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**Protecting Democracy from Liberalism: Defending
Carl Schmitt's Critiques of Liberal Democracy**

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Introduction

The decisive victory of liberal democracy in the 20th century was determined by the victory of the Allies and the end of the Cold War. The appeals to liberalism and democracy have ever since occupied much of the discourse in domestic and international politics. Entering the third decade of the 21st century, however, we are witnessing a crisis of liberal democracy worldwide. Under the circumstances, the anti-liberal and anti-democratic thoughts keep recurring as intellectual challenges. This thesis is devoted to exploring the arguments of one of the most influential opponents of liberal democracy in the 20th century, Carl Schmitt.

Schmitt has long been considered one of the most influential German political theorists of the last century (Bellamy 2000, 175). Despite being notorious for his dubious loyalty to the Weimar Republic, Carl Schmitt and his critiques of liberal democracy have never been short of scholarly attention. He argues that liberalism and democracy rest on two unreconcilable principles and that liberal democracy is inescapably self-undermining. Commentators, some of whom might agree with the theoretical contradiction within the notion, have remained critical of his conclusion by strengthening the practical value of liberal democracy in politics (Bellamy 2000, Mouffe 1997, Abizadeh 2005, Larmore 1996).

Schmitt's direct critiques of liberal democracy are largely presented in his book *The Crisis in Parliamentary Democracy*, which was initially published in 1923¹. However, his broader theoretical framework is founded in, for example, his 1922 book *Political Theology*² and can be better understood with the help of his 1932 book *The Concept*

¹ The version used in this thesis was translated by Ellen Kennedy and published in 1988. Schmitt, Carl. *The Crisis of Parliamentary Democracy*. Cambridge, MA: MIT Press, 1988.

² The version used in this thesis was translated and edited by George Schwab and published in

of the Political.³

In this thesis, I pursue the limited aim of examining the cogency of Schmitt's critiques of liberal democracy and examining Schmitt's proposal of an alternative. Towards both aims, I have to remain selective in terms of his theories due to the space constraint. In general, Schmitt's critiques of liberal democracy are founded on two facets. The first one is his understanding of Rousseau's 'general will' as a homogenous *demos* with given inclusion and exclusion, and the second is his distinction between the liberal sense of formal equality and the democratic sense of substantive equality. In Chapter 1, I will first examine his arguments on liberalism and democracy respectively.

Schmitt's basic thesis is entirely dependent upon his radical polemic against liberalism (Strauss 2009, 100). He violently negates liberalism, whose theoretical core is pluralism, due to the primacy of 'the political' (Schmitt 2007). In his conceptualisation, liberalism bases its power through its aim to depoliticise the differences in non-political spheres, and therefore to promote universal formal equality enjoyed by all humanity. This attempt, according to Schmitt, is bound to fail exactly due to its negation of 'the political', one of the most influential concepts in Schmitt's work.

Schmitt affirms the primacy of the political because he sees it as the most decisive characteristic of human beings. In other words, it is the political grouping of people that decides on who we are. All other non-political differences among

2005. Schmitt, Carl. *Political theology: Four Chapters on the Concept of Sovereignty*. Chicago: University of Chicago Press, 2005.

³ The version used in this thesis was edited by George Schwab and was published in 2007. Schmitt, Carl, and George Schwab. *The Concept of the Political*. Chicago: University of Chicago Press, 2007.

human beings can transform to the political if they are intense enough to prompt a real possibility of the actual physical killing (Schmitt 2007, 29-33). In this sense, there must be some substantive homogeneity within an entity that can be considered 'political' in a Schmittean sense – this is also how he conceptualises democracy. Schmitt puts a strong emphasis on the issue of legitimacy. A democratic regime is legitimate only if its sovereign is identified with the general will of the people. For a common will to form, it comes naturally to Schmitt that the political entity in question should have substantive homogeneity so that there can be essential unanimity. In other words, the paradox of liberal democracy is established by the opposite tendencies of liberalism and democracy – the former is inclusive, while the latter is exclusive.

