

Technology, conscience, and the political

Harold Laski's pluralism in Carl Schmitt's intellectual development

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Date: June 24th, 2022

Thesis for obtaining a “Master of arts” degree in philosophy

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I hereby declare and assure that I, Florian R. R. van der Zee, have drafted this thesis independently, that no other sources and/or means other than those mentioned have been used and that the passages of which the text content or meaning originates in other works – including electronic media – have been identified and the sources clearly stated. Place: Bennekom. Date: June 24th, 2022.

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Part I: Publishable article

Abstract of the publishable article

This article looks into the role played by Harold Laski's pluralism in the development of Carl Schmitt's thought, focusing on the way in which Laskian themes enter into and develop in Schmitt's thought during his engagements with Laski's pluralism. Schmitt's discussions critique Laski's pluralism on the basis of its overlooking "the political", and develop two Laskian themes: federalism and consent. Schmitt uses the former to conceptualise what he perceives as the disintegration of the state; his use of the latter continues and combines concerns with instrumental rationalisation and the darker sides of human nature. This culminates in a rejection of conscience, revealing the significance of the concept of "conscience" to dis/order, and a possible motive for Schmitt's eventual Nazi commitments.

Technology, conscience, and the political

Harold Laski's pluralism in Carl Schmitt's intellectual development

By far the most interesting theory of state in years: that is how Carl Schmitt (1888-1985) introduced Harold Laski's (1893-1950) pluralism in 1927.¹ Why did Laski's political philosophy interest Schmitt so much? In this paper I seek to understand the role Laski's pluralism played in Schmitt's intellectual development, tracing the development of Laskian elements in Schmitt's engagements with Laski's thought. Research on this topic is scarce. There are interesting inquiries into Schmitt's opposition to pluralism that do not engage Laski's thought,² and some that pay only limited attention to Laski (or Schmitt) while their focus lies elsewhere.³ Recently, two scholars have dealt more substantially with the connection between *Laski's* pluralism and Schmitt. Marco Walter has contributed to the periodisation of Schmitt's engagements with Laski's pluralism.⁴ Furthermore, Miguel Vatter has argued that pluralism threatened Schmitt's idea that the polity is only brought about through representation—representation understood in the Hobbesian sense (originally derived from Catholic theology).⁵

To clarify how his and my accounts are connected, let me briefly sketch Vatter's argument. Schmitt argued that there can be no political unity without representation: a multitude of people unite because they are confronted with and accept the belief that

¹ Carl Schmitt, *Der Begriff des Politischen: Synoptische Darstellung der Texte*, ed. Marco Walter (Berlin: Duncker & Humblot, 2018), 124 (BP1, 12). All references to *Der Begriff des Politischen* will refer to this edition, which presents the texts from the work's numerous re-editions. I will clarify which edition I am referring to by adding between parentheses 'BP1', 'BP2' or 'BP63' followed by a comma and the original pagination for the 1927 article (published in the *Archiv für Sozialwissenschaft* 58, no. 1, pp. 1-33), and the 1932 (Munich: Duncker & Humblot) and 1963 (Berlin: Duncker & Humblot) monographs, respectively.

² Gopal Balakrishnan, *The Enemy: An Intellectual Portrait of Carl Schmitt* (London: Verso, 2000), chap. 9; Reinhard Mehring, *Carl Schmitt: Aufstieg und Fall* (Munich: Verlag C. H. Beck, 2009), 251ff.; Chantal Mouffe, "Carl Schmitt and the Paradox of Liberal Democracy," in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Verso, 1999), 38-53.

³ Jeanne Morefield, "Political Theory as Historical Counterpoint: The Case of Schmitt and Sovereignty," *Theory & Event* 19, no. 1 (2016), Project MUSE; Mark Wenman, "English Pluralism, Functionalism and Corporatism: The Legacy of Paul Hirst," *Political Studies* 55 (2007): 801-20, <https://doi-org.ru.idm.oclc.org/10.1111/j.1467-9248.2007.00679.x>.

⁴ Marco Walter, "Kommentar," in Carl Schmitt, *Der Begriff des Politischen: Synoptische Darstellung der Texte*, ed. Marco Walter (Berlin: Duncker & Humblot, 2018), 290. Walter's editorial notes also provide insights into the secondary sources on pluralism consulted by Schmitt.

⁵ Miguel Vatter, *Divine Democracy: Political Theology after Carl Schmitt* (Oxford: Oxford University Press, 2021), 37-41.

they make up “a” people, a politically united people.⁶ *Real* political unity, in short, presupposes shared awareness of *ideal* political unity. Hobbes argued that it was the unity of the sovereign as the representative of the political unity that established this political unity.⁷ Now, notes Vatter, the question is: does this act of representation bring about a real group consciousness or “personality”, actually transforming the individuals of the multitude into group members, or not? If it does not, then there is no actual unification, and the “sovereign” quixotically confronts a multitude of individuals who never relinquished (at least part of) their individuality. But if it does, the sovereign may not be necessary as the sole voice of the people. In fact, Laski and other English pluralists pointed out that history bore the traces of group activity *in spite of* the “sovereign” state on the part of groups supposedly existing only *within* the state. Other groups compete with the state for the allegiance of individuals, and the state cannot claim that, as the condition of possibility of unity, it should enjoy priority in this competition.⁸

This interesting analysis does not, I think, exhaust the Schmittian problematic of representation or Schmitt’s interest in Laski’s pluralism. The crucial question for Schmitt is whether a unity transcending the unities established by competing groups is required—a question Schmitt answers with a decisive “yes”.⁹ Vatter, too, acknowledges this, but he seems not to acknowledge that this reproduces the problematic of representation *in a transformed way*, crucially raising the question of the determination of individual allegiances.¹⁰

In this paper, I will show that for Schmitt, Laski’s pluralism first and foremost raised precisely that issue of the determination of individual allegiances.¹¹ To understand just how it did this, I will in the first section discuss some relevant themes central to Schmitt’s early work. Next, I will outline the basics of Laski’s pluralism. In the third

⁶ Carl Schmitt, *Verfassungslehre* (Munich: Duncker & Humblot, 1928; Berlin: Duncker & Humblot, 2017), 204-16 (citations refer to the 2017 edition). See also: Vatter, *Divine Democracy*, 42.

⁷ Vatter, *Divine Democracy*, 42.

⁸ Vatter, *Divine Democracy*, 43-49.

⁹ This problem already concerned Schmitt in *Politische Theologie: Vier Kapitel zur Lehre von der Souveränität* (Munich: Duncker & Humblot, 1922; Berlin: Duncker & Humblot, 2015), 16 (citations refer to the 2015 edition). See also: Mehring, *Carl Schmitt*, 252.

¹⁰ Vatter, *Divine Democracy*, 49-53.

¹¹ It would be interesting to return to the Schmittian problematic of representation on the basis of these insights, thus continuing Vatter’s discussion. That, however, is matter for another time: it deserves and requires an article of its own.

section, against the background of a brief periodisation of Schmitt's engagements with Laski's pluralism, I will trace how two Laskian themes—federalism and consent—figure in Schmitt's discussions of pluralism, as well as reconstruct Schmitt's main critique of pluralism. In the fourth section, I reflect on two implications of Schmitt's engagements with Laski's pluralism, arguing that they reveal a connection between conscience and dis/order relevant for political philosophy in general, and that they may shed light on the reasons behind Schmitt's eventual national socialist commitments. A concluding section summarises the essentials of my argument.

1. Central themes in Schmitt's early work

An understanding of Schmitt's discussions of Laski's pluralism requires an awareness of two sets of themes in Schmitt's early work, namely: the exception and the reality of power, and Schmitt's early critiques of liberalism and of secularisation.

1.1. The exception and the reality of power

“Souverän ist, wer über den Ausnahmezustand entscheidet.”¹² Sovereign is whoever decides on the exception. That is the famous definition of the sovereign, with which Schmitt opened his *Politische Theologie* (1922). Behind it lies an increasing concern of the legal scholar Carl Schmitt with the problem of order. In *Politische Theologie*, Schmitt argued that order as such has priority over legal order (*Rechtsordnung*). For, a legal order requires a regularised collective life in order for there to be something like a distribution of authority (who can make laws? who can apply them? etc.), but also since the application of general (legal) norms to this collective life demands, first, that the collective life displays general characteristics (e.g., common habits) and, second, that it includes common interpretative practices rendering the application of the law generally intelligible and reasonable.¹³ To put it in Wittgensteinian terms: those who are to share a legal order have to play the same language game(s).

If order has priority over legal order, legal order requires a distinction between order and its other, between the normal and the abnormal, that it cannot give itself. That is, the required distinction cannot be derived from norms, as it is the very condition of possibility of a shared normative life. As such, the creation of order is a *creatio ex nihilo*,

¹² Schmitt, *Politische Theologie*, 13.

¹³ Schmitt, *Politische Theologie*, 19.

and relies on *decision*: the distinction has to be made by someone—although it does draw its substance from the variety of conflicting views of order upon which it decides.¹⁴ As its condition of possibility, the making of this distinction both belongs to and transcends the legal order. Thus, it is made only in the exceptional case in which order is properly—that is: unforeseeably from the point of view of that order—disrupted, and it is made precisely as the decision that the state of exception (*Ausnahmezustand*) holds.¹⁵ Whoever effectively makes that decision is sovereign.

Schmitt's reflections on the state of exception began during the First World War,¹⁶ and it makes sense that they continued during the first, tumultuous (*coup d'état*-ridden and often civil war-like) years of the Weimar Republic.¹⁷ They continued a preoccupation with the reality of power. Before the war, in *Der Wert des Staates und die Bedeutung des Einzelnen* (1914), Schmitt had argued that power and right, or the “is” of causal reality and the “ought”, are two separate realms that cannot be integrated without either right being reduced to mere power or the notion of “power” being split into right power and mere power on the basis of a concept of “right” which now *still* has to transcend power.¹⁸ Nevertheless, the normative domain of right does serve as an attractor on the real, it demands realisation and as such requires a “highest power” that has the effective ability to do so; as the highest power in a given time and place, the state, argued Schmitt, can only be worthy of maintenance if it fully serves this task of realising right *and* is the only power able to do so.¹⁹ However, that means that the state has to deal with two domains—that of right and that of causal reality. Consequently, the realisation of right is shaped by the demands of reality, demands not reducible to the normative.²⁰

As the reality of power became a truly pressing issue, Schmitt would increasingly emphasise the priority of the real: only if the demands of reality are met, can anything

¹⁴ Schmitt, *Politische Theologie*, 13, 16.

