

## Appendix

### Strong State and Sound Economy: An Address to Business Leaders<sup>1</sup>

Carl Schmitt

I

Gentlemen! I shall deal with the issue 'Strong State and Sound Economy' from the *point of view of the state*. You have heard the remarks of your Chair, Dr Springorum, concerning a series of economic projects and possibilities. *Dr Springorum* also mentioned the projects and plans of my dear friend Popitz,<sup>2</sup> that have to do with the administrative aspects of that issue. Aside

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<sup>1</sup> This is a translation of Schmitt's address to a conference of the *Langnamverein* entitled 'Sound Economy in a Strong State', held in Düsseldorf on 23 November 1932 and published in its proceedings (Schmitt, 1932c: 13–32). Schmitt's address was untitled. This translation uses the text published in the *Langnamverein* proceedings, but adds the title Schmitt gave it when he republished it in *Volk und Reich* (Schmitt, 1933a). It appeared in January 1933, 'only days before President Hindenburg appointed Hitler chancellor of Germany' (Schmitt, 1938: p. x). In February 1933, sections of Schmitt's address were reproduced in an article entitled 'Weiterentwicklung des totalen Staats in Deutschland' published in *Europäische Revue* (Schmitt, 1933e). It was among the essays that appeared in Schmitt's *Verfassungsrechtliche Aufsätze* (1958).

The *Langnamverein* was an association of Ruhr industrialists whose full name, *Vereins zur Wahrung der gemeinsamen wirtschaftlichen Interessen in Rheinland und Westfalen* (Association for the Furtherance of the Joint Economic Interests of the Rhineland and Westphalia), forced its abbreviation to be 'Long Name (Langnam) Association' (Abraham, 1981: 122).

The 23 November meeting of the *Langnamverein* had been convened as a show of support for Papen's policies before he tendered his resignation on 17 November. At the time of the meeting, Papen was only Acting Chancellor. After the conference, one of its participants wrote: 'The *Langnamverein* convention ... originally conceived within the framework of the Papen program and intended to support him revealed [instead] the fact that almost all of industry supports the appointment of Hitler, no matter under what circumstances' (quoted in Abraham, 1981: 321–2; compare with Turner, 1985: 302).

<sup>2</sup> According to Bentin, Johannes Popitz, Prussian Finance Minister and

from these predominantly economic or administrative aspects, it is necessary to pay attention to state matters, and thus by necessity to the political. I do not intend to engage in politics, but I must refer to political matters because the state is something political, and a strong state is, in a particularly intensive way, a political formation. I share Dr Springorum's opinion when he said that only a strong state can remove itself from non-state affairs.<sup>3</sup> The process of depoliticization and the creation of state-free spheres is a political process. I would like to make this my point of departure.

Two years ago I addressed this conference at this same place. Your meeting then bore the motto 'Courage to Action'. On that occasion I allowed myself to say that beautifully designed organizational reform plans were not as relevant as real political forces, how to identify them accurately, and then recruit them in some fashion. Above all, the regime was supposed to use all *legal means*. My assumption was that those legal possibilities were strong, much stronger than one would have then surmised. This view has not been largely disproved since that time. In these two years we have come to recognize the practical usefulness and energy of article 48. Admittedly, a strong opposition has been launched to discredit and defame article 48. This ought to prove that even today article 48 is a good, practical and indispensable instrument of a strong government.

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Schmitt's close friend, should be credited as 'proper author of the Schmittian notion of "a free economy in a strong state"' (Bentin, 1972: 125). Schmitt's life-long friendship with Popitz began in Berlin in 1929 (Schmitt, 1958: 8; compare with Noack, 1993: 102-7).

<sup>3</sup> Fritz Springorum was at the time managing director of the Eisen- und Stahlwerk Hoesch AG of Dortmund, treasurer of the Ruhrlade and chair of the *Langnamverein*. In his prefatory remarks to the audience of 1,500 participants, Springorum expressed support for Papen's blueprint for a strong state. He acknowledged that, at first sight, it appeared likely that business would favour a weak state. A strong state could impose 'all kinds of fetters on private business through taxes, credit policies and social policies' (Springorum, 1932: 5). But in reality only a strong state was able to set limits to its own activity and did not overreach its high functions. Springorum praised Papen's proposed constitutional reforms, which he thought would strengthen the state. He also suggested that the Chancellor should continue in office and cautioned against implementation of a job-creation programme by the government. The best employment programme lay in the 'return to the sound economic methods of private capitalism' (Springorum, 1932: 11; compare with Turner, 1985: 303).