Accordingly, most critiques launched by other philosophers attack one or both the facets. In Chapter 2, I will present some important critiques of Schmitt's thought, in the ordering similar with the first chapter – first, critiques of his conception of liberalism and second of 'the political'. The first critiques are centred on Schmitt's overly idealised definition of liberalism (Strauss 2009). According to these critiques, the major limitations in Schmitt's theories are owed to the fact that he looks at liberalism through the lens of liberalism and precisely as what liberalism wants to be seen: rational, dialogical, consensual and deliberative (Kalyvas 2008, 124). It is also indicated, especially by Jürgen Habermas, that Schmitt's conceptualisation of 'a people' being able to act in a coherent and consistent way already presupposes a substantive homogeneity, which reflects his political preference an ethnically homogeneous state (Habermas 1998). There are also some who do not directly argue against the inherent contradiction pointed out by Schmitt, but proclaims that liberal democracy can still be positively useful under current conditions (Larmore 1996, Mouffe 1993, Mouffe 1995). The idea that liberal

democracy is practically productive is especially the case when they see the actual political and social developments realistically impossible for the formation of the common good to be identified with the general will of the people. Therefore, liberal institutions are thus needed more than ever to keep democratic governments in check.

The final chapter centres on Schmitt's proposal of an alternative to liberal democracy and its implication for contemporary democratic theories. First, I will continue the discussion of the 'productivity of liberal democracy', arguing the supposed productivity is not working ideally as the proponents expected. I borrow what Colin Crouch formulates as 'post-democracy' (Crouch 2004) to demonstrate how the liberal and democratic principles are significantly undermining each other in politics. Second, I move the focus to Schmitt's proposal of an alternative to liberal democratic practices. Even if it might seem obvious that Schmitt advocates replacing liberal democracy with plebiscitary democracy in *The Crisis of Parliamentary Democracy*, I argue that he is equally critical of both. In liberal democracy, as Schmitt observes, major decisions are made in secret negotiations behind the scene, while in plebiscitary democracy, the real power resides in those who have the capacity to phrase and pose questions to the public. Schmitt places particular emphasis on the legitimacy of democratic states. 'The people' make no actual decision in either form of democracy, which is a noticeable violation of the state's legitimacy. Some argue that Schmitt defends a form of 'constrained democracy' in which there is a hierarchy between the commitment to democratic procedures and the basic rights (Schupmann 2017, 210-215). However, as Schupmann interprets, the constitutional constraints on mass democracy that Schmitt argues for are committed to individual liberty rights, making Schmitt's whole thesis an orthodox defence for liberal democracy, rather than a fierce critique against it.

This interpretation, as I argue, leaves out the crux of the crisis of liberal democracy. The ideas of liberty and equality are essential for all democratic theories, and yet they have different priorities. Liberal democracy tends to emphasise the legal protection of individual freedoms, but does not necessarily see equality as a necessary component. An egalitarian version of democratic theory, however, assumes that the majority of the citizens are qualified enough to participate in politics and thus no one should be considered superior or better qualified to be entrusted to make collective decisions for the others. The crisis of liberal democracy results precisely from the missing focus on the actual provision of rights and freedoms that relates to people's equal access to power.

In a word, as I shall argue, if mass democracy is to be constrained by the constitutional commitment to basic rights, the rights should be primarily concerned with people's equal rights to effectively engage in politics, rather than liberty rights based on 'negative freedom'. If democracy is still valued as the best form of government, it is time to stop cheering for the victory of liberal democracy, and to shift our attention from liberal principles in democratic theories to a more egalitarian version of democracy.

1 Carl Schmitt on Liberal Democracy

Carl Schmitt's critiques of liberal democracy are largely included in his book *The Crisis in Parliamentary Democracy*. However, to fully understand his arguments, as will be shown later, it is necessary to extend the scope of discussion to his 1932 book *The Concept of the Political*. Liberalism and democracy, two concepts that are distinct from each other in several senses, shall be examined respectively in order to either criticise or to defend liberal democracy. In this chapter, Schmitt's arguments on

liberalism are examined first as his basic thesis is dependent upon his polemic against liberalism (Strauss 2009, 100). Schmitt's thesis on the political, or more specifically, on democracy, are examined afterwards, before the examination of his arguments about liberal democracy starts.

1.1 Liberalism

Schmitt has clearly never been a fan of liberalism. He objects to liberalism because it negates the political, but yet has not 'thereby eliminated the political from the face of the earth but only has hidden it' (Strauss 2009, 100). This implies the fact that liberalism believes in and acts on a non-political form of equality but fails to promote such equality in reality, making itself dependent on some particular kind of political form to continue its equality promotion cause. Liberals denounce the political because their fundamental is the belief that the individual is prior to the state (Frye 1966, 823). Liberalism neutralises and depoliticises, for example, economics, based on its commitment to 'equality, liberty, individuality and rationality' (Bellamy 2000, 68). It acts on the belief that everyone has equal moral worth that is enjoyed by all humanity.

