ways. While at the international level it prevents ideological crusades, at the domestic level it relativises all religious, social, economic or moral claims by associating state with the otherwise diversified society on the most intense ground, that is to be in the face of an existential enemy. As Schmitt (1976: 53) says, "The political entity presupposes the existence of an enemy and therefore, coexistence with another political entity. As long as a state exists, there will thus always be in the

world more than one state.” So we can say that the political unity established and maintained by the state is the result effect of the existence of other states. Boundaries that separate one state from another create an common identity within each unit, thus these boundaries divides world among different people that are identified in terms of “us” and “them”, in terms of “friend” and “enemy” groupings that are defined in territorial terms. The territorial basis of the state provides it with a political character through which it solicits obedience as well as association because the pluralistic nature of international state system always provides state with various potential enemy configurations. Therefore, Schmitt (1976: 46) says that to the state belongs the *hostis* declaration and this is what provides the state with an enormous power. Accordingly the ever-present possibility of friend and enemy distinction is itself sufficient to render the state as the decisive entity that stands above all other associations (Schmitt, 1976: 45). In *The Concept of the Political* Schmitt (1976: 39) defines Sovereign as the one who decides on friend and enemy. In any case the group, which orients itself towards extreme possibility, is the political group, the political entity and it is sovereign in the sense that it is the one who decides for itself on the exception. Schmitt (1976: 35) notes that even if the extreme cases do not appear frequently, as they are only “exceptions”, this does not challenge their decisive character but confirms it all the more. Here Schmitt defines exception in terms of the extreme possibility, in terms of war and accordingly it explores the core of the matter. The exceptional case confirms the existing order, the existing legality as well as the authority of the state because in the face of a common existential threat the diversified groups within a society associate themselves with each other as well as with the state and therefore, normalcy, the existing order becomes all more legitimate. As in *Political Theology* Schmitt says:

The exception is more interesting than the rule. The rule proves nothing; the exception proves everything. It confirms not only the rule but also its existence. In the exception the power of real life breaks through the crust of a mechanism that has become torpid by repetition (Schmitt, 1988: 15)

In *The Crisis of Parliamentary Democracy* Schmitt (1992: 67) defines the theories of irrationalist use of direct force as the theories of unmediated real life. According to these theories public will does not arise from secret ballots or from parliamentary discussions, but instead it springs in its most intense form from the masses that are motivated by mythical images (Schmitt, 1992: 68). It emerges as the ultimate result of real life, as the ultimate struggle as a life instinct, not as a construction of intellectuals or not as a slogan for discussing parliamentarians. In this context Schmitt (1992: 70) says, "The warlike and heroic conceptions that are bound up with battle and struggle were taken seriously again by Sorel as the true impulse of an intensive life."⁴⁹ So Schmitt argues that the possibility of engaging in a war with an existential enemy is the true impulse of an intensive life, it is the exception even the possibility of an exceptional case, what brings the most intense association and dissociation. There exists no political association or society but only one political entity as Schmitt (1976: 45) quotes from Lederer (1925: 349) who says, "We can say that on the day of mobilisation the hitherto existing society was transformed into a community." However we should not conclude that Schmitt is calling for a perpetual war, or for a direct irrationalist use of force.⁵⁰ Schmitt (1976: 35) notes that war is neither the aim nor the very content of politics but as an ever present possibility it determines "in a characteristic way human action and thinking and thereby creates a

⁴⁹ Likewise Schmitt (1992: 73-74) argues that it was not the intellectual weapons used by Marxist rationalism that had brought revolution in Russia. But instead it was a mythical construction through which bourgeoisie was perceived as an enemy "capable of intensifying all the emotions of hatred and contempt" (Schmitt, 1992: 74). The metaphysical image of the bourgeoisie as the "last enemy of the man kind" migrated from West to East and the Russian people saw in it everything that was destructive for their way of existence (Schmitt, 1992: 74)