It is reasonable to raise the question whether in these two years anyone truly showed the courage to action that was then demanded of you. Could we, in this respect, acknowledge any achievement? We often get the general impression that the state has grown weaker and the circumstances have worsened and become more chaotic. It seems to me that one may respond affirmatively to the question whether, with respect to courage to action, one single achievement is to be acknowledged. The *Prussian coup of 20 July*<sup>4</sup> went to the core of the Weimar constitution's worst design defect – the dualism between the Reich and Prussia – and rectified it on a crucial point. This has to be acknowledged as an achievement and as proof of courage to action. Subsequently this achievement became, if I may say so, rapidly relativized and even paralysed. Here lies another danger for a strong state. The danger came to light during the trial held before the *supreme court in Leipzig* (there were actually twelve trials).<sup>5</sup> As soon as a genuine courage to action is exhibited and a strong state, requested for so long, really steps forward, the strangest confederates and all those interested in the status quo are found together united in their resistance. The coalition that developed during this trial against the Reich used Leipzig as a scenario. Factions and dismissed ministers combined together with Bavaria and Baden – the states that make a lot of noise with respect to their statehood. The *federal party-state* revealed itself in full daylight. The Bavarian representative referred to the dignity of Bavaria as a state, and described the Leipzig supreme court as an interstate body. He went as far as to compare it to the

<sup>4</sup> President Hindenburg appointed Franz von Papen as Chancellor on 1 June 1932, and on 4 June dissolved the *Reichstag*, invoking article 35 of the constitution. On 20 July Papen, with article 48 at his disposal, placed Prussia under martial law and dissolved its government. This event became known as the Prussian *coup* of 20 July (compare with Bendersky, 1983: 154–7; Noack, 1993: 137–54). Even though Schmitt did not share Papen's constitutional reform plans, he openly supported his government (Muth, 1971: 107) and participated, as a juridical expert, in designing a strategy for the Prussian *coup* (Huber, 1988: 38). It could not have been a surprise when during the cabinet session of 25 July Papen announced that Schmitt would officially represent the government before the supreme court at Leipzig.

<sup>5</sup> According to Bendersky, '[b]y the time the trial before the supreme court in Leipzig finally opened on October 10, the number of plaintiffs had expanded to include the states of Baden and Bavaria, as well as the Center and SPD factions of the Prussian Landtag' (1983: 160).

so-called 'World Court' at The Hague. But when I asked how could this state of Bavaria, showing up hand in hand with dismissed Prussian ministers and Prussian parliamentary factions, disregard the first assumption in interstate affairs and international courtesy, namely non-intervention in the affairs of another state, the reply was: 'We welcome federal friends wherever we find them.' These are significant words and, as it were, the insignia of the federal party-state. You should be sure, gentlemen, that when a necessarily strong state actually arises, the most heterogeneous federal friends join together to see that it does not become too strong.

Therein lies the great *lesson of this Leipzig trial*. I refer to it in the singular because, for the most part, what went on in it has not become part of the political consciousness of the German people. At present, the grotesque coexistence of three governments<sup>6</sup> in the capital of the German Reich, Berlin, makes a mockery of the German state and is a natural and adequate consequence of judicial politics. Were we actually to enter into a new era of trials like the one held at the supreme court in Leipzig, I fear then we would not need to refer to a 'strong state'. This is a clearly discernible danger for anyone who pays attention to the lessons of German constitutional history and the development of the contemporary federal party-state. During three wretched centuries the *political unity* of the German people had *collapsed* and, lest we forget, in accordance with the methods of *judicial politics*! Those were the days of the Imperial court in *Wezlar* and the Imperial privy council. To my dismay I saw the shadow of that period appear again at Leipzig. We should hope that it soon disappears, never again to return.

That sole achievement, the one obtained on 20 July, was distorted by the Leipzig verdict. Aside from this, a retrospective look at this latest year indicates that a general conception has become pervasive and that the actual leadership methods, and the management of the relations between the state and the economy, are generally seen as not viable. The worst spiritual confusion in this respect should have disappeared by now. For approximately

<sup>6</sup> The three governments Schmitt is referring to were: the government of the Reich, the government of Prussia and the commissarial Prussian government headed by Papen (compare with Noack, 1993: 143).

ten years now, the whole of Germany and the whole planet has echoed the call: *Away with politics!* The solution to all problems was said to be the elimination of politics and the elimination of the state. All matters should be decided by technical and economic experts according to allegedly purely objective, technical and economic points of view. Innumerable articles and brochures published by famous authors and economists of many nations repeated this a thousand times between 1919 and 1924. In the mean time we have known about conferences of experts and scientists. Mountains of valuable material have been stored in Geneva, Berlin and other capitals of the world, and the decision on important issues lies buried under this kind of objectivity. It turns out that this sort of depoliticization may be politically useful in deferring unpleasant problems and necessary changes through allowing any resolute will to exhaust itself.

After those approximately five years of radical demands for exhaustive non-politics, an idea has seeped through – all problems may be political problems after all. In Germany we experienced a *politicization* of all economic, cultural, religious and other dimensions of human existence. This would have been inconceivable in the nineteenth century. After years of attempting to reduce the state to economics, it now appears that economics has been entirely politicized. One can now fully grasp the effective and illuminating formula of the *total state*. I will examine it in more detail, for it surely does not only provide the key to help clarify the issue of the relations between the economy and the state, but it also indicates the direction from where the solution may come. A total state exists. One may angrily and indignantly reject the formula ‘total state’ as barbaric, Slavic, un-German or un-Christian, but that will not make it disappear from view. Every state is anxious to acquire the power needed to exercise its political domination. The surest sign of a real state is that it proceeds in that manner. Presently, we are all under the impression that power has expanded. Every state has expanded its power by technological means, more precisely, by the technological instruments of power. Modern technical means give governments of even small states such power and effective possibilities that old notions concerning state power and the possibility of resisting it fade away. The traditional images of street marches, barricades, etc. are child’s play in light of contemporary coercive

methods. A state is forced to acquire modern weaponry. If it were to lack the strength or the courage to do so, another power or organization will do so and will thus become the state.

