

Carl Schmitt

FOUR ARTICLES
1931-1938

Edited, translated and with a Preface by
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JC263
.S527213
1939
c.l.a
law



PLUTARCH PRESS
corvallis, or

This selection in English translation first published in the United States by Plutarch Press, Washington, D.C., in 1999.

Originally published in Germany as part of POSITIONEN UND BEGRIFFE IM KAMPF MIT WEIMAR - GENF - VERSAILLES, 1923-1939, von Carl Schmitt.

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Second Printing, 2001

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For information, address the publisher:

PLUTARCH PRESS

P.O. Box 195, Corvallis, OR 97339-0195

Library of Congress Cataloging-in-Publication Data

Schmitt, Carl, 1888-

[Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923-1939. English. Selections]

Four articles, 1931-1938 / Carl Schmitt ; edited, translated, and with a preface by Simona Draghici.

p. ca.

Translation of four articles from: Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles, 1923-1939.

Includes bibliographical references (p.) and index.

Contents: The way to the total state -- Further development of the total state in Germany -- Total enemy, total war, and total state -- Neutrality according to international law and national totality.

ISBN 0-943045-16-9 (pbk. : alk. paper)

1. State, The. 2. National state. 3. Germany--Politics and government--20th century. I. Draghici, Simona, 1937-

II. Title.

JC263.S327213 1999

320.943'09'042--dc21

98-54342

CIP

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Manufactured in the United States of America.

Book design and cover by JAY.

PREFACE

What can be said about our century now that it is coming to an end? After giving it some thought, I dare say that it has been the boundless field of three main forces, that all emerged in the previous century, namely, technology, population, and capital, in no particular order. It is only during this century that they have swept away any barrier from their path and so imprinted a sense of limitlessness on its ethos. Relatedly, the future has become more important than the past which in turn is continuously recast to suit the claims made on the future. Virtual reality has been taken out of funfairs with their ghost trains, and made into the gold standard of our daily existence. In the political arena, on the other hand, the century has recorded the implosion of the underlying social stratum, as the governing factor, in the body politic. Whatever it is called, whether dictatorship of the proletariat, legal revolution, or democracy, the phenomenon has also implied the marginalization of any social group that self-appointedly stood above the bottom class. It is in this century that intellect has become generally suspect, and so it is treated with hostility, unless it assumes the appearance of technology, in which case it has to prove its utility (virtual reality becomes an indispensable ancillary in this respect, too). Moreover, well-being and happiness have been elevated to the status of ultimate aims of each and every individual member of the body politic. These are emotional responses, so anything likely to stimulate and sustain them is held to be

desirable and worth pursuing. On the other hand, the irresistible urge for instant gratification has made of makeshift a main principle of living, which in this way has found itself promoted from an occasional arrangement to the norm. Whereas ambiguity and uncertainty have permeated thought and action, and for most of the century, have characterized manifest conduct.

I shall not speculate on the interaction of the three main factors mentioned at the beginning, the mutual effects and consequences of their free-wheeling spin. Grand theory is obviously an asset of the past. I only can hope that in the coming century the awareness will sink in that after all we are terrestrials, that Earth, our habitat, has limitations, and there is nothing we can do to change that.

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What struck me most when I first read the articles presented here was the realization that for the last sixty years we have done nothing in the field of social and political thinking beyond working to death the same old ideas, in our persistent attempts to shun the facts of life. Thus more recently, in the autumn of 1998, the leader of the Apple Party in the Russian duma was reassuring the Western press correspondents that his country would not return to communism, but more likely emulate some of the principles of fascism and national-socialism, while Switzerland was once again debating its neutrality at the updated league of nations, that is, the UNO, and 'globalization' was being resold as the ultimate, the only possible panacea for universal happiness. Notions from the nineteenth century have been given a new lease of life by the two superpowers, the USA and the USSR, after WWII, with the consequence that the discrepancy between the official lingo and factual reality seems wider than

at any time in the last two hundred years.

Is objective knowledge about humanity at all possible in such circumstances? The first two articles in the present selection give a positive answer but with qualifications. It obtains in such pockets of the social space, that are not identified and interfered with by interest groups or public organs, as open debate in the forum has long ceased to be a vehicle for it. Furthermore, in the conditions of tight social control, exercised in the name of some legitimating dogma, or of the never-ending bombards of competitive propaganda, Carl Schmitt thought it could be attained by applying the existential approach to the analytical examination of the institutions of the past, something which would provide not only an axis to the inquiry but also the necessary alternative to the critical distancing in any analysis, technically an impossibility with regard to current affairs and events, in the conditions of total integration. The aim was and continues to be that of bringing out the salient points and observe their deflection by on-going events. (That it works is proven by the fact that on reading what Carl Schmitt wrote decades ago we often recognize our own present realities as we experience them.) Eventually, when objective knowledge is held to be subversive, one may salvage it by resorting to an age-old technique, that of double bluff. (Ambiguity is versatile, indeed. Qui legit, intellegat, Tommaso Campanella was saying of his writings from prison.) Things become terribly complicated and difficult to unravel, though, when one and the same term is used to convey heterogeneous meanings at cross purposes, as the discussion about 'totality', included in the fourth article of the selection, shows abundantly (pp. 38-40).

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Although all the four articles printed here have the word 'total' in their titles, they represent only a small part of Carl Schmitt's writings on totalitarianism, a subject first broached in his own book on Carl Schmitt, *THE CHALLENGE OF THE EXCEPTION*, by George Schwab, in 1970. Besides, they should be read in conjunction with Professor Schwab's revised translation of Carl Schmitt's *CONCEPT OF THE POLITICAL*, originally published in German in 1927, for a fuller understanding of the approach and concepts used in them. Actually, the articles resume and expand some of the aspects of the theory of the state and of interstate relations dealt with there, including the total state. Indeed, Carl Schmitt wrote extensively on the latter subject-matter, though not exhaustively; his endeavours remained fragmentary at all times. He left it to his student and disciple, Ernst Forsthoff, to publish a book on the subject in 1933, under the very title *DER TOTALE STAAT*. Notwithstanding, Carl Schmitt went on with his own analysis of the phenomenon, even after General Schleicher's policy of 'locking the Nazis in' by surrounding them with a cabinet of influential experts was astutely reversed by Hitler himself.

The first two articles presented here were written before Hitler's ascent to power, whereas the last two date from the period of the SS state. There is an undeniable continuity throughout, although certain obscurities in the latter are due, as already said, less to faulty reasoning as to a deliberate circumvolution of his ideas, out of caution, whenever dealing with 'explosive' matters, such as the negative connotations of totalitarianism.

The opening article, which is also the longest, with its ingenious evolutionary model of the German

state since the middle of the nineteenth century, provides a general introduction and backdrop to the whole selection. On its own, it is an attempt to interpret the political and constitutional ideas prevalent at a time when Germany had developed into a hyperstate on the brink of disintegration because of its indiscriminate expansion. The confusion, which became evident in the process, was in Carl Schmitt's opinion symptomatic of the persistence of concepts and institutions of bygone times in utterly changed circumstances, and also of the tendency to project them on new infrastructures without any regard for factual compatibility. Ultimately, Carl Schmitt came to the conclusion that the vulnerability of the Weimar Republic resided in those inherent contradictions that ill prepared it to withstand the onslaught of powerful interest groups, whether indigenous or foreign. As main frame of reference, Carl Schmitt used the basic conceptual principle of the second half of the nineteenth century, and which lingered on in the Weimar constitution, namely that of the division of the overall social structure into state and society. The evolution of the fundamental dualism is treated dialectically, as interaction of opposites, thesis and antithesis, in such a way that as soon as it was attained, the synthesis itself became subject of dispute. Thus parliament, originally conceived as a bridge over the divide between state and society, came to be challenged in turn, as soon as people and society ceased to find themselves on the same side of the divide. Parliament, as an instrument by which society seized the state's own legislative power for itself, created the rather anomalous situation of the simultaneous existence of two kinds of state, an administrative alongside of a legislative state. Through the auto-organization of society, the old distinction

between state and society was eliminated, as the latter reordered itself in the image of the state minus the neutrality. That meant the obliteration of any discrimination between public and private, political and non-political, and the removal of any objection to the claims of any social group or section of the population to act and interfere with any other. As the various social interests (i.e. the people) would organize themselves along mass party lines, in Germany one came to experience a pluralist state, total in character, as it concerned itself with everything. The mass movements, which had dislodged the old, loosely structured political parties of opinion, on the other hand, displayed their own total characteristics, such as complete integration of membership, autonomy, and exclusive monopolistic claims to political power. Their action on the legislative-administrative state and its transformation into a total state was carried out in two phases: one, in which the state was forced to overspread, and the other, in which it was gradually absorbed into the framework of the strongest (and most unscrupulous), as parliament, the main legislative organ was dismantled and recreated as the most determined party's own instrument of self-legitimation.

The interaction of the pluralist state with the mass movements is the main subject-matter of the second article, where the stress is laid on the uniformly negative, destructive character of the latter's activities, geared to destroy the existing social and political fabric in their pursuit of the monopoly of material advantages. The fragmentation of the state and the accompanying transformation of its institutions were not the only consequences of the factionalist strife: the neutralization of the people from the civic and the political points of view was another.

(Incidentally, both articles show that at no time did Carl Schmitt nourish any illusions about the intrinsic negative character of the mass parties in Germany, the Nazis included, and subsequent events gave him no reason to change his mind in that respect.)

On the subject of the state, his taxonomy in the first article should not be overlooked. Some two decades earlier, Max Weber had produced a three-category classification of political authority, along the lines of charisma, tradition, and law. In his turn, Carl Schmitt retained the ideal typical character of those categories, and like Weber, insisted on the mixed character of the real thing, so to speak, in the sense that in real life, no state performs just one function, whether judicial, or administrative, and so on. In other words, his taxonomy was conceived in keeping with the main function of a state. There are five categories: 1. the judicial or jurisdictional state, in which the main political activity is to adjudicate in keeping with concrete situations; 2. the legislative state, in which making provisions by law for the perpetuation of a certain order, based entirely on pre-established norms, is the pivotal function; 3. the administrative state, the main function of which is the objective management of public undertakings by the enactment of purely technical instructions (i.e. the administration of things); 4. the governing state, the opposite of the precedent, and which is the venue for the personal and authoritarian will and commandment of a head of state, and 5. the state of exception, an alternative to the legislative and the jurisdictional states, whenever the effective normative system is challenged, endangering the very existence of the body politic. It is characterized by the suspension of the challenged system of norms, implicitly all the basic rights, and

its temporary replacement by a government by decree and emergency order, backed by the authority of a court martial of summary justice. The aim is to re-establish order and ensure that the will of the commander is put into effect, and as in a state of siege, it makes no distinction between civilians and combatants. Historical evidence made Carl Schmitt regard it as a stopgap only, and overlook the possibility of its indefinite extension in the conditions of a modern, industrialized state. (That the latter became a reality in Germany in the twentieth century remained a persistent puzzle for him.)

