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SCHMITT AND HAYEK: ORIGINS OF AUTHORITARIAN LIBERALISM AND ITS CONTINUITY IN NEOLIBERAL THOUGHT*

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SCHMITT Y HAYEK: ORÍGENES DEL LIBERALISMO AUTORITARIO Y SU CONTINUIDAD EN EL PENSAMIENTO NEOLIBERAL

Abstract
This article aims to outline what in philosophical and political literature can be termed "authoritarian liberalism." The primary focus is to highlight the similarities between the political and economic thought of Carl Schmitt and Friedrich Hayek. The crisis of Weimar social democracy was largely followed by attacks on the notion

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of representative parliamentary democracy itself. In this context, Schmitt—famously anti-parliamentary—relied on the concept of qualitative total state, distinguishing it from what he termed quantitative total state, which characterized the Weimar period. Additionally, Hayek partly constructed his notion of (limited) democracy using Schmittian categories, and ordoliberal thought did not hesitate to push its "social market economy," starting from the apparent Schmittian paradox, from a strong state to a "free" economy.

Keywords

Carl Schmitt; Friedrich Hayek; Weimar Republic; ordoliberalism; social democracy; totalitarianism

Resumen

El artículo pretende presentar los contornos de lo que puede designarse como "liberalismo autoritario" en la literatura filosófica y política. El principal objetivo del artículo es destacar las similitudes entre el pensamiento político y económico de Carl Schmitt y el de Friedrich Hayek. En gran medida, a la crisis de la socialdemocracia de Weimar sucedieron ataques a la propia noción de democracia parlamentaria representativa. En este contexto, Schmitt, conocido por ser antiparlamentario, se apoyó en el concepto de Estado total cualitativo para distinguir lo que denominó Estado total cuantitativo, que caracterizó el periodo de Weimar. Además, Hayek construyó en parte su noción de democracia (limitada) mediante categorías schmittianas, y el pensamiento ordoliberal no dudó en impulsar su "economía social de mercado" desde la aparente paradoja schmittiana de un Estado fuerte hacia una economía "libre".

Palabras clave

Carl Schmitt; Friedrich Hayek; República de Weimar; ordoliberalismo; socialdemocracia; totalitarismo

Carl Schmitt was a prominent figure in National Socialist law, and his thought has transcended the era of its creation, influencing various fields, including political science, constitutional law, and legal philosophy. However, Schmitt's association with National Socialism complicates the acceptance of his ideas. Despite being recognized as an architect of authoritarian thought, Schmitt's theories have been adopted by self-proclaimed democrats and intellectuals who claim to be free from ideological biases. One notable example is Friedrich Hayek, who publicly disavows Schmitt but incorporates fundamental elements of Schmitt's theory. Hayek explicitly denies Schmitt's influence, positioning the German intellectual on the "wrong side of history." However, Hayek's use of categories closely resembling those established by Schmitt, alongside his development of antipathy toward democracy, condemnation of multiparty systems, and embrace of a liberal-authoritarian perspective, indicates a significant, albeit unacknowledged, debt to Schmitt's ideas.

Carl Schmitt was, in many respects, more committed to Nazi ideology than a significant number of prominent party members. In the summer of 1934, Schmitt defended the extrajudicial killings of SA leaders orchestrated by Hitler during the *Night of the Long Knives* (Wolfe, 2009, p. 134), asserting that the Führer safeguarded the law through these actions. The Nazi regime acknowledged Schmitt's contributions and promptly invited him to collaborate, extending the invitation on April 1st, 1933, just two months after Hitler came to power. Referred to as the *Krownjurist*, Schmitt quickly ascended to influential positions within the government and the legal profession, even adopting explicitly antisemitic positions. In March 1947, Schmitt was detained and his case examined by the Nuremberg Tribunal, but he was released without formal charges (Cristi, 1998, p. 9).

Defenders of Carl Schmitt often assert that his works from the Weimar period should be distinguished from those of the Nazi era, suggesting that his alignment with the Nazi regime was merely opportunistic. This argument seeks to preserve Schmitt's intellectual legacy by separating the jurist from the politician (Cristi, 1998, pp. 25–26). However, Schmitt's allegiance to Nazism was not merely opportunistic; it was deeply rooted in his ideological alignment with the regime. Rather than a calculated move to secure prominent positions, Schmitt's involvement with Nazism reflected his genuine political beliefs and desires, which the regime effectively actualized.