The proliferation of technical means also allows for the possibility of *mass propaganda*, which may be more effective than the press and other traditional means of influencing public opinion. In present-day Germany, there still exists a widely respected freedom of the press. In spite of all emergency decrees, the scope for the free expression of opinions is quite broad; nobody thinks of censoring the press. But every state must control the new technical means – film and radio. There is no state so liberal as to reject intensive censure and control of radio, film and other visual media. No state can afford to yield these new technical means of mass control, mass suggestion and the formation of public opinion to an opponent. The formula ‘total state’ accurately describes the contemporary state’s undreamt-of new means of coercion and possibilities of the greatest intensity. We barely conceive of the effect these will have since our vocabulary and imagination are still deeply seated in the nineteenth century. In this respect the total state is at the same time an especially strong state. It is *total in the sense of quality and energy*. The fascist state calls itself *stato totalitario*,<sup>7</sup> and by this it means that the new powers of coercion belong exclusively to the state and promote its escalation of power. A state does not allow forces inimical to it, or those that limit or divide it, to develop within in its interior. It does not contemplate surrendering new powers of coercion to its own enemies and destroyers, thus burying its power under such formulae as liberalism, rule of law, etc. It can discern between friends and enemies. In this sense, as has been said, every true state is, and always has been, a total state.<sup>8</sup> The novelty is only

<sup>7</sup> Schmitt’s interest in Mussolini and Italian fascism sprang from his fascination with myth (Mehring, 1989: 86) and his desire to revitalize the state (Breuer, 1993: 131). In 1929, in an article entitled ‘Wesen und Werden des faschistischen Staates’ (a review of Erwin von Beckerath’s book with that same title), Schmitt wrote: ‘The fascist state decides not as a neutral but as a higher third. That is its supremacy. Whence does its energy and new force come from? From national enthusiasm, from Mussolini’s individual energy, from the war veteran movement . . . The fascist state will again be a state of ancient probity, with visible leaders and representatives, and not the façade and antechamber of invisible and non-responsible rulers and financiers’ (Schmitt, 1940: 113–14).

<sup>8</sup> Compare with Schmitt’s assertion in his *Verfassungslehre* that ‘the modern

new technological power, whose political meaning one should clearly acknowledge.<sup>9</sup>

There is, however, another meaning of the expression 'total state'. Unfortunately this is the one that can be applied to the present-day German state. This kind of total state is one that penetrates all domains and all spheres of human existence, one that knows of no state-free sphere because it can no longer discriminate. It is *total in a purely quantitative sense, in the sense of pure volume and not in the sense of intensity or political energy*.<sup>10</sup> This is what defines Germany's party-state. Its volume has been expanded to a monstrous degree. It concerns itself with all possible affairs. There is nothing which is not somehow related to the state. Not even a bowling club can continue to exist without maintaining a good relation with the state, that is to say, to a certain party and funds. This totality, in the sense of volume, is the opposite to force and strength. The present German state is *total due to weakness* and lack of resistance, due to its incapacity to resist the onslaught of parties and organized interests.<sup>11</sup> It must

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state is a closed political unity and essentially the status, namely the total status that relativizes all other status within it' (Schmitt, 1928: 173).

<sup>9</sup> Quaritsch laments Schmitt's casual use of the same label 'total state' to refer to two 'opposed realities', the authoritarian strong state and the weak totalitarian state (1988: 24, 41; compare with Koenen, 1995: 198–205). It is possible, though, that Schmitt purposely referred to his and Ziegler's notion of authoritarian state as 'total state' to emphasize its affinity with Mussolini's *stato totalitario* (compare with Heller, 1933: 296).

<sup>10</sup> Schmitt referred for the first time to the notion of a quantitative total state in his *Legalität und Legitimität* (Schmitt, 1932a: 96). He adopted Ziegler's view that total politicization meant a 'quantitative expansion' of the state, and not a strengthening of its power and authority (Ziegler, 1932: 7).

<sup>11</sup> Only a strong state could rise above contradictory interests. Alexander Rüstow's description of the strong state as 'a state that rose above groups and above interests, that could extricate itself from entanglement with economic interests' (1932: 68) coincides with Schmitt's conception. As Haselbach observes, Rüstow's call for a strong state ought to be seen in the context of the *Ordoliberalismus*, Germany's neoliberal movement of the 1920s and 1930s: 'The point of departure of a "new liberalism" was the revocation of the fusion between the state and the economic spheres. Rüstow espoused the separation of state and society. Like nineteenth-century entrepreneurial capitalism, society should again regulate itself with respect to the market and the price system' (1991: 40). Anthony Nicholls notes that Rüstow's lecture at the 28 September 1932 meeting of the German Association for Social Policy (*Verein für Sozialpolitik*) was 'a landmark in the prehistory of the social market economy. Rüstow's words certainly made a

yield and satisfy everyone, while simultaneously pleasing contradictory interests. As I have indicated, its expansion is the consequence not of its strength but of its weakness.