The category of the state of exception reappears in the discussion on the totality of state and nation, in the last article, written some seven years later (pp. 38-39). As 'totality phase', it is redefined as a formula for coping with and overcoming dangerous situations, that eliminates earlier distinctions between the executive and the legislative, in favour of the former, mobilizes all the resources, material and human, in a specific direction, within the confines of one's borders, while restricting individual rights, procedures, and institutions. It entails a country's political situation, its decision-making mechanism and authority, but does not make any provisions concerning foreign policy as such. In other words, the state of exception is no sufficient condition for expansionism. What tips the balance in favour of the latter is the presence of an essentially messianic and missionary suprastatal motive, which does not recognize borders and sovereignties others than one's own. (Implicitly, a total state functioning on the pattern of the state of exception needs to continuously invent new reasons for its perpetuation, after the initial, imminent danger, its true reason, has disappeared. In its light, such

notions as 'internal enemy', 'capitalist encirclement', 'the Jewish conspiracy', as well as supra-statal ideas of ethnic, racial, religious, etc. brotherhood or solidarity, however phoney, have that very function.) As a heuristic model for the totalitarian state, the state of exception helps us understand the former's ultimately self-destructive nature better than any economic model, for instance.

On the other hand, Carl Schmitt's own ideal of a total state should not be mistaken for it. Purely existential, it betrays nostalgias akin to those of a Thomas Mann and Stefan George. It is based on a concept of totality that has neutrality as its negative. Thus most of the times, it is more than mere national unity; rather what neutrality is not, with regard to the political and social life of a community, namely, full involvement and participation in the affairs of the community, out of a definite political will proper to each member of the community, and which surges from a sense of political responsibility for the survival of the community. It is a stance, an attitude of mind, rather than an institution. As collective expression of a general political will and voluntary rallying of energies, Carl Schmitt's ideal approximates a plebiscitary authoritarian state, combining features of the French absolute monarchy at the end of the religious wars, with communal democracy. His attempts to define totality by means of the quality/quantity antithesis, it must be said, remain heuristically unsatisfactory. The 'quantitative total state' is just another name for a state monopoly of finances. Whereas the quantitative totality of mass movements only designates their programmatic exclusionism which was disruptive of national unity.

It is the third article that makes explicit the

connection between warfare and Carl Schmitt's concept of totality, on the basis of the experience of WWI and the specialized literature on military strategy and the European public law. It is there that the agonistic character of the total state in turn becomes evident, despite the irenic character of the ternary title. (It is in *THE CONCEPT OF THE POLITICAL* that Carl Schmitt suggested the term as a convenient device, whenever the agonistic effect of antithetical dualities is to be avoided.) The article is interesting from another point of view, as well, since it brings forth the changes worked out by technology on warfare, and intra- and interstate relations. It has delocalized the theatre of war, turning it into a three-dimensional affair that renders borders redundant, and any distinction between combatants and non-combatants meaningless, thus providing unlimited exposure to violence. On the other hand, its potential for overall destruction makes the modern total war self-defeating, leaving the door open to larval forms that are neither true peace nor real war. Eventually, as the fourth article in the selection shows, indirect suprastatal power replaces warfare by police work.

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The age of information technology, the twentieth century has also been an era of dislocation and confusion with ghastly consequences wherever questions in point were not asked and adequate answers were not sought. As system-building had proven unsatisfactory, Carl Schmitt's self-assured task was to single out and throw light on emerging trends in and between the nations of Europe and the world, at a time when the collapse of the three Continental empires posed once more the question of state-structure and state-

building, and of the very nature of the social fabric. The famous pair of opposite concepts, foe-friend, that lies behind his notion of political activity, ceases to be as intriguing when one recalls the then pervasive principle of Marxism and the Bolshevik Revolution - the class struggle. His analyses of concrete situations, as he himself explained, remain groups of relations spanning one conceptual field or another, in which the various concepts inform each other in keeping with their positions in the field, whether they are conceived as thesis and antithesis, implicit pairs of opposites, triads, etc.

Cork,
September 1998

SIMONA DRAGHICI

BIBLIOGRAPHICAL NOTE: Carl Schmitt was a prolific writer (some forty books and over two hundred articles), and the cause of a flourishing exegetical industry that continues unabated thirteen years after his death, much of which is judgmental of the man. Among his works in English translation, that are relevant to the various questions raised by the present selection, mention should be made of *THE CONCEPT OF THE POLITICAL*, *POLITICAL THEOLOGY I*, and *THE LEVIATHAN IN THE STATE THEORY OF THOMAS HOBBS*, all edited by George Schwab, *THE CRISIS OF PARLIAMENTARY DEMOCRACY*, edited by Ellen Kennedy, *POLITICAL ROMANTICISM*, edited by Guy Oakes, and *LAND AND SEA*, edited by S. Draghici. Two issues, No. 72(1987) and No.78(1989) of the review *TELOS* contain material by and about Carl Schmitt that is of interest, while George Schwab's book, *THE CHALLENGE OF THE EXCEPTION. AN INTRODUCTION TO THE POLITICAL IDEAS OF CARL SCHMITT BETWEEN 1921 AND 1936*, Berlin 1970, 2nd edition, Westport 1989, is a sober attempt on the part of an American to venture into the labyrinth of Carl Schmitt's political reflection.

THE WAY TO THE TOTAL STATE

The present-day constitutional situation is characterized first of all by the fact that numerous institutions and regulations of the 19th century have continued unchanged, while the current state of things appears to have changed entirely, when compared to those earlier circumstances. The German constitutions of the 19th century belong to an era, the basis of which had been formulated clearly and for all practical purposes by the outstanding German theoreticians of the state in those days, namely, the distinction between state and society. Another, closely related question about the ranking of state and society, whether one was given precedence over the other, whether one was dependent on the other, and if so how, and so on and so forth, does not concern us here. The distinction, though, remains. Moreover, one must take into consideration the fact that 'society' was essentially a polemical notion, used as an objection to the concrete, monarchical militaro-bureaucratic state in existence at the time: it referred to what was regarded as not belonging to that state, and was called society for that very reason. The state was strong enough to hold out on its own against the other social forces surrounding it, and as a result, to determine the segregation in a way that the numerous differences inside the 'state-free' society - denominational, cultural, economic - relativized themselves by necessity, in virtue of the collective separation from it, while the state, on its part, did not hinder their concentration into 'society'. On the other hand,

it maintained a far-reaching neutrality and non-intervention regarding religion and economy, and to a large extent, observed their autonomy and that of their practical spheres of activity. Thus that state was not absolute in any sense, or so strong as to render meaningless all that was not it. In that way, too, both a dualism and an equilibrium were possible; in particular, one could believe in the possibility of a state free of religious and ideological ideas, even fully agnostic, and of the development of a state-free economy alongside of an economy-free state. The state however remained the decisive point of contact as long as its stark reality was not lost from sight. Even nowadays, to the extent it interests us here, the ambiguous word 'society' should above all stand for what is not state, and occasionally for what is not church, either.¹ As premise, that distinction lay at the basis of every important institution and regulation of public law as it evolved in Germany in the 19th century, and still represents a large part of our present-day public law. The fact that by and large the state of the German constitutional monarchy, with its pairs of opposites, prince and people, crown and chamber, government and popular representation, has been built 'dualistically' is only an expression of the overall, fundamental dualism of state and society. The popular representation, the parliament, the legislative body, had been conceived as the stage on which society would come and face the state. It was there that it had been meant to integrate into the state (or the state into it).²

The dualistic basis makes itself evident in all the important conceptual constructions. The constitution was considered a contract between prince and people. It would be discovered therein that by its essential contents, a state law 'encroaches on the

citizen's freedom and property'. A legal ruling, formerly a kind of administrative order concerning only the public bodies and the civil servants, was changed to address all the citizens of the state. The Budget law was based on the premise of a budget reconciliation that took place regularly between two partners, and even in the latest edition of the Meyer-Anschütz textbook (the 1919 edition, pp. 890, 897), the Budget law is still called 'Budget reconciliation'. When a so-called formal law is demanded for such an administrative act as the state budget estimates, this formalization only betrays the politicization of the concept. The political power of the parliament is big enough to push through the notion that a regulation is enforceable as law only if the parliament has played a part in it, and also enough to deduce a formal legal concept from the related proceedings. This formalization comes to convey the very political success of the popular representation over the government, of society over the state of the monarchical civil service. Even the auto-administration, with its procedures, presupposed the distinction between state and society. The auto-administration was that part of society which confronted the state and its civil service. It was on this presupposition that it developed and formulated its conceptions and procedures in the 19th century.

Such a 'dualistic' state is an equilibration of two different kinds of state: it is a governing state and a legislative state at one and the same time. It grew into a legislative state as the parliament increasingly developed into the legislative body of the government, in other words, the more the former society showed itself superior to the state as it was at the time. States may all be classified in keeping with the sphere of their state activity in order to uncover the

essence of their operation. Accordingly, there are justice, or better still, jurisdictional states; next, states that are essentially executive and governing, and finally, legislative states.³ In the medieval state, as the Anglo-Saxon theory of the state still largely assumes, the core of the state power lay in the judicial authority. State power and judicial authority stood on a par, and are still presented as such in the Codex Juris Canonici (canons 196 and 218, for instance). Relatedly, indeed, one may notice that the authority of the Roman-Catholic church and of her highest offices is not conveyed through the image of a judge but rather of a shepherd tending his flock. From the 16th century on, the form of an absolute state, which it assumed, derived directly from the collapse and disintegration of the medieval, pluralistic, judicial state, with its feudal hierarchy and its jurisdiction, and leaned upon the military and the civil service. From then on, it was essentially a state of the executive and of government. Its rationale, the ratio status, the often misinterpreted reason of state, did not lie in the existence of norms loaded with content, but rather in the efficient handling of situations in which norms could be made to carry weight, generally for the first time, while the state put a stop to the cause of all disorder and civil war, namely the strife for normative correctness. That state 'established public order and safety'. As soon as that was achieved, the legislative state, with its civil legalistic constitution, was able to force its way in. The essence of that particular state came to light in the so-called state of exception. In those circumstances, the jurisdictional state made use of martial law (more exactly, the authority of the court martial), that is to say, summary justice; thus the state appears above all as the stopgap of the executive

power for what is necessarily associated with the suspension of the fundamental rights. In other words, the legislative state of emergency decrees and exception orders is but the state of summary legislative proceedings.⁴

Whenever working with such classifications and typologies of the various kinds of state, one must remember that in real life there are no pure types, that a legislative state as such is hardly possible, or for that matter, a genuinely jurisdictional state, or a state reduced to government and public administration. In this respect, every state is a combination of these types, a status mixtus. With this qualification, a taxonomy of states in keeping with the main state activity may still prove useful. Thereupon, it is correct, and particularly appropriate concerning the guardian of the constitution, to regard the bourgeois legal and constitutional state in the way it developed in the 19th century as a legislative state. As Richard Thoma has aptly remarked, 'it is characteristic of the modern state with its propensities for definitions that one may always quarrel about the soundness and fairness of the decision, and leave it to the legislator to make and to the judge to take'.⁵ A jurisdictional state is possible as long as certain norms and their contents remain uncontested and are acknowledged as such even in the absence of a known and written set of norms issued by an organized central power. In a legislative state, on the other hand, no constitutional justice or state judicial authority may be taken for the true guardian of the constitution. That is, in the last instance, the reason why in such a state, the judiciary do not decide controversial constitutional and legislative matters on their own. In this respect, it would be useful to quote to some length Bluntschli's opinion

which by virtue of its objective clarity and the wisdom of its practical knowledge may be considered a classical position within the 19th-century state theory. Bluntschli admits that the constitution unquestionably applies to the legislation and the latter in no way has the right to do what it is expressly forbidden to do. He has a correct appreciation of the principles and the advantages of the American practice of the judiciary examination of the laws. Then he goes on: 'If one takes into consideration, though, that the legislator is content with the principle of the mediation of the law by the constitution and will remain so, yet builds his opinions on slightly different foundations so that his statement becomes object of dispute, the court may have a different opinion than the legislator on the matter; when one comes to think of it, the higher authority of the legislator admittedly would be reduced not in principle but by the outcome of the lower-placed court, and so in the conflict with a separate organ of the state body, the representative of the whole nation must take second place to the latter. If one thinks about and recalls the conflict and the disruption which are brought to bear on the homogeneous life-course, and the fact that in its current condition the court refers mostly to and is slanted in favour of the recognition of the norms of private law and of legal circumstances, and stresses the formal-logical factors, whereas quite often it deals with important constitutional interests and the general welfare, which are the job of the legislator to know and support, then, considering all this, one may feel inclined to give preference to the European system, although the latter itself is not protected from all the evils either, and has its own share of human imperfection. It is in its own formation, though, that the legislative body carries its

weightiest guarantee against the exercise of its powers in an anticonstitutional spirit'.⁶ This last sentence is crucial. There, he shows that in the conception of the 19th century, the parliament itself was the guarantee of the constitution, by virtue of its very existence. That was part of the belief in parliament and its premise, namely, that the legislative body of state executives, the state itself, was a legislative state.