Even among efforts to salvage Carl Schmitt's thought—at least his works from the Weimar Republic period—there is no denying his conservatism (Cristi, 1998, p. 4). This conservatism provides a lens through which to understand Schmitt's reasons for adhering to National Socialism. For instance, Schmitt had a close relationship with Leo

Strauss, a major figure in neoconservatism. During their period of closest association, Schmitt wrote a letter of recommendation for Strauss, which helped him leave Germany in 1932. That same year, Strauss critically reviewed Schmitt's book *The Concept of the Political*, arguing that Schmitt was not sufficiently antiliberal (Wolfe, 2009, p. 139). Political antiliberalism characterized the connection between certain conservative manifestations and the anti-democratic undercurrents in Schmitt's authoritarian thought. Indeed, it is primarily conservatives who attempt to rehabilitate Schmitt's ideas, seeking to cleanse his work of its political vices.

This discussion focuses on Carl Schmitt's anti-democratic thought and relationship with economic theories. Schmitt's significant critique of "mass democracy" is rooted in his concept of political theology. Political theology relates to political metaphysics concerning sovereign authority as a manifestation of legitimate regime power. According to Schmitt, political theology can reclaim elements of metaphysics that counter the era of mass democracy. Unlimited democracy, Schmitt argued, would abolish the distinction between the state and society, leading to the "socialization" of the state and the disappearance of the political as a sacred sphere of sovereign authority and power (Bonefeld, 2016, p. 41). Numerous works delve into the topic of Schmitt's political theology, highlighting its antidemocratic nature. This reference serves to understand how political theology exemplifies the antidemocratic tendencies in Schmitt's thought, reflecting his broader critique of mass democracy and its economic implications.

The immediate focus is examining what might be termed "authoritarian liberalism." To analyze this concept, it is crucial to consider some of Carl Schmitt's lesser-known texts, particularly those that address economic themes. In *Global Civil War*, Schmitt discusses industrial appropriation. He posits that the replacement of private land appropriation by a form of large-scale modern industrial appropriation marks a significant transformation. According to Schmitt, the ancient right of conquest over lands in pre-industrial times has been supplanted by the appropriation of industries. Schmitt argues that a global civil war (Schmitt, 2007a)—a conflict that is both political and economic—has replaced traditional interstate wars (Schmitt, 2007a, p. 60). In this context, Schmitt asserts that the economy represents the contemporary modality of politics. He contends that the division of labor constitutes, in his view, the actual constitution of the earth (Lazzarato, 2017, p. 43). As interpreted by Maurizio Lazzarato (2017), Schmitt's thought reveals that for the German jurist, "economy is politics" (p. 43). This perspective highlights Schmitt's conception of economic processes as fundamentally intertwined with political authority, reflecting his idea of authoritarian liberalism.

Carl Schmitt offered a significant critique of the Weimar Republic during his time, revealing an important alignment between his thought and neoliberal ideas, both in the Austrian and Ordoliberal versions. In his work *Legality and Legitimacy*, Schmitt asserts that governmental institutions were transforming and were marked by an "inevitable trend towards planning" rather than leaning towards freedom. Schmitt said this excessive governmental intervention was steering Germany towards becoming an "administrative state." This critique underscores Schmitt's concern with the increasing role of government in economic and social affairs, which he saw as a departure from true freedom and a movement towards a more controlled and bureaucratic state apparatus (Schmitt, 2007b, p. 5). This perspective resonates with neoliberal critiques of state intervention and emphasizes individual freedom and market mechanisms rather than state planning and control.

Carl Schmitt's critique of the Weimar Republic shares foundational principles with neoliberal thought, particularly in opposing freedom and planning. Schmitt's views align with the neoliberal doctrine that spread from the late 1930s onward. His writings during the final phase of the Weimar Republic primarily target multiparty systems, as seen in *Legality and Legitimacy and The Guardian of the Constitution.* In these works, Schmitt critiques what he calls "policracy"– the fragmentation of the parliamentary legislative state and the intense development of the state towards an economic state (Schmitt, 2007c, p. 136). Schmitt argues that the pluralistic state should be opposed as it represents a process of autonomization and depoliticization. He does not advocate for the extinction of politics but rather for a specific type of politics, opposing party politics. Schmitt envisions a "neutral state" strong enough to separate itself from civil society (Bercovici, 2004, p. 101). This perspective reveals Schmitt's preference for a centralized, authoritative state over a pluralistic, multiparty system, reflecting a shared disdain with neoliberal thinkers for excessive government intervention and planning.

Carl Schmitt identified a significant problem with the multiparty state: its inability to distinguish between friend and foe, which is a fundamental principle of his doctrine on the political. He argued that constant democratic intervention threatens to transform politics into a kind of "civil war" (Scheuerman, 1997, p. 175). This perspective reveals a robust antidemocratic conception, particularly regarding the limits and role of the economy. This is evident in Schmitt's articles, which are *The Theory of the Partisan and The Nomos of the Earth*. In these works, Schmitt contends that the pluralistic state's failure to navigate the friend-enemy distinction effectively undermines its stability and coherence. The perpetual democratic involvement in state affairs, according to Schmitt, leads to a state of internal conflict akin to a civil war. This view underscores Schmitt's broader

critique of democracy and his preference for a more authoritarian model of governance, where the economy plays a central role in maintaining political order.