¹⁵ Schmitt, *Politische Theologie*, 13f.

¹⁶ Mehring, *Carl Schmitt*, 88ff.; Michael Dylan Rogers, “The Development of Carl Schmitt’s Thought During the First World War,” *Modern Intellectual History* 13, no. 1 (2016): 123-49, <https://doi-org.ru.idm.oclc.org/10.1080/16544951.2018.1498698>.

¹⁷ Mehring, *Carl Schmitt*, 120-23.

¹⁸ Carl Schmitt, *Der Wert des Staates und die Bedeutung des Einzelnen* (Tübingen: Verlag von J. C. B. Mohr (Paul Siebeck), 1914; Berlin: Duncker & Humblot, 2015), 28f. (citations refer to the 2015 edition).

¹⁹ Schmitt, *Der Wert des Staates*, 37-43, 50, 57-60.

²⁰ Schmitt, *Der Wert des Staates*, 75-80.

like “right” be realised. In the exceptional case, this means that the legal order may be suspended so that order can be re-established by *any means necessary*.²¹ Such a reckoning with the reality of power is part and parcel of the sovereign decision.²²

1.2. Schmitt’s early critique of liberalism and secularisation

Schmitt is perhaps best known as a critic of liberalism, and in Schmitt’s early works numerous critiques of liberalism can be distinguished. Two in particular form the backdrop of Schmitt’s discussions of pluralism.

First, Schmitt warned that liberal individual freedoms dangerously hampered the state’s ability to cope with the dark sides of human nature. In 1914 Schmitt described human nature as selfish and contradictory, and presented the creation of order as an astonishing feat.²³ Schmitt’s dire view of human nature, or *anthropological pessimism*,²⁴ returns in *Politische Theologie*, where Schmitt approvingly cites the grim anthropological views of counterrevolutionary Catholic philosophers Louis de Bonald, Joseph de Maistre, and Juan Donoso Cortés. Especially in Donoso Cortés, anthropological pessimism takes on a fundamental, epistemological character: human nature is not simply weak—as it also is with a much more optimistic philosopher like Immanuel Kant²⁵—, it is “blind”, utterly unable to see the true and the good.²⁶ However, Schmitt does remark that the radicality of Donoso Cortés’ absolute pessimism results from his polemic with the equally absolute optimism of the anarchist Joseph Proudhon—which suggests that Donoso Cortés is a bit too radical for Schmitt’s liking.²⁷ Nevertheless, Schmitt agrees sufficiently with the pessimism of Bonald, De Maistre, and Donoso Cortés to argue with these thinkers that, in the face of looming chaos, *that* something is decided is far more important than *what* is decided.²⁸

Secondly, the main strand of criticism in *Politische Theologie* criticises liberalism as a

²¹ Rogers, “Schmitt’s Thought During the First World War,” 124, 132f.; Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (Munich: Duncker & Humblot, 1921; Berlin: Duncker & Humblot, 2015), xviii-xix (citations refer to the 2015 edition).

²² Schmitt, *Politische Theologie*, 14.

²³ Schmitt, *Der Wert des Staates*, 85.

²⁴ Mehring, *Carl Schmitt*, 146.

²⁵ Immanuel Kant, *Grundlegung zur Metaphysik der Sitten*, ed. Karl Vorländer (Hamburg: Felix Meiner Verlag, 1994), 33-34.

²⁶ Schmitt, *Politische Theologie*, 63.

²⁷ Schmitt, *Politische Theologie*, 61f.

²⁸ Schmitt, *Politische Theologie*, 60f., 67ff.

product of secularisation. Schmitt's understanding of "secularisation" is shaped by Max Weber's. Famously, secularisation meant for Weber disenchantment of the world (*Entzauberung der Welt*). This means that the technical, or instrumental, rationality which dominates the natural sciences absorbs the way in which the world is viewed: the world is deemed to be ultimately calculable and controllable.²⁹ Such a worldview is a secularised worldview insofar as all powers that may disrupt the world's calculable, predictable functioning are denied, leaving no room for miracles or other interventions of or interactions with God, gods, or other transcendent entities.³⁰ It should be noted that Weber's disenchantment is incomplete: as instrumental rationality is free of value and purpose, it has to find the values and purposes that determine its implementation outside itself, in what for the secularised worldview, dominated as it is by instrumental rationality, can only be regarded as irrational sources (yielding a plurality of values that can neither be rationally reconciled nor rationally grounded).³¹

Schmitt's *Politische Theologie*, continuing an argument started in *Die Diktatur* (1921), critiques the way in which the secularisation process had affected the conceptualisation of the state, turning it into an instrument or machine. According to Schmitt, secularisation had distorted the way in which political life was conceptualised. As God was removed from the universe, leaving it to run according to its own constituted laws, that which transcends the constituted political and legal order, namely, the sovereign decision, was removed from political thought;³² as the miracle was exiled from theology, its political analogue, the exception, was exiled from politics.³³ Thus, in *Die Diktatur*, Schmitt described the liberal belief in the state as a machine as follows: the monarchs had fulfilled their role as constituting forces, they had eliminated all powerful and disruptive social groups and classes within the state and installed a comprehensive, mechanical balance of powers, and now the state could be left to run on its own.³⁴ *Politische Theologie* especially critiqued Hans Kelsen's legal positivism—which identified the legal order with a body of laws viewed as a complete and self-sufficient whole—as

²⁹ Max Weber, *Wissenschaft als Beruf* (Berlin: Duncker & Humblot, 2011), 16f.

³⁰ Max Weber, *Die protestantische Ethik und der Geist des Kapitalismus* (Munich: Anaconda Verlag, 2020), 90, 102; Weber, *Wissenschaft als Beruf*, 26.

³¹ Weber, *Wissenschaft als Beruf*, 22-23, 26ff.

³² Schmitt, *Die Diktatur*, 97-101; Schmitt, *Politische Theologie*, 52ff.

³³ Schmitt, *Politische Theologie*, chap. 3.

³⁴ Schmitt, *Die Diktatur*, 200f.

a contemporary exponent of this liberal view of the state as a machine.³⁵ But order, urged Schmitt, could be disrupted, and hence it was paramount to bring the moment of its (re-)constitution back into view—which meant that liberalism, with its thoroughly secularised perspective on the state, had somehow to be overcome.

2. Laski's pluralism

Not too long after the publication of *Politische Theologie*, Schmitt encountered Laski's political thought. Within Laski's thought, a distinction can be made between his fundamental, pluralist critique, and a constructive political philosophy formulated on its basis.³⁶

2.1. The fundamental critique³⁷

Laski articulated his fundamental critique in his first monograph, *Studies in the Problem of Sovereignty* (1917). The argument in *Studies* revolves around an opposition between two views of the state: monism and pluralism. Monism accords the state a special, higher place among the other associations it supposedly encompasses.³⁸ The unity of the state has priority over everything that supposedly exists within it. This entails a priority of allegiance: people belong first to the state, and only in a secondary fashion to other associations, groups, or classes.³⁹ Consequently, monism demands that the state be sovereign in the sense of omniscient.⁴⁰ The state must always “triumph” over other associations and must be able to decide within all spheres of life, lest the state's unity is in any way contested.⁴¹

It is precisely here that Laski criticises monism and articulates his alternative, pluralism. *Studies* largely consists of historical case studies of conflicts between church and state.⁴² These show that in actual practice the state does not always triumph in conflicts

³⁵ Schmitt, *Politische Theologie*, 13f., chap. 2.

³⁶ In fact, Laski himself makes such a distinction. See: Harold J. Laski, *Studies in the Problem of Sovereignty* (New Haven: Yale University Press, 1917; London: Routledge, 2015), ix (citations refer to the 2015 edition); Harold J. Laski, *Authority in the Modern State* (New Haven: Yale University Press, 1919; Clark, NJ: The Lawbook Exchange, Ltd., 2014), ix (citations refer to the 2014 edition).

³⁷ This subsection repeats, with minor changes in presentation, an argument I gave earlier in: Florian R. van der Zee, “Concealed Similarity: Carl Schmitt's Critique of Harold Laski's Pluralism,” *Splijtstof* 49, no. 4 (2021): 53-55.

³⁸ Laski, *Studies*, 1, 5, 25.

³⁹ Laski, *Studies*, 5.

⁴⁰ Laski, *Studies*, 68, 268.

⁴¹ Laski, *Studies*, 7.

⁴² Laski, *Studies*, chaps. 2-5.

with other, supposedly “lower” associations.⁴³ That means that in conflicts between the state and other associations, there is an actual dilemma, a dilemma confronting the individual. In a conflict between associations, neither demand and hence neither association turns out to be truly decisive—even if one of the associations involved is the state. Decisive are rather the wills, or consciences,⁴⁴ of the conflicted individuals who are members of both. Therefore, “[w]here sovereignty prevails, where the State acts”, Laski observes, “it acts by the consent of men.”⁴⁵ This is the pluralist point: insofar as they must all vie for the effective allegiance of their members, all associations are equal and independent of one another—and that includes the state.⁴⁶

There is a notable curiosity in Laski’s argument, however. Laski’s writings oscillate between factual description and normative judgment. In *Studies*, the distinction between monism and pluralism often seems to be a descriptive one. After all, Laski argues against monism by showing that the state is not *actually* able to always decide within all spheres of life. Such an approach suggests that monism and pluralism are descriptive theories the truth of which can be empirically determined. However, at other times the distinction between monism and pluralism clearly figures as a normative one, as when Laski writes of monism: “A state that demands the admission that its conscience is supreme goes beyond the due bounds of righteous claim.”⁴⁷ The question is whether these attitudes are to be separated. Does *Studies* actually elaborate two monisms and two pluralisms, descriptive and normative ones?

I do not think that is the case, for in the matter of conscience description and normativity may be argued to intersect. In *Studies*, Laski *descriptively* shows that the power of all associations, the state included, depends on individual consent and, consequently, conscience. Consent, then, is not devoid of normativity, and monism taken as a normative stance undermines itself. For, a normatively understood monism amounts to a normative claim on individual conscience that seeks to deny the individual’s right to conscientious judgment. There is, in short, a hypocrisy in monism: to be effective, it has to secure and thus implicitly appeal to and accept the very consent, the very

⁴³ Laski, *Studies*, 66-68, 118f.

⁴⁴ Laski, *Studies*, 263.