II

How is it that we got into this condition of total weakness?

If we take a closer look, we see that we do not have a total state but a *plurality of total parties*. Each party realizes in itself the totality, totally absorbing their members, guiding individuals from the cradle to the grave, from kindergarten to burial and cremation, situating itself totally in the most diverse social groups and passing on to its membership the correct views, the correct ideology, the correct form of state, the correct economic system, and the correct sociability on account of the party. Old liberal-styled parties, which are not capable of such organization, are in danger of being pulverized by the millstones of the modern total parties. The drive towards total politicization appears to be inescapable.

Coexistence between these total visions, which on their way to parliament dominate the state and turn it into the aim of their compromises, leads to that remarkable indiscriminate quantitative *expansion of the state* in all directions. A strong well-organized *plural party system* interposes itself between the state and its government on the one side, and the mass of citizens on the other, and manipulates the *monopoly of politics* – the most astounding of all monopolies, the monopoly of political mediation, the monopoly of the transformation of interests, which of course must exist, into the will of the state. The need to submit to this political monopoly which is the case with every vital concern and every major social organization today in Germany, modifies and falsifies all constitutional institutions. This political monopoly of a series of strong political organizations is more important than any economic monopoly. These organizations will tolerate a strong state only if this state can be exploited for their purposes.

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great impression on his listeners, among who was at least one future Minister of Economics in the Federal Republic of Germany' (1994: 48). But Nicholls fails to mention Rüstow's explicit agreement with Schmitt's views on the total state.



The principal tool of this political monopoly is the nomination of the *list of candidates*. Every election depends on the list of candidates. The electorate cannot nominate candidates on its own. Today, the great majority of voters is completely dependent on approximately five party lists. Elections are no longer direct. The representative is nominated by the party and not chosen by the people; so-called elections are fully mediated statements that voters address to a party organization. The number of parliamentary seats that accrue to each list is thus the only remaining question. I submit that this process, as it plays itself out today, does *not constitute an election*, not just an immediate election but no election at all. What goes on here? We have five party lists dictated by five organizations; the masses mount, if I may say so, five already prepared saddles, and one still refers to the statistical recording of this process as 'an election'. What does this mean? One must gain full awareness of this question lest Germany perish through the use of those very methods. The choice between five fully incompatible, opposed and closed total *systems*, which espouse opposed ideologies, forms of state and economics, and whose coexistence makes no sense, is absolutely *monstrous*. Five organized hostile systems, each of them total and all of them coexisting – and the people must choose between them five times each year! Whoever can clearly grasp what that means and then understand that each time the entire German people must choose between five opposed ideologies, economic systems and forms of state, cannot expect that a functioning and active majority may ever ensue from such a procedure – a majority, even a loosely connected one, united for the formation of a political will. A process like this can only give rise to five political systems and organizations which endure an unstructured, indeed, hostile coexistence, and whose aim is mutual subjugation and deception. There should be no delusions on this matter.

Such methods of constituting a political will lead to a purely quantitative total state that draws no distinction between the economy and the state, the state and culture, or even between the state and other spheres of human and social existence. Elections are no longer elections, representatives are no longer the representatives that the constitution conceives. The representative is no longer an independent, free person, representing the common welfare over and against partisan interests. The representative is

the partisan that marches in step and knows how to cast a ballot; debates and ballots in the popular assembly become an empty farce. Just as the representative is no longer a representative, so too *parliament* is no longer parliament. The present-day *Reichstag* is not the *Reichstag* of the Weimar constitution. The non-confidence vote is not the non-confidence vote understood by a rational parliamentary system, because today it does not have the capacity or the willingness to form a functioning and responsible government. All these constitutional institutions have become frail and have entirely lost their meaning. If the one last column of our constitutional order – the *Reichspräsident* and the government appointed by him and carried by his confidence – were not to stand, chaos would probably exist already in full view and in outward appearances, and even the semblance of order would have vanished.

### III

How can we get out of this situation? The state's weakness, due to the reasons mentioned, has led to the confusion of the state and the economy, to the confusion of the state and other non-state spheres. Only a *very strong state* would be able dissolve this dreadful coalescence with all kinds of non-state businesses and interests. That would have to be a painful surgical intervention and not an 'organic' process in the sense of slow growth. If slow growth were allowed, rank growth and weeds sprout faster and multiply more readily than the healthy strains they now cover and obstruct. A process of depoliticization, the segregation of the state from non-state spheres is, to repeat, a political procedure. In today's circumstances, disengagement from politics is a specifically political act. It cannot be generated by party-political motives, whether of an economic, cultural or confessional nature; it can only originate from the state as a whole. The first requirement is a clean and clear distinction between state and state-free spheres. Distinction, not separation! But distinction ought to be the point of departure.