Carl Schmitt blamed political parties for weakening state authority and advocated for a strong state to ensure the necessary protection for developing a free economy. He envisioned a "qualitative total state" in contrast to what he perceived as a "quantitative total state," which he deemed weak. This concept would later be embraced by ordo-liberal thinker Alexander Rüstow, who incorporated Schmitt's framework. The notion that "only a strong state could guarantee a free economy" was prevalent in conservative circles during the Weimar period. This idea is reflected in the work of Walter Schotte, an ultra-conservative author who linked the multiparty state to corruption. Schotte recommended a new type of state that would be strong, free from vested interests, and both above and independent of political parties (Cristi, 1998, p. 31). Schmitt's advocacy for a strong state aimed to transcend the fragmentation and inefficacy he attributed to multiparty systems, thereby establishing a stable and authoritative governance structure conducive to economic freedom.

Schmitt's objective was to separate parliamentary institutions from their democratic constraints. In his books *Dictatorship and Political Theology*, Schmitt entrusted a counter-revolutionary dictatorship as the only means to safeguard the nation's political unity and sustain a dual assault against humanitarian liberalism and atheistic democracy (Cristi, 1998, pp. 80–81). The political criterion of democracy in the 19th century, according to Schmitt, was contentious and anti-monarchical: the sovereignty of the people versus the sovereignty of the monarch. Once democracy lost its enemy (the king), Schmitt argued that the political had disappeared. The concept of democracy was grounded in the principle of equality between governors and governed (egalitarianism). Schmitt saw no incompatibility between democracy and dictatorship, as he believed the essence of democracy lay in identity rather than freedom (Schwab, 1989, p. 62). The crisis of parliamentarism described by the German jurist corresponds to the irreversibility of egalitarian trends in Western democracy, creating a natural incompatibility between democracy and liberalism. Schmitt also argued that, similar to neoliberals, fascism and Bolshevism could be viewed as democratic phenomena (Scheuerman, 2020a, p. 49).

Separating democracy and liberalism would be necessary to understand the heterogeneous construction that constitutes modern mass (Schmitt, 1990, p. 97) democracy. The parliamentary system would be produced by liberal ideas but not by democratic ideas. Moreover, it would connect to the discourse of the French aristocracy, which, through Enlightenment thinkers like Montesquieu and Voltaire, emphasized and supported such egalitarian postulates.

For Schmitt, real democracy is defined by the fact that not only are equal individuals treated equally, but also unequal individuals are treated unequally. In democracy itself, we find, firstly, homogeneity and, secondly, the destruction of heterogeneity (Schmitt, 1990, p. 98). In his words, "the political power of a democracy lies in knowing how to eliminate the foreign and the unequal that threatens its homogeneity" (Schmitt, 1990, p. 98). There is no democracy that does not know the concept of the foreigner (Schmitt, 1990, p. 99). The equality of all individuals bound by this quality does not correspond to democracy but to a specific type of liberalism; it is not a form of the State but rather a kind of morality and an individualistic and humanitarian worldview.

In this union of both categories, the current mass democracy (Schmitt, 1990, pp. 100–101) is solidified. For Schmitt, this democracy governed and distorted by political liberalism would not truly be a democracy nor a form of the State. It would correspond, above all, to a morality. Therefore, as a morality and as a particular worldview, this form of government would be individualistic, isolationist, and arguably anti-communal. In the author's view, it is precisely on this ethic of liberalism that mass democracy is based.

Clearly, this understanding of the political phenomenon is neither naive nor antiteleological. Through Schmitt's analysis of concepts such as democracy, liberalism, and authoritarianism, fascism would not appear in the usual attire attributed to it by political philosophy. Fascism, according to Schmitt's conclusions, would be like any other dictatorship—anti-liberal—but not antidemocratic.

According to Schmitt, it would suffice to observe how some dictators are acclaimed by the people. The German thinker affirms the existence of forms of legitimizing political power that are independent of the popular vote. This includes popular acclamations, granting certain political charters, and so on. According to Schmitt, some dictatorships would be part of democracy. It was characteristic of 19th-century liberal ideas to consider that the people can only express their will through each citizen individually, in the deepest isolation and secrecy, by casting their vote (Schmitt, 1990, p. 102). Conceiving alternative forms of legitimizing political power, democracy, and fascism (or any other authoritarian phenomenon) would be reconcilable in Schmitt's perspective. The decoupling of democracy and liberalism was revisited by Brazilian authoritarian thinkers, especially Francisco Campos.