⁴⁵ Laski, *Studies*, 13.

⁴⁶ Laski, *Studies*, 18f.

⁴⁷ Laski, *Studies*, 67.

workings of conscience, that it seeks to override.

2.2. The basics of a constructive political philosophy

The critique of monism developed in *Studies* informs the constructive arguments in *Authority in the Modern State* (1919) and *A Grammar of Politics* (1925); for clarity's sake, I will focus on the former.⁴⁸ Here, Laski's fundamental critique results in the insight that as the state cannot help but appeal to individual conscience, it has to embrace it. That means that the state must justify itself in light of the consciences of its citizens, that is, in light of what its citizens regard as good. The state should therefore endorse and serve the individual's ability to pursue the good life, or, as Laski puts it, the state must embrace the ideal of liberty "in the sense of the positive and equal opportunity of self-realisation".⁴⁹

For the state to embrace the ideal of liberty thus understood, it has to guarantee certain basic rights that safeguard the bare minimum requirements of the pursuit of the good life, notably a right to education, to leisure, and rights to freedom of expression and association. Only if those rights are guaranteed, Laski maintains, can people debate and associate on the basis of well-informed and well-considered conscientious judgment.⁵⁰ For Laski, these rights are "natural" insofar as they constitute demands with priority over the political organisation, but they differ from natural rights due to their historicity: different times may demand different pre-political rights.⁵¹

Laski's pluralism entails a right to resistance: in the final instance, individual conscience is and should be the judge of the state's functioning. If it judges the state to be remiss, obedience may be withheld *and* action—including organisation—may be taken to right the wrongs, as individual conscience is the judge of where authority resides.⁵² Ultimately, Laski insists, "the allegiance of man to the state is secondary to his

⁴⁸ *A Grammar of Politics* was written *after* a "statist" turn on Laski's part. On this turn, see: Peter Lamb, *Harold Laski: Problems of Democracy, the Sovereign State, and International Society* (New York: Palgrave Macmillan, 2004), 18ff.; Michael Newman, *Harold Laski: A Political Biography* (Pontypool: Merlin Press, 2009), chap. 4. Nevertheless, Laski sought to retain his pluralist insights, as can be discerned from: Harold J. Laski, *A Grammar of Politics* (London: George Allen & Unwin Ltd., 1925; Oxon: Routledge, 2015), 31-34, chap. 2 (citations refer to the 2015 edition).

⁴⁹ Laski, *Authority*, 37. See also: Laski, *Authority*, 46f., 108.

⁵⁰ Laski, *Authority*, 47f.

⁵¹ Laski, *Authority*, 43.

⁵² Laski, *Authority*, 26-32, 85, 92.

allegiance to what he may conceive his duty to society as a whole.”⁵³ In short, and as will become clearer below, Laski espouses a political philosophy in which grassroots, organised resistance and the organisation of reform (or even revolution) coincide.

On this basis, Laski argues for and validates the organisation of pragmatic reform—even if this organisation takes place *despite* the state. When I speak of *pragmatic* reform, I mean that Laski typically does not seek necessary forms of organisation (in fact, he tends to denounce such an endeavour), but rather proposes reforms that will likely further what seem to be desirable goals. Consequently, Laski’s proposed reforms are largely informed by empirical assumptions, often derived inductively from history.⁵⁴

One of Laski’s most crucial assumptions is that the level at which interests are represented determines the substance of interest representation. In general this means that increased centralisation will eventually be followed by a decreased attention to (relevant) details: “in administration”, writes Laski, “there is a point at which, for every increased attribute, an obvious diminution of efficiency results.”⁵⁵ But not only will increased centralisation at some point correlate with an *overall* decrease in the quality with which represented interests are served, centralisation as such also tends to favour certain interests over others. A national parliament, for example, will prioritise those interests that are shared by all those it represents. That means that the interests of more particular groups like miners or religious minorities will not be as well served by parliament as the interests of, say, consumption and consumers in general, which are shared by all those represented by parliament.⁵⁶

Laski’s assumptions led him to demand decentralisation via “a division, not of powers, but of power upon the basis of functions.”⁵⁷ For example, workers may self-organise despite the state, growing an economic (or industrial) democracy within the state—notably through the federalisation of grassroots organisations, which Laski regards as inevitable given the interdependence of economic processes⁵⁸—and in so doing *supplementing* the state: the old state powers such as parliament will represent certain

⁵³ Laski, *Authority*, 122.

⁵⁴ Laski, *Authority*, 19f.

⁵⁵ Laski, *Authority*, 77.

⁵⁶ Laski, *Authority*, 82ff.

⁵⁷ Laski, *Authority*, 74.

⁵⁸ Laski, *Authority*, 74; Harold J. Laski, “The Problem of Administrative Areas,” in idem, *The Foundations of Sovereignty and Other Essays* (Clark, NJ: The Lawbook Exchange, Ltd., 2014), 69ff.

general interests (for these do deserve to be represented), while grassroots self-organisation and federalisation will create the structures and countervailing powers necessary for the representation of those interests which the old state fails to represent.⁵⁹

3. True pluralism: Schmitt contra Laski

How did Schmitt respond to Laski's pluralism? Why and how did it appeal to him? To answer these questions, I will first briefly provide a periodisation of Schmitt's engagement with pluralism, on the basis of which I can turn to a more substantial discussion of the main arguments Schmitt developed through his discussions of Laski's pluralism.

3.1. A brief periodic overview of Schmitt's engagements with pluralism

Schmitt's engagements with Laski's pluralism can be divided into five phases. Initially, starting with Schmitt's first reference to Laski in *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923), Schmitt regarded Laski as a liberal,⁶⁰ a qualification repeated in a letter to Rudolf Smend in 1925.⁶¹ Somewhere between 1925 and 1927—probably during the winter semester of 1925/26, as Schmitt's teaching activities led him to a closer engagement with Laski's pluralism⁶²—Schmitt began to differentiate between liberalism and pluralism. Laski's pluralism now appeared as a symptom of the dissolution of the state in a cultural context in which, marked as it was by an “economic-technical” mode of thought—that is, the secularised, instrumentally rationalised worldview discussed in §1.2—, the state as a pre-eminent and stable unity had become incomprehensible.⁶³ Schmitt elaborated on this idea in “Der Begriff des Politischen” (1927), which contained his first more extensive discussion of pluralism and sought to

⁵⁹ Laski, *Authority*, 86ff.

⁶⁰ Carl Schmitt, *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (Munich: Duncker & Humblot, 1923; Berlin: Duncker & Humblot, 2017), 43n2 (citations refer to the 2017 edition). Schmitt's engagement with Laski thus starts earlier than presented in Marco Walter, “Kommentar,” 290. According to Miguel Vatter, *Politische Theologie* already responds to Laski, but I am not convinced that this is the case. Despite resembling book titles, *Politische Theologie* could have been written without any knowledge of Laski's pluralist *Studies*, and Schmitt's slowly growing attention to the peculiarities of pluralist argument as well as Schmitt's citation history suggest that it was. Cf. Vatter, *Divine Democracy*, 50.

⁶¹ Schmitt to Rudolf Smend, Cavtat, September 14, 1925, in „Auf der gefahrenvollen Straße des öffentlichen Rechts“: *Briefwechsel Carl Schmitt – Rudolf Smend, 1921-1961*, ed. Reinhard Mehring (Berlin: Duncker & Humblot, 2012), 49.

⁶² Carl Schmitt, *Tagebücher 1925 bis 1929*, ed. Martin Tielke and Gerd Giesler (Berlin: Duncker & Humblot, 2018), 44 (January 9, 1926), 67 (March 1, 1926); Walter, “Kommentar,” 290.

⁶³ Carl Schmitt, “Zu Friedrich Meineckes „Idee der Staatsräson“ (1926),” in idem, *Positionen und Begriffe im Kampf mit Weimar – Genf – Versailles, 1923-1939* (Berlin: Duncker & Humblot, 2014), 59.

retrieve the logic of political unity so as to re-establish the state's comprehensibility.⁶⁴

In 1928, with the publication of the *Verfassungslehre*, Schmitt reconciled himself with an authoritarian variant of liberalism.⁶⁵ Until Hitler's rise to power in 1933, he would oppose pluralism to liberalism, whereas during 1923-1927 he had mainly emphasised their proximity. It was during 1928-1933 that Schmitt most intensively engaged with pluralism, and all of Schmitt's central arguments concerning pluralism are contained in his most elaborate inquiry into it, "Staatsethik und pluralistischer Staat" (1930).⁶⁶

Following Hitler's rise to power, from 1933 to 1936, Schmitt hailed the Nazi regime as a solution to the pluralistic problem. During this period, Schmitt would not deepen his understanding of pluralism. That changed after 1936; especially with *Der Leviathan in der Staatslehre des Thomas Hobbes* (1938) Schmitt continued his engagements with pluralism.⁶⁷ Finally, after Nazi Germany was defeated in 1945, the context of Schmitt's theorising changed, as it was marked by a return to domestic pluralism.

3.2. Laskian themes and Schmittian critique

For the sake of clarity, I will now turn to a thematic discussion of Schmitt's engagements with Laski's pluralism, within which I will pay attention to the development of

⁶⁴ Schmitt, *Der Begriff des Politischen*, 114ff. (BP1, 9ff.); cf. Mehring, *Carl Schmitt*, 208.

⁶⁵ In the *Verfassungslehre*, Schmitt argued that the liberal component of liberal regimes, on the basis of the universalist notion of "humanity", sought the limitation of the state to guarantee individual freedom, prescribing basic rights and a balance of powers so as to organise the state's self-limitation. But existentially, this liberal component was parasitic on the—exclusive rather than universal—political unity, and therefore the need to maintain political unity was primary and could warrant the suspension of liberal safeguards *for their own sake*. See: Schmitt, *Verfassungslehre*, 20-29, 125ff. For an analysis according to which *Die geistesgeschichtliche Lage des heutigen Parlamentarismus* (1923) already marks Schmitt's reconciliation with liberalism, see: Renato Cristi, "Carl Schmitt on Liberalism, Democracy and Catholicism," *History of Political Thought* 14, no. 2 (summer 1993): 281-300. For accounts that take *Die geistesgeschichtliche Lage* to contain a critique of liberalism, see: Balakrishnan, *The Enemy*, chap. 5; Graham Ward, *The Politics of Discipleship: Becoming Postmaterial Citizens* (Grand Rapids, MI: Baker Academic, 2009), chap. 1, KOBO EPUB. For an analysis occupying a position somewhere in between, see: Mehring, *Carl Schmitt*, 157-62.

