

# **Dictatorship and the Decline of Parliament**

## **Carl Schmitt's Theory of Political Sovereignty**

[John Keane](#)

Nowadays the representative system is associated with the republican form of state. But originally it arose in monarchies, where the monarch, representing the unity of the state, opposed the estates, representing the diverse private interests which had to be reweaved constantly into a unified whole. This dualism is basic for the system of representative government. In modern political life it appears in the polarity of 'state' and 'society', of the unity and diversity of interests of a people.

Otto Hintze

## **The Age of Liberalism**

The representative assembly, or parliament as it is called most often, is one of the oldest, most commonplace and - for the socialist tradition - most controversial democratic institutions. Suspicion of parliament is certainly not confined to the socialist tradition. The modern history of parliament - the ultimate political symbol of peaceful compromise and quiet agreement - have been littered with bitter conflicts, paralysis and open violence. In the early decades of this century, these trends reached something of a climax. With the Bolshevik Revolution, the severe political crises that followed in the aftermath of the First World War, and the rise of syndicalism and fascism, parliament appeared to have little or no future. This period saw not only the first successful government. It also witnessed a deep loss of confidence in the spirit of parliamentarism among its closest supporters, many of whom publicly lamented the declining legitimacy and effectiveness of representative assemblies.'

Carl Schmitt, whose political writings are little known outside his native Germany, was undoubtedly the shrewdest and most controversial European critic of parliament during this period. His writings on parliament directly address the subject of civil society and the state. They cast serious doubts on the capacity of parliament to regulate the relations of power within and between civil society and the state. Schmitt's rejection of parliament raises fundamental political questions concerning state sovereignty, civil war, dictatorship and the future of democracy, and these in turn have a strikingly contemporary ring about them. For these reasons, his writings on parliament deserve careful reconsideration, freed from the highly personalized and bitter reaction they typically evoke in West Germany today.<sup>2</sup>

Schmitt situates his criticism of parliament within a wider account of the grip of liberalism upon nineteenth-century European politics. The essence of modern liberalism, in his view, is its deep antipathy to state power. In its struggle against the arcane power of absolutist states, liberalism developed a deeply negative distrust of political power without, however, defining a positive political view of its own. Liberalism admits the need for state and governmental power - suitably subdivided into legislative, executive and judicial branches - but only inasmuch as it serves the specific purpose of enhancing individuals' freedom within civil society. Every transgression by political rulers of their properly limited prerogatives is therefore denounced by liberals as tyranny, as *eo ipso* evil and unjust.

Schmitt does not consider the objection that liberal individualist thinkers from Hobbes to Bentham, Guizot and Mill were often driven, by the force of their liberal individualism, to support strong state measures in matters of domestic rule, colonization or military conquest.<sup>3</sup> He instead

emphasizes that the central preoccupation of liberalism is the protection of individuals' rights of property ownership and freedom of speech. The liberal schema supposes that free competition among freely speaking and propertied citizens within civil society neutralizes state power and renders it nearly superfluous. In contrast to the notion of politically enforced unity and balance of its absolutist predecessor, liberalism views social and political equilibrium as a consequence of the *absence* of political regulation - as the effect of 'perpetual competition and perpetual discussion.' 4

From this perspective, Schmitt views parliament as a key liberal mechanism for ensuring equilibrium between the state and civil society.<sup>5</sup> Parliament is supposed to openly, fairly and peacefully resolve differences of expressed opinion within civil society, as well as subjecting the state apparatus and its governmental executive to processes of deliberation and legislation. Parliament is the fulcrum between civil society and the state, the guarantor of non-violent and unforced social and political harmony. 'The essence of liberalism is negotiation, a cautious half-measure, in the hope that the definitive dispute, the decisive bloody battle, can be transformed into a parliamentary debate which permits the decision to be postponed forever in an unending discussion.'<sup>6</sup> The 'essential principles' of parliament are openness and discussion. According to Schmitt's strict definition, tussles among conflicting interests, and mere negotiation and compromise, are not features exclusive to parliament. They are clearly evident, for instance, in private meetings between company directors and political party or trade union officials, and at diplomatic conferences. Open parliamentary discussion is essentially different. It rests on a shared commitment to principled argument and counter-argument. It supposes the willingness to be

persuaded of another's point of view and, hence, freedom from particular loyalties and selfish interests. 'Discussion means an exchange of opinion that is governed by the purpose of convincing one's opponent through argument of the truth or justice of something, or allowing oneself to be convinced of some thing as true or just'.<sup>7</sup>

In the liberal view, various parliamentary arrangements are supposed to facilitate this form of open and principled discussion. These include unrestricted parliamentary proceedings, the rights of free speech and legal immunity of representatives, as well as their freedom from party or constituency instructions, their obligation being only to their own principled conscience (as in article 21 of the Weimar constitution). Parliamentary arrangements of this kind ensure that opinions are formed not by a noisy clash of jostling interests, but through an unhindered exchange of reasoned arguments. Every matter before parliament is supposed to be discussed, negotiated and agreed in a process of calm and open deliberation. According to Schmitt, Bentham's observation that in 'parliament ideas meet, and contact between ideas gives off sparks and leads to evidence'<sup>8</sup> correctly summarizes the liberal parliamentary principle. On this view, legislators seek the truth together honestly and openly. Political truth, as it crystallizes in universal norms and promulgated, generally binding laws, consists neither in the discovery of transcendental standards nor blind compromises among dogmatists defending their selfish interests. Rather, it is a function of unrestricted competition among freely expressed opinions within the legislative assembly. In this sense, liberal parliamentary government, in contrast to its absolutist predecessors, is visible government, openly reported by a free press. Parliamentarians find themselves under the watchful eye and attentive ears of the citizenry, whose access to a free press (here Schmitt

draws upon a central theme of Guizot's *Histoire des origines du gouvernement représentatif en Europe*) enables them in turn to ascertain the truth of matters and express it to their parliamentary representatives.<sup>9</sup>

### **The Spiritual Crisis of Parliament**

Schmitt's account of the nineteenth-century liberal era of parliamentarism is brief and overly simplified. Yet it serves the deeper purpose of foregrounding and defending his claim that twentieth-century parliament is facing a profound crisis. In his view, classical liberal parliament and its ideals are degenerating into a rump parliament without ideals. This process is likened to the slow disappearance of monarchy. Just as the end of the epoch of European monarchy was signalled by growing criticisms and outright rejections of the monarchic principles of kingship and honour, so the loss of legitimacy of parliamentary ideals indicates that the hour of parliament has tolled, even if, like monarchy, it survives indefinitely as a crippled and hollow figure from the past.

Symptomatic of the loss of reality and spiritual crisis of parliament is the militant rejection of parliamentary institutions by communists, fascists and anarcho-syndicalists.<sup>10</sup> Among its staunchest defenders, Schmitt observes, the old intellectual arguments for parliament have also run out of steam. They appear ever more antiquated and idealistic and, in their place, purely pragmatic reasons are adduced in favour of parliament. Compared with the untried and risky -experiments in direct democracy, for instance - parliament is said to ensure a minimum of political order and governmental continuity. Or parliament is favoured on the equally pragmatic grounds (spelled out in Schmitt's time by Max Weber, Hugo

Preuss and others)<sup>11</sup> that it functions primarily as a ~means of screening and selecting competent political leadership - as a testing ground for a future political class. Schmitt reasons that such pragmatic defences of parliament are frail and unconvincing, since they fail to explain the essential principles upon which it rests. The distinction between essential principles and pragmatic considerations is basic to Schmitt's argument that contemporary parliament is suffering a deep spiritual crisis: 'Parliamentarism consists today of a method of government and a political system. Just like everything else that exists and functions tolerably, it is useful - no more and no less. It counts for a great deal that even today it functions better than other untried methods, and that the minimum of order that is today actually maintained would be endangered by frivolous experiments. Every intelligent person would concede such arguments. But they do not carry weight in an argument concerning principles.'<sup>12</sup>

This spiritual crisis has several causes. Among the most vital is the growing influence of democracy. Schmitt argues that the struggle for greater political democracy pressures governments to expand their scope and power in order to satisfy growing social demands. Thereby, the nineteenth-century trend toward a noninterventionist liberal constitutional state is reversed. By increasing the strategic importance of state power, the struggle for democracy also makes a mockery of the old parliamentary principles. The open deliberations of parliament are destroyed by mass democracy, and especially by the concomitant growth of competitive party politics.

Schmitt's analysis of this trend thinly veils his well-known lifelong disdain for party politics. The masses are subjected to a constant barrage of party campaigning, which utilizes propaganda geared to voters'

passions and immediate interests, in order better to manipulate and govern them. Parties ‘create electoral propaganda, process the masses, and dominate public opinion’.<sup>13</sup> Elections become a plebiscitary contest among sectional interests, ‘a roll-call of the standing party-army’.<sup>14</sup> The tide of organized party domination in the electoral arena naturally spills over into parliament, which becomes a prime target for tightly disciplined party machines battling for newly enfranchised electorates.’<sup>15</sup> The scope for independent deliberation and the rational balancing of opinions among members of parliament is destroyed. In a context in which combatants have already decided their bargaining positions before discussion begins, government by open debate becomes simply impossible. Parliament becomes cluttered with party manoeuvrings and purposeless and banal discussion. It is choked by the obstructive tactics and misuse of parliamentary privilege by its radical (class) opponents, whose first aim is to manipulate parliament for their own particular economic and party-political ends. This threatens the equilibrating function of parliament. In Schmitt’s eyes, nineteenth-century liberal parliaments, which normally defended their existing constitutions, were threatened by executive domination. By contrast, twentieth-century parliaments, dominated as they are by self-paralysing party politics, threaten the constitutional order and unity of the state. As parliament falls into decline, the state tends to degenerate into an ‘unstable coalition *Parteienstaat*’.<sup>16</sup>

The corrosive effects of democracy by no means spare parliament’s guiding principles of openness and discussion. According to Schmitt’s idiosyncratic interpretation, the hybrid term ‘parliamentary democracy’ is self-contradictory and self-paralysing, since the essential principles of

liberal parliamentarism and democracy are fundamentally at odds with each other.