The foundation for most of Schmitt's arguments around "authoritarian liberalism" arises from the concept of the "total state." In *Legality and Legitimacy*, Schmitt asserted that the multipartisan State becomes "total." However, such transformation does not occur through force or vigor but rather through weakness, as it ends up intervening in all spheres of life, needing to satisfy the demands of all interested parties. In this State,

there would be a shift towards the economic dimension, which until then had been free from state interventions, even if it required these groups to relinquish political leadership and influence.

The total state would be a state that voluntarily abdicates adequate leadership, by its own will, in economic and technical development, precisely in an "economic-technical" era. This renunciation would result in declaring neutrality regarding political issues and decisions, inexorably leading to a renunciation of the pretension to dominate (Schmitt, 2007b, p. 100). After Hitler was appointed Chancellor, disciples of Carl Schmitt, such as Ernst Forsthoff, attempted to reconfigure the Schmittian concept of "total state," particularly in its qualitative sense. For Forsthoff, the rise of National Socialism should impose obedience to principles derived from tradition rather than according to typically Nazi principles like racial homogeneity, for example (Franco de Sá, 2012, p. 147).

It is interesting to note that Schmitt, in *The Concept of the Political*, starts from a common point with the mentioned intellectual Clinton Rossiter and his theorization of constitutional dictatorship. For Schmitt, the functioning condition of normativism (characteristic of legal liberalism) relies on institutional normality. However, during the Weimar crisis and thereafter, already during World War II, this normality would cease to exist. Schmitt insists in this text on criticisms directed at pluralism and multiparty systems, which would distort national unity and could even lead, given that liberal forces do not align with democratic ones, to a total state (Schmitt, 2002, pp. 97–98).

For Forsthoff, the entire order of domination would be based on the difference between leading and being led, commanding and being commanded. Therefore, every order of domination would necessarily be non-democratic, as democracy is a "form of the State" characterized by equality between leaders and followers. This identity would ultimately undermine government authority, as it cannot develop within a system functionally oriented by democracy (Forsthoff, 2000, p. 320). In Schmitt's words, "every democracy requires the complete homogeneity of its people […] the true democratic method is not a method for integrating heterogeneous masses" (Schmitt, 2000b, p. 299).

For Schmitt, this State that seeks to intervene in broad and specific areas would be "total" only from a "quantitative" perspective. It would be divided, being a party State, while hegemonic complexes would end up usurping political influence, both of relative duration and transient. They would be driven by the use of their power, anticipating political opponents' criticisms, and treating every justification as an argument in the inter-political struggle. Legality and legitimacy, under such conditions, would become strategic instruments used by every individual in an endless power game (Schmitt, 2007b, p. 100).

Schmitt's diagnosis is that the German state heavily depended on social groups, often appearing as a victim due to its agreements. The state would end up making agreements with various interest groups, such as unions, the church, etc., to balance heterogeneous interests. In this context, state power would be weakened if not emptied. It can be argued that the state would become a servant of a dominant class or party or simply the product of the always difficult balance among these heterogeneous groups that battle each other. At this point, the state would be a mere referee among various disputes, incapable of making authoritative decisions, losing control over religious, economic, and social conflicts, and often even omitting and denying their existence. Thus, for Schmitt, we would have the advent of the "agnostic state," criticized by fascist doctrine (Schmitt, 2000b, p. 303).

Schmitt argues that the State is weak even when it is omnipresent and deeply involved in its relationship with society and the economy. What Schmitt referred to as the authoritarian State was, obviously, a liberal State. Schmitt's authoritarian State would be a liberal-authoritarian State, one that, in the classical sense, would be strong and weak at the same time: strong in the sense of protecting the market and the economy from egalitarian and democratic demands for redistribution to the extent of using public force to ward off such claims; weak in its relationship with the market understood as the proper space for individual pursuit of benefits (Streeck, 2015, p. 362).

Thus, there was the projection of replacing the quantitative total state (a weak State inspired by social democracy) with a qualitative total state (an alternative form of interventionism that safeguards the economy), which ensures authentic sovereignty to the State while protecting the autonomy of capital owners. Schmitt identified his strong State with the Italian fascist totalitarian State, which would be strong in the qualitative sense (Cristi, 1998, p. 195).

The development of this transformation from a quantitative total state to a qualitative total state was detailed in a conference for German industrialists, later published under the name "Strong State and Solid Economy." For Schmitt, only a strong State could withdraw from matters not belonging to the State. For the jurist, depoliticization and the creation of spheres immune to state intervention certainly constitute a political process (Schmitt, 1998, p. 213).

Schmitt's total state would be strong in terms of its quality and energy, referencing the *Mussolinian Stato Totalitario*. In his view, the fascist State determined that coercive powers belong exclusively to the State, promoting the hierarchization of its power (Franco de Sá, 2012, p. 146; Schmitt, 1998, p. 217). This total state would not be confused with the type of state that penetrates every aspect of human life, disregarding

non-state spheres, as it would end up incapable of recognizing them. It would be only quantitative, signifying pure volume and not referring to the intensity of political energy (Schmitt, 1998, p. 218).