But that position of the legislative body was possible only in a certain situation. To be precise, whenever it was assumed that the parliament, the legislative assembly, as representative of the people or of society - people and society could be considered one and the same, as long as they both stood in opposition to the government and the state - was on its guard against a strong monarchical state of civil servants, independent of it, and which was its partner in the constitutional pact. As long as it was representative of the people, the parliament was supposed to be there as true guardian and guarantor of the constitution, because the other party to the contract, the government, had concluded the pact only reluctantly. The government gained from it only suspicions; it spent money and exacted taxes; it was thought to spend freely while the representatives of the people were held to be frugal and reluctant to spend, what wholly and factually became its downfall. Then the trend of the liberal 19th century came along to shrink the state to the minimum, to hinder it as much as possible from intruding and intervening in the economy in any way, to neutralize it most of all with regard to society and its opposite interests so that society and economy should win the necessary decisions for their sphere, according to their immanent principles: political parties came into existence in the free

play of opinions, on the basis of free campaigning, while public opinion emerged from their discussions and battles of ideas, and the contents of the will of the state were determined by its means. The freedom of contract and trade prevailed in the free play of the social and economic forces, and as a result, the greatest economic prosperity seemed assured, as long as the automatic mechanism of free trade and of the free market steered and regulated itself according to the economic laws (through the supply and demand, the competitive exchange, the capital accumulation of political economy). The fundamental civil rights and freedoms, in particular personal liberty, the freedom of expression, the freedom of contract, economic freedom and the freedom of trade and private ownership, in other words, the real points of reference in the top issues handled by the Supreme Court of the United States, assume the existence of a neutral state that would not intervene, and most of all would not mess with the cause of restoring the disrupted stipulations of free competition.

This state, which in the liberal non-interventionist sense, was basically neutral towards society and economy, remained as a premise of the constitution even when allowances were made for social and cultural-political exceptions. Nevertheless, it changed itself from top to bottom, and admittedly in equal measure, it lost the strain it had shown as dualistic structure of state and society, government and people: the legislative state was complete. As a consequence, the state would become the 'auto-organization of society'. The distinction between state and society, government and people, that had previously been taken for granted, was cancelled in the process, while concepts and institutions built on that premise (law, budget, auto-administration) turned into new

problems. Simultaneously, though, something more profound and far-reaching set in. Society organized itself in the image of the state; were state and society to be fundamentally identical, the social and economic problems would automatically become state problems, and one would no longer be able to distinguish between the state-political and the societal-unpolitical spheres. All the outstanding confrontations that had been customary in the conditions of the neutral state, came to an end. They had become manifest in the wake of the distinction between state and society, and were misapplications and redrafts of that separation. Such antithetical distinctions between politics and economy, politics and education, politics and religion, state and law, politics and law, which were meaningful when they corresponded to an objective separation into distinct parts or areas, became groundless and lost their meaning. Changed into state, society becomes an economic state, a cultural state, a welfare state, a social security state, a provider state. It is a state which is the result of the auto-organization of society, and so in fact no longer separated from it, that seizes all the social, that is to say, everything that has to do with the common life of human beings. There is no sector in it any longer which would observe the unqualified neutrality towards the state, in the sense of non-intervention. The parties in which various societal interests and trends organize themselves are the very society turned into a multi-party state. Because they are economically, denominationally, culturally determined parties, the state can no longer remain neutral towards the economic, confessional and cultural spheres. In the state that has developed through the auto-organization of society, there is simply nothing left that is not at least potentially state-related

and political. All the sectors are included in this new state. French jurists and soldiers conceived the notion of the potential armour of the state, which covers not only the military, in the narrow technical sense, but everything else, the industrial and the economic preparation of war, even the intellectual and moral development, as well as the education of the citizens of the state. Ernst Jünger has come with a very pregnant formula to describe this astonishing process: total mobilization. With the necessary qualifications regarding contents and accuracy, the formulas of potential armour and total mobilization are individually befitting. One must pay attention to the important insight gained from them and make good use of it. They impart a sense of sweeping range while conveying the idea of a great and profound transformation: as it has organized itself into state, society is in the process of changing from a neutral state of the liberal 19th century into a potentially total state. The tremendous turning may be construed as the one side of a dialectical evolution which passes through three stages: from the absolute state of the 17th and the 18th centuries, over the neutral state of the liberal 19th century, to the total state of the identity between state and society.

The change stands out most conspicuously in the economic sphere. Thus, it is made evident by a generally recognized and uncontested fact, namely that when compared both with their earlier, pre-war state and with the present free and private, that is to say, non-public, economy, the public finances have assumed such proportions that cannot be considered merely a quantitative increase, but rather a qualitative transformation, a 'structural change' which will affect all the sectors of public life, and not just financial and economic matters. Whatever the figures

by which change is attested, whether, for instance, the often quoted estimate, calculated for the year 1928, that 53 per cent of the German national revenue will be controlled by the public purse⁷ is correct statistically need not be answered here, because the overall phenomenon is uncontested and uncontested. In a summing-up speech about the financial balance sheet,⁸ State Secretary Professor Johann Popitz, an expert of the highest authority, assumes that in the action to allocate the larger percentage of the German national revenue, the self-regulatory mechanism of the free economy and of the free-market is switched off and its place is taken by 'the decisive influence of a will in itself essentially extra-economic, namely, the will of the state'. Another specialist of the highest rank, the Reich Commissioner for the Economy, State Minister Saemisch has said that it is the present-day political situation in Germany that exerts a decisive influence upon the economy of public finances.⁹ From an economic perspective, there is an extremely apt formulation of the contrast which distinguishes the yesterday's system from that of today, or so it seems to me: from a system of proportions (according to which the state is entitled only to a share of the national revenue, a sort of dividend from the net profit) to a control system through which the state has a say in the national economy as a participant in and new distributor of the national revenue, as producer, consumer and employer, as a result of the close connection between financial economy and national economy, and as a result of the strong increase both in the needs of the state and in state revenue. This formula must be used here for what it is worth, without embarking on a critique of the national economy. It has been spelled out by Fritz Karl Mann in an interesting and significant book,

DIE STAATSWIRTSCHAFT UNSERER ZEIT (The State Economy of Our Times), published at Jena in 1930. In this context, it is very important for the theoretical studies on state and constitution to consider the relation between state and economy nowadays as the real issue of the problems of home policy, while the traditional formulas of the earlier state, built upon the separation of state from society, are suited only to mislead as far as the facts are concerned.

In every modern state, the distinction between state and economy emerges as the real issue of the current, direct questions of internal policy. They can no longer be answered by means of the old liberal principle of unqualified non-interference and unrestricted non-intervention. Apart from a few exceptions, this will be recognized fully and generally. In the present-day state, the economic questions constitute the core of the difficulties of the internal policy, and all the more so, the more modern and industrialized the state is. Internal and foreign policies are economic policy to a considerable extent, and admittedly not just as customs and trade policy or as social policy. If a state law 'against the misuse of positions of power in economy' is passed (such as the Ruling of 2nd November 1923, with regard to German cartels), so too, as a result and by this very formulation, the idea and the existence of an 'economic power' are recognized by state and law. The present-day state has a comprehensive labour legislation, including basic pay rates and state arbitration of wage disputes, through which it exerts a decisive influence on wages; it grants subventions to the various sectors of industry, it is a welfare state and a social security state, and simultaneously as a result, a tax and duty state on a vast scale. Moreover, in Germany, it is also a reparations state which must

raise billions as tribute to foreign states. In such a situation, the demand for non-intervention would amount to utopia, to a contradiction in terms. Because non-intervention would mean that in the social and economic conflicts and contradictions, which cannot be overcome nowadays with purely economic means, the way is left open for various power groups. Under such circumstances, non-intervention is but intervention in favour both of concealment and recklessness, and once more the simple truth of Talleyrand's seemingly paradoxical words about foreign politics becomes obvious: non-intervention is a difficult notion, roughly, it means the same thing as intervention.

The most striking change in the conceptions about the state, prevalent in the 19th century, occurs in the transition to the economic state. The transformation may be seen in other spheres as well, although at present they will be felt mostly as less obtrusive, because of the crushing burdens of the economic problems and hardships. It is not surprising that the resistance to such an expansion of the state appears next as a resistance to the legislative state. Therefore, safeguards against the legislator will be called for next. So too, I suppose, the first gropings for remedies need to be elucidated as they are clamped on the judiciary in order to win a counterweight against the ever more powerful and grabbing legislator. They would end in empty formalities unless they are built on accurate knowledge of the overall situation of the constitutional law, and are not merely a reflex reaction. The actual error lies in the fact that to the power of the modern legislator one could oppose only a judiciary that either is bound to this legislator by specific norms and their contents, or is able to hold out against him only by means of vague and controversial principles that will not

succeed in justifying their authority over the legislator. The transition to the economic and the welfare state admittedly represents a critical moment for the surrendering legislative state, and for that reason, it need not, nor could it after all, provide the courts with renewed strength and political energy any more. In such changed circumstances, and given the broad scope of state problems and responsibilities, perhaps the government may take remedial action, but certainly not the judiciary. Nowadays, most countries of continental Europe have allowed the judiciary to be deprived of all substantial norms on the pretext that it was capable of mastering the completely new situation on its own.

At the very moment when the victory seemed to be fully its own, parliament, the legislative body, the vehicle and keystone of the legislative state, turned into a contradiction-ridden structure, disowning its own qualifications and the premises of its victory. Its previous position and superiority, its expansionist drive at the expense of the government, its representation in the name of the people, all that presupposed the distinction between state and society did not survive the parliament's victory, at least not in that form. Its unity, actually its identity with itself, had been defined until then against the opponent in domestic affairs, the old monarchical, military and bureaucratic state. When it fell, the parliament in turn came apart, so to speak. Now the state is, as the saying goes, the auto-organization of society, but the question is: how does the auto-organized society achieve its unity, and provided the unity sets in, is it truly the result of auto-organization?