This contradiction between parliament and democracy went unnoticed during the heyday of liberalism, when the two phenomena gained ground simultaneously. With the growing victories of democracy, however, it becomes evident that democratic principles are antithetical to limited government by unrestricted discussion. Democracy rests upon a principle of exclusion (here Schmitt draws upon an aspect of Aristotle's definition of democracy<sup>17</sup>). It specifies that even though all persons may be equal, some are certainly more equal than others; that is, that only equals, and not unequals, are worthy of being treated equally. The practice of universal and equal suffrage among citizens is based upon this democratic principle. So also are attempts -evident in Bolshevism, fascism and other forms of dictatorship<sup>18</sup> -to exclude from the franchise unequals, whose admission to citizenship would ruin the spirit of equality and homogeneity so essential to democracy. 'A democracy demonstrates its political power by knowing how to eliminate or keep at bay something that is foreign and unequal and threatens its homogeneity.'<sup>19</sup>

The democratic principle of equality among equals also supposes that the citizens' will is sovereign, and that these citizens are capable of expressing a unanimous opinion - a general will -on matters of common political concern. Essential to democracy is the argument (here Schmitt draws upon Rousseau's *Du Contrat social*) that the real will of outvoted minorities is in fact identical with the general will, as and when it is expressed in the will of the majority.<sup>294</sup> In principle, democracy therefore supposes that political harmony will reign when authority comes from those over whom it is exercised, that is, when rights of control are fully entrusted to those who are to be controlled.

These democratic ideas concerning equality and unanimity have profoundly subversive implications for liberal parliamentarism - or so Schmitt argues. Obviously, the characteristic yearning of democracy for homogeneity and (restricted) equality contradicts the liberal, parliamentary emphasis upon the (initial) diversity of social interests, and therefore upon the probable controversy and disagreement among citizens and their representatives. Less obviously, democracy confronts parliament as an unnecessary and outmoded institution. (Schmitt particularly directed this point at the Weimar constitution which, in his view, contained a self-contradictory mixture of arguments for liberal and democratic principles, for the Reichstag and the Reichspräsident.) According to Schmitt, the democratic idea supposes that it is the assembly of citizens, and not parliamentary representatives, who enjoy the ultimate prerogative of deciding and altering laws. Democracy further supposes the possibility of an identity of the governed and the governing, of those who command and those who obey.<sup>21</sup> This supposition becomes especially evident in a crisis situation when, according to the democratic principle, the people's sovereign will should hold sway, regardless of the constitutional framework or the decisions of parliamentary representatives. It is a short step from this claim to an anti-parliamentary conclusion: Since the state can and should become identical with the popular will (through devices such as elections and referenda), the institutional separation of the state and civil society - as well as the equilibrating role of parliament - become redundant. Democracy views undivided state power as a natural and healthy consequence of the growth of active citizenship among equals. It destroys the anti-political hopes of classical parliamentary liberalism.

## **The Total State**

The growing victories of democracy over parliamentary liberalism reinforce Schmitt's conviction that the age of parliament is coming to an end. Under pressure from the accelerating push for greater democracy, the state, in responding to social demands, begins to absorb civil society into its bureaucratic structures. The classical liberal separation of the state and civil society is destroyed, and replaced by the total state.<sup>22</sup> In several respects, this argument is less than convincing. Schmitt's claim that there is a symbiotic relationship between democratic principles and total state power is highly questionable.\* His thesis that democratization - in the sense of popular power - stimulates the growth of the total state also fails to anticipate fully the ways in which democratization stimulates the renewal of the cleavage between the bureaucratic state and civil society.<sup>23</sup> He merely expresses concern that the growing influence of organized social powers within the state may destroy or weaken its capacity to govern.<sup>24</sup> Faced with that threatening possibility, he emphasizes the exciting political implications of the loss of identity and independence of civil society. The collapse of civil society into the total state (potentially) destroys parliament in its classical liberal form. It becomes an empty apparatus situated in the shadows of state power.<sup>25</sup> The merging of civil society into the total state also (potentially) dissolves the liberal illusion - here Schmitt attacks Otto von Gierke's theory of association, as well as Figgis, Laski and the English pluralists<sup>26</sup> - that the State, as the servant and guarantor of civil society, is merely one association among others. Thanks to the emergence of the total state, political power makes a comeback and, Schmitt hopes, this in turn will stimulate awareness of the essential principle of politics: the ability to distinguish between friend and enemy.

Summarized briefly, Schmitt's argument is that the political world is a pluriverse, a dangerous jungle of self-interested partnerships, shifting tactical alliances, open disagreements and outbreaks of violent conflict. These specifically political phenomena are a reflection of the fact that human beings are dynamic and dangerous creatures who are often driven, by force of circumstances, to commit devilish acts.<sup>27</sup> Those who rule through the state are consequently forced to recognize that, at home and abroad, they are always confronted by alien others, by strangers with whom extreme and violent conflicts are possible and indeed likely. In the sphere of politics, the liberal parliamentary attempt to sublimate political enemies into economic competitors and debating partners makes no sense at all. The openness and discussion principles of parliament cannot substitute for the friend-enemy principle of politics. In politics, only fools suppose that they can treat their enemies as honest debating partners, peaceful competitors or adversaries in need of tolerance, understanding and compassion.

Those who are politically wise bear in mind the constant possibility of deception, cunning and violent opposition from their opponents. They know that armed conflict against pre-defined enemies - the attempt to neutralize or eliminate them physically- is the ultimate political event. They also know that the state should be the sovereign entity - sovereign in the exact sense (here Schmitt draws upon Bodin's classic definition) that those who rule through the state are required, in an emergency or exceptional situation (*Ausnahmezustand*), to make decisions about what is to be done, including what is to be done against the enemies of the state. 'Sovereign is he [sic] who decides on the exception.'<sup>28</sup> Concretely, this means that to those who rule politically belongs the *jus bd/i*. They enjoy the unlimited right to define the domestic or foreign enemy, as well

as to fight and destroy that enemy with all the available resources of state power. Political power confers upon its holders an awful prerogative: the unrestricted power to wage war and, hence, to ‘publicly dispose of the lives of human beings’<sup>29</sup>

Under the umbrella of sovereign political power, Schmitt observes, there remains room for the existence of independent power groups, such as businesses, churches, trade unions and parliaments~ Schmitt denies that the total state is totalitarian. But he emphasizes that lesser, subordinate associations and institutions, including parliament, can exist legitimately within the total state only on the condition that they do not endanger the established political order. The total state should be considered ‘the highest entity, not because it dictates omnipotently or subjugates all other entities, but because it decides, and hence within itself can hinder all other antagonistic groupings ... here it exists, the social conflicts among individuals and social groups can be decided in such a way that order - a normal situation -prevails.<sup>31</sup> This conclusion makes clear that the liberal doctrine of parliamentary sovereignty has no place in the total state. According to Schmitt, the ability to act effectively in an abnormal situation declines as the number to be consulted increases. Since parliaments attempt to deliberate and decide by means of clumsy and time-consuming group assembly and reasoned agreements among conflicting partners, ultimate political power is best invested in a single pair of agile hands.<sup>32</sup> In normal times, no doubt, parliament can still legitimately debate and decide matters of lesser political importance. In the luxury of quiet times, it may also function as a forum in which sociopolitical interests can be galvanized into a ‘supra-party will’, which in turn secures the unity of the state and its constitution. But Schmitt insists that when the political stability of normal times disappears, and

push comes to shove, parliament - and all other subsidiary institutions - must render their obedience to those in charge of the state. In accordance with the Hobbesian 'protection-obedience axiom'<sup>33</sup> members of parliament and their constituents must recognize that the price of protection from enemies at home and abroad is unconditional obedience to the sovereign state authority.

### **First Principles of Parliament?**

Even when summarized so briefly, Schmitt's criticism of parliament is impressive and challenging. It raises questions of fundamental importance to a democratic theory of civil society and the state. It challenges some basic postulates of the European parliamentary tradition. And its frank defence of the sovereignty of the political is - or should be - disquieting for anyone who values such parliamentary customs as open deliberation and non-violent agreement. Schmitt's impressive rejection of parliamentarism nevertheless remains unconvincing. It is crippled by three decisive weaknesses, which arguably derive from Schmitt's peculiar - metaphysical - method of analysing the origins, development and decline of parliament.

Schmitt's strategy for criticizing parliamentarism rests initially on an attempt to historicize parliamentary discourse - to view it as the product of liberal attempts to depoliticize the modern world. On that basis, Schmitt, the metaphysician, attempts to strip away the appearances surrounding parliament and, thus, to reveal and explain its essential nature. This unmasking of parliamentary phenomena is attempted by enquiring after its First principles. All important institutions, Schmitt

says, rest upon certain characteristic or essential ideas - upon what Montesquieu called the principle of a governmental form.<sup>34</sup> These essential principles of an institution can be uncovered through careful and systematic reflection upon what has been said and written about it. Thus, Schmitt attempts to divine 'the ultimate core of the institution of modern parliament'<sup>35</sup> by carefully reflecting upon the writings of its staunchest defenders (Burke, Bentham, Guizot, J.S. Mill) who lived through the golden age of parliament. These essential principles of parliament, discussed above, are not to be confused with 'practical' or expedient arguments in its favour. Nor are they necessarily identical with the actual day-to-day functioning of parliament; indeed, parliament can stray from its own specific principles, even to the extreme point of assuming a form which contradicts them and renders them passe.

Schmitt's metaphysical account of the essential principles of parliament is unusual, considering that the study of parliament -following Maitland's nineteenth-century defence of the 'pedestrian method of description' - has been conventionally pursued through narrowly empirical methods. It is nevertheless vulnerable to the simple, non-empiricist objection that its criteria of validity are not specified, but *assumed by* Schmitt to be true. That assumption, in turn, is vulnerable to the more consequential objection that Schmitt's method of grasping the essentials of parliament is in fact only one - necessarily limited and biased -method among possible others. Like all other approaches to the study of parliament, Schmitt's rigorous questioning of its 'essential principles' cannot claim to be either exhaustive or unprejudiced. It rather approximates a form of ideal-typical analysis (in the sense of Max Weber). In other words, it is better viewed as one particular account of parliament which rests upon simplifying conceptual abstractions, and which therefore selectively, that

is, one-sidedly, scrutinizes and emphasizes only *some* of the characteristic features and predicaments of parliament.