In his analysis of the Weimar Republic, Schmitt asserts that "the current German State is total due to weakness and lack of resistance, due to its inability to resist attacks from parties and organized interests" (Schmitt, 1998, p. 218). Only a very strong State would be able, therefore, to dissolve the intermingling of all types of non-state businesses and interests (Schmitt, 1998, p. 221). According to Schmitt, the process of separation between state and non-state spheres would unequivocally be a political process (Schmitt, 1998, p. 221).

However, according to Schmitt, this process could not be conducted based on the liberal opposition developed in the 19th century between the State and free individuals. According to the German jurist, there would be a very relevant terrain of the individually considered individual that would be essentially economic activity. In this way, one could no longer oppose individual interest to the State (Schmitt, 1998, p. 224). The inadequacy of classical liberal criteria would, in the author's view, be replaced by a tripartite scheme that would surpass the duality of State and individual, firstly, by determining the economic sphere of the State, i.e., the content of what belongs to state privileges. Secondly, the dimension of everything opposed to the first state sphere would develop, i.e., the realm of the individual and free entrepreneur, or in other words, that of absolute privacy.

Finally, Schmitt suggests the development of a third instance, naturally intermediate and non-state, although still public (Schmitt, 1998, pp. 224–225). For the author, economic democracy exposed a mixture of politics and economy and tried to acquire economic power through political power while simultaneously increasing its political power through economic power. Schmitt refers to an "autonomous economic administration (economic self-management)" to identify this new segment of relations between the State and the economy. There would be an economic sphere that belongs to the public interest and should not be separated from it. This non-state sphere organized by business agents would function as a genuine independent administration (Schmitt, 1998, pp. 225–226).

This process of creating spheres is primarily a process of depoliticization. Furthermore, only a strong State would be capable of determining certain activities, such as traffic control, radio stations, and so on, to maintain its privileges. In his view, all other activities should be delegated to the self-management of the free economy. For Schmitt, the form of depoliticization would be an intensely political process, hence the requirement for a strong State. To acquire the capacity to carry out these functions, Schmitt

states that the State needs to "establish particularly authoritarian foundations in terms of new arrangements and institutions" (Schmitt, 1998, pp. 226–227).

It is known that Schmitt was a reactionary critic of the Weimar Republic (Scheuerman, 2020a, p. 11) since he saw Germany during this period as a quantitative total state as opposed to a qualitative one. In this second form, the State would continue to play a central role in economic matters, but it would also signify the end of *laissez-faire*. For Schmitt, the State should provide the legal and institutional preconditions for forming a system where capitalist owners could engage in economic supervision. Moreover, such intervention should be far from a "collectivization" of private property (Scheuerman, 2020a, p. 11).

The qualitative totality would imply that the objective of state action would be of secondary importance compared to the effectiveness and coherence of this action (Scheuerman, 2020b, p. 112). The strength of the qualitative total state would lie in its ability to effectively resist the demands made by political parties. This qualitative total state would not interfere with the economy. However, to ensure peace and stability, the State could not, in Schmitt's view, refrain from regulating media, postal services, and other public bodies (Schwab, 1989, pp. 78–79).

According to Schmitt's thought, the qualitative total state is more authoritarian than totalitarian. It would exercise its authority in the political realm (capacity to distinguish between friend and enemy) while maintaining individual freedom in the private economic, religious, and social spheres (Schwab, 1989, p. 86). In this sense, Arendt's criticisms would be inapplicable to Schmitt's proposal of a strong State, demonstrating once again the fragility of the notion of "totalitarianism." Moreover, in 1936, Schmitt used the term "authoritarian liberalism" to describe the predominant constitutional systems in the 19th century (Cristi, 1998, p. 6). Schmitt sought to replace the notion of democracy with a "substantial democracy," illiberal, based on the substantial homogeneity of the people (Bielefeldt, 1998, p. 23).

The quantitative total state corresponded, due to the threat of erosion of its authority by parties, to the self-organization of society itself. The proposal for depoliticization, therefore, characterizes the State's overlap with parties, transforming into an authoritarian State. Here, Schmitt closely followed Heinz Otto Ziegler's (Franco de Sá, 2012, p. 146) formulation: "An authoritarian State should manage to overcome the present party struggles in society." The overlap between the State and society signifies the complete politicization of life, as referred to multiple times by Schmitt.