The difference between a state of parliamentary parties, with loose, that is to say, not firmly

organized parties, on the one hand, and a multi-party state with tightly organized structures which are vehicles in the shaping of the will of the state, on the other, may be greater than that between monarchy and republic or any other state form. The exponents of the pluralistic state reproduce a naked likeness of the pluralistic division of the state itself, outside parliament where their representatives assume the form of factions. Wherefrom is the unity to come in this state of affairs? From the abolition and the amalgamation of strong party and interest connections? There is no more room for discussion. Well, my mere hint to this ideal principle of parliamentarianism has induced Richard Thoma to dismiss it as an 'entirely mouldy' foundation. Certain, so-called 'direct connections' that go through political parties (agricultural interests, labour interests, civil servants, in some cases, women, too) can produce a majority, in distinct areas; in the conditions of pluralism, they are no longer the exclusive concern of parliamentary parties and factions. Moreover, such direct connections themselves may be factors of pluralistic grouping, so admittedly, they complicate the state of affairs even more, and instead of doing away with it, they are more likely to entrench its very conditions. Understandably, the famous 'solidarité parlementaire', the common, selfish, private interests of parliamentary deputies, and particularly of the true professional politicians, that run across party lines and may be an effective motive and a useful factor of unity, is no longer sufficient in such a difficult situation as that of present-day Germany, in the conditions of an intensive hardening of the organizations. Parliament changes itself from a stage for a unifying free debate among free representatives of the people, from a transformer of narrow party interests

into a supraparty will, into a stage for the pluralistic division of the organized, societal powers. As a result, either it becomes incapable of majority rule and action, because of its immanent pluralism, or the majority in office exhausts the legal means as tools and safeguards of its power-holders, makes the most of its stint of state power in all directions, but above all seeks to narrow as much as possible the chance of the strongest and most dangerous opponent to do the same. Perhaps it would be rather naive to interpret it as human wickedness or a particular kind of baseness, possible only nowadays. The history of the German state and constitution has registered similar occurrences in a disturbing number and with the same disturbing regularity in the past centuries. What the emperor and the princes did to safeguard the power of their houses during the disintegration of the old Roman Empire of the Germanic nation repeats itself in numerous parallels.

The transformation from the 19th century is fundamental even in this respect. In this case, too, it would cover itself with the veil of words and phrases, kept unchanged, with old ways of speaking and thinking and a formalism that served those residues. But one must not be under the illusion that the effect both on the character of the state and constitution and directly on the state and constitution is great beyond any measure. It consists mainly in the fact that to the same extent in which the state has changed itself into a pluralistic structure, the loyalty to the social organization, the structure generated by state pluralism, replaces the loyalty to the state and its constitution, especially as the social complex often shows a tendency to become total, that is to say, to bind the helpless citizen entirely to itself economically, in accordance with its ideology. So,

ultimately, a pluralism of moral ties and obligations of loyalty, a 'plurality of loyalties',¹⁰ also comes into being, through which the pluralistic dispersion is increasingly reinforced and the prospect of building up a state unity becomes ever more remote. Taken to its logical conclusion, it turns a civil service with obligations to the state into an impossibility, because this sort of officialdom too is supposed to be one of the organized social complexes of the disaggregated state. Moreover, a conceptual pluralism of legality comes to the fore, destroying the respect for the constitution and turning its foundations into an uncertain terrain contested from several sides, whereas according to every constitution, a political separation exists beyond any doubt, and which together with the constitution, is the given basis of state unity. With the clearest conscience, each group or or coalition in power call legality the exploitation of all the legal means and the safeguarding of each of their positions of power, the utilization of all state and constitutional power in legislation, administration, personnel policy, disciplinary law and auto-administration. As a consequence, every serious criticism or even the mere exposure of their situation seems to them an illegality, a coup, and a violation of the spirit of the constitution. On the other hand, every organization in opposition, affected by such methods of government, refers to it, pleading that the infringement of the principle of the equal opportunity provided for by the constitution is the worst violation of the spirit and of the fundamental principles of a democratic constitution. In this way, and likewise with the clearest conscience, it can return the accusation of illegality and abuse of the constitution. The constitution itself will be smashed into smithereens between these two, in the conditions

of a state pluralism in which mutual negations function almost automatically.

This examination of the concrete constitutional conditions should make one aware of a truth the sight of which many would rather avoid for many various reasons and on all kinds of pretexts. Nonetheless, it is indispensable for the study of constitutional law, which concerns itself with such problems as the protection and the safeguarding of the present constitution of the Reich. It will not do to speak in general terms of a 'crisis' or to dismiss this presentation as another specimen of the 'crisis literature'. Whether the present-day state is to be a legislative state, whether in addition and considering the expansion of the sectors of state life and activity, one may already talk of a transition to the total state, whether in that case, the legislative body, already the stage and focus of a pluralistic dispersion of state unity, would become a majority of tightly organized social complexes, whatever the questions, one thing is certain, namely that the formulas and counter-formulas, coined to describe the conditions of the constitutional monarchy of the 19th century, will not be of much help: the most difficult question of today's constitutional law cannot be answered by talking about the 'sovereignty of the parliament'.

FURTHER DEVELOPMENT OF THE TOTAL STATE IN GERMANY

Ten years ago, successful authors and leading personalities of all descriptions assured us that we only needed to abolish politics and the politicians, and all the difficulties would vanish. The radical 'depoliticization' would have consisted in letting the technical, economic, legal or other experts decide all the questions, which before had been considered political, on an allegedly purely technical, purely economic, purely juridical, in short, a purely 'objective' basis. Between 1919 and 1924, countless articles and pamphlets heralded it as the only condition for universal happiness. In between, we met in many conferences of specialists and technicians. Mountains of valuable material and most expert reports have been stored in Geneva, Berlin, and many other cities of the globe, and the settlement of the issues has simply been buried under their kind of objectivity. Soon it became evident that this 'depoliticization' is a practical political material that is used to avoid unpleasant problems and defer necessary changes, to preserve an absurd status quo and let all determination to bring about a change fizzle out.

Such disappointments with 'nonpolitics' were rather likely to lead to the recognition of the fact that all problems are potentially political problems. Then we in Germany have practically gone through a politicization of every economic, cultural, religious and other sphere of the human existence in a way that would have been incomprehensible to a 19th-century

mind. It came to the fore particularly after several years in which attempts were made to 'economize' the state. Now the opposite happens and economy is completely politicized. Until recently one still believed to have mastered the effective and convincing formula of the total state. Today, there are many who have already fallen out of it, refuted the 'total state' and mentally got over it. Notwithstanding, just for once, let us have a look at the true situation and not at the propaganda and the literature.

I

There is a total state. One may dismiss the 'total state' with any kind of shouts of outrage and indignation as barbaric, servile, un-German or unchristian, but the thing remains that one does not get rid of it in that way. Every state strives to seize for itself the power base which it needs for its political domination. To do so is actually the sure sign that it is a genuine state. Moreover, we all are impressed by the massive escalation of power, which every state is subject to nowadays through technical progress, that is, the development of the technical means of military power. The modern technical means give even to the small states and their governments the capacity to become influential to an extent that makes the old ideas of state power and of resistance to it look rather dim. Against the total state there is only one antidote, a revolution just as total. In the light of these contemporary means of power, the traditional images of public demonstrations and barricades look like child's play. Every political power is forced to take hold of the new weapons. If it does not have the strength and the guts for that, then another power or organization will turn up, in which case, it is the political power all over again, that is to say, the

state.¹

The development of the technical means in particular makes the influencing of the masses possible, nay, necessary. It may be as comprehensive as everything that the press and the other traditional media were capable of achieving with regard to the formation of opinions. A widespread freedom of the press still rules in Germany today. In spite of all the restrictions imposed by the state of emergency, the elbow room of the 'free expression of opinions', but in fact the manipulation of the masses through party agitation and propaganda, is considerable, and nobody seems to think of a censorship of the press. Likewise, every state must take hold of the new technical media, film and radio. There has not yet been a state so liberal as to abstain from making claims on the contents of films, and on the cinema and the radio, in the form of an intensive censorship and control, as well. No state can afford to relinquish to others the new technical media for the transmission of news, the influencing of the masses, mass persuasion, the creation of a 'public', more exactly, a collective opinion. Thus, behind the formula of the total state, a correct awareness stands firm, namely that the present-day state has got new means and possibilities of tremendous power, the range and consequences of which we hardly suspect, whereas our vocabulary and our imagination are still deeply rooted in the 19th century.²

In this sense, too, the total state is by far a stronger state. It is total with regard to quality and energy, in the way the fascist state calls itself a '**stato totalitario**'. By that it wants to say first of all that the new power means belong exclusively to the state and serve to increase its power. Such a state does not allow the development of any sort of forces

hostile to the state, that obstruct the state and disrupt its internal life. It has no intention to hand down the new means of power to its own enemies and destroyers, and to let its power be buried under any kind of watchwords, such as liberalism, legal state, or whatever name one wishes to give them. Such a state can discriminate between friend and enemy. In this sense, as already said, every genuine state is a total state. It is admittedly a *societas perfecta*, of this world for all times. The theorists of the state have long known that the political is total, and new are only the new technical means, the political efficacy of which must become clear to anyone.

At present, though, one attaches still another meaning to the phrase 'total state', and that is unfortunately the meaning by which one wants to correct the mess of today's Germany. This kind of total state is a state which indiscriminately gets into all the spheres of human existence, a state which knows no state-free sphere any more, because generally it cannot make any distinctions any longer. It is total in a purely quantitative sense, of mere volume, and not of intensity and political energy.³ The present-day multi-party state in Germany has engendered this kind of total state. Its volume has expanded enormously. It intervenes in all possible matters, in economy and in all the other spheres of human existence. Of this Erwin von Beckerath has rightly said that the total state, in the sense of an amalgamation of state and economy, is 'a reality readily available', but that also applies to cultural and spiritual things, which one would readily claim as 'purely private' matters. Why should the state not subsidize economic, cultural and other undertakings, as each and every one of them are ultimately the state itself, by way of the party; and why should a choral society not be able to maintain

good relations with the state, that is, with certain parties and funds? This precious 'why not?' is the whole theory of the multi-party state and the spiritual framework of its totality. It is certainly a totality in the sense of mere volume, and it is the opposite of strength or energy. Today's German state is total out of weakness and absence of resistance, by its inability to hold out against the assault of the parties and of organized interests. It must bow to everybody's wishes, please everyone, subsidize everyone and be at the beck and call of conflicting interests at one and the same time. Its expansion is the result, as already said, not of its strength but of its weakness.⁴

II

A closer look, though, reveals that we in Germany do not have a total state in fact, but rather a majority of total parties, each of which seeks to achieve the totality in which to entangle their members completely, and attend on people from the cradle to the grave, from nurseries for little children, and on through bowling clubs and sports associations, to funeral and cremation societies, to provide their adherents with the correct world outlook, the right form of state, the right economic system, the right circle of friends recruited from the party, and in those ways, fully to politicize people's lives and shatter the unity of the German people. Parties of the old liberal style, which as mere 'parties of opinion' are not capable of such organization and totality, expose themselves to the danger of being crushed between the millstones of the modern total parties. The pressure for total politicization seems inescapable. No party organization can avoid it. The ruthlessly total parties define the type and drive the parties

that are only a quarter, half or three quarters total to the consistency of the successful type. Alongside of every decision of a single-minded nationalism or socialism or atheism, the manoeuvred half measures seem mere helpless pettiness.