⁶⁶ Carl Schmitt, "Staatsethik und pluralistischer Staat (1930)," in idem, *Positionen und Begriffe im Kampf mit Weimar – Genf – Versailles, 1923-1939* (Berlin: Duncker & Humblot, 2014), 151-65. Judging by Schmitt's diaries, the period from 1928 until the completion of "Staatsethik" saw his most intensive engagement with pluralism: Schmitt, *Tagebücher 1925 bis 1929*, 222 (October 25, 1928), 230 (November 12, 1928), 232 (November 18, 1928), 235 (November 25, 1928), 251f. (January 16, 1929), 252f. (January 18, 1929), 288 (April 26, 1929), 291 (May 5, 1929), 292 (May 6, 1929), 292 (May 8, 1929), 296 (May 15, 1929), 296 (May 17, 1929), 298 (May 22, 1929), 302 (June 2, 1929), 303 (June 5, 1929), 305 (June 9, 1929), 305 (June 10, 1929), 306 (June 11, 1929); and in the parallel diaries, probably from early 1928 to early 1929: *ibid.*, 417, 419, 453, 456, 472.

⁶⁷ Carl Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines politischen Symbols* (Hamburg: Hanseatische Verlagsanstalt, 1938; Stuttgart: Klett-Cotta, 2018). Citations refer to the 2018 edition.

Schmitt's thought and attempt to substantiate and clarify my periodisation in the process. My discussion will focus on three themes: federalism and the equation of associations, the political, and consent.

3.2.1. Federalism and the equation of associations

Laski, as we saw, placed all associations—the state included—on the same plane, rendering them equally responsible to the individual conscience, and on this basis argued that pragmatic reform may be realised through grassroots organisation and eventual federalisation. This arrangement finds its mirror image in Schmitt's presentation of pluralism as a theory of the disintegration of the state.

In "Staatsethik und pluralistischer Staat," Schmitt argued that pluralism corresponded to the empirical reality of modern, industrial states. In practice as well as in pluralist theory, Schmitt maintained, the state is instrumentalised, becoming a mere means to the ends of society, or its unity is turned into a mere compromise between social forces. Both developments are detrimental to political unity: a mere instrument makes no demands and settles no disputes, it is only the object of demands; and, if the state is turned into a compromise, into a mere agreement or pact between social forces, the only "ethic" of state still available is that agreements must be kept, *pacta sunt servanda*—but that means that domestic politics takes on the character of foreign politics, thus yielding an "ethic of civil war" (*Ethik des Bürgerkrieges*).⁶⁸

During the 1930s Schmitt would further fill in this empirical picture and its genealogy. Against the background of the *Verfassungslehre* he endeavoured to show that pluralistic reality (I use 'pluralistic' to refer to the state of affairs that pluralism, as an ideology, according to Schmitt describes and affirms) distorted and disrupted liberal categories and institutions, which on his analysis presupposed a dualism between state and individuals free of intermediaries. Schmitt mobilised these insights to support the presidential rule that, from 1930 until Hitler's rise to power, sought to govern an increasingly impoverished and politically polarised Weimar Republic via presidential emergency decrees.⁶⁹ As Schmitt's empirical and constitutional-theoretical

⁶⁸ Schmitt, "Staatsethik," 154f., 159, 164.

⁶⁹ Three works are particularly noteworthy in this context. First, there is: Carl Schmitt, *Der Hüter der Verfassung* (Tübingen: Verlag von J. C. B. Mohr (Paul Siebeck), 1931; Berlin: Duncker & Humblot, 2016). In this work Schmitt seeks to explain and understand empirical pluralism in Germany, and argues that in the face of it, effective power should accompany the normally symbolic authority of the president. It

determinations only very generally bear the mark of Laski's pluralism, I will not discuss them in further detail.

What interested Schmitt particularly about *Laski's* pluralism, were the origins of the arguments used to justify what Schmitt perceived as a disintegration or instrumentalization of the state: these go back to those articulated by various churches and religious sects in their struggle against the state.⁷⁰ In particular, pluralism draws on the originally Catholic idea that the church, like the state, is a *societas perfecta*: a self-sufficient, independent and autarchic whole. However, the church stakes a universalist—which is to say: monist—claim, a claim contradicting the dualism of two *societates perfectae*, revealing the argument to be but a weapon used in a competition with the state. Schmitt claims that this is also the case with pluralism. In the case of Laski's pluralism, the idea of pluralism is but a veneer behind which universalist socialism and the universalist notion of “humanity” (with its corresponding individualism) lurk.⁷¹

In short, Schmitt thought the state was being undermined from behind the scenes by powers that argued in favour of domestic plurality precisely until they could install the kind of unity they themselves favoured.

3.2.2. *The political*

The crux of Schmitt's critique of pluralism was the idea that the significance of “the political” had been forgotten. Schmitt first articulates this critique in “Der Begriff des Politischen” (1927). Here, he writes that the *differentia specifica* of the political is the distinction between friend and enemy;⁷² the sovereign decision on normality and abnormality, which already in *Politische Theologie* was connected to the very existence of

incorporates the earlier reflections on pluralism of: Carl Schmitt, “Staatsstreichpläne Bismarcks und Verfassungslehre (1929),” in idem, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954* (Berlin: Duncker & Humblot, 2003), 29-33; idem, “Das Reichsgericht als Hüter der Verfassung (1929),” in idem, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954* (Berlin: Duncker & Humblot, 2003), 63-109; idem, “Das Problem der innerpolitischen Neutralität des Staates (1930),” in idem, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954* (Berlin: Duncker & Humblot, 2003), 41-59. The other two works, which critique the legalistic formalisation of the constitution and seek to retrieve the Weimar Constitution's substantial core, are: Carl Schmitt, “Grundrechte und Grundpflichten (1932),” in idem, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954* (Berlin: Duncker & Humblot, 2003), 181-231; idem, *Legalität und Legitimität* (Munich: Duncker & Humblot, 1932; Berlin: Duncker & Humblot, 2012).

⁷⁰ Schmitt to Ernst Rudolf Huber, Berlin, May 2, 1930, in *Carl Schmitt – Ernst Rudolf Huber: Briefwechsel 1926-1981*, ed. Ewald Grothe (Berlin: Duncker & Humblot, 2014), 69f.

⁷¹ Schmitt, “Staatsethik,” 153f., 156f.; see also Schmitt's later remark that precisely in the decisive years of 1931/32, Laski turned away from liberal individualism to Marxism: Schmitt, *Der Begriff des Politischen*, 127 (BP63, rem. on pp. 37ff.).

⁷² Schmitt, *Der Begriff des Politischen*, 76-78 (BP1, 4).

political unity, now turns out to also amount to the decision on friend and enemy.⁷³ To the friend/enemy distinction, only the reality of power—the real possibility of two collectives’ ways of life being existentially incompatible and in the extreme case requiring demarcational violence (war)—is essential.⁷⁴ However, it can draw on oppositions in any domain of human life: any opposition can become *the* political opposition.⁷⁵

The political thus understood separates the political grouping, or political unity, from other associations and elevates the former over the latter—and that, argues Schmitt, is precisely what Laski overlooks. The state, as the political unity, is elevated and sovereign not insofar as it is the only locus of decision making, but insofar as it constitutes the *ultimately* (or: exceptionally) decisive grouping.⁷⁶ Furthermore, Schmitt maintains that the superiority of the political grouping makes demands on the associations that inhabit it: the maintenance of a political unity requires that the associations that live within it do not usurp the political decision. A political unity is dissolved when other groups within it prevent it from declaring war, or actually manage to declare war themselves (in which case they become new political unities).⁷⁷

In “Staatsethik und pluralistischer Staat”, Schmitt repeated the thesis that pluralism overlooks the political, adding that this in part resulted from the idea that the political is a separate “sphere” of human activity besides other such spheres. This sphere-view of the political overlooks the fact that there is not a political opposition next to other, unpolitical oppositions; the political concerns the degree of intensity of any opposition. The political has no subject matter of its own, and the necessarily unsuccessful quest to find it anyway leads some to deny the need for a political unity or state altogether.⁷⁸

Schmitt’s discussions on the political were polemically directed against universalism in politics. “Der Begriff des Politischen” ultimately refers the forgetfulness of the political (of which pluralism is only an example) to a “denaturalisation” of all political concepts by liberal thought. In “Der Begriff des Politischen”, what characterises liberalism is an individualism grounded in a universalist humanism. For the sake of

⁷³ Schmitt, *Der Begriff des Politischen*, 118-22 (BP1, 11); Schmitt, *Politische Theologie*, 16.

⁷⁴ Schmitt, *Der Begriff des Politischen*, 82-84 (BP1, 5).

⁷⁵ Schmitt, *Der Begriff des Politischen*, 114-18 (BP1, 9-11).

⁷⁶ Schmitt, *Der Begriff des Politischen*, 122-38 (BP1, 11-14).

⁷⁷ Schmitt, *Der Begriff des Politischen*, 118-22 (BP1, 11), 140 (BP1, 14).

⁷⁸ Schmitt, “Staatsethik,” 159.

universal truth liberals emphasise discussion; the universalist notion of “humanity” betrays an optimism which embraces the free self-organisation of individuals in society while distrustfully seeking to limit state power through a balance of powers; and, secularisation offers the illusion of a neutral and therefore universal space. Such an attitude must efface the political: universalism cannot bear the particularity and exclusiveness of the friend/enemy distinction, and individualism cannot validate the demand that in the final instance of war individual life be sacrificed; instead, the state must be limited and instrumentalised, becoming a mere tool for the purposes of society.⁷⁹

Schmitt was particularly concerned about the interaction between universalism and a world actually marked by political differences. The application of universalist ideas to political reality meant, argued Schmitt, a fatal reorientation of political categories and oppositions. If a universalism seeks to reshape political reality, it will do so by denying its own political nature. Universal humanity knows no human enemies, and instead of war it knows only justice. A universalism that seeks to maintain itself vis-à-vis political opposition has absolute right on its side, and is thus able to justify the most inhumane and destructive of wars.⁸⁰

Against this background, Schmitt, in “Staatsethik und pluralistischer Staat”, distinguished pluralist theory from true pluralism. Humans are finite beings, and this inevitably breeds diversity: human conceptions of the true and the good will invariably be various and flawed. Here, Schmitt continues the emphasis on variety inherent in anthropological pessimism, drawing the conclusion that particularity and exclusion have to be embraced. In overlooking the inescapability of plurality, universalism in the political world—that is: the identification of groups of people with supposed universal ideals *or*, as with pluralism, with the complete inclusion of plurality—is deceptive and dangerous. Nor can we do away with the exclusive, substantial state, as it is the precondition of the realisation of any kind of right whatsoever (see §1). Instead, true pluralism requires a world inhabited by a plurality of states wherein it is more important that something is decided than what is decided.⁸¹

⁷⁹ Schmitt, *Der Begriff des Politischen*, 168-70 (BP1, 19f.), 208ff. (BP1, 27ff.).