⁵⁰ For a contrary view see Mark Neocleous (1996), "Perpetual War, or 'War and War Again': Schmitt, Foucault, Fascism" *Philosophy and Social Criticism* 22(2): 47-66.

specifically political behaviour.” His main concern was the construction of the most intense form of association on a territorial basis, so that no distinction within the society prevents this political community from being perceived as such. Schmitt (1976: 35) argues that all politics terminate when the possibility of actual fight disappears. Accordingly when politics is negated, when the possibility of war is “utterly” eliminated this would bring a world without the friend and enemy distinction, a world in which states lose their right of *hostis* declaration (Schmitt, 1976: 35). Thus in such a world state loses its capacity to bring about the utmost intense association and dissociation, to authorise people to engage in a war and it would dissolve in society, the deciding entity would not be the state any more. When such a distinction is outlawed that Schmitt necessarily defines in territorial terms not only will state lose its authority but also conflicts would be fought in other realms by other political groups. As Schmitt (1976: 35) says, “For the definition of the political, it is here even irrelevant whether such a world without politics is desirable as an ideal situation.” Schmitt thought that the world would not be pacified with the aid of constructions and ideals. For him the main concern was whether to contain the possibility of conflict among legally recognised states or to let it to be experienced by all.

At this point we have to answer what is the necessity for a political idea, for an ethos of belief if state governs the society, if state legitimates its actions that fell outside the legal order by simply making society faced with an existential enemy? Indeed Schmitt’s conceptualisation between politics and morality is quite hard to understand. On the one hand in *Political Theology* Schmitt (1988: 65) defines “decision” as the “exacting moral decision” which constitutes “the core of

the political idea.” On the other hand he argues that there could be no rational purpose, no norm, no program, no social ideal, no legitimacy nor legality that can justify men killing each other (Schmitt, 1976: 49). It is also noteworthy that in *The Concept of the Political* Schmitt sometimes defines enemy as a threat to one’s physical existence, while at other times as a threat to one’s own way of existence. We would argue that Schmitt’s seemingly contrary statement result from his dual effort. On the one hand he wants to underline the dangerousness of changing friend into a foe, of waging war in the name of universalist moral and ethical values. On the other hand he wanted to re-establish state authority which he thought to be necessarily based on a political idea, on an ethos of belief (Schmitt, 1996: 7). It is for this reason that he noted that the political distinction could draw upon other distinctions for support without ceasing to be autonomous (Schmitt, 1976: 36). It is for this reason he argued that in an age of subjectified occasionalism (religion of privacy) there remains no *concept of truth* about which people construct a common understanding of the world, on which political idea, representation can be based (Oakes, 1986: xx). This is why he called for “identification” that is to be necessarily defined on a substantive homogeneity, let it be religious convictions, some commonly shared idea of morality or nationality. To have a better understanding, we have to focus on the relation between his concept of “enemy” and “representation.” In 1928, in his *Verfassungslehre* Schmitt says:

...a state is the political unity of one people. There can be only one political unit in a state whose form of political existence is based on the constituent will of the people. Specific political decisions, such as the determination of friend and enemy or other existential concepts like public order and safety, can be made only by the political totality because they are essential features of political existence...In a democratic state, i.e. one organised according to the principle of identity, no distinction should be made between the will of the state and the will of the people because they are one. (Schmitt, 1991: 55-56)

These sentences explain us how Schmitt's conceptualisation of enemy depends on the political idea represented by the state in a given period. Accordingly state symbolises the constituent will of the people but to this belongs authority from above and simply identification. On the basis of this identification state defines friends and enemies and it decides in the name of friends against their enemies. As Slavoj Žižek (1999: 20) says, a kind of Schmittian politician would draw the line of separation between friends and enemies "*by means of a purely formal, abyssal act of decision, without any grounds in the actual properties and acts of those concerned* (since they are not yet even born)." In reality there exists no such political unity or a common constituent will but they are all defined and in "rhetoric", all "rhetorically" protected by the state. Likewise as Paul Gottfried summarises Pier Paolo Portinaro's (1983) interpretation of Schmitt's concept of the political:

... Schmitt's view of the enemy "cannot assume precise features as long as its relation to its opposite remains vague." Schmitt, Portinaro observes, characterises the enemy in *Theory of Partisans* as that which challenges "us with representations." Neither friend nor the enemy for Schmitt could transcend being a mere representation, for neither refers to a real community or to the assault upon it from historically definable outsiders (Gottfried, 1990: 11).