This total state would be a version of the legislative, pluralist, economic, bureaucratic, and policratic State, which would have become incapable of qualitatively differentiating itself from society (Franco de Sá, 2012, p. 193). As pointed out by Franco de Sá,

> the total State will replace the Neutral State of the 19th century, bringing a series of new challenges with the transformation of all economic and social problems into potentially political issues. For Schmitt, the total state promotes the politicization of everything that is economic, social, cultural, and religious. (Bercovici, 2004, p. 93)

It is easy to notice that Schmitt's conception of liberalism was very close to that upheld by ordoliberals (Cristi, 1998, p. 176). Schmitt's vision of a strong State and a free economy coincided with the "new liberalism" of certain German economists like Alexander Rüstow, Walter Eucken, and Wilhelm Röpke. This conservative-liberal school of thought argued that only a strong State could guarantee market self-regulation, initiate depoliticization, and ensure the creation of spheres free from State intervention (Cristi, 1998, p. 194). This aligns precisely with Schmitt's framework. The ordoliberal State is also a strong State. Only this form of State could distinguish itself from society (Bonefeld, 2017, p. 3).

The *Vitalpolitik* advocated by ordoliberals relates to a business society where competition is second nature. *Vitalpolitik* involves the integration of competition into the "total way of life" (Bonefeld, 2017, p. 6). Alexander Rüstow called for a strong state reaction against the Weimar Republic and supported it based on Schmitt's political theology. Ultimately, he was exiled to Turkey (Bonefeld, 2017, p. 10) due to political persecution, a fact that ordoliberal advocates point to as "proof" that the economic policies of the *Third Reich* were different from those advocated by ordoliberals.

Franz Böhm and Walter Eucken were the main figures of the Freiburg School and solidified German ordoliberal economics during the Nazi period (Bonefeld, 2017, p. 11). Another prominent figure, Müller-Armack, published a book in 1933 in honor of Nazism called *Ideas of the State and Economy Order in the New Reich* and worked as a consultant for the Nazi regime (Bonefeld, 2017, p. 10). Ordoliberalism is a theoretical expression of economic liberalism, representing a program for legitimizing private property (Bonefeld, 2017, p. 13). Similarly, Neumann argued that the rule of law is necessary as a precondition for capitalist competition.

The freedom of competition necessitates separating from the law because it is one of the highest expressions of formal rationality. The primary task of the State would be to establish legal frameworks and ensure contract enforcement (Neumann, 1996, p. 116). In this sense, the ordoliberal position aligns with Schmitt's, as it advocates "authoritarian intervention in the economy, not planning, nor a project of social emancipation" (Bercovici, 2004, p. 102). Schmitt's total state would be, in addition to an administrative State, an economic State (Bercovici, 2004, p. 96).

Both ordoliberalism and Schmitt's authoritarian liberalism did not believe in alternatives to a market economy outside of an authoritarian State (Streeck, 2015, p. 363). This scenario could be seen as a kind of "economic-financial state of exception" or even the transformation from "guardian of the Constitution" to "guardian of the free market." As Bonefeld (2020) points out, "The strong State is a security State. It combines freedom with surveillance." Schmitt enthusiastically supported the Nazi labor reform of 1934 as a manifestation of concrete order thinking. These reforms stripped away minimal labor protections, reclassifying workers as disciples. This was because "the economy must be liberal, private, and depoliticized." (Bercovici, 2004, p. 102).

According to Bercovici (2004), "political liberalism is discarded by Schmitt, but not economic liberalism. The Schmittian economic model seeks to strengthen capital, freeing it from the Social State" (p. 107). As Neumann emphasizes, Carl Schmitt's "totalitarianism" became palatable even to major industrialists, discussing in his conference the "invention" of two forms of totality: the Roman and the Germanic, where the Roman would be quantitative and the Germanic qualitative. This correlation between economic liberalism and political authoritarianism had been previously exposed (even more clearly) by Pareto, whose thinking influenced the initial phase of Mussolini's economic policy (Neumann, 2009, p. 49). Schmitt's strong State would favor private property and initiative (Neumann, 2009, p. 50). This is beyond doubt.

At the time, the main criticism against Schmitt's position came through Herman Heller's thoughts, who saw in the German jurists' proposals the emergence of authoritarian liberalism. Heller argued that "what is decisive, then, for the social and political character of the authoritarian state is its vision of the capitalist form of the economy" (Heller, 2015, p. 298). According to Heller, this authoritarian state would result from a subsequent development consistent with nationalist liberalism, thus only being identifiable as "authoritarian liberalism" (Heller, 2015, p. 299).

Heller's primary contention with this form of state is its withdrawal from social politics, the liberalization of the economy, and the dictatorial control of the state over political-intellectual functions (Heller, 2015, p. 300). Authoritarian liberalism views a free economy as a state order and recognizes the economic constitution of freedom as a practical political order (Bonefeld, 2020). It emerged in the early 1930s as one of the causes leading to the blurring of lines between society and the state, envisioning how to renew this separation between state and economy in a mass democratic society (Bonefeld, 2020). The content of the authoritarian state outlined by Schmitt aligns in many aspects with Hayek's critiques of collectivist perspectives, which would lead to "totalitarianism." Thus, the ideas of these two authors share numerous points of contact, including certain concepts.