The juxtaposition of more such total structures, which dominates the state by way of parliament and makes it the object of their compromises as long as it remains pluralistic, is the reason of that strange quantitative expansion of the state. Nowadays, a well organized, albeit pluralistic juxtaposition of several total parties has inserted itself between the state and its government, on the one hand, and the mass of citizens, on the other, and wields the monopoly of politics, the most amazing of all monopolies. All political will, all change over of interests, which needless to say, result in the will of the state, is directed by way of the will of a party. Only the party of today is something else than the old liberal party of opinions. As Otto Koellreuter remarked a long time ago, it is a party of activists that in cold blood use the liberal freedoms, the result of the free exchange of opinions, and all the legal means, the institutions and powers of the liberal constitution as instruments of their actions, and force the parties that have been liberal to succumb to this change that destroys the constitution. The pressure to submit to its monopoly, to which every walk of life and larger group of people are subordinate in Germany nowadays, alters and distorts all the institutions of the Weimar Constitution. As important as any economic monopoly, this political monopoly is in the possession of a series of strong political organizations which tolerate a government only on condition that the state remains its object of exploitation.⁵

The characteristic instrument of this political

monopoly, or rather 'polypoly' as we are dealing with a pluralistic state, is the drawing of the list of candidates. The result of every election depends on the list of candidates. The mass of voters cannot nominate any candidate from their midst, and the government lacks the most implicit and natural right of a government, namely the *jus agendi cum populo*.⁶ Thereupon, the large mass of the so called 'voters' and the popular will itself are entirely parcelled out among some five party lists. The election is contrary to the constitution which calls for direct elections. They ceased to be direct elections a long time ago. The deputies are appointed by the party, and not elected by the people. The so-called election is the mediated adherence of the 'voters' to a party organization. It is generally acknowledged that nowadays any direct elections are out of the question. I maintain, though, that the whole procedure as it is carried out these days is no election at all. What happens then? Five party lists have come out, made in the deepest secrecy and occult manner, dictated by five organizations. The masses arrange themselves, so to speak, into five ready-made pens, and the statistical result of this operation is called 'election'. Who against whom? After all, one should have asked oneself this question bluntly at least once before. Germany has been ruined by suchlike methods for forging the political will. There is a virtually fantastical opportunity to choose from among five systems, entirely irreconcilable, fully antagonistic, in a pointless juxtaposition, each total and self-contained, with five antagonistic ideologies, types of state and economic structures. Several times a year, a nation must choose from among five organized systems, each of which is total and intent to the end to abolish and annihilate the others; in this way, for

instance, it has to choose between atheism and christianity, and at the same time, between capitalism and socialism, and almost as simultaneously, between monarchy and republic, between Moscow, Rome, Wittenberg, Geneva and the Brown House, and other friend-enemy alternatives, similarly incompatible, backed by hardened organizations. Whoever realizes what that means will no longer expect such a procedure to bring about a majority, loosely held together, capable of action and suited to shape a political will. Such a procedure means only that the will of the people will be diverted at the source into five channels and in five different directions, so that it may never flow together in one stream. The result is always a nation split into different sections with five different political systems and organizations, which in their incoherent, nay, inimical juxtaposition seek to defeat or dupe one another, and incapable of any positive work, deal only in negatives, and only meet at point zero, once at the most, in such matters as votes of no-confidence, demands of amnesty or the modification of the constitution through the bill of 17th December 1932 regarding the representative of the President of the Reich.

With such methods for forging the political will, we find ourselves inside a state quantitatively total and which can no longer make any distinction either between economy and the state or between the state and the various walks of individual and social life. The election is no more an election, the representative no longer a representative as the constitution thinks of him. He is not the free person, independent of and above party interests, advocating the well-being of all, but rather a functionary that marches in formation, receives his orders outside parliament, and for whom such things as the debates in the plenary sessions

of the parliament must look like an empty farce. As there is no representative of the represented, so too the parliament is no parliament any more. With its simultaneous impotence and subversive negativity, such a parliament weighs on the democratic system of the Weimar Constitution as a physically and spiritually sick monarch on the institutions and the stability of a monarchy. The present-day German Reichstag (Assembly of Deputies) is no Reichstag as meant by the Weimar Constitution, the present-day German Reichsrat (the Upper House) is no Reichsrat as meant by the Weimar Constitution, because there the regional governments meet more as business people than it is normal, and the Land of Prussia, that is two thirds of the German Reich, is represented by a former minister, relieved from his post in a previous, managerial government. Nor is the vote of no-confidence a vote of no-confidence in the sense given to it by a parliamentary system of government, because nowadays it has neither the ability nor the willingness to form a responsible government, capable of action. All these constitutional institutions have become redundant and quite distorted. All legal powers, the very possibilities of interpretation and the arguments have been turned into tools and are used as tactical means in the struggle carried on by one party against another and by all of them against the state and the government. Were it not for one of the last pillars of the Weimar constitutional order, the President of the Reich, with his authority from before the pluralist time, that has stood firm so far, it is quite probable that the chaos would have been here in all its obtrusiveness and outward manifestation, and any pretence of order would have disappeared.

TOTAL ENEMY, TOTAL WAR AND TOTAL STATE

I

In a certain sense, there have been total wars at all times; a theory of the total war, however, presumably dates only from the time of Clausewitz who would talk of 'abstract' and 'absolute' wars.¹ Later on, under the impact of the experiences of the last Great War, the formula of total war has acquired a specific meaning and a particular effectiveness. Since 1920, it has become the prevailing catchword. It was first brought out in sharp relief in the French literature, in book titles like 'La guerre totale'. Afterwards, between 1926 and 1928, it found its way into the language of the proceedings of the disarmament committee at Geneva, in concepts such as 'war potential' (potentiel de guerre), 'moral disarmament' (désarmement moral) and 'total disarmament' (désarmement total). The fascist doctrine of the 'total state' came to it by way of the state; the association yielded the conceptual pair: total state - total war. In Germany, the publication of the BEGRIFF DES POLITISCHEN (Concept of the Political) has since 1927 expanded the pair of totalities to a set of three: total enemy - total war - total state. Ernst Jünger's book TOTALE MOBILMACHUNG (Total Mobilization) of 1930 made the formula part of the general consciousness. Nonetheless, it was only Ludendorff's 1936 booklet entitled DER TOTALE KRIEG (The Total War) that lent it an irresistible force and caused its dissemination

beyond any bounds.

The formula is omnipresent; it forces itself into the sight of a truth the horrors of which the general consciousness would rather shun. Such formulas, however, are always in danger of becoming widespread nationally and internationally and of being degraded to summary slogans, to mere gramophone records of the publicity mill. Hence some clarifications may be appropriate.

a) A war may be total in the sense of the summoning up of one's strength to the limit, and of the commitment of everything to the last reserves.² It may also be called total in the sense of the unsparing use of war means of annihilation. When the well-known English author J.F.C. Fuller writes in a recent article, entitled 'The First of the League Wars, Its Lessons and Omens', that the Italian campaign in Abyssinia was a modern total war, he only refers to the use of efficacious weapons (airplanes and gas), whereas looked at from another vantage point, Abyssinia in fact was not capable of waging a modern total war nor did Italy use its reserves to the limit, reach the highest intensity and lead to an oil blockade or to the closing of the Suez Canal, because of the pressure exerted through the sanctions imposed by the League of Nations.

b) A war may be total either on both sides, or on one side only. It may also be deliberately limited, rationed and measured out, because of the geographical situation, the war technique in use, and also the predominant political principles of both sides. The typical 18th-century war, the so-called 'cabinet war', was essentially and deliberately a partial war. It rested on the clear segregation of the soldiers participating in the war from the non-participant inhabitants and non-combatants. Nevertheless, the Seven

Year War of Frederick the Great was relatively total, on Prussia's side, when compared with the other powers' mobilization of forces. A situation, typical of Germany, showed itself readily in that case: the adversity of geographical conditions and the foreign coalitions compelled a German state to mobilize its forces to a higher degree than its more affluent and fortunate bigger neighbours.³

c) The character of the war may change during the belligerent showdown. The will to fight may grow limp or it may intensify, as it happened in the 1914-1918 world war, when the war trend on the German side towards the mobilization of all the economic and industrial reserves soon forced the English side to introduce general conscription.

d) Finally, some other methods of confrontation and trial of strength, which are not total, always develop within the totality of war. Thus for a time, everyone seeks to avoid a total war which naturally carries a total risk. In this way, after the world war, there were the so-called military reprisals (the 1923 Corfu Conflict, Japan-China in 1932), followed by the attempts at non-military, economic sanctions, according to Article 16 of the Covenant of the League of Nations (against Italy, autumn 1935), and finally, certain methods of power testing on foreign soil (Spain 1936-1937) emerged in a way that could be correctly interpreted only in close connection with the total character of modern warfare. They are intermediate and transitional forms between open war and true peace; they derive their meaning from the fact that total war looms large in the background as a possibility, and an understandable caution recommends itself in the delineation of the conflictual spaces. Likewise, it is only from this point of view that they can be grasped by the science of international law.

II

The core of the matter lies in warfare. From the nature of the total war one may grasp the character and the whole aspect of state totality; from the special character of the decisive weapons one may deduce the peculiar character and aspect of the totality of war. But it is the total enemy that gives the total war its meaning.⁴

The different services and types of warfare, land warfare, sea warfare, air warfare, they each experience the totality of war in a particular way. A corresponding world of notions and ideas piles on each of these types of warfare. The traditional notions of 'levée en masse' (levy), of 'nation armée' (nation in arms) and 'Volk in Waffen' (the people in arms) belong to land warfare.⁵ Out of these notions the continental doctrine of total war came into being, essentially as a doctrine of land warfare, and that thanks in the main to Clausewitz. Sea warfare, on the other hand, has its own strategic and tactical methods and criteria; moreover, until recently, it has been first and foremost a war against the opponent's trade and economy, whence a war against non-combatants, an economic war, which by its laws of blockade, contraband and prizes, drew the neutral trade into the hostilities, as well. Air warfare has not so far built up a similar fully-fledged and independent system of its own. There is no doctrine of air warfare yet, that would correspond to the world of notions and concepts accumulated with regard to land and sea warfare. Nonetheless, as a consequence of air warfare, the overall configuration sways in the main towards a three-dimensional total war.

The 'if' of a total war is beyond any doubt today.