This interpretation can also be derived from *The Concept of the Political* where Schmitt (1976: 35) says, "war as the most extreme political means discloses the possibility, which underlies every political idea, namely the distinction of friend and enemy." So we can conclude that the state justifies its authority through representation of a political idea. In every representation, state symbolises an ethos of belief, which is used to construct a political unity and to justify the state's existence. State appears as the protector of this idea against possible enemies and therefore, its actions that transgresses the existing legal order become legitimate in the eyes of the people. More to the point in a case of intense conflict within the

society and in a case of extreme antagonism, state decides on the exception, it defines enemies and thereby brings the utmost association on territorial terms. By bringing the utmost level of association and dissociation on territorial basis, state relativises all other associations and commitments within society and on the basis of this relativisation state acts as the “highest judge.” We can say that even if political community achieves its utmost intense form of association in the face of an enemy, threat is not simply conceived as a threat to their own physical existence but more to the point, as Schmitt (1976: 27) notes, as an adversary that negates their “own way of life,” their independence, freedom and the like. Schmitt says

The state rests, as a political unity, on the combination of two opposed principles: the principle of identity (namely the presence of the people as a political unity...when capable of distinguishing between friend and enemy) and the principle of representation, by virtue of which the political unity is constituted by the government (Schmitt, 1928: 214)

Accordingly the political unity is constructed through representation, through justifying the authority of the state on the basis of an ethos of belief with which people can identify themselves with and when this association is achieved they are made capable of distinguishing between friend and enemy. Throughout this process they are bound to the idea state represents and they consider the enemy that is declared by the state as an enemy against their existence, as an enemy that is no more an external imposition, but in contrast, as something very internal to themselves. The real impulse of an intensive way of life is related to warlike and heroic conceptions that signify fighting in the name of ideas through which people give meaning to their existence in a society as a part of that society that transcends their mere existence. It is the impulse to fight in the name of our way of existence, to fight for the ideas with which we associate ourselves so intensely that we can engage in a life-death struggle to protect them. So we can conclude that according to Schmitt for the

purposes of establishing a political unity among a territorially defined society, references to ethical values, substantive ideas would not result in a war waged against an “unperson”, because they are merely used for the purposes of governing.

As we have noted earlier, Schmitt thought that state lost its monopoly on politics and that is the reason why he conceptualised the political in terms of intensity of association and dissociation:

the classical profile of the state was shattered as its monopoly on politics waned. New...political protagonists asserted themselves...From this followed a new degree of reflection for theoretical thought. Now one could distinguish “politics” from “political.” The new protagonists become the core of the entire complex of problems called “political.” Here lies the beginning and thrust of every attempt to recognise the many new subjects of the political, which become active in political reality, in the politics of the state or nonstate, and which bring about new kinds of friend-enemy groupings. (Schmitt, 1972: 24)

Before the establishment of mass democracies states used to have monopoly on politics within their territory, they used to decide in the cases of conflict again by the legitimacy they obtain from the political idea they represented. They decided on the exception, they defined their friends and enemies thus they brought an end to the conflicts by establishing the utmost association and dissociation. However with the establishment of mass democracies states lost their monopoly on politics and new actors of politics have entered into the scene. It is afterwards that no sphere of human life appeared as absolutely social and every social issue appeared as something pertaining to state and politics. Thus appeared the qualitatively total state. However, it is not when social issues and non-state actors engage in politics that every societal contradiction become “political.” Even if many societal distinctions are brought into politics, they are only potentially “political” in the sense that they transform themselves into a political one when they become sufficiently strong enough to group