The first similarity between the thoughts of Schmitt and Hayek emerges in their distinction between law (*recht*) and legislation (*gesetz*). Both believed that creating law by an elected parliament would lead to the degeneration of the Rule of Law into a Legal (Slobodian, 2018, pp. 205–206) (or Administrative) State, as Schmitt pointed out. Hayek developed a differentiation between general laws and individual commands, arguing that the Rule of Law could not be subject to the wills and desires of individuals (similar to the content developed by Schmitt).

When addressing norms, Schmitt stated that the concept of rule required by a liberal perspective depended on its conformity to four criteria: a) generality; b) predictability and measurability of all political and legal decisions; c) an administration subject to judicial review; d) equality before the law. In his book *The Constitution of Liberty*, Hayek defends the same four criteria (Cristi, 1998, p. 152). Thus, for both, the Rule of Law would be a purely procedural condition rather than a substantial one for the validity of legal norms. The similarities do not end there. The "Law for the Protection of German Blood and Honor" and the "Reich Citizenship Law," both from 1935, aimed to cancel German nationality for Jews and prohibit marriage between Jews and Germans, even sexual relations. Schmitt referred to these laws as "the Constitution of Liberty," curiously the same title as Hayek's famous book. According to Schmitt, these laws transformed German blood and honor into key legal concepts. These laws were seen as "the first German Constitution of Liberty" (Llobet Rodríguez, 2019, pp. 71–72).

Similarly, Hayek asserts that increased state intervention would lead to a total state (a term introduced by Schmitt in the 1930s to describe the same phenomenon). In *The Guardian of the Constitution*, Schmitt argued that the liberal neutral state of the 20th century was being replaced by a total state, where the state and society would be identical. Hayek reaffirms this thesis throughout his life, thus sharing Schmitt's view that an interventionist state resembles more a plebiscitary dictatorship (here referring to voting). Another point of intersection between Hayek's and Schmitt's thoughts lies in the critique of the multi-party state.

The "unlimited democracy" of Hayek is equivalent to the quantitative "total state" highlighted by Schmitt as a weak state. The transformation of this state into a kind of neutral arbiter that must resolve different conflicts of interest and relinquish social control was similarly addressed by both Schmitt and Hayek. As mentioned earlier, Schmitt identified social democracy as the decline of state authority, criticizing the subordination of the state to different social groups. Hayek also criticized democracy in this regard, highlighting that the democratic constitutional structure leads politicians to buy the support of these groups.

Hayek openly endorses the core of Schmitt's critique of the so-called "pluriparty state" (Scheuerman, 1997, p. 180), as highlighted by Scheuerman. Furthermore, Schmitt's perspectives against democratic liberalism align with Hayek's attacks on the welfare state (Cristi, 1998, p. 153). Hayek echoes many of Schmitt's theses on liberalism, emphasizing that democracy should be considered antithetical under certain circumstances (Mirowski, 2013, p. 107).

Schmitt's Strong State was not supposed to intervene in any way in civil society matters. His conservatism was combined with a liberal view that ensured society enjoyed the absence of state intervention and should be regulated by spontaneous market mechanisms. The strength of the State depended on its ability to remain neutral, depoliticizing society. Schmitt's strong State was a qualitative total state compared to the totalitarian state of the fascist regime (Cristi, 1998, p. 20). For Hayek, unlimited democracy would lead to socialism, to a totalitarian regime. Hayek echoes Schmitt's thesis that liberalism and democracy are antithetical (Mirowski, 2009, p. 443).

Schmitt's distinction between liberalism and democracy allowed him to develop a space to manifest the political. Thus, the political could manifest itself not only through the democratic form but also through the monarchical or aristocratic form (Cristi, 1998, p. 21). In *Legality and Legitimacy*, Schmitt argued that the total state was confronted with an authoritarian State. As mentioned earlier, this conclusion was previously elaborated by Heinz Ziegler, who opposed democracy to authoritarianism and liberalism to totalitarianism (Cristi, 1998, p. 23). This distinction was drawn by Hayek and all his followers, who ended up reconfiguring the political and economic doctrine of Nazism through an economistic lens.

Authoritarian liberalism, as developed from Schmittian and ordoliberal thought, reappears, albeit in a more blurred and less crystalline manner, in the ideas of Hayek. Both thinkers have several similarities, although Hayek operates a kind of performative contradiction, constructing his thought through categories similar to those of Schmitt while simultaneously disavowing any political influence from the German jurist. Hayek formally denounced Schmitt in both *The Road to Serfdom and Law, Legislation, and Liberty* (Cristi, 1998, p. 146).