The (unacknowledged) one-sidedness of Schmitt's interpretation is evident in several ways: first, in its striking disregard of the pre-liberal history of parliament; in its failure, secondly, to spot the wide gulf between the liberal principles of openness and discussion and the actual functioning of nineteenth-century parliaments; and, finally, in its blind dismissal of the possibilities of democratically reforming parliament, of strengthening its power in opposition to the 'total state'. Since these three weaknesses in Schmitt's interpretation bear heavily on the issue of whether or not parliament has an important place in a contemporary theory of the state and civil society, they are~ worth examining in greater detail.

### **Pre-liberal Parliaments**

Schmitt's neglect of pre-liberal parliaments is problematic, in view of their ubiquity, their rich history and - above all - their deep continuity with parliaments in the age of liberalism and beyond. Parliaments may be broadly defined as assemblies of decision makers who consider themselves formally equal to one another in status, and whose authority as members of parliament rests on their claim to represent a wider political community. Parliaments in this sense first developed in the field of high tension between the public power of feudal monarchs and the cluster of private interests represented by the estates of nobility, clergy, peasantry and burghers. The dualism between monarchs and estates - which developed nowhere else in the world, and was the forerunner of the polarity of state and civil society of the early modern era - is basic to understanding the origins of European parliamentary assemblies.<sup>37</sup>

So far from being absent in Europe before the era of modern liberalism - as Schmitt implies by his silence - parliamentary assemblies appeared at the end of the twelfth century, flourishing thereafter, at one time or another, throughout the British Isles and continental Europe west of Russia and the Balkans.\*\* Parliaments superseded the traditional medieval assemblies (such as the German *Hoftage* or English *witanagemots*), which had functioned mainly as loosely organized, ad hoc consultative bodies summoned by the monarch for the purposes of seeking their counsel or opinion, or publicizing among the monarch's subjects special events, such as dynastic marriages, international treaties and new judicial and legislative measures.<sup>38</sup> In contrast to these medieval assemblies, parliaments such as the Spanish *cortes* and the French *parlement* (or *par/amen turn*) met more frequently and regularly, and also functioned as both consultative and deliberative bodies. Especially when the cohesion and influence of estates increased, and when at the same time government typically assumed the form of the *Ständestaat* - a monarchy ruling over a society dominated by orders - parliaments became a vital intermediary between monarchic rulers and the (elected or appointed) representatives of the most privileged estates, who sought to define and defend matters of concern to the whole 'realm'.

These early European parliaments were by no means weak or intermittent. Not only the English parliament - often assumed to be the unique example of a powerful representative assembly - but nearly all continental parliaments exercised considerable powers of granting taxes, participating in legislation and determining the justice of matters as diverse as succession and foreign policy. Throughout Europe, monarchs could rarely impose taxes without the consent of their parliaments, which also very often collected these taxes through their own agents and

treasuries, and prescribed how they should be spent. Parliaments also exercised considerable powers of initiating legislation (for instance, in the form of bills that became statutes upon receiving royal assent). They investigated alleged injustices and illegal acts committed by monarchs or their officers, and enforced the principle that grants of supply be conditional upon the monarch's redress of these grievances within the realm. These parliamentary powers of taxation, legislation and litigation were reinforced, especially in times of crisis, by the exercise of other prerogatives, including the conduct of foreign policy, the settlement of succession to the throne, the guarantee of treaties, partitions and settlements, and the appointment of the monarch's advisers and ministers.

By ignoring the long and complex history of these pre-liberal parliaments, Schmitt's theory of the rise and decline of parliamentarism appears less plausible and less distinctive than at first sight. In spite of its unorthodox theoretical assumptions, it evidently stands within a hoary tendency among German political and legal thinkers of intellectually denigrating the history of parliamentary assemblies and (unwittingly) siding with the monarchs and state-builders who tried to suppress them.<sup>39</sup> It also overlooks the deep continuities between liberal parliaments and their medieval predecessors. Important differences no doubt divide them. The earliest parliaments convened less regularly, and often according to the whim or will of the monarch. Their proceedings - in contrast to those of their bourgeois-dominated counterparts of the liberal era - were most strongly influenced by the nobility and clergy (who claimed to represent the entire realm, including those interests unrepresented or unsummoned to the assembly). Moreover, the earliest parliaments rarely defended their positions through explicit political theories - such as those of the liberal variety analysed by Schmitt -

instead basing their claims upon ancient customs and privileges, which they doggedly refused to modify. And the earliest parliaments were forged in the struggles between monarchs and estates in the era of the *Ständestaat*, whereas liberal parliaments, as Schmitt points out, operated as a bridge between a bourgeois civil society and a constitutional nation state.

Notwithstanding such important differences, medieval and liberal parliamentary assemblies are links in the same nearly unbroken historical chain. Parliament is not a specifically liberal-bourgeois invention; and pre-liberal parliaments are therefore not merely of antiquarian interest. It is virtually impossible to determine the point in time where the older parliaments pass over into their nineteenth-century counterparts. Contrary to the impression left by Schmitt, liberal parliaments by no means held a monopoly on the principles of openness and deliberation. Pre-liberal parliaments sought equally to transform arbitrary, arcane and violent political decision making into negotiated policy agreements founded on open deliberation and peaceful conciliation among (potentially) conflicting interests. Schmitt's claim that the suspicion of political power was a unique trait of liberal parliamentarism is also unfounded. By standing on ancient customs, rights and privileges - a tactic not unknown to nineteenth- and twentieth-century assemblies - preliberal parliaments raised commonly shared grievances about a wide range of matters, from the environmental damage caused by the monarch's animals to forcible military recruitment and the excessive labour performed by the peasantry. And especially during the period of absolutism, these older parliaments also attempted to resist the growing tendency of monarchical governments to decide arbitrarily and without regard for their subjects' wishes. In this way, they served more than the particular interests of the

dominant estates. They also acted as a counterweight to petty tyranny and absolute government, thereby keeping alive the spirit of liberty and constitutional government commonly associated with nineteenth-century liberal parliamentarism 40

### **Parliamentary Government as Utopia**

To emphasize the deep historical continuities of European parliaments is not to fall victim to a blindly Whiggish interpretation of parliamentary history.<sup>41</sup> The Whig image of mettlesome, refractory parliamentarians struggling in dark times to establish a parliamentary opposition, which subsequently undermined absolutist monarchies and set nineteenth-century nation states such as Britain and the Netherlands on the high road to full parliamentary democracy, is misleading in several respects. The field of vision of pre-liberal European parliaments was narrowed constantly by the self-interested demands of the estates which dominated their proceedings; well into the nineteenth century, as Ostrogorski remarked of Britain, parliamentary politics remained ‘the pet hobby of a select group, the sport of an aristocracy.’<sup>42</sup> Looked at from the more cynical standpoint of monarchs and state-builders, these European parliaments also frequently served as a convenient, even ingenious political instrument for regularizing supply by consent, and for making laws more firmly binding upon those very same agents who were seeking to formulate these laws.<sup>43</sup>

The degree to which rational, independently spirited parliaments ‘flowered’ or ‘came of age’ during the heyday of nineteenth-century liberalism is also wildly exaggerated by the Whig view - to which

Schmitt's account of liberal parliamentarism is surprisingly close. According to Schmitt, liberal parliaments were structured by the principles of openness and deliberation. Parliamentary deliberations consisted of the free exchange and competition of opinions among speakers and listeners bent on persuading each other of the truth of their respective views. There are two problems with this view.

In the first place, it defines liberal parliamentary principles too narrowly. As Hermann Heller originally pointed out against Schmitt, the intellectual basis of liberal parliamentarism is 'not the belief in public discussion as such, but belief in the existence of a common basis of discussion and *fair play* for an opponent, with whom one seeks to reach agreement under conditions that exclude naked force'.<sup>44</sup> Secondly, Schmitt's view substitutes the alleged 'essential principles' of liberal parliament for its actual (and rather different) patterns of operation. On that basis, it misunderstands the status of the principles of openness and discussion, which functioned less as 'essential principles' and more as a 'utopian' ideal at odds with the reality it claimed to defend.

Recent research has indicated that the conventional image of the freely deliberating parliamentarian - the private member of judicious temper who usually voted as he freely willed without incurring more than the momentary displeasure of his party leaders - is contradicted by the pro-government moderation, vested interests and patterns of sectional voting which actually dominated liberal parliamentary procedures and outcomes. Certainly, between the 1832 and 1867 Reform Acts in Britain - the supposed golden age of *the* model parliament - the monarchy lost its unfettered ability to choose ministers. Government policy on various occasions was also overruled or amended by parliament; and the removal of ministers or even changes of government sometimes depended on the

voting preferences of members of the House of Commons.<sup>46</sup>

Yet these trends do not prove beyond doubt that parliamentary proceedings approximated to Schmitt's essential principles. The geographic distribution of parliamentary constituencies remained highly skewed. Rotten boroughs had by no means been eliminated; the franchise remained highly restrictive; and the aristocracy continued to hold great political sway in parliament.<sup>47</sup>

The conventional image of the golden age of British parliament also exaggerates the degree to which parliamentarians (in the House of Commons) voted independently of civil society or their party. This image is sustained by focusing attention on rebellions of private members against their parties during the dramatic and highly emotional issues of that time - such as the extension of the suffrage and Irish Home Rule. When this highly selective emphasis is supplemented with consideration of the normal patterns of voting behaviour on the settled issues, on the more specific, humdrum questions which occupied most of parliament's time, a markedly different picture emerges. <sup>48</sup>

Throughout the nineteenth century, governments were rarely defeated on the floor of the House of Commons. Even during the stormiest decade (1851-60), when the House was most fragmented and minority government lasted almost three years, less than a handful of amendments to government legislation was carried each year against the government whips.<sup>49</sup> This suggests that a large majority of members of parliament acted not so much out of a reasoned independence, but on the basis of a shared consensus about the aims and methods of (parliamentary) government. The conventional view - expressed by Schmitt - of the mid-nineteenth-century independent parliamentarian mistakes moderation for

independence. The genuinely independent parliamentarian was most often in a minority, and situated on the extreme wings of his own party. There was 'government by the moderate centre', rather than government by open deliberation or (as later) party government:~50 Finally, whenever intraparty disputes broke out, they typically assumed the form of sectional conflicts - an example is the ongoing struggles within the Liberal Party between radicals and moderates - while cross-bench deviations from party rule were guided less by the promptings of oratory and conscience, and far more by the (threatened) sanctions brought to bear upon parliament by various outside social power groups. Organized or rumoured sanctions against parliament were facilitated by the small and restricted constituencies, the personal relationship which existed between the member and his electors and, increasingly, by the growth during this period of political clubs, registration societies and election funding.