human beings according to friend and enemy distinction (Schmitt, 1976: 37). Therefore, Schmitt (1976: 26) states, "The specific political distinction to which all political actions and motives can be reduced is that between friend and enemy.... The distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation." Today state lost its monopoly on politics and therefore, many new protagonists asserted themselves as the new source of the political (Schmitt, 1972: 24). They brought new kinds of potential friend and enemy groupings thus they challenge the monopoly of state to decide on enemy, thus they challenge state's power to construct political unity, to bring the utmost association and dissociation on a nation-wide basis and to act as the highest judge. As Schmitt says (1976: 32) when the antagonistic forces within the society weaken state, when politics become merely party politics, when *intensification of internal antagonisms weakens common identity vis-à-vis another state*, when domestic conflicts among political parties become the sole political difference, the result would be civil war. When the irreconcilable conflicts are brought into politics, as in the case of mass democracies, when these conflicts are so intensified, thus become "politicalised" and when they grow so strong that the state loses its capacity for representation the end result would be civil war. To prevent this from happening state has to decide on an enemy in the face of territorial identity, so that it can take steps to depoliticalise the conflicts before they intensify that much, before they become sovereign entities themselves:

Political unity is the highest unity – not because it is an omnipotent dictator, or because it levels out all other unities, but because it decides, and has the potential to prevent all other opposing groups from dissociating into a state of extreme enmity- that is, into civil war. Where a political unity exists, the social conflicts among individuals and social groups can be decided so that an order- that is, a normal situation- is maintained." (Schmitt, 1999: 203)

Thus Schmitt reminds that even if state lost its monopoly on politics, the issues pertaining to the state should be defined clearly. State is the one who represents and one who decide on friend and enemy groupings, who constructs the most intense unity. Thus in critical situations, when internal antagonisms are intensified, state is compelled to decide upon a domestic enemy to maintain internal peace and according to Schmitt every state has a formula for this declaration. As he says “Whether the form is sharper or milder, explicit or implicit, whether ostracism, expulsion, proscription or outlawry are provided for in special laws or in explicit or general descriptions, the aim is always the same, namely to declare an enemy” (Schmitt, 1976: 47). In each case, state defines friends and enemies, or as we have argued earlier, in the name of representing democratic identity it defines “equals and unequals.” It defines so for the purpose of justifying its actions that transgress the existing legal order, the actions that are in reality made for its own self-preservation, for the relativisation of conflicts and for the establishment of a homogeneous medium.

4.3: WHAT IS BEYOND THE EXCEPTION

As we have argued so far, according to Schmitt state is the ultimate judge who brings an end to the conflicts within the society by declaring “an enemy” whose precise definition can not be known before an actual “politicalisation” takes place. Schmitt thought that in the absence of a state construction societies do not constitute a political unity. Thus we can say that neither the enemies nor the friends of a society are real even if some critical situations, some intensified antagonisms constitute real

threats merely to the existence of state as the sole political entity, as the sovereign and to the political unity maintained by that sovereign. However the implications of what Schmitt (1928: 214) have defined as friend and enemy is not simple in the sense that the existence of a political unity which can perceive what state defines as an enemy as such is depended on the capacity of the state to construct such unity through representation. So we should note that state can neither establish such a representation nor can construct such an intense identification in just one night before it declares an exception in the face of a symbolic enemy. As Schmitt (1996b: 23) have noted to the symbolism belongs a representative rhetoric, a great language of its own. Therefore, state is in continuous construction, and manipulation, especially in mass democratic conditions where it necessarily competes with new political protagonists. Thus in *The Crisis of Parliamentary Democracy* Schmitt says:

It is then particularly noticeable that the single practical question affected is the question of identification, and specifically the question of who has control over the means with which the will of the people is to be constructed: military and political force, propaganda, control of public opinion through the press, party organisations, assemblies, popular education, and schools. In particular, only political power, which could come from the people's will, can form the people's will in the first place. (Schmitt: 1992: 29)