And first, because we are dealing here with a process that is primarily political, one ought to start with the state. The state ought to be again a state. The first prerequisite is obviously a

*bureaucracy*, which is not a prop or an instrument of party-political interests or aims. It seems to me that the significant coalescence of state and party, characteristic of present-day Germany, is more the result of flawed knowledge and perception than of bad will. The peculiar coexistence between well-acquired rights and the right to political activity is not generally acknowledged as intrinsically impossible.<sup>12</sup> Otherwise it would have long since been dismissed both morally and juridically. We face here a simple alternative: *either* well-acquired rights and the forswearing of all political activity, *or vice versa*. There is no third alternative. Until recently, our way of thinking was a notion that was not familiar and for which we only have a technical expression, a somewhat awkward foreign term: incompatibilities, that is, *irreconcilabilities*.<sup>13</sup> Whoever refuses to see that well-acquired bureaucratic rights are incompatible with party-politics, will refuse to accept that it is usually the state, communities and other public associations, who pay a party's employees and collaborators, and that thereby bureaucrats turn out to be something else than what the constitution prescribes. Here, it is evident that there is a need for unequivocal distinctions. Until now we have not clarified the necessity of those incompatibilities. On the contrary, one may define contemporary Germany as the land of unlimited compatibilities, where everything may be reconciled with everything else, where one and the same person may simultaneously be a member of the Reichstag, of a provincial assembly, a representative of the Council of State, a high state functionary, a party chairperson, and a multitude of other offices. This is precisely the characteristic expression and product of the type of quantitative total state that exists today in Germany; it can neither define itself as state nor distinguish itself from what is not

<sup>12</sup> According to Schmitt, only an autonomous and independent bureaucracy would be able to counterbalance the effects of unstable party coalitions (compare with Schmitt, 1928: 172; 1931: 101). He noted that articles 129-30 of the Weimar constitution protected the bureaucracy against parliamentary interventions by means of institutional guarantees like tenure and intangible well-acquired rights. (Article 129 of the Weimar constitution stated that 'the well-acquired rights of public functionaries are inviolable' and extended these rights to the armed forces. Article 130 stated: 'Public functionaries serve the whole state and not one party'.)

<sup>13</sup> The issue of incompatibilities is discussed in Schmitt's *Verfassungslehre* as a theoretical consequence of the separation of powers (1928: 189-91).

state. Who will then be able to distinguish between spheres, when state and non-state domains and functions are combined in such a grotesque manner? For once, we could at least look at this problem of incompatibilities right in the eye. In Germany, we have preserved an island in this sea of unlimited compatibilities, and today every German feels that safeguarding the *armed forces* unpolluted by party politics is the equivalent to having saved Germany and the state. The armed forces were able to elude that murky flood. This can also be an encouraging paradigm for the rest of German bureaucracy. It demonstrates that non-partisanship and a disposition towards the state are still possible and are not at all utopian.

If the specific instruments of state power, the armed forces and the bureaucracy, remain undisturbed, a strong state is still conceivable. But then I would consider it unfortunate if one were to take away the only legal instrument of coercion that is still retained for genuine cases of emergency – article 48. The coexistence of the total parties that have occupied the state can never lead to state power, that is, to a strong state. In virtue of its original meaning, the democratic-parliamentary system ought to generate a state capable of acting, ruthlessly if necessary, in cases of emergency, a state that enjoys the unified agreement and consent of the entire people. In Germany's present-day circumstances this aim cannot be reached, and with conditions such as they are it cannot be reached in the foreseeable future. On the contrary, our type of party-state, with its plurality of total parties, precludes any genuine power. It unites itself against any attempt at securing a strong state and leads to a combination of impotence and the annihilation of power. The bearers of this situation still retain enough power to want, and to be able to, block others from acquiring power. To me, this negative resolve not to permit the emergence of a strong state explains the present battle against article 48 and the attempts to destroy this last indispensable instrument of the state.

From the side of the state, present-day conditions are in fact more difficult. The responsibility lies not in the democratic methods for the formation of the state will, but in the peculiarities of the total party-state as they exist now in Germany. But Germany is no longer a democratic state. A state is self-contradictory, particularly a democratic state, if it no longer has the

right to bring up its young militarily and educate them as good soldiers. *There can be no meaningful universal electoral rights without a necessarily corresponding universal military service.* In the past this was obvious to every democrat. But this is the most effective of all the endeavours aimed at the destruction of the German state – the separation of electoral rights and military duties, thus leading universal *electoral* rights, without the necessary correction provided by universal *military* duties, to its most absurd consequences. This caricature of a democratic state determines that the democratic parliamentary methods for the formation of the political will, possibly good under other assumptions, bring about an impotence that is destructive of power. One word, at least, with respect to the inseparable connection that exists between the question of military duty and the military readiness of the German people. I know the both the factual and legal difficulties of this issue, which is also unfortunately a foreign affairs issue, but here, in the demilitarized Rhine, that is, in the dishonoured zone, that should not remain unsaid.