The 'how' may vary. The totality is perceptible from opposite vantage points. Hence the standard type of guide and leader in a total war is necessarily different. It would be too simple an equation to accept that the soldier will step into the centre of this totality as the prevailing type in a total war to the same extent as in other kinds of wars previously.⁶ If, as it has been said, total mobilization abolishes the separation of the soldier from the civilian, it may very well happen that the soldier changes into a civilian as the civilian changes into a soldier, or both may change into something new, a third alternative. In reality, it all depends on the general character of the war. A real war of religion turns the soldiers into the tools of priests or preachers. A total war that is waged on behalf of the economy becomes the tool of economic power groups. There are other forms in which the soldier himself is the typical model and the ascending expression of the character of the people. Geographical conditions, racial and social peculiarities of all kinds are factors that determine the type of warfare waged by great nations. Even today it is unlikely that a nation could engage in all the three kinds of warfare to a degree equal to the three-dimensional total war. It is probable that the centre of gravity in the deployment of forces will always rest with one or the other of the three kinds of warfare and the doctrine of total war will draw on it.⁷

Until now the history of the European peoples has been dominated by the contrast of the English sea warfare with the Continental land warfare. It is not a matter of 'traders and heroes' or that sort of thing, but rather the recognition that any of the various kinds of warfare may become total, and out of its own characteristics generate a special world of notions and ideals as its own doctrine and also relevant

to international and constitutional law, particularly in the assessment of the soldier's worth and of his position in the general body of the people. It would be a mistake to regard the English sea warfare of the last three centuries in the light of the total land warfare of Clausewitz's theory, essentially as mere trade and economic but not total warfare, and to misinterpret it as unconnected with and markedly different from totality. It is the English sea warfare that generated the kernel of a total world view.⁸

The English sea warfare is total in its capacity for total enmity. It knows how to mobilize religious, ideological, spiritual and moral forces as only few of the great wars in world history have done. The English sea warfare against Spain was a world-wide combat of the Germanic and Romance peoples, between Protestantism and Catholicism, Calvinism and Jesuitism, and there are few instances of such outbursts of enmity as intense and final as Cromwell's against the Spaniards. The English war against Napoleon likewise changed from a sea war into a 'crusade'. In the war against Germany between 1914 and 1918, the world-wide English propaganda knew how to whip up enormous moral and spiritual energies in the name of civilization and humanity, of democracy and freedom against the Prussian-German 'militarism'. The English mind had also proved its ability to interpret the industrial-technical upsurge of the 19th century in the terms of the English world-view. Herbert Spencer drew an extremely effective picture of history that was disseminated all over the world, in countless works of popularization, the propagandistic force of which proved its worth in the 1914-1918 world war. It was the philosophy of mankind's progress, presented as an evolution from feudalism to trade and industry, from the political to the economic, from soldiers to

industrialists, from war to peace. It portrayed the soldier essentially as Prussian-German, eo ipso 'feudal reactionary', a 'medieval' figure standing in the way of progress and peace. Moreover, out of its specificity, the English sea warfare evolved a full, self-contained system of international law. It asserted itself, and its own concepts held on their own against the corresponding concepts of Continental international law throughout the 19th century. There is an Anglo-Saxon concept of enemy, which in essence rejects the differentiation between combatants and non-combatants, and an Anglo-Saxon conception of war that incorporates the so-called economic war. In short, the fundamental concepts and norms of this English international law are total as such and certainly indicative of an ideology in itself total.

Finally, the English constitutional regulations turned the subordination of the soldiers to the civilians into an ideological principle and imposed it upon the Continent during the liberal 19th century. By those standards, civilization lies in the rule of the bourgeois, civilian ideal which is essentially unsoldiery. Accordingly, the constitution is always but a civil-bourgeois system in which, as Clemenceau put it, the soldier's only *raison d'être* is to defend the civilian bourgeois society, while basically he is subject to civilian command. The Prussian soldier-state carried on a century-long political struggle on the home front against this bourgeois constitutional ideal. It succumbed to it in the autumn of 1918. The history of Prussian Germany's home politics from 1848 to 1918 was a ceaseless conflict between the army and parliament, an uninterrupted battle which the government had to fight with the parliament over the structure of the army, and the army budget necessary to make ready for an unavoidable war, that were

determined not by the necessities of the foreign policy but rather by compromises regarding internal policy. The dictate of Versailles, which stipulated the army's organization and its equipment, to the smallest detail, in an agreement of foreign policy, was preceded by half a century of periodical agreements of internal policy between the Prussian-German soldier state and its internal policy opponents, in which all the details of the organization and the equipment of the army had been decided by the internal policy. The conflict between the bourgeois society and the Prussian soldier state led to an unnatural isolation of the War Office from the power of command and to many other separations, consistently rooted in the opposition between a bourgeois constitutional ideal imported from England either directly or through France and Belgium, on the one hand, and the older constitutional ideal of the German soldiery, on the other.⁹

Today Germany has surmounted that division and achieved a close integration of its soldier force.¹⁰ Indeed, attempts will not fail to be made to describe it as militarism, in the manner of earlier propaganda methods, and to hold Germany guilty of the advent of total war. Such questions of guilt too belong to the totality of the ideological wrangles. *Le combat spirituel est aussi brutal que la bataille d'hommes* (the spiritual combat is as ruthless as the battle of men). Nonetheless, before nations stagger into a total war once more, one must raise the question whether a total enmity truly exists among the European nations nowadays. War and enmity belong to the history of nations. But the worst misfortune only occurs wherever the enmity is generated by the war itself as in the 1914-1918 war, and not as it would be right and sensible, namely that an older, unswayed enmity,

true and total to the Day of Judgment, should lead to a total war.

NEUTRALITY ACCORDING TO INTERNATIONAL LAW AND NATIONAL TOTALITY

In his well-received speech of 14 May 1938, Il Duce warned the western democracies against a 'guerra di dottrina'. The great battle-cry of such a war of ideologies sounds familiar: 'war of the democracies against the totalitarian states'. It is not the aim of this exposition to dwell on that much misused head-word, 'totality', once more and to clarify the often impenetrable confusion, all of which would take the larger part of the presentation. This confusion will be only hinted at as the word totality brings to mind the fact that in 1932, one of the most interesting political commentators, Heinz O. Ziegler, published a paper still worth reading, entitled 'Autoritärer oder totaler Staat?' (Authoritarian or Total State?), and which at the time met openly and extensively with the approval of the liberal democrats and led to the conclusion that democracy belongs necessarily to the total state, and that only an authoritarian state is in the position to counter the irresistible democratic trend to this totality.

However hard it is to reach a consensus in this matter, a point needs prompt clarification, nonetheless. It will keep a particularly damaging misunderstanding at bay. It is about the interpretation given to the problem of neutrality in international law by the different totalitarian forces that nowadays strongly assert themselves in all countries. A Swiss specialist in international law, Professor Dr. Dietrich

Schindler of Zurich has given his opinion on this matter in several articles, and more recently in the review VÖLKERBUND UND VÖLKERRECHT, IV, year 1938, p. 689, which features his article, entitled 'Die Wiederherstellung der umfassenden Neutralität der Schweiz' (The Restoration of Switzerland's Full Neutrality). His views are in stark contrast to my opinions. Nonetheless, his stance and argumentation are defined with so much scientific objectivity that a basic clarification of this point does not seem out of place. One must try to help the cause of European peace by clearing away a typical and especially harmful misunderstanding as much as it is possible within the modest framework of a theoretical discussion of international law.¹

Professor Schindler obviously assumes that the total character of a national state generally endangers neutrality according to international law, and even more, turns it into an impossibility. He seems to see the danger which threatens neutrality according to international law nowadays wholly in the ideas of totality. That is a very widespread opinion. Its broad dissemination is due entirely to the somewhat simplistic idea that the totality with which a nation entwines all other states and nations, so to speak, forces all the others to acknowledge its own claims fully and unreservedly. All this implies indeed that in the case of a conflict between a total state and another state, the uncommitted third states are faced with an alternative from which the international law with its concept of neutrality excludes them, just as the involvement of a total state in the conflict makes the respect for the neutrality of the third an impossibility. But this view and interpretation of totality's claims misjudges the very essence of a nation's totality which rests in the people's awareness

of itself and of the whole of its own political existence. Many things may be piled under the label of the totality of state or nation: all sorts of restrictions or alterations of individualistic customs and freedoms inherited from the 19th century; some in fact suffered only a relative change of their scope, such as free trade, free economy, free competition of opinions and of the press from before the war; others are consolidations of all kinds; the expansion of and the increase in the power of the executive over the legislative; the elimination of earlier distinctions and divisions of the executive and the legislative, and so on and so forth. When compared to the Manchester liberalism, President Roosevelt's New Deal is readily taken for a gloomier 'totalitarianism'.² Generally speaking, there are as many kinds of totality as there are peoples in different situations, and if need arise, each state organization establishes its own kind of totality and mobilizes its resources. An excellent article by a young Greek jurist, Dr. Georg Daskalakis in ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE, 1938, p. 194, aptly points out that the total state is not a separate, distinctive state form. Rather it is a moment in the life of a state, that is to say, 'a moment in the effective development of every type of state, marked by the mobilization of all energies in a certain direction'. Thus, potentially, every form is total, and in distinctly dangerous situations, it is likely to get through a totality phase. No matter the variety of the developmental symptoms, even when grouped together under the label of 'totality', a closer examination would quickly reveal that in fact the totality of a nation or a people's state is first and foremost its own business.³ The more a nation thinks of itself and recognizes its own singularity and also its limitations, the more it comes to respect

the singularity and the limits of other nations, and creates the sure basis for the understanding of the neutrality of a nation, from the point of view of the international law, in the conflicts between others. The self-contained entirety of a single state does not present a threat or danger to neutrality according to international law; rather the danger comes from a suprastatal and supranational claim to decide the rights and wrongs of a nation, on its own legal authority and on behalf of a universal, or in some other way supranational collectivity.⁴

Switzerland's experiences with the Geneva League of Nations have brought out into sharp relief this kind of threat to neutrality according to international law and brought it to the notice of all the states to which neutrality in keeping with the international law is vitally important. First and foremost, Switzerland's position has proved that it is not possible to ignore the core of neutrality according to international law, and that the crucial point is unqualified non-partisanship, that is to say, not to take sides in the legal sense of non-discrimination. Indeed, that has always been known and talked about by all the respectable specialists in international law. This simple truth, though, might have been obscured for a while by the numerous, subtle and complicated formulas of compromise in the jurisprudence of the League of Nations in Geneva. Today it is no longer possible to doubt that the basis is strict non-discrimination by which it stands or falls with all the other rights and obligations of the neutrals, and the whole legal institution of neutrality according to international law. The duty of neutrals to refrain from military intervention derives its meaning and contents only from the obligation to discriminate. And the other way round: if a state follows a procedure the meaning

and contents of which consist in disqualifying a party legally and morally in favour of the other during a war-like conflict, by doing so it has readily forsaken its duty to neutrality, no matter what further conclusions it draws from its adherence to that procedure, whether it continues to stay by the legal or moral disqualification, or whether it decides to take this disqualification to its practical, logical conclusion, to resort to measures of economic and financial pressure or finally, to take military action. The duty not to take sides may be legally understood only as the duty to stay away from all such methods of legal and moral discrimination.

The correctness of such affirmations that one can either be or not be neutral, and that neutrality does not come in half measures or portions lies in this concrete and practical knowledge and not in theoretical conceptual subtleties or abstract principles. It goes without saying that the variations in the political situation may compel the neutral state to many differentiations and shades of meaning and offer it some scope for its practical political discretion. The 1914-1918 world war has shown in what difficult and dangerous conditions the smaller neutral states may find themselves when they want to remain truly neutral. Fortunately, once upon a time, there was no League of Nations in Geneva to intervene in the conflict through sanctions. In spite of all the elbow room and all the adjustments to difficult situations, the central point of the international law always remains the simple alternative of neutrality or non-neutrality. That would apply as long as neutrality according to international law is at all possible. All the tarnishing and concealment of this simple legal truth endangers the legal institution of neutrality as much as the political existence of the

states that opt for it.⁵

In the case of collective actions based on Article 16 of the Covenant of the League of Nations in Geneva, 'the breaker of the regulations', explicitly in the sense of the international law, will be set in the wrong. That is of primary importance. On the other hand, it is of secondary importance as regards the international law whether the member state, which discriminates in that way, decides in favour of military action against the breaker of the regulations or whether it is content with economic and financial measures, or with its legal disqualification and discrimination in terms of the law. That makes it obvious that the universalistic claims and collective methods of the League of Nations in Geneva are what destroys neutrality in terms of the international law. It is common knowledge that the incompatibility between the Covenant of the League and neutrality has often been stated particularly by the pacifists and the friends of the League, only to mask it with quite a few compromises in actual political practice. The evolution of Swiss neutrality has become such a serious matter in the last six months because of it. It is in the nature of a legal institution such as neutrality that its core, the essential dilemma - neutrality: yes or no? - emerges stronger and clearer as the seriousness of the situation grows. Just as the opposite makes itself felt, namely that the less the League of Nations in Geneva and neutrality have anything in common, the more the League activates its Article 16 and 'puts it into effect'. In the long run one will not be able to avoid its logic and logical consistency, because it is in the nature of the institution of the international law. No European state the vital interests of which lie in its ability to remain neutral, is as a result interested in

wavering before this dilemma.