Hayek, despite condemning Schmitt's work, extensively used Schmittian concepts, especially those from the Weimar period. He clearly accepted Schmitt's distinction between democracy and liberalism, as well as another central element of Schmitt's thought: the difference between totalitarianism and liberalism (Cristi, 1998, p. 147). A limited liberal policy bound by abstract general rules would be open to authoritarian rule, which does not seem contradictory to Hayek. Like Schmitt, he appeals to the

distinction between authoritarianism and totalitarianism, consciously following Heinz Otto Ziegler. Furthermore, in a Schmittian fashion, he opposed state planning and any form of intervention in economic matters to liberalism (Cristi, 1998, p. 166).

Joseph Raz emphasized the compatibility of Hayek's Rule of Law with non-democratic systems.[1] Hayek believed that strongly authoritarian governments could ensure the depoliticization of civil society. His liberalism was politically conservative, allowing for a strong state and a liberal society. As Cristi points out,

> in his California manuscript, Hayek seemed much more receptive to dictatorship. In a passage he expressly deleted from his final version, he wrote, 'Today, even dictators could come to power by a genuine breakdown of democracy and be genuinely anxious to restore it if they knew how to safeguard it against the forces that destroyed it.' (Hayek, 1998, p. 168)

There is no doubt that Hayek was referring here to the Pinochet regime.

One could also argue that Hayek's *Model Constitution* advocated for emergency powers to suspend freedom for a certain period, echoing Carl Schmitt and Clinton Rossiter, who emphasized that there can be no democracy in abnormal times. For Hayek, in a government facing a breakdown, it is practically inevitable that someone would have absolute powers. As Cristi (1998) points out, "In truth, Hayek owes much to Schmitt, more than he acknowledged" (p. 23). Indeed, Hayek builds on some concepts developed by Schmitt (Scheuerman, 1997, p. 172). He criticizes some of Schmitt's texts from the Nazi era but overlooks how his own thinking aligns with the *Krownjurist.*

It could be said, in conclusion to this topic, that the greatest inconsistency in the collective neoliberal thought is that the alleged new facets of freedom share a common criticism of old liberalism exposed by authoritarian thought developed by Italian and German political scientists during the interwar period (Mirowski, 2013, p. 106). Neoliberals closely followed Schmitt in order to establish a strong state with a technocratic government immune to social demands (Brown, 2019, p. 61). The same criticisms addressed to the ordoliberals and the Austrian School should be applied to the Chicago School, as the difference between ordoliberalism and the Chicago School is not doctri-

[1] "A non-democratic legal system, based on the denial of human rights, widespread poverty, racial segregation, sexual inequalities, and religious persecution, can, in principle, conform to the requirements of the Rule of Law more than any of the legal systems of the more enlightened Western democracies. This does not mean that it will be better than those Western democracies. It will be an immensely worse legal system, but it will excel in one thing: its conformity to the Rule of Law" (Raz, 1977, p. 196).

nal but lies in emphasis, that is, in the social and historical contexts of private property. It is merely a matter of nuances (Bonefeld, 2017, p. 14), not a political platform.

It seems that by reviving the ordoliberal and Schmittian construction of authoritarian liberalism, Chantal Mouffe (1998) is correct in arguing that democracy denies liberalism and liberalism denies democracy (p. 161), given the "elective affinity between free-market economics and authoritarian policies that have become increasingly common in the contemporary political landscape" (Scheuerman, 1997, p. 184).

Authoritarian liberalism is not just about emphasizing liberal economic policies alongside political repression aimed at quelling dissent against the regime. It is characterized by the concentration of economic and financial decision-making (Chamayou, 2020, p. 14) in the hands of the executive branch. According to Chamayou, neoliberal discourse engaged in historical revisionism by highlighting the connections between democracy and totalitarianism precisely because National Socialism represented a model of state based on an "Economic State," which could be termed "authoritarian liberalism" (Chamayou, 2020, p. 17). When analyzing Latin American policies, Paul Samuelson used the term "capitalist fascism" to describe the combination of market openness with political repression (Samuelson, 1981, pp. 35–44).

Critiques of state welfare programs developed by Hayek stemmed from his aversion to "social justice" (Gamble, 1996, p. 46). However, Hayek never provided evidence for his claims linking totalitarianism and democracy. Instead, he engaged in historical revisionism that reversed the connections between liberalism and National Socialism. It is worth noting that the social democracy of Weimar was crushed by the authoritarian perspective of National Socialism. There was not a progressive transformation from social democracy to totalitarian socialism. Additionally, the National Socialist Party found support and backing precisely from conservatives, which makes Hayek's thesis an unprecedented historical falsification.

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