What would be required, from the *side of the economy*, to allow for the possibility of a strong state and a sound economy? Here again some new distinctions should be drawn. The old nineteenth-century opposition, the opposition drawn by our liberal forebears between state and free individuals, is insufficient. There is still today a very significant domain of the singular individual which is in essence, I believe, economic activity. But today one can no longer oppose the state with the private individual, with the isolated private entrepreneur. Both would instantly fall to the ground. In opposition to the collective image of the modern state it is necessary to insert an intermediate domain between the state and the singular individual. I use here a distinction drawn in recent years by young constitutional jurists. It is valuable and useful, not for the purpose of setting up new organizations but in order to begin with the right knowledge. We will draw a three-fold distinction in the domain of economics and replace, with a *tripartition*, the two-fold antithesis between state and free individual economy, state and private sphere. First, the *economic sphere of the state*, the sphere of genuine state privilege. Certain activities of an economic nature belong to the state – certain commercial entitlements are, for instance, absolutely necessary, and in certain forms, like the postal entitlement, have always

existed. These are legitimate state enterprises, which ought to be clearly featured as monopolies and distinguished from the rest of the economy. Second, in opposition to that domain, the sphere of the free, individual entrepreneur, i.e. the *sphere of pure privacy*. Third, the intermediate *non-state, but still public* sphere. For decades we have endured an unfortunate conceptual confusion that understood anything public as a state concern. This meant that one of the greatest achievements of the German people – real autonomous administration (*Selbstverwaltung*) – could not be rightly understood anymore.<sup>14</sup> It is known how, in the wake of party politicization, autonomous municipal administration has reached a critical point. Everyone is aware of this crisis in our autonomous administration. In the domain of economics, however, it is necessary to set the record straight with respect to the notion of *autonomous economic administration*. ‘Autonomous economic administration’ may be an ambiguous, possibly a misleading slogan. Like in any ambiguity, here too, under this description, the unclear and obscure aims of every kind of party-politician may find refuge.

What is advanced here as economic autonomous administration, and as the distinction between state and public spheres, is completely different from the ‘economic democracy’ propagated a few years back by a certain side. That economic democracy explicitly espoused a *mixture of economics and politics*; it also wanted to acquire economic power within the state by means of political power, and subsequently increase its political power by means of the economic power it had thus acquired. By contrast, when I refer here to economic autonomous administration [or economic self-management] I mean something different, something that aims at a distinction and a separation. There is an economic sphere that belongs to the public interest and should

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<sup>14</sup> In his *Verfassungslehre*, Schmitt employed the notion of autonomous administration as Gneist understood it, namely administrative jurisdiction as an honorary activity placed in the hands of wealthy and instructed citizens. Here, however, Schmitt adopted Popitz's views. Popitz extolled the virtues of municipal autonomous administration, which ‘demands, in a practical sense, strengthened and unified state supervision (the “companion piece of autonomous administration”). This supervision should emanate from the central state and not from the federal states. Centralization and autonomous administration do not exclude each other, but are mutually required’ (Bentin, 1972: 20).

not be seen as separate from it. Still, this is a non-state domain that can be organized and administered by these same business agents, as it happens in any genuine autonomous administration. Today, we already gather under the insufficiently clear expression 'autonomous economic administration' a number of things: industrial and commercial chambers, non-voluntary unions of every sort, associations, monopolies, etc.; we have mixed economic enterprises, where again the expression 'mixed economies' is misused when applied to pure state socialist or state capitalist corporations that organize themselves privately as stock companies or companies of limited responsibility. Finally, we have monopolies of every kind chartered in the public interest but administered autonomously by commercial agents. A major confusion still reigns here, which is characteristic of the present and that we always encounter. The state appears as an economic agent in all conceivable outfits: in public law and private law, as state, as treasury, as majesty, as company of limited responsibility and as stockholder. The state is thus disguised and concealed, making it absolutely necessary to refer to it in simple, solid and non-ambiguous legal forms and methods and to ask that it appear openly as state when 'the state' is at issue. Should it require a commercial privilege, it should use it openly as a state privilege and not misuse it in an unclear combination of private legal forms.

One may already refer today to an *autonomous economic administration* and to an intermediate sphere of a public but non-state economy as an order that exists in a number of initiatives. Naturally, those are often contradictory initiatives, and, of the formations just mentioned, some will be good and promising, others bad and bizarre. We are dealing here with a basic outline that has to be considered and kept in view. Without an autonomous economic administration, in the sense of that intermediate sphere, a real new order would be hardly thinkable.

#### IV

If the gist of basic outline is clear, we can proceed to raise the question: how can one today render the distinction between state and economy effective? Increasingly one thing is evident: only a

strong state can depoliticize, only a strong state can openly and effectively decree that certain activities, like public transit and radio, remain its privilege and as such ought to be administered by it, that other activities belong to the above mentioned sphere of self-management, and that all the rest be given to the domain of a free economy. A state that is to bring about this new order ought to be, as was said, extraordinarily strong. Depoliticization is a political act in a particularly intense way. How can we achieve a strong state that may be capable of such *tour de force*? At present, it is evident that the state, today only intermittently and momentarily a state, needs to gain particularly solid authoritarian foundations by means of new arrangements and institutions. In connection with this I refer to the proposals, also mentioned in the exposition of Dr *Springorum*, for a new type of second chamber, an upper house, as it is sometimes referred to, a combination of state council, state economic council and other elements, or for the creation of something similar. But if I have understood the expositions of your Chair, a certain – I would not say scepticism – reserve and a certain lack of unconditional optimism was expressed, when he mentioned the problem of the opposed interests dividing industry and agriculture.<sup>15</sup> It can be very useful to bring organized interests together, to unite them in guilds [*Gremien*] for the purpose of a round-table session and then to await the decisions of this guild. However, I would like to remind you of the following: interests, particularly business interests, may unite or may separate. That cannot be changed. Whoever organizes interests as such, simultaneously organizes opposed interests and possibly increases, by means of the organizing, the intensity of the opposition. When these organized interests come to the table, and once serious conflicts of interest ensue – the conflicting case is precisely the case that is of interest here, for it is obvious that we will reach agreement on irrelevant matters – the assembly will soon dissolve into its component parts. The danger of secession or the exodus of one group is