All this suggests the existence of a wide gap between the reality of liberal parliamentarism and its utopian self-image as a public sphere of openness and free deliberation. Schmitt's account of the age of liberalism actively denies this gap by theorizing it away; the 'essential principles' of the liberal self-image are interpreted as identical with reality itself. Not surprisingly, the subsequent history of parliament is made to follow a fatal course of decline. A lost golden age of parliament becomes the standard for tracking its subsequent decline, and declaring parliament to be a thing of the past.

## **Reforming Parliament**

The pseudo-tragic quality of Schmitt's observations on the decline of parliament provides a clue to a third negative consequence of its metaphysical search for 'essences': its failure to consider the chances of democratically reforming twentieth-century parliament, making it less a mouthpiece of arbitrary state executives and more capable of functioning as the guardian of the powerless within civil society and the state. Schmitt's argument a priori eliminates this possibility, as if parliament were destined to fulfill its historical fate by remaining a permanently crippled object of total state power.

Schmitt's diagnosis of the sources of paralysis of parliament -its colonization by organized party politics, for instance -certainly contains grains of truth. Since the early decades of this century, the task of radically reforming parliament has become more pressing - and certainly more difficult. The catalogue of complaints against parliament, although varying from one west European parliamentary system to another, has grown steadily. Parliament nowadays tends to be viewed increasingly as a rubber stamp on decisions reached elsewhere. This view often dovetails with complaints about parliament's gentlemanly pomp, ritualized debates and preoccupation with trifling details. There are also signs, strongly evident within social movements, of a growing conviction that democracy is not a matter for parliament alone, and that local-level commitments and social initiatives are preferable. These diffuse complaints against parliament are worth analysing more carefully, if only to clarify the magnitude of the task facing democratic reformers of parliament.

(a) Parliamentary proceedings are normally controlled by well-organized party machines, and especially by their parliamentary executives.

Executive stranglehold over parliamentary proceedings originated in great crises, especially war,<sup>51</sup> and has for some time been reinforced by the compromise party system (essay 4). This trend towards a government-managed parliament is strongly evident in Britain, where the executive has virtually unfettered control over parliamentary proceedings. In matters of government expenditure, for example, parliament has no means of examining the amount or sources of government borrowing or the detail of spending estimates. It is procedurally impossible for parliament to propose increases in a department's estimate and proposals of reduction are always treated as issues of confidence. This kind of executive control is maintained by such practices as the use of royal prerogative in matters of war or signing treaties; the wide powers of prime ministerial patronage; and collective cabinet responsibility, which serves to shield the executive against criticism from any direction. Executive control is also maintained by informal executive pressures - from the friendly glass of whisky to offers of promotion - brought to bear against backbenchers, whose party loyalty and willingness to be pliable are increased by their relatively high chances of advancement due to the size of government. Consequent upon such practices, the House of Commons is reduced to a consultative body which registers the results of general elections and passes virtually all the legislation placed before it.

(b) Conventional parliamentary procedures or formal constitutional arrangements often reinforce the grip of strict party discipline and of executive domination<sup>52</sup> These procedures range from heavy restrictions on backbenchers' rights to speak and the excessive use of closure and the guillotine to restrict debate, to the habit of spending too much time on discussing the inevitable, and far too little on the 'pre-legislative' and 'post-legislative' stages of legislation. The general decline of the control

functions of the French parliament since the 1958 constitution provides one illustration of this broader trend. The 1958 constitution -certainly when compared with its 1946 predecessor - virtually gags parliament. The government indirectly fixes its agenda through the process for determining priority; it can also prevent parliament from organizing debates or passing bills without government assent. Furthermore, in matters of legislative and budgetary procedure, parliament is effectively bound and gagged. The well-known blocked vote procedure, for example, permits the government in legislative discussions to demand a single vote on the complete package of texts (including the amendments it has accepted), thereby squashing all discussion and all voting on its particular articles.

(c) The intervention of various media of mass communication between party-political leaders and ~the constituents of civil society has reduced the level of visibility of parliament in the realm of official politics. Heavy media coverage of the main party conferences and the privileging of leadership through television and radio interviews and addresses are contributing factors. So also are press reports based on the unattributed back-door leaks and briefings of the 'lobby system', and kite-flying - the unacknowledged spreading of rumours or disinformation by governments to test the waters of public opinion. All these factors have the combined effect of shifting the visual centre of official political debate from the parliamentary chamber to the extra-parliamentary realm. This process is accelerated by the proclivity of key government figures to regard parliament as a waste of time, and by their corresponding habit of withholding their opinions in the name of 'official secrets', 'parliamentary privilege' and other versions of the doctrine of *raison d'etat*

(d) The growing scope of state power has ensured that parliament is swamped with business, and surrounded by apparatuses whose business is scarcely known, let alone controlled by parliament. Schmitt's observation that parliament threatens the constitutional order and unity of the state consequently needs to be reversed. In contemporary west European democracies, parliament is besieged by the massive growth of unaccountable and invisible government.<sup>53</sup> The practice of state secrets, *Arcana rez publicae*, a central theme of political writing from the sixteenth century onwards, is again becoming a central ingredient in the operation of state power. A plethora of invisible and unaccountable sites of political decision making - state-owned and state-subsidized industries and services, nuclear regulatory and processing bodies, quasi-governmental authorities, secret police and 'national security' organs conducting covert intelligence and military operations - outflank the parliamentary forum. There are even bizarre incidents, in which parts of the elected executive branch of the state systematically disinform parliament, snoop on their potential rivals (Watergate), or conduct secret junta-like operations (the Iran-Contra affair) behind the back of parliament.<sup>54</sup> All of these developments suggest that political decision-making operates increasingly in the shadowy, unelected zones of state power, and that the historic (if never completed) transformation of European absolutist states into constitutional parliamentary states is nowadays undergoing a reversal.

(e) During the second half of the twentieth century, there has been a considerable growth of supranational policymaking and administration. A considerable number of parliamentary choices are consequently either limited or foreclosed by a state's membership in military arrangements such as NATO and other intergovernmental organizations such as the

UN, the IME and the EEC, as well as by the investment decisions of transnational corporations. Especially in matters of foreign policy, these supranational trends shift decision making power away from parliament. They increase the level of electoral unaccountability and secrecy of government operations. And, since supranationalization encourages particular governments to allege the necessity of political compromise with other governments, it leads governments to formulate 'flexible' negotiating positions rather than firm decisions, thereby discouraging parliament from 'interfering' in supranational negotiations.

Each of these developments subjects parliament to threatening pressures. They also indicate that parliament would clearly benefit from some drastic repairs and radical innovations which go beyond tinkering with its committee systems, televising its proceedings or improving its cost-effectiveness and internal efficiency. Certainly, there are *ineradicable* limits upon parliament's ability to fully and effectively supervise the manifold operations of state institutions. Such limits are inherent in the division of labour between the law-making/supervisory functions of parliament and the state agencies which are supposed to interpret and implement its decisions. These limits are also inherent in the manifold opportunities for both social power groups and state administrators and workers to legitimately redefine, postpone, evade or even quash parliamentary directives. Limits on the 'sovereignty of parliament' are inherent in a system in which power is dispersed and divided democratically between the state and civil society. To suppose that the power of parliament could become, in the words of Edward Coke, 'so transcendent and absolute, as it cannot be confined either for causes or persons within any bounds<sup>94</sup>~' is therefore to reach for something never fully attainable. The doctrine of parliamentary sovereignty is, and shall

always remain, an elusive utopia.

Parliamentary reform is none the less a pressing and vital condition of the effective and open government so central to democratic politics. Several possible types of reform - corresponding to the developments threatening parliamentary power - can be mentioned here briefly<sup>57</sup>

The excessive grip of party machines on parliament could be weakened by giving institutional recognition to the limits of political parties and by various other changes in the party system (outlined in essay 4). Executive domination of parliamentary proceedings might be curtailed by the regular election of ministers by the governing parliamentary party or coalition, by restricting the powers of prime ministerial patronage, loosening the practice of collective cabinet responsibility and (in the case of Britain) abolishing the use of royal prerogative to declare war, sign treaties or to reshape or dissolve parliament. Other improvements could include more convenient sitting hours, better office accommodation and research and assistance facilities. Changes in the timing and geography of parliamentary procedure - equalizing the speaking rights of parliamentarians, particularly on urgent and topical debates, and allowing backbenchers to concentrate on the pre-legislative and post-legislative stages of law-making - would also assist the process of strengthening parliamentary control of the state. These changes, in turn, would likely heighten the level of serious media coverage - and public recognition - of parliament. More open media coverage of parliament might also result from the lifting of governmental controls upon parliamentary procedures. Of special importance would be the abolition of the 'lobby system', various forms of which presently function to limit publicity surrounding potentially controversial developments in favour of selected journalists and government policies. The (further) development of independently-

minded, publicly accessible standing committees - of the legislative, investigatory or advisory kind anticipated in the Bundestag and American Congress - could allow more effective scrutiny and regulation of both the executive and the 'invisible' branches of the state apparatus. Invisible state power might also be rendered more publicly visible by transforming the upper house (of bicameral systems) into a 'social parliament', an advisory chamber comprising the elected representatives of the functional interests of civil society<sup>58</sup> Finally, the expanding economic, political and military power of supranational organizations might be subjected to greater parliamentary supervision through various mechanisms. These could include strengthened standing committees, closer co-operation among national legislatures and, in turn, their co-ordination with supranational parliaments - such as the European parliament - whose strengthening, contrary to some expressed doubts, might well contribute to the reviviscence of their national counterparts.

### **Dictatorship and Parliament**

The viability of proposals for democratizing parliament and strengthening its role within the state clearly depends on factors such as the particular national and historical contexts of the parliament in question. It also depends on the inner coherence (and unanticipated side-effects) of the reform proposals themselves, and, above all, on the degree of support they enjoy within civil society, the party system and the state. The viability of radical reform proposals further depends upon the ability of their protagonists to successfully resolve the possible dilemma that

radical parliamentary reforms may work, in the short run at least, in favour of anti-democratic parties and social forces.<sup>59</sup> Finally, their credibility depends on meeting Schmitt's fundamental challenge on the issue of political sovereignty. For if, as Schmitt claims, the ability of a limited number of individuals to find friends and deal swiftly with enemies in an abnormal situation is the essence of successful political leadership, then executive statepower must ultimately override parliamentary deliberations, as well as whatever rights might be enjoyed by its constituents in civil society.