⁸⁰ Schmitt, *Der Begriff des Politischen*, 238-42 (BP1, 32-33).

⁸¹ Schmitt, “Staatsethik,” 160-65.

3.2.3. Consent

In the *Verfassungslehre*, Schmitt argued that after the demise of the monarchy, the agent whose will was foundational to the organisation of the polity had to be the people.⁸² This meant that the real political identity of the people—its homogeneity in the sense of a shared and substantial political will—was of crucial importance to the subsistence of the political unity as such.⁸³ Put differently, in a democratic age political unity rests on the stability of public opinion.⁸⁴ At this point, a danger comes into view: what if invisible and irresponsible powers manage to direct public opinion? But in 1928, Schmitt still seemed relatively optimistic, remarking: “The danger is not great as long as there is a substantive democratic similarity among the people, and as long as the people have political consciousness that can distinguish between friend and enemy.”⁸⁵

Schmitt would strike a more pessimistic note in “Staatsethik und pluralistischer Staat”, when he critiqued the pluralist demand that the state be grounded in consent (*Konsens*). Schmitt concedes that political unity is grounded in consent, but maintains that the real issue is the way in which consent is brought about. According to Schmitt, power realises consent, and the important question is who controls the various economic, pedagogical and psychotechnical means for doing so.⁸⁶ When they are controlled by forces other than the state, the political unity is at an end, and the state becomes but a shell for invisible and irresponsible powers: “If these means are in the hands of social groups or of single individuals, and removed from state control, then everything which officially still gets called ‘state’ is at an end, and political power has become invisible and unaccountable [*unverantwortlich*]”.⁸⁷

In the final weeks of the Weimar Republic, at the height of its political crisis, Schmitt returned to the issue in “Weiterentwicklung des totalen Staats in Deutschland” (1933). Central to this article was the argument that the technological means for controlling public opinion had become so effective that the state had to monopolise them.

⁸² Schmitt, *Verfassungslehre*, 23, 90ff.

⁸³ Schmitt, *Verfassungslehre*, 226-34, 238..

⁸⁴ Schmitt, *Verfassungslehre*, 246.

⁸⁵ Carl Schmitt, *Constitutional Theory*, trans. Jeffrey Seitzer (Durham: Duke University Press, 2008), 275; Schmitt, *Verfassungslehre*, 247.

⁸⁶ Schmitt, “Staatsethik,” 157f.

⁸⁷ Carl Schmitt, “Ethic of State and Pluralistic State,” trans. David Dyzenhaus, in *The Challenge of Carl Schmitt*, ed. Chantal Mouffe (London: Verso, 1999), 202; Schmitt, “Staatsethik,” 158

In principle, Schmitt added, that was but a continuation of the every-present need of the political unity to deal with the reality of power and control those instruments which made an effective decision between friend and enemy possible.⁸⁸

Here, several of Schmitt's concerns intersect. Schmitt's emphasis on the reality of power and his concerns about secularisation together culminated in reflections on the material products of instrumental rationalisation. In "Der Begriff des Politischen", for example, Schmitt emphasised that novel technologies (such as new types of weaponry) could transform the reality of power and, consequently, the political. After all, the existence of a given political unity is dependent upon the ability of that unity to maintain itself within the reality of power, which includes the ability to combat and employ new technologies effectively.⁸⁹ Over time, Schmitt's engagements with pluralism led him to include technologies for mass manipulation in his interpretation of the reality of power—and that meant a radicalisation of his anthropological pessimism, increasing his scepticism about liberalism's ability to cope with the dangers of human nature.

On January 30th, 1933, before "Weiterentwicklung" was even published, Hitler was appointed chancellor of Germany. After a brief period of hesitance and despite initial aversion,⁹⁰ Schmitt would enthusiastically endorse the Nazi regime, and from 1933 to 1936 he heralded it as the solution to the pluralistic problem: the prohibition of all political parties except one had solved the issue of party pluralism, and the racist identity (*Artgleichheit*) of the German people—which supposedly found clear and incontestable expression in the *Führer* as the undisputed leader of that people—had solved the problem of the manipulability of public opinion.⁹¹ As far as his account of pluralism was concerned, Schmitt recapitulated the general thesis he had developed in the 1928-1933 period that the rise of powerful social groups distorted liberal categories and institutions, but to this he typically added that such a pluralistic disintegration was the unavoidable outcome of any liberal regime.⁹²

⁸⁸ Carl Schmitt, "Weiterentwicklung des totalen Staats in Deutschland (1933)," in idem, *Verfassungsrechtliche Aufsätze aus den Jahren 1924-1954* (Berlin: Duncker & Humblot, 2003), 360f.

⁸⁹ Schmitt, *Der Begriff des Politischen*, 140-42 (BP1, 15).

⁹⁰ Balakrishnan, *The Enemy*, chap. 13; Mehring, *Carl Schmitt*, 299ff.

⁹¹ E.g., Carl Schmitt, *Staat, Bewegung, Volk*, in idem, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 83f., 112-15.

⁹² Carl Schmitt, "Der Staat des 20. Jahrhunderts," in idem, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 36-38; idem, "Ein Jahr deutsche Politik – Rückblick vom 20. Juli 1932 – von Papen über Schleicher zum ersten deutschen Volkskanzler Adolf Hitler," in idem, *Gesammelte*

After the 1933-36 period, Schmitt would again display a more active interest in pluralism, especially with his *Der Leviathan in der Staatslehre des Thomas Hobbes* (1938)—a work that can be regarded as a sequel to “Staatsethik und pluralistischer Staat”.⁹³ In *Der Leviathan*, Schmitt presents Thomas Hobbes as the foundational theorist of the modern European state, and examines Hobbes’ construction of the state to find the roots of its demise.⁹⁴ According to Schmitt, what had doomed Hobbes’ state was the way in which Hobbes had conceptualised the relation of the state to belief.⁹⁵ Here, as we shall see, Hobbes’ conceptualisation of the state provided a way in for invisible and irresponsible powers seeking to undermine and instrumentalise the state.

Hobbes’ state, Schmitt argued, was to be more than a mere instrument: as an answer to the Reformation and the dissolution of the medieval theologico-political order, the state was to inherit the latter’s authority.⁹⁶ Consequently, Hobbes accorded the sovereign the authority to decide questions of religious faith. This way, religious conflict could be neutralised. However, Hobbes did distinguish between inner faith, or *fides*, and outer confession, or *confessio*, and maintained that the sovereign could only determine *confessio*; as far as *fides* was concerned, every individual was free.⁹⁷

According to Schmitt, the demise of the state lay in this distinction between *confessio* and *fides* and in the assertion that only the former was subject to the sovereign’s authority.⁹⁸ Schmitt’s critique of the *fides/confessio* distinction can be divided into two related, but not identical strands.

First, a strict separation of *fides* and *confessio* institutes a dichotomy between beliefs people actually (ought to) believe in and the “beliefs” of the state’s merely external

Schriften 1933-1936 (Berlin: Duncker & Humblot, 2021), 43-46; idem, “Die Verfassungslage Deutschlands,” in idem, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 70-75; idem, *Staat, Bewegung, Volk*, 76-115; idem, “Ein Jahr nationalsozialistischer Verfassungsstaat,” in idem, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 119-26; idem, “Das Neue Verfassungsgesetz,” in idem, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 127-30; idem, “Die Grundzüge des nationalsozialistischen Staates,” trans. Giuseppe Perconte and Wolfgang H. Spindler, in Carl Schmitt, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 335-49; idem, “Politik,” in idem, *Gesammelte Schriften 1933-1936* (Berlin: Duncker & Humblot, 2021), 403-407.

⁹³ Cf. Schmitt’s remark, “Wenn der [...] Fleisch heraus”, in “Staatsethik,” 152, in which the central terminology of *Der Leviathan* is already present. See also: Miguel Vatter, *Divine Democracy*, 48.

⁹⁴ Schmitt, *Der Leviathan*, 119.

⁹⁵ Schmitt, *Der Leviathan*, 79.

⁹⁶ Schmitt, *Der Leviathan*, 49, 52-54, 61f.

⁹⁷ Schmitt, *Der Leviathan*, 79-85.

⁹⁸ Schmitt, *Der Leviathan*, 86.

doctrine, beliefs that need warrant no believe.⁹⁹ The state is thus stripped of its spiritual content, and can on this basis be instrumentalised.¹⁰⁰ But such an instrumentalization is incompatible with the state's ultimate claims, as the political unity, on individual life (cf. §§3.2.1-3.2.2). The integration of people into a *political* unity demands that people unite in reverence to some transcendent idea of this unity,¹⁰¹ and as such individual belief and state doctrine cannot be strictly separated. It should be noted that a critique of this kind is compatible with the demand that the state be held accountable to individual conscience.¹⁰² But that is not what Schmitt was after.

Schmitt's second strand of criticism attacks freedom of conscience. As soon as *fides* and *confessio* are distinguished, the superiority of *fides*, of private judgment over public doctrine, is conceded.¹⁰³ Thus, the groundwork is laid for an official acknowledgment of this superiority in the form of freedom of conscience and the liberal scheme of individual freedoms that grew out of it.¹⁰⁴ Freedom of conscience and the individual freedoms that it engendered provided the protection used by invisible and irresponsible powers to usurp the machinery of the state for their own purposes.¹⁰⁵

That Schmitt connects his attack on the *fides/confessio* distinction to an attack on freedom of conscience suggests that Schmitt is not after some kind of negotiation between state doctrine and individual conscience, but instead wholesale rejects the idea of conscience as a legitimate normative faculty according the individual a (potentially rebellious) degree of normative authority. It seems, then, that in *Der Leviathan*, Schmitt's anthropological pessimism reaches its apogee, coinciding at last with Donoso Cortés' absolute and epistemic pessimism (see §1.2). Furthermore, it seems to me likely that Schmitt's increasing concern with the technological manipulability of public opinion informed this development. In that case, Schmitt rejected conscience as a source of individual normative authority independent of power structures, on the basis of a

⁹⁹ Schmitt, *Der Leviathan*, 92, 94.