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<sup>15</sup> In his prefatory remarks, *Springorum* lamented the fact that the recent economic crisis had pushed the different sectors of the economy apart instead of bringing them together. He mentioned the conflicts his own sector had had with agriculture over quota fixing in foreign trade and suggested that agriculture and industry should have a round-table discussion on matters concerning trade policy (1932: 10).



constant. I remind you of the experiences that we had with the *Business Advisory Board* in October 1931. One would have to say that it broke apart too soon. I would also remind you of the notorious experience that has been had with more or less each and every union of various professionally (*berufständisch*) organized groups: if a unified resolution is to pass, unconditional parity must be eliminated and the possibility of a veto or of being outvoted must be allowed. When every professional branch has a firm quota and its electoral weight stays forever the same, the result is predictable; majority resolutions make no sense in those cases. That would give majority resolutions, where a coalition of shoemakers and bakers could outvote beekeepers; or, as was once the case, where professional musicians were the decisive factor in the conflict of interest case between steel and coal.

In order to avoid politicizing a most interesting consideration concerning professional associations, and also to avoid illusions, I would suggest that the great, and also somehow idealized, medieval *history of the professional associations* (*Berufsstände*) and their organization offers us the following lessons: first, these medieval Estates (*Stände*) did not constitute a politically unified will of themselves. They faced a monarch or a prince and only in this way was the constitution of a politically unified will possible.<sup>16</sup> Second, the Estates never passed resolutions as a collective association of professions and never voted as separate Estates. No Estate was outvoted by the majority of the other Estates. The outvoting of one Estate was not possible in a system of professional associations and would be meaningless. Third, the medieval Estates did not vote at all in the way we do. Within each Estate our problem with the 51 per cent majority did not arise. On the contrary, a certain unanimity arose of itself in a way that, for corrupted human beings like us, cannot be explained without procedural manœuvring. In any case, there is no historical basis

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<sup>16</sup> In 1938, Schmitt would praise Hobbes's strong state for overcoming 'the anarchy of the feudal estates' and the church's right of resistance as well as the incessant outbreak of civil war arising from those struggles' (1938: 71). He also noted that during the nineteenth century, Hobbes's old adversaries, 'the "indirect" powers of the church and of interest groups, reappeared ... as modern political parties, trade unions, social organizations ... They seized the legislative arm of parliament ... and thought they had placed the leviathan in harness' (p. 73).

which would allow this whole system to function with our methods. Our arithmetical conception of the 51 per cent majority, that puts the remaining 49 per cent in the shade, was certainly not available. However, our modern electoral ways boil down to that. One should not disregard the difficulty of these matters in the call for a second chamber.

The issue of a *second chamber* is brought forward today primarily as a way of strengthening a state that is not strong enough and lacks authority. A second chamber would furnish it with the authority it requires, obtaining it from anywhere, from authority residuals of an earlier epoch, let alone as an advance. In my view, *the sequence ought to be reversed*. Only a strong state can bestow this second chamber the respect and authority required by its members to free themselves from professional (*ständischen*) allegiances, and dare to submit to a unified collective resolution in a way that externally preserves their respectability and nobility without immediately being chased away by their unsatisfied clients. No upper house and no second chamber is possible without a strong state. Here, a strong state is also the first presupposition. From it proceeds the ordering effect that overcomes the confusion and antagonism of the diverse interests, and orders them like a magnet attracts iron filings. Otherwise they would at best organize a pathetic duplicate of today's Reichstag. In the history of the modern constitutions this second chamber, i.e. the chamber that is not generated by universal ballot, has normally had until today the role of limiting and slowing down. It ought to preserve duration and continuity in the face of the first chamber, the unstable and revolutionary-minded chamber generated by the universal vote of the essentially dispossessed masses. Among us the first universally elected chamber is incapable of any action. Should a new second chamber be conceived of as a constraint and counterpoise of a first chamber that is incapable of action, it becomes an institution that is unclear in itself. Something that is in itself incapable of action cannot and need not be further constrained. But should the second chamber strengthen or replace the missing capacity to act of the first chamber, then the latter will probably receive a new impulse and again throw its weight around as popular representative. The second chamber will then share the destiny of the state business council, so that the question arises whether it is good and

convenient to lend in this manner new life to such a first chamber. So long as the point of view of the democratic electoral system remains decisive for legality and legitimacy, an elected chamber will unavoidably either abrogate the second chamber or make it into its mere shadow and reflection. These considerations should not, as was indicated, disprove the thoughts of a second chamber, but only interpolate cautionary restraints against hasty institutions.<sup>17</sup> I know how useful a second chamber can be, I would not like to reject or dismiss it as an ultimate goal. However, in view of the difficult circumstances of present-day Germany, I must turn my attention to our immediate present and to our immediate future as far as it may be assessed. We need, in the first place, a strong state that is capable of acting and ready for its great tasks. Were we to have it, we would then create new arrangements, new institutions, *new constitutions*.