The crucial political issue, according to Schmitt, is who shall decide in the event of a state of emergency (*Ausnahmezustand*). He was in no doubt that such crisis situations could be resolved only by the decisions of shrewd, strong-willed and well-armed political leadership. Sovereignty resides neither in parliament nor the constitution and its laws, but with the individual (or small group) who decides under pressure. In emergency conditions, when time and events appear to be out of joint, and when political nervousness signifies weakness and emboldens opponents and subordinates, neither slow-moving deliberative assemblies nor anonymous constitutions are capable of deciding. Only political leaders can defend the state and its laws effectively - without delay and without appeal.<sup>60</sup>

Schmitt qualifies this point by distinguishing two fundamentally different forms of sovereign leadership.<sup>61</sup> 'Sovereign dictatorship' (of the kind evidenced in Marxism-Leninism, but traceable to eighteenth-century Enlightenment thinkers such as Mably and Sieyès) is driven by its antipathy to the status quo. It struggles to overthrow the old constitutional order, and to establish a new and more 'authentic' political-legal order. The ultimate aim of sovereign dictatorship is 'to create a condition which

makes possible a constitution that it regards as a true constitution'.<sup>2</sup> It acts in the name of the principle of popular sovereignty and on behalf of its subjects, who are treated as little more than a 'formless *pouvoir constituant*'. Sovereign dictatorship is supposed to be a temporary affair, lasting only until such time as the popular will is capable of expressing itself freely or, in the Marxian version of socialism, until the transition to pure communist society is effected.

Distinct in principle from this first form of dictatorship is the commissarial dictatorship'. Unlike the sovereign dictatorship, it declares itself the friend of the established constitutional order, its aim being to combat a crisis and to re-establish normal conditions. While a commissarial dictatorship is only temporary - its tenure is limited to the duration of the crisis - this does not mean that its hands are tied, or that it is weak-willed or faint-hearted. The commissarial dictatorship must be as powerful as necessary. Although it is the defender of the *pouvoir constituant*, and hence cannot alter either the existing government or the laws or the constitution, it is entitled to invoke all measures deemed necessary for the restoration of order, including the suspension of parts of the constitution. When the crunch comes, the commissarial dictator must be intolerant of associations within civil society, regarding them as 'worms within the entrails' of the body politic (Hobbes). Sovereign power must be supreme. It must be granted the plenitude of power and cry, with Dante, that the *maxime unum* is the *maxime bonum*. But after completing its mission, the commissarial dictatorship is relieved of its post by the body -parliament, for instance - which governs in normal times. The dictatorship is absorbed back into the political-legal order, in effect ceasing to exist - until the next crisis appears.

Schmitt's careful distinction between two models of dictatorship is

intended to distinguish between revolutionaries who seek to overthrow the existing order and constitutionalist proponents of the status quo. A nation state, he argues, can have 'either a sovereign dictatorship or a constitution; one excludes the other. In the circumstances of Weimar, this argument was directed against reactionary monarchists, revolutionary communists and others opposing the constitution, and in favour of the supporters of the Weimar republican constitution. But this argument also lent support to proposals for resolving political crises through commissarial dictatorship. Consistent with his chronic fear of political disorder and his preference for the established political and legal order, Schmitt insists that commissarial dictatorship, and not parliamentary decision, is necessary for resolving political crises. Under emergency conditions, citizens must confront the state in awe and fear; the presumption in resistance is always firmly against them. The price of protection from enemies at home and abroad is their unconditional, if temporary, obedience to the dictatorial powers of the sovereign political leadership.'<sup>4</sup>

Schmitt's defence of commissarial dictatorship against parliament is elaborate, daring and crisply argued. Yet it provides no counter-argument against three serious doubts. Each bears on the problem of despotic power, and parliament's role in reducing its likelihood.

First, an emergency situation (whose existence, duration and termination are defined as such by the sovereign political executive!) usually aggravates the difficulties of government by parliament.<sup>5</sup> Schmitt's defence of commissarial dictatorship, resting as it does on a mixture of cynicism and stinging criticisms of the 'weakness' of parliament, is potentially a self-fulfilling claim. In theory, it is tautological, and therefore self-justifying. Schmitt himself recognized that his concept of

sovereignty was structurally akin to the theological idea of a miracle. This admission is revealing. For since emergencies, like miracles, may take place in an infinite number, and since their recognition as such is always a hotly contested business, and therefore has to be actively authenticated by a particular power group, it follows, logically, that the decision that a particular context is in fact an emergency situation must be made by the very same sovereign power group which Schmitt supposes only *reacts* to emergency situations. Schmitt's defence of commissarial dictatorship necessarily traps itself within the chain of reasoning of Joseph de Maistre's *Du Pape* (1821): 'There can be no human society without government, no government without sovereignty, no sovereignty without infallibility.' In practice, Schmitt's defence of commissarial dictatorship also renders rule by decree ever more likely and necessary. The relegation of parliament to a subsidiary or negative role not only assures the domination of the executive and bureaucratic agencies of state power. It also accelerates the decline of parliament's influence on public opinion, and this, in turn, usually magnifies the attraction of anti-democratic propaganda and authoritarian parties and movements promising a political order without 'obstructive' or 'weak-minded' parliaments.

Secondly, Schmitt's assumption that the commissarial dictator will remain a *pouvoir neutre*, a non-partisan power standing temporarily over and above parliament and other conflicting social and political groups, is unconvincing. Schmitt indicates that the powers of the commissarial dictator can and ought to be limited to enacting measures (*Massnai4men*) of a factual kind.<sup>66</sup> The dictator is supposed to be the honest guardian of the status quo, and to have no legitimate powers of initiating legislation or administering justice.

In the face of the well-known temptations of executive power, such

assurances are glib, even provocative. Schmitt himself noted the classical Roman cases of Caesar and Sulla, both of whom violated the existing constitutions and deviated from their roles as commissarial dictators<sup>67</sup> Moreover, if, as Schmitt says, human beings are dynamic and dangerous creatures who are often driven, by force of circumstances, to commit devilish acts, then this 'rule' of human nature must also apply to commissarial dictators. The point is that the divide between commissarial and sovereign dictatorships - assumed by Schmitt to be fundamental - tends always to be paper-thin. Temporary dictatorships have a nasty habit of becoming permanent arrangements. Since they are always pressured by potential (real or imagined) opponents, as well as being tempted by weapons of power ranging from disinformation and demagogy to assassination, torture and imprisonment, they very often prepare the way for sovereign dictatorships. Commissarial dictatorships, to borrow a phrase from Bismarck, are often the 'early fruit' (*Vorfrucht*) or precursors of sovereign dictatorships. They greatly strengthen the military and police bases of state power; they accustom citizens to dictatorial conditions, encourage them to act in self-serving and toadyish ways; and they enable the sovereign dictatorship to justify itself by referring to its predecessors.

Thirdly, Schmitt's insensitivity to the dangers of permanent dictatorship - his inability to foresee the rise of totalitarianism - is evident in his implied defence of already existing (and long-lasting) sovereign dictatorships. Following the Hobbesian equation that states ought to provide security in exchange for their subjects' obedience, Schmitt always regarded deference to a legally constituted state authority as a fundamental precept of political life/<sup>94</sup>~ Logically, this precept holds true even for regimes secured by a sovereign dictator. Schmitt's theory of political sovereignty takes its stand upon the beatification of order. It does not ask questions

about the purposes for which order is maintained. It cannot conceive of the illegitimate - as distinct from illegal - conquest or deployment of state power. It thereby places itself at the disposal of the political group which happens, at any given historical moment, to control the state. Whoever rules through law is right or, as Schmitt liked to say: *Auctoritas, non veritas facit legem* (Authority, not virtue, makes the law). The 'essence' of a constitution, even that established by a sovereign dictatorship, is inviolable. This being so, constitutional amendments must be strictly limited - and wholesale constitutional changes, including those aimed at restoring a measure of social and political pluralism, rendered illegal.

### **Parliament and Socialism**

Schmitt's blindness to the dangers of absolute power is emphasized here in order to suggest an answer to his fundamental challenge to all supporters of the kind of democratic parliament defended in this essay. Since the original principles of parliament are exhausted, Schmitt argues, new ones must be invented in its favour if it is to be considered a viable institution: 'whoever still believes in parliamentarism must at a minimum propose new arguments in its defence.'<sup>70</sup> The reply suggested by this discussion of parliament is old-fashioned, but thoroughly modern:

Open, active parliaments are a *sine qua non* of the survival and flowering of principles as such - at least, a genuine plurality of them. In the absence of a civil society independent of the state, and their parliamentary defence and mediation in turn, a plurality of principled forms of life is impossible.

No doubt, parliament alone can never guarantee the survival of democracy in this sense. The strongest assembly cannot rise above a deeply hostile society or state. Moreover, the pluralizing functions of

parliament can be supplemented by courts of law, the press, and trade unions and other independent social power groups. And it is also true - as Bagehot's classic essay pointed out<sup>71</sup> - that parliament can have a variety of functions. Nevertheless, two sometimes tensely interrelated functions of parliament are of special importance to democracy.

First, a democratic parliament is an indispensable means of aggregating, co-ordinating and representing diverse social interests. This integrative capacity of parliament has often been misunderstood - by the Marxist tradition especially - as a mechanism of bourgeois class rule. Parliament *may* become the political means of class domination - 'simply a machine for the suppression of one class by another'<sup>72</sup> But a cursory familiarity with the long history of European parliamentary assemblies suggests that there is no *essential* relationship - or even 'elective affinity' - between parliament and bourgeois domination. The effects of parliamentary forms are not necessarily produced by the forms themselves. For this reason, the 'sovereignty of parliament' is a necessary - if tentative, and never attainable - utopian fiction within democratic systems.\*\*\* For only when there is a supreme and *accountable* political body - a national parliament -~ can *final* decisions be taken which fairly and openly balance and transcend the particular, conflicting group relations of civil society. No 'natural' harmony among social groups can be assumed. And there is never a 'natural' equilibrium between society and the state. There is a constant danger in a democratic system that party competition, freedom of association, the rule of law and other democratic procedures will be used to defeat democracy. Hence, parliament is an indispensable mechanism for anticipating and alleviating the constant pressure exerted by social groups upon each other, and upon the state itself. And, when faced with recalcitrant or power-hungry organizations in crisis situations,

parliament becomes an indispensable mechanism for ordering the suppression of those groups committed explicitly to destroying pluralism.