Likewise in his "Ethic of State and Pluralist State," Schmitt (1999: 201) argues that there are many ways of building unity and among all others he mainly focuses on two which he claims to be not necessarily antithetical: unity by consensus and unity by force. Schmitt argues that for pluralists only consensual unity might be ethically valid but accordingly this is a problematic position because Schmitt argues that every consensus, even a free one, is always "motivated" and "brought" into existence. According to him consensus and often, a rational and ethically justified consensus is produced by power. Thus he concludes:

From a pragmatic and empirical perspective, the question arises of who controls the means of bringing about the 'free' consensus of the masses: the economic, educational, psychotechnical means of very different kinds with whose help, as we know from experience one can achieve consensus. If these means are in the hands of social groups or single individuals, and removed from state control, then everything which officially still gets called 'state' is at an end, and political power has become invisible and uncountable...(Schmitt, 1999: 202).

What gets called a state, what appears as the representation of the political existence of a society is then constructed by "economic, educational and psychotechnical means of every kind. Following these words Schmitt once again notes that every state is obliged to use techno-military instruments of power (technological means) to exercise its political domination as if it does not do so, another power or organisation would do it which would in that case itself become the state. So we can conclude that according to Schmitt even if state is established just to maintain internal order and security, even if state is necessary to maintain free-spaces of human life in the face of total politicalisation of human life, thus in the face of either civil war or the establishment of a totalitarian regime, it can not do it without the necessary manipulation. In order to maintain its strength and authority, the state is obliged to use the necessary techniques for constructing public opinion for its own purposes. State's capacity to stay neutral towards different societal claims and conflicts, its power to establish free-spaces of human life depends on its ability to constitute political unity through representation and manipulation. For Schmitt (1999: 205) "deception and lies" are possible within the state. But it is modest when compared to the fantastic dimensions of a universal deception that would be made if states are not considered as the highest judges for the conflicts that occur between different truth claims, different universalist and total commitments. Against the pluralist theories of the state Schmitt (1999: 206) says: "In a spiritual world ruled by the law of pluralism, a piece of concrete order is more valuable than any empty generalisations

of a false totality...It would be a false pluralism which played world-comprehending totalities off against the concrete actuality of such plural orders.” Therefore Schmitt argues that even if there can be deception and manipulation within a state order, this political unity is still preferable. Because it is a unity within the boundaries of general pluralism because it maintains free-spaces of human life, it protects the concrete existence of concrete people and social groups.

Concerning the concept of the political it is also important to note the relation between Schmitt and Hans Morgenthau. According to Morgenthau the political, defined in Schmittian terms, is not something fixed but instead it is “as a property that is kept to a higher or lower degree, just as body keeps heat” but unlike the temperature, the intensity of the political can not be measured by an objective standard. (Pichler, 1998: 196). Accordingly, the political element consists “in the degree of intensity with which a matter of state action can be related to the individuality of the state itself...Questions on which the preservation of the existence of the state depends, obviously stand in the closest imaginable relation to the individuality of the state.” (Morgenthau, 1960: 33) Hans-Karl Pichler (1998: 197) notes that this argument on different levels of intensity with which the political manifests itself is in deed an extension of Schmitt’s friend and enemy distinction. An extension which impressed Schmitt a lot and made him congratulate Morgenthau and meet with him in Berlin in 1929. So we can say that the most extreme consequence of political, declaration of war against an enemy or defining an enemy publicly so as to take necessary steps by the legitimacy of that “exceptional situation” is not what totally defines the concept of the political. State continuously keeps in check its potential enemies and acts politically at different degrees. This observation is

welcomed by Schmitt (1976: 21) who, in his conceptualisation of the political, draws upon Dufour⁵¹ who says, “Defining an act of government is the purpose to which the author addresses himself. Such an act aims at defending society itself or as embodied in the government against its internal or external enemies, overt or covert, present or future.” So we can say that government does not only consists in dealing with present threats to the very existence of the state by declaring exceptions, but it also involves in keeping in check the potential future threats as well as acting politically towards them at different levels. It is also quite interesting to note that while Schmitt’s concept of the political as the distinction between friend and enemy has received quite a lot attention, this has not been the case for his “secondary concept of the political.” Schmitt says:

Furthermore, next to the primary political decisions and under the protection of the decision taken, numerous secondary concepts of the political emanate. As to the equation of politics and state...it has the effect, for example, of contrasting a political attitude of a state with party politics so that one can speak of a state’s domestic religious, educational, communal, social policy, and so on. Notwithstanding, the state encompasses and relativises all these antitheses. However an antitheses and antagonism remain here within the state’s domain which have relevance for the concept of the political (Schmitt, 1976: 30).

Schmitt notes that it was not before a politically noteworthy class put forth its social demands that state started to employ a social policy and it was not until this period that welfare care was considered and treated as a sociopolitical problem. The same can be said for the state’s church policy as Schmitt says that it was when church constituted a politically significant counterforce that the state had a church policy. So the state not only decides on the enemy and not only brings an end to societal conflicts but it also employs certain policies to make sure that this issue has been “depoliticalised,” to make sure that its “temperature” is being kept in check. Schmitt

⁵¹ Schmitt reference to Dufour is made only by giving the name of the original source, that is *Traité de droit administratif appliqué*, V, 128).

says that after the decision on the public enemy has been taken, the influence it inspires does not come to an end with the elimination of extreme case:

What remains here from the original friend and enemy groupings is only some sort of antagonistic moment, which manifests itself in all sorts of tactics and practices, competitions and intrigues; and the most peculiar dealings and manipulations are called politics. But the fact that the substance of the political is contained in the context of a concrete antagonism is still expressed in everyday language, even where the awareness of the extreme case has been entirely lost (Schmitt, 1976: 30).

In our brief analyses of the concept of the political we have seen that for Schmitt the capacity of the state to govern a society stems from the political idea it cultivates and represents and in the name of which it defines friends and enemies on a territorial basis, thus relativises other associations and dissociations. In a case where there exists a threat to the existence and the unity of the state, it decides on the exception and it takes necessary steps to eliminate this threat. Decision on the political distinction, on the utmost intensity of association and dissociation is not made frequently. However we should also note that state's political actions, its acts to deal with possible threats and with potentially political issues within the society is not bound with its declaration of an exception in the face of an extreme case of conflict, that is the declaration of war against an existential enemy. But instead the state can act politically at different levels, it can take necessary political measures to prevent groups within society from strengthening to the level that they themselves may become sovereign and declare war in the name of their cause. State keeps in check the potentially political issues and it aims to prevent the extreme case, it aims to prevent them from becoming "politicalised" in the sense that is defined by Schmitt. When state defines a social issue that has been taken into the sphere of politics become "politicalised," when other groupings within society claim to bring the utmost level of association and dissociation themselves, the political unity of the

state is threatened, thus it defines for itself friends and enemies, declares the exception and takes the necessary steps. The implications of this decision is not only the relativisation of the conflict and the suppression of the threat for this concrete moment but state also deals with that problem in a longer process so that it tries to guarantee that the threat is eliminated, the issue and the conflict within that arena would not be intensified that much again.



CHAPTER V

CONCLUSION

Even if society-centred theorists presupposed the unity of society and conceptualised social and political institutions accordingly, Christopher Morris (1998: 24) notes that the unity we attribute to societies was missing in most of Medieval Europe. Accordingly, before the establishment of state, there was no single, no unitary society but instead there were overlapping networks of individuals. As Christopher Morris (1998: 23) says, “But what makes a society *one*, a unified social entity? In fact, the unity we tend to attribute to societies may be present, but it may be *political* and a consequence and artifact of the political form of organisation, namely, its state.” Thus we have returned to our initial problem. What have replaced God as the sole legitimator of politics with the rise of secularisation? How was then state able to construct such unity in the absence of a commonly agreed understanding of the world? Where does state get its power, indeed its legitimacy from, so that it gains capacity to construct a unified society that is indeed diversified in its nature? How does state arise as self-evident in the eyes of those people who perceive the world from different lenses? Thus Christopher Morris’s (1998: 23) point find its theoretical explanation in Schmitt’s theory of the state, where we recognise that state does not only claim a territorialised administration and authority but it also constructs and thereby claims to represent a territorial identity and unity. That is one of the reasons why we argue that Carl Schmitt’s studies are pivotal in understanding how states govern their societies.