In my opinion now is the time, and we no longer have many chances or much latitude for great constitutional experiments. I would go as far as saying, if I may express my own personal private opinion, that the German people has no professional competence for constitutional legislation, in the present meaning of constitutional legislation. I consider that not a fault or an inferiority of the German people. Mostly, we produce imitations of French-styled or Soviet constitutions. And when we draft and constitutionally establish new institutions, according to an organizational scheme of clever and deep kind, we probably obstruct a clearing that ought to remain free. We have before us the example of Weimar's improvisation. A constitution is swiftly prepared, and then in a few minutes, when it is required, lies ready-made on the table. But once it is there it is not easy to discard it. It is then a source of *legality*. It may be that today the German people does not need legality as much as it did in the past, and that it also does not believe so much in legality. Do not forget that a modern state and its bureaucracy function according to the point of view of legality. The authorities listen only to legal prescriptions. Legality is – as distinguished from law (*Recht*) in a

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<sup>17</sup> In Heinrich Muth's view, one should not read this criticism of a corporatist second chamber, Papen's 'pet project', as a sign of a rift between Schmitt and the regime. Schmitt's objections had to do with a long-standing and unresolved dispute within the Catholic camp (Muth, 1971: 125).

'pathetic' sense – the manner in which modern bureaucracies and the modern civil service function. I speak here very soberly about the political meaning of legality, and in this sense the notion has still a very special value, and particularly so for the strong state. When we now improvise a new legality and posit, next to the current institutions of the Weimar constitution which its creators took as no more than an *emergency setting*, new institutions, we thus create new legalities and thereby new protective walls for various interests which will immediately take refuge under the new legal walls.

I believe therefore that it is better first not to create authority through new institutions, so to say in anticipation. We live in a situation that is similar, even if more acute, to the one we lived in two years ago. The government should make use of all *constitutional means*, but also of *all* constitutional means, which stand at its disposal and that prove to be necessary in chaotic circumstances. It should try to establish immediate contact with the real social forces of the people. The tasks are indeed great. In the introductory words of the Chair, a list of those important matters was already mentioned. The duty to labour service, to settlement, to military exercises and to the military service for the youth, and many other things, are such great and powerful tasks that a government which employs those means to that end, and is able to unite with the forces of the social self-organization of the German people, may have the success that every decent German recognizes. Success comes from immediate labour, from the solution of a genuine labour task. That is possible and not mere utopia. *Authority stems only from success and achievement.* Not the other way around. One should not begin with a proclamation of authority. Nobody will be fooled by this. I must work, show what I can do, and this possibility belongs to work. When besides other strictly constitutional institutions, that may wish to interfere but whose interference is to be eliminated, new methods, guilds (*Gremien*) or even individual persons prove their worth, then a new authority rises, for which, I believe, the readiness of the German people to follow and honestly to recognize an honest success is great. The problem of the constitutional legalization of new institutions will not then constitute an insuperable difficulty.

This is how I envisage the road ahead. The assumption is that work shall start immediately. Another assumption is that the vast

and strong productivity of the German people, which in the course of centuries of German history has always stood out in the most astounding way, is rendered fruitful. Our own experience during the last decades still reminds us how the capacity for autonomous organization always proved successful: during the war and the post-war period, during mobilization and demobilization, in good and bad times. This capacity for work and for autonomous organization does not require today the party-political costume in which it is forced to perform in disfigured fashion. If a decisive and ready for action government were to retrieve this connection and immediately seize these forces, what is necessary would then also be possible.<sup>18</sup> Extensive organizational plans for constitutional reform should not be given up. But today they should be deferred. *The forces are here. They are only awaiting a call.* Were they to be seized, rational distinctions would then again be possible, particularly the distinction between state administration, autonomous economic administration and the individual domain of freedom. On the basis of such distinctions, the German people would, over and above party divisions and particularisms, gain its political unity and a strong state.

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<sup>18</sup> According to Bendersky, this should be read as Schmitt's 'wholehearted' support for General Schleicher's proposed national front government 'extending from the Socialists and Catholics to the left wing of the Nazi party'. Schleicher's project included social reform and a massive public works programme to generate employment (Bendersky, 1983: 183). In Turner's view, Schleicher had virtually no support among Germany's business leaders, who favoured Papen's reliance on private enterprise. Schleicher was perceived as being 'soft on labour' and 'as a potential quasi-socialist in military garb'. Hans Zehrer, one of his conservative revolutionary admirers, referred to him as a 'red general' (Turner, 1985: 304-5). Is it then conceivable that Springorum invited the wrong man to address the *Langnamverein* convention?