¹⁰⁰ Schmitt, *Der Leviathan*, 62-64, 85f., chap. 6.

¹⁰¹ Schmitt, *Der Leviathan*, 52; see also, besides the introduction to this paper: idem, *Verfassungslehre*, 204-16; idem, *Römischer Katholizismus und politische Form* (Stuttgart: Klett-Cotta, 2019), 28.

¹⁰² Cf. Theo de Wit, "Rationalisme en populisme: twee varianten van het intolerantievertoog in de moderne filosofie van de liberale democratie," in *Grenzen aan tolerantie: Erasmus, Hugo de Groot, Spinoza en de Actualiteit*, ed. Wil Derkse (Budel: DAMON, 2004), 108f.

¹⁰³ Schmitt, *Der Leviathan*, 94f.

¹⁰⁴ Schmitt, *Der Leviathan*, 86-94.

¹⁰⁵ Schmitt, *Der Leviathan*, 95f., 127, 131f.

complete rejection of conscience's independence of those structures.

After 1945 Schmitt continued his reflections on the demise of the state, but in a context marked by a return to domestic plurality and pluralism;¹⁰⁶ whether he changed his position on conscience is not entirely clear. Regarding pluralism, there are only scattered remarks that do not immediately shed light on the problem of conscience.¹⁰⁷

Der Nomos der Erde (1950) may shed light on Schmitt's post-1945 views on conscience. Here, Schmitt argued that the *ius reformandi*, the sovereign's right to decide on the state's religion—the *cuius regio, eius religio* of the Augsburg Settlement—was central to the state's monopolisation of the political, and that any attempt to relate to the political in such a way as to embrace particularity and stave off chaos relied on the maintenance of this principle.¹⁰⁸ The fact that Schmitt refers to the Augsburg Settlement suggests that Schmitt did not change his stance on conscience: the Augsburg Settlement accorded the *princes* the right to confessional self-determination, but reserved no such right for their subjects.¹⁰⁹ However, in *Nomos* Schmitt's main concern was international order. If this was Schmitt's *only* concern in stressing the relevance of the *ius reformandi*, Schmitt's argument merely calls for a world populated by a variety of polities mutually respecting their sovereign right to decide on questions of truth and goodness, so as to avoid the dangers attached to universalist politics.¹¹⁰

4. The significance of Schmitt's response to Laski

Schmitt's engagements with Laski's pluralism warrant attention for at least two reasons. First, Laski's thought poses a challenge to Schmitt's, and this challenge may not only have influenced the development of Schmitt's thought, it is also relevant to political philosophy more generally. Second, Schmitt's responses to Laski's pluralism shed light on the controversial issue of Schmitt's involvement in national socialism.

¹⁰⁶ Cf. Carl Schmitt, *Verfassungsrechtliche Aufsätze* (Berlin: Duncker & Humblot, 2003), 385.

¹⁰⁷ Schmitt, *Der Begriff des Politischen*, 127 (BP63, rem. on pp. 37ff.); idem, *Die Tyrannei der Werte* (Stuttgart: W. Kohlhammer, 1967; Berlin: Duncker & Humblot, 2020), 12 (citations refer to the 2020 edition).

¹⁰⁸ Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (Cologne: Greven Verlag, 1950; Berlin: Duncker & Humblot, 2011), 99, 99n1, 226.

¹⁰⁹ Klaus Schreiner and Gerhard Besier, "Toleranz," in *Geschichtliche Grundbegriffe: Historisches Lexikon zur politisch-sozialen Sprache in Deutschland. Studienausgabe*, 8 vols., eds. Otto Brunner, Werner Conze, and Reinhart Koselleck (Stuttgart: Klett-Cotta, 2004), 6:486.

¹¹⁰ Cf. Schmitt's retrospective conscience-friendly presentative of *Der Leviathan* in: Carl Schmitt, *Ex Captivitate Salus: Erfahrungen der Zeit 1945/47* (Cologne: Greven Verlag, 1950; Berlin: Duncker & Humblot, 2015), 21-23 (citations refer to the 2015 edition).

4.1. The challenge of conscience

Thus far, I have argued that from 1928 to 1933 Schmitt opposed pluralism to liberalism. There is a notable exception, however.¹¹¹ In the second, book-length edition of *Der Begriff des Politischen* (1932), Schmitt stated that pluralism:

totally revolves in a liberal individualism. The result is nothing else than a revocable service for individuals and their free associations. One association is played off against another and all questions and conflicts are decided by individuals.¹¹²

The paradox—that Schmitt opposes *and* equates pluralism and liberalism—may be resolved by distinguishing between pluralist motives and effects; more significant is the fact that Schmitt’s remark misrepresents Laski.¹¹³ Laski does not seek to *make* room for individual decisions; rather, he points out that, as the power of all associations depends on individual consent, *this room is always already there*, and that since individual conscience underlies consent any attempt to gain consent while seeking to annihilate this room for individual decisions is contradictory and hypocritical.

Why did Schmitt misrepresent Laski? Perhaps he simply misunderstood Laski, but it seems to me both likely and a more interesting possibility that Schmitt misrepresented Laski so as to conceal the challenge Laski’s thought posed to Schmitt’s. According to Schmitt, Laski overlooked the political. Therein lies an important critique: Laski, especially prior to *Grammar*, underestimated the dangers of plurality, the intensity oppositions could assume, and consequently paid insufficient attention to the need for and presuppositions of order. Nevertheless, Laski’s fundamental critique does unsettle Schmitt’s decisionist approach to sovereignty and the political. When made public, even the sovereign decision in the Schmittian sense passes through the potentially resistant medium of individual conscience, and it cannot wholly deny the validity of conscientious objection without undermining itself.¹¹⁴

So long as individuals are accorded a degree of independent normative authority,

¹¹¹ As is also pointed out in: Walter, “Kommentar,” 290.

¹¹² Carl Schmitt, *The Concept of the Political: Expanded Edition*, trans. George Schwab (Chicago: The University of Chicago Press, 2007), 45; Schmitt, *Der Begriff des Politischen*, 138 (BP2, 32).

¹¹³ As I have pointed out in: Van der Zee, “Concealed Similarity,” 59ff. Part of the following argument was already presented in that paper.

¹¹⁴ Cf. the analysis of the trinity of the decision in: Marin Terpstra, ed., *Onenigheid en gemeenschap: Basisboek politieke filosofie* (Amsterdam: Boom, 2012), 117f.

as the concept of “conscience” traditionally demands,¹¹⁵ no authority over individuals can be absolute, nor the right to resistance wholly dispensed with. That is, I think, a crucial lesson from Laski’s political philosophy. If we accept it and if we do accord individuals independent normative authority, we may still find that we cannot do without an exclusive political unity wielding coercive power. There is a reality of power and a plurality of worldviews to be reckoned with, after all, and, as the early Schmitt maintained, in such a context right can only be realised as a particular right through the instruments of power. But so long as we do not reject individual normative authority, that cannot be the end of it. The realisation of right will be accountable to an authority irreducible to the polity, and the problem of order should be approached with the inescapable possibility of (legitimate) conscientious resistance in mind.¹¹⁶

In the course of his inquiries into pluralism, it was precisely the idea of conscience undergirding individual normative authority that Schmitt rejected. Combined with his preoccupation with instrumental rationality (or secularisation) and its products, Schmitt’s engagements with the Laskian idea of consent seem to have led him to the conclusion that novel technologies allowed the forces wielding those technologies to mould the contents of individual consciences. Against Laski’s pluralism, this kills two birds with one stone: the complete rejection of conscience’s independence of power relations denies both conscience as the site of independent knowledge of the good (which would prevent Laski’s shift from description to prescription), and Laski’s descriptive thesis that it is the *individual* who adjudicates between competing associations. Schmitt’s misrepresentation of Laski’s pluralism in 1932 suggests that at that time, Schmitt lacked either the will or the conceptual apparatus or both to refute Laski’s challenge through a rejection of conscience, but by 1938 this was no longer the case—by 1938, Schmitt’s scepticism of public opinion had reached the heart of the matter.

4.2. The appeal of Nazism: a politics without conscience?

As I have argued, it is not entirely clear whether Schmitt continued to reject conscience after the demise of Nazi Germany. But if by 1933 Schmitt was serious about his

¹¹⁵ Richard Sorabji, *Moral Conscience through the Ages: Fifth Century BCE to the Present* (Chicago: The University of Chicago Press, 2014), 47.

¹¹⁶ It makes sense, then, that Laski, as he came to recognise the need for state power, turned to the idea of civil disobedience, an idea simultaneously and paradoxically acknowledging state and individual authority: Laski, *Grammar*, 33.

pessimism concerning public opinion, this may (partially) explain Schmitt's national socialist commitments. Both Ville Suuronen and Jens Meierhenrich have shown that from 1933 onwards, Schmitt actively sought to conceptualise the political organisation of the new regime, embracing national socialist biological racism in the process.¹¹⁷ Meierhenrich has described Schmitt's endorsement of national socialism in terms of a turn from "pragmatist" to "extremist" institutionalism, that is, from an acceptance of whatever institutional arrangements happen to be able to effectively order collective existence to an insistence on particular institutional configurations.¹¹⁸ That is, while Schmitt was initially willing to judge institutions by their results, by 1933 he wanted institutional arrangements to adhere to a strict blueprint.

There may be more continuity between these periods than meets the eye. Like Laski's pragmatist reformism, a pragmatist institutionalism operates with certain assumptions. The idea of the manipulability of public opinion or conscience changes these assumptions, as a result of which suitable institutional arrangements are still pragmatically selected, but under very stringent criteria. If this is indeed what happened, Schmitt may have had an actual interest in Nazism, albeit a formal rather than a substantial one: regardless of his interest in, e.g., Nazi biological racism, Schmitt by 1933 may have been interested in Nazism's totalitarian form of organisation.

Conclusion

In 1917, Laski formulated his pluralist critique of state sovereignty: to be effective, the state's will, like that of any other group, needs individual consent. It must, then, pass through and thus appeal to the consciences of its subjects. Therefore, the state's will cannot wholly deny individuals a right to follow the dictates of their consciences without becoming hypocritical. Armed with this critique, Laski pleaded for a federalism of decentralised interest representation, organised in spite of the state if need be.