The integrative function of a democratic parliament is not its only possible role. Parliament is also a vital means of checking the secretive or unaccountable operations of state power, and hence, of dampening the desires of would-be dictators - making it difficult or impossible for them to govern without open debate and organized opposition to state policies. The oppositional role of parliament is based on the (originally medieval) premise that there is no incompatibility between effective government and effective opposition. It is also based on the premise that opposition to state power can be effective only when the special privileges traditionally monopolized by those who rule - immunity from prosecution, rights to freely criticize and guaranteed pay and political status - are shared with their opponents.

Parliament's (potential) oppositional function is by no means obsolete, as Schmitt supposed. 'Constant experience shows us that every person invested with power is apt to abuse it, and to carry that power as far as it will go.'<sup>73</sup> This remark by Montesquieu remains as pertinent today as ever. Probably more so, considering the alarming growth during the twentieth century in the range and number of sophisticated and macabre weapons available to the power-hungry. Montesquieu's maxim certainly applies as strongly to democratic socialists as to their opponents. Socialists seek to radically alter the existing distribution of power within and between the state and civil society. They are therefore certainly to be confronted with various acts of resistance and sabotage and, hence, with the temptation of overcoming such obstacles by accumulating ever more political power. The lust for power is polymorphously perverse. It knows no political affiliation. It can cripple and peacefully undermine its

protagonists, in which case its subjects are lucky. But more often than not - the disastrous twentieth-century history of socialism in power reminds us - the lust for power easily blinds its protagonists. It often catapults them into ecstasy - and sometimes into the highest bloody rapture.

Actively functioning parliaments are a necessary condition of democratic regimes, precisely because of their capacity for provoking public debate, criticizing governments and resisting their monopoly and abuse of power. This point (emphasized by Rosa Luxemburg, Karl Kautsky and others against the Bolsheviks) is seriously neglected by the insurrectionary socialist tradition. Its condemnation of 'parliamentary cretinism' (Trotsky) has most often served as a ruse for exercising its (qualitatively worse) state variant. The same point is neglected in Lucio Colletti's well-known distinction, directed against 'the Stalinist mentality', between parliament (which could be eliminated by a future socialist state) and political and civil liberties, which are inviolable, and thus a necessary feature of socialism. 'Every socialist', says Colletti, 'must be reminded constantly that public liberties -the suffrage, freedom of expression, the right to strike - are not identical with parliament.'<sup>74</sup> This is undoubtedly true. The liberties of a democratic civil society encompass activities deeper and wider than parliament and its associated political freedoms. And yet Colletti's hint that civil and political liberties could be preserved and strengthened *without* parliament forgets their inner connection: the liberties of an active, self-organizing civil society cannot be defended without a central parliamentary assembly, which enables the particular interests of civil society to argue their case and to resolve their differences, openly, non-violently and without state repression.

There has never been a political regime which simultaneously nurtured democratic civil liberties and abolished parliament. Nor has there ever

existed a political regime which simultaneously maintained a democratic parliament and abolished civil liberties. And, so far, there has never existed a political regime in which a post-capitalist civil society was twinned with deep political freedoms and an active and vigilant parliament. To build exactly that kind of regime might be said to be one of the historic challenges facing the contemporary democratic tradition.

## Notes

\* Schmitt points insightfully to the Jacobinist potential of the doctrine of popular sovereignty (*Die geistesgeschichtliche Lage*, pp. 40-41). He argues that the nineteenth-century idea that all power derives from the people is an inverted, secularized form of the idea of divine right: the older theological belief that all authoritative power comes from God is brought to earth and replaced by the principle that the immanent source of power and authority is 'the sovereign people'. (Schmitt consistently adopted the view that all significant concepts of the modern theory of the state are secularized theological concepts' (*Political Theology*, p. 36).) The sovereign people may temporarily be incapable of recognizing that they are God, in which case - here Schmitt observes the Jacobin implications of the popular sovereignty doctrine - an enlightened minority can legitimately act as the 'temporary bearer of the people's power and authority. This part of Schmitt's thesis is compelling. However, its extremely narrow definition of democracy - which owes most to Aristotle and Rousseau - is unconvincing. It takes no account of the considerable overlaps between liberal thought (in Schmitt's sense) and the much more influential tradition of *representative democracy* - the great invention of modernity according to Hamilton and other authors of *The Federalist Papers*. In the view of a substantial number of late eighteenth and early nineteenth century thinkers such as Madison, Bentham, James Mill, Constant, J.S. Mill and Tocqueville the whole of the people cannot themselves gather in large-scale polities to regularly decide on specific issues. They saw the vital importance of an elected committee of responsible (male, property-owning) citizens, from which in turn is drawn a government of representatives, which remains dependent upon the general body of citizens through mechanisms such as periodic elections, freedom of public assembly, and unrestricted rights to publicly discuss and criticize those who govern. These representative-democratic themes clearly overlap with liberalism (as Schmitt understands it) in several decisive respects. Many representative-democratic and liberal thinkers feared the general loss of liberty that would result from undivided arbitrary government (essay 2). Consequently, they often doubted the principle of unbridled majority rule (of male property-owning citizens). Also, they viewed with suspicion the possibility of an identity between governors and governed. ('The chief merit of representative government', observed Alphonse de Lamartine in *Bien public*, is to make a country think.') Perceiving the dangers of undivided state power, many liberals and representative democrats of this period also valued parliament as the indispensable mediator between governed and governors, between civil society and the state. In short, parliament. openness and public discussion are seen by these thinkers as essential preconditions of democratic representative government - and not, as Schmitt claims (*Die geistesgeschichtliche Lage*, p. 42), as mere 'expedients' which have nothing at all to do with the essential principles of democracy. See, for example, Alexander Hamilton et al., *The Federalist Papers*, New York 1964, especially nos. 9, 14, 37; James Mill, *An Essay On Government*, Indianapolis 1953. chapters 1-6; J.S. Mill,

'Considerations on Representative Government', in *Essays on Politics and Society*, edited J.N. Robson, Toronto 1977, pp. 399-412; Alexis de Tocqueville, *De la democratie en Amerique*, Paris 1981, part 2, ch. 7, pp. 343-60.

\*\* Parliamentary assemblies of this kind first appeared, at the end of the twelfth century, in the Spanish kingdom of Leon. During the thirteenth century, they spread to Aragon, Castile, Catalonia and Valencia, to Sicily and Portugal, England and Ireland, and the states of the Empire, such as Austria and Brandenburg. During the next two centuries, parliaments developed in the large majority of German principalities, in Scotland, Denmark, Sweden, France, the Netherlands, Poland and Hungary. Nearly all of them survived until the seventeenth and early eighteenth centuries; despite the growth of absolutism, many continued to function until the French Revolution, and a few (the Swedish *Riksdag* and the Hungarian *Diet*) lasted into the nineteenth century, while the powerful Estates of the Duchy of Mecklenburg survived intact until 1918. See H.M. Cam et al., eds, *Recent Works on the Origins and Development of Representative Assemblies*, Florence 1955. More recently, see H.C. Koenigsberger, *Estates and Revolutions: Essays in Early Modern European History*. London 1971, and A.R. Myers. *Parliaments and Estates in Europe to 1789*, London 1975.

\*\*\*Here I dissent from the recent tendency of some democratic socialists to abandon altogether the utopian, but politically fertile doctrine of parliamentary sovereignty, on the grounds of its lack of 'realism'. See, for example, Barry Hindess, *Parliamentary Democracy and Socialist Politics*, London, Boston, Melbourne and Henley 1983, chapter 2. The principle of parliamentary sovereignty is certainly 'unrealistic, in the sense of being out of step with political reality. And Hindess's emphasis on the importance of extra-parliamentary struggles in the development of democratic socialism is wholly convincing. But the alternative he proposes - multiplying the centres of democratic authority within and outside the state - begs questions about their interrelationship, their likely conflicts, and therefore about the appropriate mechanisms of conflict resolution and suppression. The same difficulty surfaces in early twentieth-century pluralist and Guild Socialist theories, whose advocates normally assumed, naively, that peaceful equilibrium - and not a free for all - would result from the de-emphasis of parliamentary struggles and, ultimately, from the abolition of the state as we know it.

1. Among the best known of this literature from the first quarter of the century is: NI. Ostrogorski. *Democracy and the*

*Organisatzon of Political Parties*, London 1902; Sidney Low. *The Governance of England*. London 1904, especially chapters 4-5; James Bryce, *Modern Democracies*. London 1921; Haroldi. Laski, *The Foundations of Sovereignty and Other Essays*. London 1921.

2. This essay deals only with Schmitt's general claims concerning the twentieth-century crisis

of parliament. For reasons of space and contemporary relevance, it does not trace the ways in which Schmitt's dismissal of parliament is driven by the specifically German events of his time: the collapse of the Wilhelmine order; war and military defeat; the panicked reaction to the Bolshevik Revolution; the worker-soldier councils; the Versailles Treaty; and the permanent instability of Weimar. Nor does this essay deal with questions surrounding his writings' contribution to the destabilization of the Weimar Republic; or the extent of his collaboration with the Nazis; or his ingenious - and insidious - capacity to act as an intellectual chameleon, who literally adjusted his writings to fit in with changing social and political circumstances. These issues are discussed in Alfons Sollner, 'Jenseits von Carl Schmitt', *Geschichte und Gesellschaft*, 12, 1986, pp. 502-29; 'Carl Schmitt in Gespräch mit Dieter Groh und Klaus Figgé'. in Piet Tommissen, ed., *Over en in Zake Carl Schmitt*, Brussels 1975; Hans Barion et al., *Epirrhosis: Festgabe für Carl Schmitt*, 2 vols, Berlin 1968; Joseph W. Bendersky, *Carl Schmitt: Theorist for the Reich*, Princeton 1983; George Schwab, *The Challenge of the Exception. An Introduction to the Political Ideas of Carl Schmitt between 1921 and 1936*, Berlin 1970; Jürgen Habermas, 'Sovereignty and the Führerdemokratie', *Times Literary Supplement*, 26 September 1986, pp. 1053-4.3. See my 'Despotism and Democracy: The Late Eighteenth Century Origins of the Distinction Between Civil Society and the State', in *Civil Society and the State*, London and New York 1988, and the classic interpretation of C.B. Macpherson, *The Political Theory of Possessive Individualism*. Oxford 1962.