The issue of totality has arisen in one form or another for every state in these times. The new comprehensive plans, the legislation regarding state defence and the security of the borders, and so on express themselves plainly as propagandistic slogans. Nobody will probably deny any longer that a war in earnest between the big modern powers will compel them to total mobilization. Thereby one should be ready to look the facts in the face and see that they have derived their power of persuasion from the formulas of the total state, instead of carrying on the uncanny war of slogans and ideologies.⁶ It is only about these facts. Only they can be examined objectively within a genuine, direct discussion among European nations, whereas the ideological-propagandistic battle, the guerra di dottrina stealthily and without delay introduces the question who is to blame for this evolution towards totality or who has started it. Nonetheless, an objectively open and direct method of discussion contradicts the methods and procedures that are integral part of the League of Nations in Geneva. That Genevan establishment may be described as a rather typical illustration of what may be called indirect power, to use the hotly contested concept of 'potestas indirecta'.⁷

It is common knowledge that in this formulation, the claim and the doctrine of 'potestas indirecta' was juridically and politically worked out by the Roman Catholic Church at the time of the Counter-Reformation. This singular concept, as theologically and juridically elaborated by Bellarmine, served the universalistic claims of the Roman Church to domination over the then established sovereign states. It began to have effect in the second half of the 16th century. Both chronologically and situationally, it

belongs to the era of the religious, sectarian, factional and civil wars which only ended in 1648. In this respect, many French publicists will draw a parallel between the year 1550 and our present times. Naturally, the century-long row over the indirect power did not at any moment come close to a mutual conversion of the spiritual and political fronts opposing each other, yet it made quite obvious the fact that the claims and the methods of this kind of indirectness did not prevent the wars but rather intensified them, because they rendered a true neutrality impossible and transformed the wars of self-contained states and of nation-states into international civil, religious and sectarian wars. It would be good and also appropriate from the point of view of the international law to pay attention to the singularity and the modes of operation of the indirect method. From the numerous historical parallels that appear from all sides nowadays as in every age of radical changes, this one, when correctly applied, seems to me to be particularly enlightening and to facilitate a true understanding of the present-day reality.

It is characteristic of the indirect power, that without waging war itself, but by virtue of a supra-national moral and legal authority, it takes it upon itself to decide what is legally and morally permissible and what is not in the showdowns between states and nations, and in that way, alters the character of the confrontations. Moral and legal discriminations and disqualifications, ostracism and excommunications, or in modern language, moral, social and economic boycott are the typical methods of the 'indirect' power. As a consequence, the non-discriminatory war between states changes itself into an international civil war and therewith it achieves a kind of totality that is

as horrid and destructive as everything of which a facile propaganda has accused the national totality.⁸

Three centuries ago, a great English thinker, a pioneer and theoretician of the struggles against the 'potestas indirecta', Thomas Hobbes, dealt with the legal constructs of this doctrine and its methods of ostracism and moral disqualification. He correctly identified it as the main source of the increasing fierceness and internationalization of the internal and the external political fighting. Referring to the legal and moral disqualification of entire nations, he asked the following question: what effect may the disqualification and ostracism of a whole nation have? And he answered: 'when a Pope excommunicates a whole nation, methinks he rather excommunicates himself than them'.⁹ If that is valid in the case of the Pope and the Roman Church, then it will be as much in the case of the League of Nations in Geneva, and pronounces the correct verdict about its methods through which a confrontation between states is extended to neutral third countries, according to Article 16 on the discrimination against a participant state.

NOTES

After Hitler's ascent to power, Carl Schmitt stopped providing his articles with an apparatus criticus, and instead, adopted the new fashion of inserting quotations in their original language, but without source identification. Earlier, he had indeed produced long articles without footnotes, but those were meant for the general public, such as his *Römischer Katholizismus und politische Form* (1923). Eventually, in 1950, he reverted to the old custom. That explains the absence of any apparatus criticus from the last two articles written during Hitler's era, while the second in this selection, although written prior to Hitler's advent, was a publicistic piece, written in support of General von Schleicher's attempts to prevent the transfer of power to Hitler.

THE WAY TO THE TOTAL STATE

Originally published in the April 1931 issue of the *EUROPÄISCHE REVUE*. Reproduced in *Positionen und Begriffe im Kampf mit Weimar - Genf - Versailles, 1923-1939*, Hamburg, 1940, pp.146-157.

1. The clearest and most straightforward summary of the various concepts of 'society', which often are ambiguous and incomprehensible, is to be found in Eduard Spranger's article 'Das Wesen der deutschen Universität' (The Essence of the German University), *Akademisches Deutschland III*, 1, p.9: 'Briefly, in the German sociological vocabulary, "society" usually means the endless abundance of loose and organized, peer and hierarchical, ephemeral and lasting forms of human association which are neither state nor church. Its shape is as nebulous as that of "milieu".' Spranger focuses here only on the negative aspect of the concept. It seems to me, though, in the light of further historical facts, that 'society'

in the concrete situation of the 19th century had not only a negative but also a specifically political, and hence, polemical sense, and as a result, the notion ceased to be 'hazy', and instead, acquired the concrete precision which a political concept gains from its opposite notion. Furthermore, as a consequence, the notions of this situation, which were worked out with the help of the term 'societas', have mostly an oppositional meaning whenever they acquire historical importance, which is not only the case of 'socialism', but also of 'sociology', which came into being as an 'oppositional science', according to Carl Brinkmann in his *Versuch einer Gesellschaftswissenschaft* (Essay in a Science of Society), Munich and Leipzig, 1919. G. Wiebeck of Berlin has kindly drawn my attention to a passage on page 82 of L. von Hasner's book *Filosofie des Rechts und seiner Geschichte in Grundlinien* (The Philosophy of Law and Its Historical Outline), Prague, 1851, which is of interest also for the additional clarification it brings to the above-quoted text, regarding the situation of a society which finds itself in the process of 'auto-organization'. It reads as follows: 'As a buzzing, unorganized mass, society is not an ethical but only a transitional, historical form. It is organized into an ethical society, but so is the state itself, if the latter is to be something else and something more than an abstraction'.

2. For example, one may refer to Lorenz von Stein and his *Geschichte der sozialen Bewegung in Frankreich* (History of the Social Movement in France), the Gottfried Salomon edition, Munich 1921, vol. II, p. 41. He writes that the chamber is the organ 'through which society rules over the state'. Likewise, in his *Nationale Rechtsidee von Ständen* (The National Legal Idea of Social Classes), Berlin, 1894, p. 269, Rudolf Gneist makes an observation full of substance: the general desire for the secret ballot is 'the unmistakable sign of the swamping of the state by society'.

3. 'Executive' here has the meaning of administrative, of attending to the daily business of what is regarded as a country-wide enterprise. Carl Schmitt would develop this taxonomy of states

into his longer work *Legalität und Legimität* (Legality and Legitimacy), published a year later, in connection with the concept of the parliamentary legislative state. It is more or less a functional classification, in keeping with the dominant political factor. In the other text, he distinguishes alongside of the legislative state, as codifier of law according to pre-existing norms and principles, the governmental state, the jurisdictional state and the administrative state, considering the last as the most compatible with a total state in which economic forecasts and planning become more important than, for instance, love of freedom. - Ed. note.

4. For more about the state of exception see my book *Der Hüter der Verfassung* (The Guardian of the Constitution), p. 115f. In his article 'Die Grundlagen des militärischen Verordnungsrechts in Zivilsachen während des Kriegszustandes' (The fundamental principles of the military prescriptive law in civil cases during a state of war), *AöR.*, xxxvi, 1917, p. 389f., Ludwig Waldecker correctly perceives the connection between the jurisdictional state and martial law, but misunderstands the consistency of the later development.

5. *Grundrechte und Polizeigewalt. Festgabe für das Preußische Oberverwaltungsgericht* (Basic Rights and Police Power. Commemorative edition in honour of the Prussian Superior Administrative Court), Berlin, 1925, p.223. Not exactly in the same way in the Colloquium on the occasion of the Day of the Theoreticians of State Law in Vienna in 1928, reproduced in *VERÖFFENTLICHUNGEN DER VEREINIGUNG DER DEUTSCHEN STAATSRICHTSLEHRER*, No. 5, p. 109. More in *Reichsgerichtsfestschrift* (Commemorative Publication of the Reich Court), 1929, p.200 and *Handbuch des Staatsrecht* (Manual of State Law), vol. II, pp. 109, 136-137.

6. *Allgemeines Staatsrecht* (General State Law), 4th edition, 1868, vol. I, pp. 561-562. It is particularly instructive to compare R. Gneist's arguments with these statements by Bluntschli: the former sees the guarantee in the combined legislation shared by a

hereditary monarchy, a permanent first chamber and a second, elected chamber (*Gutachten a.a.O.*, p.23).

7. This figure has been given in the *VIERTELJAHRSSHEFTEN FÜR KONJUNKTURFORSCHUNG*, vol. V, 1930, No.2, p.72. It has been used and validated by J. Popitz, for instance (see note 8), by G. Müller-Oerlinghausen, in his 'Vortrag über die Wirtschaftskrise' (Lecture on the economic crisis) of 4 November 1930, in *MITTEILUNGEN DES LANGNAMVEREINS*, Year 1930, new series, No. 19, p.409. Compare with Otto Pfeleiderer, *Die Staatswirtschaft und das Sozialprodukt* (State Economy and the Social Product), Jena, 1930, and Manuel Saitzew, *Die öffentliche Unternehmung der Gegenwart* (The Public Venture Enterprise of the Present), Tübingen, 1930, p.6f.

8. 'Der Finanzausgleich und seine Bedeutung für die Finanzlage des Reichs, der Länder und Gemeinder' (The financial balance and its importance for the state of the realm, the regions and the local districts), in *Veröffentlichungen des Reichsverbandes der deutschen Industrie* (Publications of the Reich Federation of the German Industry), Berlin, 1930, p.6; also, 'Der öffentliche Finanzbedarf und der Reichssparkommissar' (The Public Financial Needs and the Reich Commissioner for Economy), *BANKARCHIV*, XXX, No. 2 (15 October 1930), p. 21.

9. In *DEUTSCHE JURISTENZEITUNG* of 1 January 1931, column 17, and more in 'Der Reichssparkommissar und seine Aufgabe' (The Reich Commissioner for Economy and his task) in *FINANZRECHTLICHE ZEITFRAGEN*, vol. II, Berlin, 1930, p. 12.

10. In English in the original.

FURTHER DEVELOPMENT OF THE TOTAL STATE IN GERMANY

First published in the February 1933 issue of *EUROPÄISCHE REVUE*, pp. 65-70. Reproduced in *Positionen und Begriffe...*, Hamburg, 1940, pp. 185-190.

1. This whole introductory paragraph is rather puzzling by its incoherence, so uncharacteristic of Carl Schmitt. One way to unravel it is the following: a state is strong when it enjoys political power fully, is able to maintain it and even increase it by making the most of the modern technological means not only militarily, but also as effective factor in the transformation of the human psyche. In international relations, technology has rendered not only the size of a country irrelevant to its power, but also the old doctrines of the state. A strong state, though, is not one and the same as a total state, but a necessary condition of the latter. The state is the organ of political power, the site for its accumulation and its practice. On the other hand, the curt statement that a total revolution is the only antidote against a total state just makes a splash, unconnected with the rest, it is never resumed and pursued. It may refer to the opposite notion of a state become total through weakness, through its eagerness of being everything to everybody (see farther on p. 23), and which can be saved only by a complete overhaul. - Ed. note.