Schmitt came to regard Laski's philosophy as descriptively correct but theoretically flawed. For Schmitt, Laski's pluralism described the disintegration of the state at the

¹¹⁷ Jens Meierhenrich, "Fearing the Disorder of Things: The Development of Carl Schmitt's Institutional Theory, 1919-1942," in *The Oxford Handbook of Carl Schmitt*, eds. Jens Meierhenrich and Oliver Simons (Oxford: Oxford University Press, 2016), 171-216; Ville Suuronen, "Carl Schmitt as a Theorist of the 1933 Nazi Revolution: 'The difficult task of rethinking and recultivating traditional concepts,'" *Contemporary Political Theory* 20, no. 2 (2020): 341-63.

¹¹⁸ Meierhenrich, "Disorder of Things," 182f., 194ff.

hands of social forces usurping its power from behind the scenes. At a more theoretical level, Schmitt argued, first, that the claim to embrace plurality was merely the instrument of one group's struggle against the state. Second, Schmitt argued that the claim to fully embrace pluralism as well as the equation of all associations overlooked the political: only a particular and exclusive order can be realised, and this order has to be upheld within the reality of power—a reality in which oppositions can become so intense that they lead to war. That calls for a single overarching “association” whose order may in the final instance be defended through war. Sovereignty consists in the decision establishing this order, demarcating it from its other, its enemy.

Laski indeed paid little attention to the dangers of political reality, and he may have insufficiently inquired into the requirements of political order. But Schmitt's critique so far misses a significant point: sovereign decisions in the Schmittian sense still pass through the medium of individual conscience. Over time, this would change. Schmitt had for a long time been sceptical about human goodness and epistemic qualities, and concerned about secularisation in the sense of instrumental rationalisation, which both effaced the eminence of political unity and materially transformed the reality of power. These concerns converged in Schmitt's reflections on the Laskian demand that the state be based on individual consent. Schmitt increasingly stressed the technological malleability of consent, eventually rejecting conscience as a fount of individual normative authority. These insights may have informed Schmitt's embrace of Nazism in 1933—and they highlight the centrality of the concept of “conscience” to questions of order and disorder.

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Part II: PhD proposal

Conscience and chaos

Conscience and political order after Carl Schmitt

Summary of the project

This research project thematises (freedom of) conscience and Carl Schmitt's political thought. Conscience and its freedom are central to the liberal tradition, as well as to ideas of legitimate disobedience to an unjust political order. However, the concept of "conscience" is somewhat discredited nowadays. In contemporary philosophy, the voice of conscience is often suspected of being empty or, worse, of expressing the demands of superior powers internalised by the individual in a process of subjection. Schmitt's critique of conscience resembles the latter view, but uses it—contrary to typical philosophical critics of conscience—to reinforce an order-oriented, authoritarian critique of conscience that goes back to Thomas Hobbes. Schmitt, then, poses a challenge to contemporary political philosophy: a particular critique of conscience may well lead to authoritarian—or actually: totalitarian—conclusions. This research project has two aims: it wishes *to understand Schmitt's critique of conscience (and consequently his challenge)*, and *to use that understanding to investigate the conceptual relationship(s) between conscience and political order*. To do this, both the history of Western political thought on conscience, Carl Schmitt's critique, and possible avenues for a critique of Schmitt's critique will be explored.

Detailed description of the research proposal

General description of the research problem

This research project connects two important themes: (freedom of) conscience and Carl Schmitt's political thought. Schmitt gradually developed a critique of conscience which connects an understanding of the unruly, disorderly potential of the concept of "conscience" to a scepticism and eventual rejection of the idea of conscience. Schmitt's critique resonates strongly with contemporary philosophy, but whereas contemporary critiques of conscience tend to inform individualist emancipatory efforts (cf. Butler 1997), Schmitt draws strongly authoritarian conclusions. Schmitt's critique of conscience thus challenges contemporary political philosophy and practice. This research project sets out to analyse Schmitt's challenge, and to arrive, through that analysis, at

a better understanding of the conceptual relationship(s) between conscience and political order.

Conscience and political order: a brief historical overview

A brief historical analysis of Western political thought on conscience can shed light on both the issue at stake in, and the feasibility of the proposed research project.

The idea of conscience is typically conceptualised as a normatively demanding, critical “voice” one hears within oneself, urging one to do what is right and refrain from what is wrong, judiciously expressing one’s knowledge of right and wrong. The concept has its origins in ancient Greece, and it has been argued that the standards used in conscience’s judgment were originally the ethical views prevalent within one’s community (Strohm 2011). Later, especially with Stoicism and with a Christian tradition originating in the letters of Saint Paul, the standard(s) employed by conscience would be regarded as the law of God or reason inherent in all human beings (Sorabji 2014; Strohm 2011).

The concept of conscience has two “faces”, which are typically united in some way. Firstly, there is what might be called the *conformist* face of conscience. Conscience here implies the passing of judgment on one’s person without challenging the status quo in the process. Secondly, however, there is the *reformist* face of conscience, which manifests itself when the status quo is contested on conscientious grounds. Conscience’s reformist face is the offshoot of the independent normative authority the concept of “conscience” traditionally accords the supposed bearer of a conscience.

Up to the Reformation, emphasis was put on the conformist face of conscience. As long as conscience draws on the ethical standards prevalent within a community, it can only evaluate the status quo in light of the standards dominant within it. As soon as conscience is regarded as expressing the law of God or reason, the concept of “conscience” articulates an individual access to the good which can give the individual the authority to critique not just prevailing practices and institutions (in the abovementioned limited sense), but norms and values as well. Nevertheless, given the existence of a plurality of views on the good, the question must be asked to what extent people are able to articulate the demands of God or reason. In medieval Europe, emphasis was put on people’s consciences’ need for instruction, and that need was connected to

the institutionalisation of confession, a technique of conscience (a method aimed at improving the substance of, and the attentiveness to, conscience) going back to the Pythagoreans (Schreiner and Besier 2004; Sorabji 2014).

With the Reformation, the idea of “freedom of conscience” grew out of a discourse on religious toleration. The idea was originally connected to *religious* matters: as the Church disintegrated and religious conflict divided Europe, the question of the relation between worldly power and spiritual matters was asked anew, and freedom of conscience formed one of the answers (Schreiner and Besier 2004). Over time, the concept of “conscience” was (re-)secularised, and freedom of conscience with it (Sorabji 2014).

Here began a liberal tradition, articulated forcibly albeit limitedly by John Locke, amongst others, and continued by such thinkers as John Stuart Mill, Immanuel Kant and John Rawls, which demanded that worldly power would be (relatively) neutral on questions of ultimate truth and goodness, and would safeguard a sphere within which individuals were free to follow their consciences, that is, to make up their own minds and seek to convince one another (Nussbaum 2008; Sorabji 2014). As the liberal tradition tends to think in terms of a division of “spheres” of life (such as the political sphere, the religious sphere, the economic sphere, etc.), and moreover typically seeks to base this sphere division on a consensus all reasonable agents would under ideal circumstances reach, the reformist face of conscience is often not fully visible within it. After all, if through an unproblematic division of spheres all areas where conflicts of conscience might arise are privatised while the basic political order rests on a thoroughly reasonable consensus, no conflicts between conscience and order should arise. But the less the organisation of political power is regarded as a neutral matter, the more visible conscience’s reformist face becomes. Thus, liberal champions of freedom of conscience may acknowledge the need for accommodation, for allowing exceptions to general laws and norms on conscientious grounds (Nussbaum 2008).

Where the organisation of power and the demands of conscience diverge even further, the call for civil disobedience may be heard. Civil disobedience presupposes a situation in which political order—and, thus, political power—is accepted, but its actual organisation and usage (conscientiously) rejected, and in that situation calls for disobedience to the polity’s laws while accepting whatever punishment they may inflict. Hugo Adam Bedau (2002, 6f.) clearly expresses civil disobedience’s link to conscience,

when he writes: “Its purpose is to frustrate and then change the law itself, by making an *appeal to conscience*, the conscience of the authorities and especially the conscience of the majority of the public [...]” It was given its name by Henry David Thoreau (2012), but was championed by numerous other thinkers, including one with whom Schmitt engaged particularly: Harold J. Laski (esp. 2015).

During the 20th century, conscience has been criticised and reconceptualised as the internalisation of relations of power. On this analysis, conscience is a psychic mechanism through which the individual subjects herself to the demands of others. The voice of conscience does not articulate the good (whatever its origin), it articulates norms internalised in the process of subjection to superior powers and power structures. This critique goes back to Friedrich Nietzsche and Sigmund Freud (Hübsch 1995; Sorabji 2014); currently, it can be found particularly clearly in the work of Judith Butler (1997). Although they are not typically presented as critiques, contemporary evolutionary analyses of conscience offer similar accounts, describing conscience as a faculty providing “an individual with feedback that helps in staying out of trouble with the group, which means adhering to group rules—except when one will profit [in terms of reproductive success, FvdZ] by breaking them” (Boehm 2014, 169).

The idea that conscience may not derive its standards from a reliable source has a longer history. An important critic of conscience was Thomas Hobbes, whose authoritarian political philosophy suspected that individual conscience expresses mere opinion. Hobbes, however, was a somewhat inconsistent critic of conscience. Despite rejecting the authority of individual conscience, he felt the need to employ the distinction between inner faith and outer confession—a distinction introduced by Martin Luther (Schreiner and Besier 2004), present in the early Locke (Sorabji 2014) but slowly transfigured during the development of liberalism—to argue that even though his sovereign could decide questions of truth and goodness, conscience was not infringed upon, for only outer confession was subject to coercive power (Sorabji 2014).

Schmitt’s critique of conscience continues the Hobbesian take on conscience and political order, but in a more consistent manner. Over time, Schmitt (2003; 2014) became increasingly convinced that people’s convictions were, or had become, technologically malleable. His concern culminated in a rejection of conscience: in *Der Leviathan in der Staatslehre des Thomas Hobbes* (2018), Schmitt attacked Hobbes’ distinction

between inner faith and outer confession, which according to Schmitt could not help but culminate in the idea of freedom of conscience, destining the state to be destroyed from within by social forces given free rein. This seems to be Schmitt's challenge: if the dictates of conscience can be moulded by invisible powers controlling certain technological means, it may be better for a single, visible power to openly take control of the means by which people's consciences are shaped. Then, there will at least be order.