4. Carl Schmitt, *Der Begriff des Politischen*, München 1932, p. 58; cf. his *Die geistesgeschichtliche Lage des heutigen Parlamentarismus*, Berlin 1926, pp. 51-2; and Schmitt's interpretation of the definition (given by the Spanish conservative, Donoso Cortés) of the bourgeoisie as *una clase discutidora* (a 'discussing class') in *Political Theology, Four Chapters on the Concept of Sovereignty*, trans. George Schwab, Cambridge, Mass. 1985, pp. 59 ff

5. *Die geistesgeschichtliche Lage*, pp. 50-52.

6. *Political Theology*, p. 63.

7. *Die geistesgeschichtliche Lage*. p. 9.

8. *Ibid*, p. 12.

9. *Ibid*, pp. 43-4.

10. *Ibid*, pp. 63-77.

11. *Ibid*, pp. 6-7. See, for example. Max Weber, 'Parlament und Regierung im neugeordneten Deutschland', in Johannes Winckelmann, ed., *Max Weber. Gesammelte Politische Schriften*, Tübingen 1980, pp. 353ff.

12. *Die geistesgeschichtliche Lage*, p. 7; cf. *ibid*, p. 62.

13. *Ibid*, p. 30.

14. *Der Begriff der Justizverfassung*, Tübingen 1931 pp. 86-7.

15. *Die geistesgeschichtliche Lage*, p. 8.

16. *Über die Verfassung*. p. 88.

17. Aristotle, *Politica*, in *The Basic Works of Aristotle*, ed. Richard McKeon, New York 1968, (1280a): in democracies... justice is considered to mean equality... It (IOCS mean equality - but equality for those who are equal, and not for all).<sup>92</sup>

18. *Die geistesgeschichtliche Lage*. pp. 22, 37, 41.

19. Ibid. p. 14. Schmitt explains this point with the example of the British Empire's exclusion of three-quarters of its

subjects from citizenship: Does the British Empire rest on universal and equal voting rights for all its inhabitants? It could not survive for a week on this basis; with their monstrous majority, the coloureds would outvote the whites. In spite of that, the British Empire is a democracy' (pp. 15-16). This passage also reveals something of Schmitt's characteristic yearning for an ethnically pure and sovereign state based on the principle of *Führerdemokratie*; see Jürgen Habermas, 'Sovereignty and the *Führerdemokratie*'.

20. Or, as Schmitt would add, as it is expressed by the assumed bearers of the general will. He argues that since the democratic principle of unanimity cannot become palpable reality in large-scale polities, democracy tends to produce J

Jacobinist programmes of 'people's education', the aim of which is to rectify the citizenry, so that they can recognize their own authentic will in that of their leaders (*Die geistesgeschichtliche Lage*, pp. 36-7). This inner connection between democracy and Jacobinism explains Schmitt's peculiar (crypto-fascist) description of Bolshevism, fascism and other forms of dictatorship as democratic (ibid., pp. 22, 37, 41).

21. Compare Jean-Jacques Rousseau, *Du contrat social*, Book III, ch. xv, in Roger D. Masters, ed., *On the Social Contract*. New York 1978, p. 102: 'Sovereignty cannot be represented for the same reason it cannot be alienated. It consists essentially in the general will, and the will cannot be represented. Either it is itself or it is something else; there is no middle ground. The deputies of the people, therefore, are not nor can they be its representatives; they are merely its agents. They cannot conclude anything definitively. Any law that the people in person has not ratified is null; it is not a law.'

22. See *Der Begriff des Politischen*, pp. 11-13; and *Der Hüter der Verfassung*, pp. 78-9. According to Schmitt, the

emergence of the total state is also hastened by the growing political energy of nationalism. Nationalism emphasizes the awareness of belonging to a *political* community with a common fate or identity which differs from other, potentially hostile nations. Schmitt estimated that it would prove to be of greater political importance in the twentieth century than class conflict; see *Die geistesgeschichtliche Lage*, p. 88. Viewed retrospectively from the late twentieth century, Schmitt's anticipation of the total state underestimated two antithetical trends: the rise of the totalitarian empire/state (of the kind analysed in essays 4 and 6) and, elsewhere, the decline of the sovereign nation state, due to a combination of economic, military and political forces operating both from above and below the state (see David Beetham's suggestive essay, 'The Future of the Nation-State', in Stuart Hall et. al., eds, *The Idea of the Modern State*, Milton Keynes, 1984, pp. 208-22).

23. This argument is elaborated in essays I and 4; the introduction to John Keane, ed., *The Rediscovery of Civil Society*; and *Public Life and Late Capitalism*, Cambridge and New York 1984, essays 1 and 7.

24. This trend was observed by one of Schmitt's contemporaries, James Bryce (*Modern*

*Democracies*, New York and London 1921), according to whom representative assemblies are losing some of their influence to organized extra-parliamentary interests, which serve increasingly as forms of public discussion and decisionmaking in competition with parliament. Schmitt also noted this trend, but with different motives. His concern about 'the onslaught against the political' surfaces in *Political Theology*, p. 65 and in *Die geistesgeschichtliche Lage*, p. 62, where he makes the sardonic observation that 'what representatives of the large capitalist interest groups agree to in the smallest committees is perhaps more important for the daily lives and fate of millions of people than any political decision'. The same theme surfaces strongly in *Romischer Katholizismus und Politische Form*, Hellerau 1925, p. 24, where both liberalism and socialism are indicted for reducing life to a process of production and consumption'. whereby politics becomes a mere mechanism for safeguarding economic interests.

25. *Die geistesgeschichtliche Lage*, p. 30.

26. See Otto von Guericke, *Natural Law and the Theory of Society. 1500 to 1800*, translated Ernest Barker, Cambridge

1958; J.N. Figgis, *Churches in the Modern State*, London 1914; and Harold J. Laski, *The Foundations of Sovereignty and Other Essays*, London 1921.

27. Schmitt quotes with approval from Wilhelm Dilthey's *Cesammelte Schriften*, third edn. Berlin 1923. II. p. 31:

'Humanity according to Machiavelli is not by nature evil. Some passages seem to indicate this ... But what Machiavelli wants to express overall is that human beings, if not checked, have an irresistible inclination to slide from passion to evil: animality, drives, passions - and above all love and fear - are the kernels of human nature. Machiavelli is inexhaustible in his psychological observations of the play of passions ... From this principle feature of human nature he derives the fundamental law of all political life' (quoted in *Der Begriff des Politischen*. p. 47).

28. *Political Theology*. p. 5; cf. Jean Bodin, *De la republique*, Book I, ch. 8: 'All the characteristics of sovereignty are

contained in this, to have power to give laws to each and everyone of his subjects, and to receive none from them.

29. *Der Begriff des Politischen*, p. 34.

30. Ibid. pp. 26-7, 35-6; cf. George Schwab, *The Challenge of the Exception*, pp. 146-8.

31. 'Staatsethik und pluralistischer Staat', in *Positionen und Begriffe im Kampfe mit Weimar-Cenf-Versaillen, 1929-1939*. Hamburg 1940, p. 141; cf. *Der Begriff des Politischen*, p. 31.

32. In the context of the ailing Weimar Republic, when the issue of the power of constitutional review became crucial,

Schmitt argued this conclusion in support of the *Reichspräsident* as the most appropriate interpreter and defender of the constitution. See *Der Hüter der Verfassung* and Joseph Bendersky, *Carl Schmitt: Theorist for the Reich*, pp. 112 ff.

33. *Der Begriff des Politischen*, p. 40.

34. Montesquieu, *De l'esprit des lois*, Paris 1979, vol. 1, Book III, pp. 143-53.

35. *Die geistesgeschichtliche Lage*, p. 30; cf. *ibid*, p. 33: 'We are concerned here with the ultimate intellectual foundations of parliamentarism itself, not with expanding the power of parliament.' Schmitt rarely discusses the supporting assumptions of this approach. One example is to be found in his conversation with Joachim Schickel, *Cuerillos, Partisanen, Theorie und Praxis*, Munchen 1970, p. ii: 'I rely on a method that is unique to me: Let phenomena come to me, wait a while, and then, as it were, think from the matter itself, not from ready-made criteria.' According to Reinhart Koselleck (in a conversation in Bielefeld, West Germany, June 1987), Schmitt always considered himself a 'concrete~ political and legal thinker.

36. See Max Weber. *The Methodology of the Social Sciences*, edited Edward A. Shils and Henry A. Finch. New York 1949. pp. 110, 173, 150. and my *Public Life and Late Capitalism*, Cambridge and New York 1984, pp. 30-69. Schmitt's onesided account of parliamentary principles - his overemphasis of the 'literary appearances of things' - is pointed out in a different way by Richard Thoma, 'Zur Ideologie des Parlamentarismus und der Diktatur', *Archiv fur Sozialwissenschaft und Sozialpolitik*, 53, 1925, pp. 215-17.

37. See the classic essay by Otto Hintze, 'Weltgeschichtliche Bedingungen der Repräsentativverfassung (1931)', *Staat und Verfassung*, Gottingen 1970, pp. 140-85.

38. See Antonio Marongiu, *Medieval Parliaments. A Comparative Study*, trans. S.J. Woolf, London 1968, part 1; W.

Ullmann, *Principles of Government and Politics in the Middle Ages*, Harmondsworth 1961.

39. This tradition is discussed in FL. Carsten, *Princes and Parliaments in Germany*, Oxford 1959, p. 434; 'The German Estates in the Eighteenth Century', in *Recueds Soeziti Jean Bodin*, vol. 25, 1965, pp. 227-38; and *Essays in German History*, London 1985; cf. the general remarks on the statism of nineteenth- and twentieth-century German historiography in Hans-Ulrich Wehler, 'Historiography in Germany Today'~ in Jurgen Habermas, ed. *Observations on 'The Spiritual Situation of the Age'.* *Contemporary German Perspectives*, Cambridge, Mass., and London 1984, p. 222.

40. See Kurt von Raumer, 'Absoluter Staat, korporative Libertat, personliche Freiheit', *Historzsche Zestschrift*, vol. 183, 1957, pp. 55-96.

41. A classic and influential example is J.E. Neale, *The Elizabethan House of Commons*, London 1949; another is A.F.

Pollard, *The Evolution of Parliament (1920)*, London 1964, p. 3: 'Parliamentary institutions have ... been incomparably the greatest gift of the English people to the civilization of the world.'