2. This remark is still valid at the end of the 20th century. - Ed. note.

3. While in the previous article Schmitt was talking of a state that became total by making all the spheres of human activity its concern, on the one hand, and on the other, of the new political parties which he described as autonomous mass movements that were total in their pursuit of a full integration of their membership, here he tries a new approach in terms of quantity and quality. He came to think that he had found a more adequate formula for the restoration of national unity and the elimination of the overall weariness in the Fascist doctrine which itself had been inspired by the model of the absolute monarchy of earlier centuries. So he associates the cultivation of a generalized political will and the kindling of the necessary energy for its materialization with quality, whereas the scope of state interference and patronage to the limit under the pressure of the mass movements are regarded as mere

quantity. The pairing is not conceptually productive, because the opposites are each taken from a different existential sphere, that is to say, they are not mutually exclusive, nor can one be understood as the negative of the other. Hence the repetitions of the statement without further elaboration. It shows the impasse which he reached in his reflection on the relationship between the structure of the state as he had envisaged it and the mass movements which were a relatively new phenomenon. That intellectuals like him could think that eventually they could capitalize the energy and the determination of the strongest among the latter to the benefit of the state only shows how romantically utopian their practical calculations were. As far as I am aware, I do not think that Carl Schmitt ever admitted it even to himself. - Ed. note.

4. This idea of a total state is brought over from his longer essay *Legalität und Legimität* (Legality and Legitimacy), published several months earlier. - Ed. note.

5. Here Schmitt resumes the idea of the transformation of society into state, discussed in the preceding article, and renders it more precise by bringing the political mass movements into the conflict. While he insists on the process of deterioration of the power of society turned state, he stops short of taking the on-going dialectical conflict to its logical conclusion, and point to the prospective appropriation of the state by one of the mass parties at the expense of the others, and its own transformation into state. - Ed. note.

6. It refers to the authority of the people to act. The phrase *agere cum populo* meant to address the people in a public assembly in order to obtain their approval or rejection of a particular matter. - Ed. note.

TOTAL ENEMY, TOTAL WAR AND TOTAL STATE
Originally published in *Völkerbund und Völkerrecht*, vol. 4,

1937, it was reproduced in *Positionen und Begriffe im Kampf mit Weimar - Genf - Versailles, 1929-1939*, Hamburg, 1940, pp.235-239.

1. General Carl von Clausewitz (1780-1831) is best known for his book *Vom Kriege*, never finished and published posthumously, which incidentally has been translated into English under the title *On War*. There are numerous versions available in print. - *Ed. note*.

2. Carl Schmitt's own political principles of 'will' and 'energy', components of his qualitative concept of total state derive from this characteristic feature of 'total war': collective determination to assume a cause considered worthwhile, and unreserved commitment to its fulfillment. (See also p.32, farther on.) As a generalized rallying round and enthusiasm for a cause and a particular course of action, it is a frequent phenomenon of social psychology, yet its usually ephemeral character makes it unfit as a durable basis of any social structure. I remember the enthusiasm with which in 1982, to a man, the Argentines, for instance, rallied to the idea of going to war to free the Maldives and hurried to put it into practice, and the accompanying hatred which they grew against the British. The enthusiasm cooled off quickly, but not the hatred, which lingered on. To perpetuate the enthusiasm a plethora of other factors have to be brought in, of which, in the case of Germany at the beginning of the 'thirties, Carl Schmitt actually had not a clue. - *Ed. note*.

3. The 'lesson' is in keeping with the Hitlerite Frederician cult and legitimating tradition and does not claim to be historically accurate. Although a digression that seems out of place, it has a certain significance for the time it was made. In the autumn of 1936, Hitler circulated a memorandum revealing his expansionist intentions. Then in 1937, the organization of the nation to serve those intentions began, a process which coincided with the rise of the SS state. In November of the same year the German media were ordered to keep silent about the preparations for a 'total war'. Bearing all that in mind, Schmitt's short digression reads more as a

warning of danger than a point of military strategy. - *Ed. note*.

4. What is interesting here is his insistence on the existential essence of the phenomenon, which is consonant with his earlier definition of the political and at the same time renders the distinction between the professional soldier and the civilian meaningless. Moreover, total enmity with its implicit elimination of the adversary excludes any prospect of a peace treaty, as the war is to go on until one of the belligerents is annihilated. - *Ed. note*.

5. *Das Volk in Waffen* (The Nation in Arms) happens to be the title of a work on total war by Colmar von der Goltz (1843-1916), published in 1883, and which is an important stepping stone in the reflection on modern warfare that led to Ludendorff's book. - *Ed. note*.

6. At the beginning of February 1938, Adolf Hitler became commander in chief of the German armed forces, appointing General Keitel his assistant at the head of the High Command of the Armed Forces, as the War Ministry was dissolved. - *Ed. note*.

7. Eventually only the Soviet Union came closest to Carl Schmitt's expectations, while the United States waged a fully-fledged three-dimensional war, dictated by its geographical position and sustained by its vast economic and technical resources most of which remained outside the battle zone. - *Ed. note*.

8. For a broader treatment of the subject-matter see Carl Schmitt's *Land und Meer*, which as *Land and Sea* is available in an English translation, Washington DC, 1997. - *Ed. note*.

9. The conflict between the civil society and the military in Germany was the subject-matter of a longer essay by Carl Schmitt, published in Hamburg in 1934 under the title *Staatsgefüge und Zusammenbruch des Zweites Reiches. Der Sieg des Bürgers über den Soldaten* (The State Structure and the Collapse of the Second

Reich. The Burghers' Victory over the Soldiers). - *Ed. note.*

10. Röhm, the ideological soldier, had been eliminated in 1934, at the same time as the political soldiers, the Generals von Schleicher and von Bredow. Furthermore, as already mentioned in note 6 above, the War Ministry ceased to exist at the beginning of 1938, while the Commander in Chief, Field Marshal Werner von Blomberg was removed from his post for having compromised himself by marrying a 'lady with a past', and his prospective successor, General von Fritsch was forced to resign on a trumped-up charge of homosexuality. At the same time, sixteen other generals were retired and forty-four were transferred. Göring who had been very active in carrying out this 'integration' got for it only the title of field marshal, as Hitler kept for himself the supreme military command. - *Ed. note.*

NEUTRALITY ACCORDING TO INTERNATIONAL LAW AND NATIONAL TOTALITY

First published in the July 1938 issue of *MONATSSHEFTE FÜR AUSWÄRTIGE POLITIK*, pp. 613-618. Reproduced in *Positionen und Begriffe...*, Hamburg, 1940, pp. 255-260.

1. Two things are worth remarking here: one, Schmitt's formal disengagement from any possible affinity with Schindler's position, and the other, his open scepticism about the feasibility of building up objective notions and concepts in substantive discussions across borders in an era of competitive ideologies and propaganda, smoke screens for arbitrary actions. As it will become apparent later on, the difference between Schindler and Schmitt in matters of neutrality lies in their individual approach, which after all leads them both to the same conclusion. - *Ed. note.*

2. As part of Carl Schmitt's attempts to come with a satisfactory definition of the 'total state', it is worth retaining as a characteristic trait, the elimination of the distinction between the

executive and the legislative, in favour of the executive which becomes its own legislator. - *Ed. note.*

3. Here the 'total state' is identified with the state of the exception, of which mention was made in the first article of the present selection, written in 1931. As the legislative is suspended in favour of the executive, a sharpened distinction between friend and enemy informs the summary justice that accompanies it. Another characteristic feature is its transitoriness. - *Ed. note.*

4. Accordingly, on 11 March 1938, Germany annexed Austria in the name of a suprastatal Germanism. - *Ed. note.*

5. It is here that the actual difference between Schindler and Schmitt is made clear: Schmitt's approach to neutrality in conflicts between countries is from the point of view of the Continental international law inherited from the 19th century, whereas Schindler's takes into consideration the imperialistic tendencies of one-party states of the time. As the applicability of that international law is highly questionable, so too is the neutrality defined by it. Thus, ultimately, both are in agreement about neutrality becoming impossible in the given circumstances. - *Ed. note.*

6. Refers in particular to the Four-Year Plan, on the model of the Soviet economic plans, which Germany adopted for her own rearmament and self-sufficiency. In addition, Schmitt remarks the suspension of any policy of realism in international relations, owing to the continuous campaigns of conditioning public opinion worldwide. For some of the techniques used see his own recommendations on pp. 20-21, above. It is the shift obtained in that way that has rendered international law redundant. - *Ed. note.*

7. The League of Nations has been one of the many attempts to create a suprastatal authority that would preserve a certain status quo, or bring about a certain change in the name of a suprastatal morality. On the other hand, the doctrine of *potestas*

indirecta has less to do with Bellarmine, the Jesuit Cardinal, who had advised Galileo to treat Copernicus' theory as a hypothesis, and later to play safe, declared it spurious, than with Schmitt himself who by 'indirections' was trying to conceptualize some of the recurrent aspects of the cumulative experience in the field of international relations (conflicts included) in the 20th century. In that context the League of Nations is only an instance of the institutionalization of that political concept, favoured by the various, more or less coherent ideologies in circulation the world over, which were universal in character, missionary and messianic. The Spanish Civil War, and Hitler's 'pan-Germanism', copied from the pan-Slavism of the previous century, were part of that experience that justified Schmitt in his theoretical effort. As a secular principle, it is instrumental in the globalization that has followed WWII, against the spectre of a nuclear war, with the increase in number and power of international and supranational organizations, the liberation movements, and the circulation of capital, and the concomitant insignificance of such concepts as sovereignty and national borders.

- *Ed. note.*

8. The German terms are 'der völkische Totalität', as in the title. In both cases, I chose not to use 'folkish', which is good English although rather rustic, but a derivative of the Middle English word 'nation' that had come into the English language through Old French from the Latin *natio-nationis*, signifying a community of people of common descent. Schmitt himself uses the term technically as such, as antonym of 'international'. - *Ed. note.*

9. In English in the original text. - *Ed. note.*

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CORRIGENDUM

On page 52, note 2, line 11, read:
'the Malvinas' instead of 'the Maldives'.

'The age of information technology, the twentieth century, has also been an era of dislocation and confusion with ghastly consequences wherever questions in point were not asked, and adequate answers were not sought. As system-building had proven unsatisfactory, CARL SCHMITT's self-assumed task was to single out and throw light on emerging trends in and between the nations of Europe and the world, at a time when the collapse of the three Continental empires posed once more the question of state-structure and state-building and of the very nature of the social fabric.'

A political theorist and an expert in European public law, author of some forty books and over two hundred articles, CARL SCHMITT (1888-1985) was born and died at Plettenberg, in Westphalia. He read law at Strassburg University which granted him a degree in 1910, and a doctorate of jurisprudence in 1916. He started his career in the Imperial civil service, and later on, during the Weimar Republic, he became an academic. From 1921 until 1945, he taught at various universities in Germany, among which Bonn and Berlin. A disciple of Max Weber, he turned away from positivism and neo-Kantianism in legal and political thinking, and helped broaden the science of law and legal and political institutions by bringing in historical, sociological and cultural factors.



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