Schmitt's critique of conscience, in short, combines a criticism of conscience closely resembling that of the internalisation-critique with a sensibility for the order-disturbing potential of the idea of "conscience" that we find in defences of civil disobedience, and on this basis radicalises Hobbes' anti-liberalism to totalitarian proportions. His critique, then, takes up all of the perspectives on conscience and order outlined above, and as in so doing Schmitt *contrasts* conscience and political order, his thought seems a good starting place for an inquiry into the possibly tense relation between the two as well as into the conditions under which the tension becomes (un-)bearable.

State of the art

Schmitt's critique of conscience is not yet explored in Schmitt scholarship. Although Schmitt's attack on Hobbes' distinction between inner faith and outer confession has attracted attention, and although its totalitarian nature has sometimes been acknowledged, Schmitt's thought on *conscience* has not yet been investigated (Balakrishnan 2000; Fischer 2010; Slomp 2010; Stanton 2011; Tralau 2010; Tralau 2011; De Wit 2004).

Schmitt's critique of conscience does not figure in the literature on conscience either, nor has the relation between political order and conscience as such been thematised. Recent literature on conscience can mostly be typified on the basis of the historical overview given above. Research by Sorabji (2014) and Strohm (2011) has focused mainly on the history of the concept of "conscience"; as far as critiques are concerned, Sorabji discusses the early critiques of Hobbes, Locke and Michel de Montaigne as well as the later critiques of Nietzsche and Freud, while Strohm discusses Fyodor Dostoyevsky, Nietzsche and Freud, restricting his focus to the idea of conscience as an unbearable and unnecessary psychological burden.

In political philosophy, recent work on conscience can be distinguished into three types: work expanding the liberal tradition, work expanding the internalisation-critique,

and work mobilising a negative concept of conscience. Lucas Swaine (2006) and Martha Nussbaum (2008) excavate and elaborate the concepts of “conscience” and “freedom of conscience” from within a liberal tradition in an attempt to find a new (or renewed) liberal common ground on which to base religious pluralism. Judith Butler (1997) is an important advocate of the internalisation-critique, as is Saidiya V. Hartman (1997), who elaborates the internalisation-critique through analyses of Atlantic slavery. Finally, in the pursuit of a new progressive politics, Simon Critchley (2014) draws on a negative concept of conscience (which goes back to Martin Heidegger) as an *empty* voice calling the person back to her fundamental freedom, that is, to the fundamental possibility of being otherwise.

The general tenor of philosophical work on conscience is that, due to secularisation and critiques of rationalism, conscience’s substance has become precarious (cf. Van Vugt 2003). This is where the internalisation-critique and negative accounts of conscience come in, although Stefan Hübsch (1995) has sought to rehabilitate the concept of “conscience”, arguing that attempts to analyse it descriptively have rendered the concept incomprehensible by displacing its traditional role as an expression of original ethical validity (in the sense of both authority and duty).

Aims and methodology

This research project has two related aims, namely:

- (1) To understand Schmitt’s critique of conscience;
- (2) To investigate the conceptual relation between conscience and political order (on the basis of an understanding of Schmitt’s critique of conscience).

These aims are to be accomplished through the fulfilment of the following tasks:

- (a) To get an overview of the ways in which conscience and political order have been conceptualised together in Western political philosophy;
- (b) To reconstruct Schmitt’s critique of conscience and its development;
- (c) To critically assess Schmitt’s critique of conscience;
- (d) To discern the presuppositions of different ways of conceptually relating conscience and political order.

Task (a) is to be accomplished through a literature study. Existing histories of (freedom of) conscience will be reviewed and key primary sources will be analysed. This will

provide the background for both research aims. There will be cross-fertilisation between tasks (a) and (b), for a reconstruction of Schmitt's critique of conscience will have to take into account the views on conscience present in major influences on Schmitt's thought (such as Hegel, Laski, and Max Weber).

Task (b) is to be accomplished through the close reading of those parts of Schmitt's oeuvre that deal, implicitly or explicitly, with conscience.

Task (c) entails assessing the validity of both the assumptions and the conclusions of Schmitt's critique of conscience. This yields two subtasks. *Subtask c₁* will gloss the empirical evidence on the manipulability of human convictions (probably drawing on the expanding literature concerning the idea of "post-truth", which brings such insights together, as in: McIntyre 2018) and ask the more fundamental question whether conscience can be empirically falsified (drawing on Hübsch 1995). *Subtask c₂* will contrast Schmitt's political philosophy to Chantal Mouffe's, and for that purpose involves a close reading of those passages of Mouffe's works that deal, implicitly or explicitly, with conscience. Contrasting Schmitt's and Mouffe's thought seems a fruitful way of critically assessing Schmitt's critique of conscience, as Mouffe's thought shares many assumptions with Schmitt's (such as an emphasis on human finitude which, as anti-essentialism, seems to threaten affirmations of a positively understood conscience; see: Mouffe 2013) but arrives at diametrically opposed (democratic rather than totalitarian) conclusions.

Task (d) will be accomplished through a comparison of the various views on conscience and order gathered in task (a), and, more importantly, by inquiring how, and on the basis of which assumptions, these various views are able (or unable) to withstand Schmitt's (now critically evaluated) critique.

Scholarly and societal relevance

As the discussion of the state of the art shows, this research project will fill a gap in Schmitt scholarship and in research on the concept of "conscience". But the results of the research project should be of interest to political philosophy generally, as ultimately the presuppositions (with respect to the concept of "conscience") of particular configurations of political order are at stake. Given the precarious state of the concept of

“conscience”, Schmitt’s thought poses a real challenge to democratic self-understanding, which gives this research project its urgency.

Democratic self-understanding is not merely a theoretical concern. It concerns all who are committed to democracy. Especially in times of increasing polarisation and resistance to the status quo—such as when ecological issues result in disruptive protests on both sides of the political spectrum, or when emergency measures during a pandemic meet with increasing dissatisfaction and rejection—, an understanding of the place of conscientious unruliness vis-à-vis political order may provide a common ground *despite*, and *without denying the inevitability of* clashes between organised political power and objectors. The question of conscience may well enlighten the ambiguity of order and authority, and political actors are likely to benefit from an understanding of that ambiguity.

Key words

Carl Schmitt, conscience, freedom of conscience, political order, civil disobedience

Timetable

Year	Task(s)	Actions	Output
1	(a)	Gloss histories of (freedom of) conscience. Extract different concepts of “conscience”. Identify and read key political-philosophical texts on conscience. 1 st PhD seminar. Teach a seminar on a general theme.	Draft of chapter 1 of the dissertation: “Conscience in politics: a brief historical overview.”
2	(a) (b) (c)	Identify and close read key passages on conscience in Schmitt’s œuvre.	Publishable article: “Carl Schmitt’s Critique of Conscience.”

		<p>Identify and read major influences on Schmitt's critique of conscience.</p> <p>Identify and close read key passages on conscience in Mouffe's œuvre.</p> <p>2nd PhD seminar.</p>	<p>Draft of chapter 2 of the dissertation: "Conscience and chaos? From Hobbes to Schmitt."</p>
3	(c)	<p>Compare the position of conscience in Schmitt's and Mouffe's thought.</p> <p>Gloss post-truth literature for analyses of the manipulability of convictions.</p> <p>Critically inquire whether conscience can be empirically negated.</p> <p>Teach a seminar on conscience in political philosophy.</p>	<p>Draft of chapter 3 of the dissertation: "The limits of Schmitt's critique? Schmittian democracy and the resilience of conscience."</p> <p>Publishable article: "Conscience after Its Critical Description? A Critical Reassessment."</p>
4	all	<p>Revisit the views on conscience and order gathered in task (a)/year 1. Compare them and inquire how they measure up to Schmitt's critique.</p> <p>Revise drafts of chapters twice (before acquiring, and incorporating final feedback, respectively).</p> <p>Write thesis introduction and conclusion.</p>	<p>Draft of chapter 4 of the dissertation: "Political Orders as Configurations of Conscience."</p> <p>Finalised chapters.</p> <p>Complete dissertation.</p>

Summary for non-specialists

Since ancient times, Western thought has reflected on an ethically demanding voice within people, rejecting the bad and applauding the good. This voice, known as “conscience”, was for a long time thought to express the laws of God or reason written in all humans. Conscience has repeatedly clashed with political power. This makes sense: if all humans have an individual access to knowledge of what is good and right, they can lay claim to the ability to criticise laws, norms, institutions and practices. Conscience seems to make individuals the ultimate judge of the rightful nature of order.

While champions of conscience have repeatedly challenged political orders, champions of order have challenged the idea of conscience. The political philosopher Thomas Hobbes, for example, thought that individual conscience expressed mere opinions. Despite this, he did feel the need to allow individuals inner freedom of conscience. Perhaps he thought that consequently, his proposals would not only convince those sceptical of conscience, but also those attached to the idea of a free human conscience. If freedom of conscience can be relegated to the inner life of individuals, people can cling to their consciences without disturbing order.

Recently, scepticism concerning the contents of conscience has grown. The idea of goodness and truth applicable to and accessible by all has fallen into discredit. This raises the question where the demands of conscience come from. Against this background, critics of order have criticised conscience, too. What if this reprimanding voice we hear within ourselves expresses only the demands of those more powerful than us? What if, as some sort of subconscious coping mechanism, people respond to a lack of power by appropriating the demands and commands they are unable to resist? In that case, conscience is manipulable by the powerful and thus not to be trusted.

The German thinker Carl Schmitt articulated a similar critique of conscience. But Schmitt was a champion of order, not a critic, and his critique of conscience ends up demanding a regime far more authoritarian than what Hobbes could imagine. For, if conscience is manipulable, freedom of conscience allows an uncontrolled plurality of manipulative forces to shape individual consciences. This, Schmitt feared, will yield conflicts as fierce as they are pointless (except, perhaps, for the selfish ends of the manipulating forces). Only an authoritarianism beyond that of Hobbes could provide a way out. For the sake of order and to prevent groundless and destructive chaos,

freedom of conscience had to be abolished, and a central power had to monopolise the means by which conscience can be manipulated.

In light of all this, this research project has two aims. First, Schmitt's critique of conscience is to be understood and critically evaluated. Second, Schmitt's order-oriented critique of conscience is to serve as the basis for a more general inquiry into the relationship between attitudes to conscience and attitudes to particular types of political order. In so doing, this project wishes to shed light on the possible appeal of *both* order *and* disorder.

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