According to Schmitt (1976: 45) there exists no political association or society but only one political entity, one constructed and maintained by the state. On the one hand, his concept of “political idea” and his sociology of juristic concepts provide us with an understanding of how state claims to show a correspondence between its identity and the identity of the people in each epoch. It is through this claim to “identity” that authority of state rule as Sovereign became self-evident in the eyes of its people. It is through this representation and symbolism, state signified the existence of something beyond the personal existence of each individual, of each group. This is also argued by Ernst-Wolfgang Böckenförde who says:

...what is revealed is the extent to which Schmitt's advocacy of the state related to an independent political power unit with its own authority-not to the state as a moment of the self-realisation of society-and to what extent is the possibility of such a state tied to the representation of an idea in and through the state-to the connection between rule and transcendence. Without such a connection, the state would only be a form of power and will to power-an empty form incapable of constituting political unity beyond a mere consolidation of power (Böckenförde, 1996: 85).

It is through this representation that people are made capable of perceiving themselves as part of a transcendental unity. It is through the techniques of forming public opinion and through the application of a representative discourse, the existence of the state as an authority that is above and beyond the societal formations becomes legitimated. On the other hand the capacity of the state to govern societies is depended on its ability to protect and to maintain this political unity. This is also quite interrelated with the idea of representation and identification. Because according to Schmitt, it is on the basis of this identification certain actions of the state, that are maid to preserve this unity, are legitimated. Schmitt's concept of the political as the distinction between friend and enemy explains us the ways in which political unity that is constructed through representation on a nationwide context is maintained and protected:

The state rests, as a political unity, on the combination of two opposed principles: the principle of identity (namely the presence of the people as a political unity...when capable of distinguishing between friend and enemy) and the principle of representation, by virtue of which the political unity is constituted by the government (Schmitt, 1928: 214)

It is when collections of groups are made capable of perceiving themselves as part of a political community that they realise the enemies defined by the state as a threat to

their own way existence. It is through this identification that state gains legitimacy in its extra-legal actions to decide on conflicts. When there exists a threat to the political existence of the state or when there appears an intensified conflict within society, state decides on the exception, it declares an enemy which is then defined as an enemy to the political idea that the state claims to represent. By defining friends and enemies on a territorial basis, state relativises all other conflicts and associations (Schmitt, 1976: 35, 39). In this way state prevents all other associations from becoming sovereign themselves, from constituting themselves as new political entities with new political communities. Schmitt argues that there exists only one political entity and one political community within a state and therefore continuity in the rule of state depends on its capacity to relativise all other conflicts and to maintain its monopoly on politics, today it should be said, on the political:

Political unity is the highest unity – not because it is an omnipotent dictator, or because it levels out all other unities, but because it decides, and has the potential to prevent all other opposing groups from dissociating into a state of extreme enmity- that is, into civil war. Where a political unity exists, the social conflicts among individuals and social groups can be decided so that an order- that is, a normal situation- is maintained.” (Schmitt, 1999: 203)

The theoretical insights, which Schmitt provides us with, explain the ways in which state maintains the political unity against centrifugal forces and conflicts. As Schmitt (1988: 13) says the essence of the state’s sovereignty is not monopoly to coerce or to rule, but it is the monopoly on decision. State acts as the ultimate judge in cases of

intensified conflicts, it brings an end to oppositions, it decides in the name of political unity, it takes necessary steps to deal with that problem and it brings the homogeneous medium back. Therefore we can say that in Schmitt's analyses state is not an extension of civil-society or it is not an instrument used by dominant classes. It is neither the expression of common values nor the arena within which individual interests and demands are aggregated. In Schmitt's theory of the state, society is defined as an end result of the rule as sovereign. Because it is through state's decisions and actions all other associations are depoliticalised and relativised and there remains only one political unity that is defined so to encompass all differences and particularities.