42. M. Ostrogorski, *Democracy and the Organization of Political Parties*, p. 15; cf. the remarks on the mismatch between Burke's conception of the freely judging member of parliament and the decadence of parliament during the first four decades of George III's reign in Harold J. Laski, *The Foundations of Sovereignty and Other Essays*, p. 36.

43. See G.R. Elton, *The Parliament of England 1559-1581*, Cambridge 1986.

44. Hermann Heller, 'Politische Demokratie und soziale Homogenitat (1928)', in H. Heller,

*Gesammelte Schriften*, edited Christoph Muller, Laden 1971, vol. 2, p. 427.

45. An early contribution to the 'golden age of parliament' thesis is evident in A. Lawrence Lowell, *The Government of England*, vol. 2, London 1924, pp. 76-8; amore recent version is defended by Philip Norton, *The Commom in Perspective*, Oxford 1981, pp. 14-15, 23.

46. John Mackintosh, Parliament Now and a Hundred Years Ago~, in Richard L. Leonard and V. Herman, eds, *The*

*Backbencher and Parliament: A Reader*, London and Basingstoke 1972, pp. 246-67.

47. According to D.C. Wright (*Democracy and Reform 1815-1885*, London 1970, p. 51), in 1841 more than half of the

members of the British House of Commons were sons of peers, baronets, or near relatives of peers.

48. See Hugh Berrington, 'Partisanship and Dissidence in the Nineteenth-Century House of Commons', *Parliamerrtary Affairs*, vol. 21, 4, Autumn 1968, pp. 338-74.

49. Ibid, p. 360.

50. Cf. Walter Bagehot's 1867 description of the typical member of the British House of Commons as a lover of

intellectual haze, moderation, practicality and other virtues appropriate to men of business, in *The English Constitution 1867*, introduction by R.H.S. Crossman. London 1963. pp. 159-60.

51. Bernard Crick, *The Reform of Parliament*. London 1964, p. 13.

52. Ibid. chapters 10. 11. On the French case discussed in this section, see Philip Williams, 'Parliament under the Fifth French Republic: Patterns of Executive Domination', in Gerhard Loewenberg, ed., *Modern Parliaments: Change or Decline?* , Chicago and New York 1971, pp. 97-109.

53. Norberto Bobbio, 'Democracy and Invisible Government', *Telos*, 52, Summer 1982, pp. 41-55.

54. Theodore Draper, 'Reagan's Junta', *The New rork Review of Books*, 29 January 1987, pp. 5-14.

55. See Karl Dietrich Bracher, 'Gegenwart und Zukunft der Parlamentsdemokratie in Europa', in Kurt Kiuxen, ed.,

*Parlamentarismus*, Koin and Berlin 1969, pp. 70-87, especially p. 85; and Antonio Cassese, ed., *Parliamentary Control Over Foreign Policy*, Alphen aan den Rijn 1980.

56. Thomas Erskine May, *Treatise on the Law, Privileges, Proceedings and Usages of Parliament*, edited E. Fellowes and T.G.B. Cocks, London 1957, 16th edn, p. 28.

57. Some of the following proposals are discussed at greater length in Bernard Crick, *The Reform of Parliament*, second edn, London 1968; and H. Rausch, 'Parlamentsreform in der Bundesrepublik Deutschland. Die Diskussion im Oberblick', in Kurt Kiuxen, ed.,

*Parlamentarismus*. On the peculiarities of the American Congress and its reform, see Philip Brenner, *The Limits and Possibilities of Congress*, New York 1983.

58. The argument that parliament is based on overly simple assumptions of territorial representation, and that it therefore takes too little account of the complex functional interests of civil society, was especially prominent in Europe during the first several decades of this century. It certainly deserves to be revived. See, for example, G.D.H. Cole, *Social Theory*, London 1920; Harold Laski, 'Parliament and Revolution', *The New Republic*, 19 May 1920, pp. 383-4; E. P. Thompson and B. Webb, *A Constitution for the Socialist Commonwealth of Great Britain*, London 1920; and Karl Renner, 'Demokratie und Ratesystem', *Der Kampf*, 14, 1921, pp. 54-67.

59. David Judge, 'Considerations on Reform', in David Judge, ed., *The Politics of Parliamentary Reform*, London and Exeter 1983, pp. 181-200.

60. Schmitt's dismissal of the liberal constitutional failure to deal with the question of emergency situations is developed in *Political Theology*, chapters 1-2, cf. *Der Wert des Staates und die Bedeutung des Einzelnen*, Tübingen 1914, p. 83: 'No law can execute itself; only human beings can be designated as the defenders of laws.'

61. See *Die Diktatur. Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf*,

München and Leipzig 1928. The failure to recognize this distinction and its consequences weakens the vague attempt of Andrew Arato and Jean Cohen to criticize Schmitt in 'Social Movements, Civil Society, and the Problem of Sovereignty', *Praxis International*, vol. 4, 3, October 1984, pp. 266-83.

62. *Die Diktatur*, p. 137.

63. *Ibid.* p. 238.

64. Schmitt often referred to the provisions of article 48 of the Weimar constitution, which empowered the Reich president to declare a state of emergency and to enforce the constitution with the aid of the armed forces. (This article was invoked more than 250 times during the Weimar Republic.) In *Die Diktatur*, pp. 246-7, and in *Verfassungslehre*, pp. 358-9, Schmitt argued for the presidential power to dissolve an obstructionist Reichstag and call new elections. He repeated this argument, against the Prussian SPD government and in support of the Reich government of von Papen, in the fateful Supreme Court trial of October 1932. *Prussia vs. Reich*; see Joseph W. Bendersky, *Carl Schmitt*, chapter 8. In a state of emergency, according to Schmitt, a president has the authority to dissolve a state government and to institute a Reich commissar for the purpose of defending the state and its constitution. Schmitt's first act of collaboration with the Hitler government was consistent with this precept. In April 1933, Schmitt co-drafted legislation which the Nazis utilized to take over state governments, without elections, through the appointment of commissars responsible only to Hitler; see *Carl Schmitt*, pp. 198-200.

65. On the anti-parliamentarian implications of Schmitt's enthusiastic support for the introduction of a presidential system (with Hindenburg's appointment of Chancellor Brüning), see Karl Dietrich Bracher, *The German Dictatorship: The Origins, Structure and Effects of National Socialism*, New York 1970, pp. 169-72; Joseph W. Bendersky, *Carl Schmitt*, chapter 3; David Abraham, *The Collapse of the Weimar Republic. Political Economy and Crisis*, Princeton 1981, pp. 296-7. Compare also Hans Kelsen's charge that Schmitt's defence of extensive presidential powers in effect sought the revival of

constitutional monarchy; *Wer soll der Hater der I/erfassung scm?*, Berlin 1931, pp. 8-10, 41-7, 53-6.

66. *Die Diktatur*, pp. 201-2

.67. *Ibid.* pp. 2-4, 25-7, 105.

68. Cf. George Schwab, *The Challenge of the Exception*, p. 50: 'What happens to the [commissarial) sovereign in normal times? From Schmitt's discussion it may be concluded that in normal times the sovereign is, so to speak, slumbering, and he is suddenly awakened at a crucial moment: namely, at the borderline between normalcy and the state of exception.' The commissarial dictator may well be likened to a slumbering giant, who has been awakened by the noise, smoke and fire of a political crisis. But this simile begs the fundamental questions: On the (realistic) assumption that the political giant will not voluntarily return to its bed after its public appearance, shouldn't it be prevented from the outset from leaving its bed? Or better: Shouldn't political animals be deprived from the outset of their aspirations to become political giants?

69. Schmitt's constitutional conservatism is evident in *Verfassungslehre*, where he states repeatedly that the (Weimar)

constitution is essentially inviolable, that constitutional revision should not become constitutional abrogation, and that a

two-thirds parliamentary majority did not have the authority to alter the constitution fundamentally into, say, a Soviet-type state or an absolute monarchy; see especially part 3. According to Bendersky (*Carl Schmitt*, p. 97). Schmitt's constitutionalism rests on the principle that only 'the people as a whole~, the *pouvoir constituant*, can legitimately authorize basic constitutional changes. This overlooks the *paramount* importance of Schmitt's deep-seated fear of drastic constitutional changes (lest they destabilize the state, thereby making it prey to its enemies), and also gives the impression that Schmitt believed in popular sovereignty as an ultimate principle, which he most certainly did not.

70. *Die geistesgeschichtliche Lage*, p. 12. Underpinning this belief that the essential principles of parliament are exhausted, and irreversibly so, is Schmitt's unexplained assumption that the essential principles of different forms of state grow, mature and decline, as if the political and legal history of the human species followed an evolutionary course, which is however 'blind' and without a *telos* (conversation with Reinhart Koselleck, Bielefeld, West Germany, June 1987).

71. Walter Bagehot, *The English Constitution*, (1867) London 1963, chapter 4.

72. V.I. Lenin, 'The Proletarian Revolution and the Renegade Kautsky', *Collected Works*, London 1960, vol. 28, p. 369; cf. Max Adler, *Die StaatsaufJassung des Marxismus. Em Beitrag ~ur Unterscheidung von soziologischer undjurmstischer Methode*, Wien 1925, p. 125: '[Parliament] is a part of the class struggle. It is always the exercise of power, whereby one class, with its majority, seeks to force its laws onto the resisting class. More recently, see Perry Anderson's attack on parliamentary representation as the 'principal ideological lynchpin of Western capitalism', and as a mechanism whose 'very existence deprives the working class of the idea of socialism as a *different type of State . . .*', in 'The Antinomies of Antonio Gramsci', *New Left Review*, 100, November 1976-January 1977, p. 28. Aside from their neglect of the various arguments developed in this essay, these types of criticisms of bourgeois parliaments' ignore the historical fact that the (admittedly uneven, always fragile) growth of socialist politics in the late nineteenth and early twentieth centuries was actually

made possible by the existence of parliamentary forms. Other aspects of the problematic relationship between the Marxist tradition and parliamentary democracy are well analysed by Christopher Pierson, *Marxist Theory and Democratic Politics*, Cambridge 1986.

73. Montesquieu, *De l'esprit des lois*, vol. 1, Book XI, chapter 4, p. 293.

74. Lucio Colletti, *Politique et philosophie*, Paris 1975, pp. 48-9.