According to Schmitt, historically, state was a qualitatively total state which maintained its monopoly on decision. Its autonomy from societal conflicts was established by the virtue of its stance above the society, of its neutral position in relations with societal conflicts (Cristi, 1998: 182). Therefore, according to Schmitt the distinction maintained between state and society was the precondition of its existence because it was through this distinction state was able to maintain its neutrality, to construct a transcendental unity on the basis of a territorial identity, thus to decide when conflicts are intensified, to decide for the public good and safety. According to Schmitt (1932: 78) neutrality of state was a result of its strength, of its monopoly on politics by the virtue of which it was able to provide order and security so that state-free domains could function according to their own immanent principles. According to him when the distinction between state and society blurs, state advances through its own demise and this was what he saw to be happening in the early twentieth century. Schmitt argued that there are three crisis in modern

societies. Accordingly, in the nineteenth century, liberals appear as the bearer of romantic movement. However the bourgeois order that was marked with political romanticism depended on the capacity of some unromantic powers to decide when the need arises. With the establishment of neutral state and parliamentary government, monarchs were dethroned and therefore, liberal parliamentarism found

itself in crisis. Schmitt argues that there can be no government based on discussion but instead government, state rule as sovereign is based on decision that emanates from authority. The crisis of parliamentary democracy, Schmitt argues, stems from the fact that liberal advocacy of neutral state is not compatible with the neutrality that a state has to employ because the latter always recognises the necessity of decision when the need arises. According to Schmitt with the establishment of liberal neutral states and mass democracies, state lost its monopoly on decision and it stepped beyond the limits that once separated it from societal issues. Thus he claimed that the administrative state of the twentieth century is a quantitatively total state. According to Schmitt this state not only lacks monopoly on decision but it is especially weak because it expands in all direction, it dissolves within societal issues:

Much greater significance attaches to the recognition that democracy is the cause [*Ursache*] of the “total state” of today, or more precisely of the total politicisation of the totality of human existence...and that there is need of a stable authority in order to execute the necessary de-politicisation and so, out of the total state, to gain once more free spheres and areas of life. (Schmitt, 1932: 93)

Therefore, Schmitt called once again for a qualitatively total state that has the capacity to bring an end to conflicts among societal groups all of which believe in the rightness and justice of their cause, thus would warre with each other in the absence of a decision. Schmitt According to Schmitt (1999: 205) to protect pluralism that is inherent in every society, there should be a qualitatively total state that is strong

enough to decide when necessary. It has to decide either to prevent civil war or to guarantee that no truth claim gets strong enough to replace itself, thus to replace the “pluralist unity” maintained by the state with its own totalitarian rule. As we have noted earlier, the last crisis Schmitt defined is the crisis of democracy. His position towards democracy is indeed quite ambiguous. Although he theorised about the crisis of democracy, his concepts were not used to save democracy but instead they were developed in order provide a new ethos of belief for the authority of the state. This was the new notion of legitimacy, that is the democratic notion of legitimacy.

In this thesis we have argued that Schmitt’s theory of the state is important to the extent that it is related with the concrete life of state, with the actual ways through which state handles with “political” protagonists as well as with the problems of disintegration in a world of democratic pluralism whereby nothing has been left absolutely social. It provides a challenging argument about how this modern form of political unity was able to govern societies on legitimate grounds in the absence of God as the highest point of reference. Likewise, Schmitt’s theory is explanatory in understanding the ways in which states maintain themselves in the contemporary conditions whereby the rule of law as well as the neutrality of state is accepted as the only legitimate kind of rule. The transgresses of constitutions, the references to emergency situations or the existence of open-ended precepts in constitutions signify the relevance of Schmitt’s argument on the relation between norm and the exception, between the rule of law and the political instructions of a state.

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