This non-political form of equality is called 'formal equality' (Bellamy 2000) or 'liberal equality' (Mouffe 1997, 23) (hereafter only 'formal equality'), and is an absolute kind of human equality (Schmitt 1988, 12). It rests on the principle that all individuals, regardless of their races, genders, cultures or religions, are to be treated equally because of their common humanity. This principle, as Schmitt specifically distinguishes, is liberalism, not democracy (ibid.,13). As Schmitt conceptualises, in every sphere, there must be its specific equality and inequality (ibid.,11). Without inequality, equality would become void. Nonetheless, formal equality stands without 'the necessary correlate of inequality' (ibid.,12) by promoting universal equality and

denying inequality, and thus is ‘conceptually and practically meaningless’ (ibid.,12). In this case, equality is simply stripped of its value and substance in particular spheres (ibid.,11).

Schmitt’s basic thesis is entirely dependent upon the polemic against liberalism which is determined by its failure that Schmitt conceives (Strauss 2009, 100). To say that liberalism has failed refers to at least two aspects of Schmitt’s works. First, it has failed to theoretically justify the foundation of the state due to its negation of the political. Second, as will be elaborated in the following sections, liberalism has evaded politics that is being engaged in nowadays using ‘anti-political mode of discourse’ (ibid.,100). The focus of this section will be the first failure of liberalism.

The form of equality endorsed by liberalism is formal because it does not ‘provide any criteria for the establishment of political institutions’ (Mouffe 1997, 22). In other words, for Schmitt, liberalism has failed to justify the foundation of the state for its endorsement of the universal formal equality as its guiding principle, and thus its refusal to construct a ‘we’ from ‘them’ as a collective identity. As Schmitt sees, promoting such a universal and ‘indifferent’ (ibid.,12) form is irresponsible since it could only lead to nowhere but more chaos. The significance of the construction of a ‘we’ from ‘them’ is primary in Schmitt’s work, formulated by Schmitt as ‘the political’ in *The Concept of the Political*. Briefly, it refers to the most decisive grouping that determines one’s identity. If the differences among people are intense enough to group them into different adversary collectivities with threats of real deaths in battles, their identities are formed via the distinction of friend and enemy.

Second, by taking up a rationalist account of liberalism, Schmitt conceives open discussion as the essence of liberalism, in which people of different values and interests gather together to persuade each other and eventually reach a rationally

correct conclusion or consensus (Schmitt 1988, 5). Accordingly, liberals deny the concept of 'enemy' by turning the 'enemy' into a competitor in the economic sense or a debating adversary in the intellectual sense (Bellamy 2000, 77). Therefore, as some scholars characterise, liberals refuse to construct a 'we' as a collective identity 'that articulates the demands found in the different struggles against subordination' (Mouffe 1995, 1535). However, for the political to emerge, there has to be some degree of locality and homogeneity in it, namely, the construction of a 'we' – the generalised similarities in human species do not suffice to build a political identity. Hence, liberalism's endorsement of universality and pluralism fundamentally collides with the principle underlying the transformation from something non-political to the political.

Liberalism has been trying to evade politics through various forms and ways. There are three main political settlements that are labelled as liberal: the separation of state and civil society, the rule of law and parliamentarism (Bellamy 2000, 70), the last of which Schmitt centred his arguments on in *The Crisis of Parliamentary Democracy*. Parliamentarism, as Schmitt sees, is the contemporary method of government, a political means to select political leaders, and a certain way 'to overcome political dilettantism and to admit the best and most able to political leadership' (Schmitt 1988, 4). All specifically parliamentary arrangements and norms, according to Schmitt, receive their meaning first through discussion and openness (ibid.,2). According to Schmitt, discussion means 'an exchange of opinion that is governed by the purpose of persuading one's opponent through argument of the truth or justice of something' (ibid.,5). This definition suggests that laws, in particular the laws coming out from representative constitutions, arise out of a conflict of interests and opinions, which reflects liberals' endorsement for pluralism within an entity. Pluralism, especially a rationalist account of it, recognises a plurality

of incompatible yet reasonable doctrines (Mouffe 1995, 1538). Therefore, in liberals' eyes, there should be shared convictions, the willingness to be persuaded, independence of party ties and freedom from selfish interests in an ideal discussion (Schmitt 1988, 5).

To sum up, Schmitt condemns liberalism for its negation of the political, and thus for its neutralisation and depoliticisation of the differences among all individuals. Liberalism believes in open discussion and fair competition between individuals 'in all spheres of life as a means of achieving truth and happiness' (Bellamy 2000, 71). Schmitt characterises liberalism as the foundational principle for parliamentarism that rests on the principles of discussion and openness to achieve what is rationally correct out of the conflicts of interests and opinions.

1.2 Democracy

Before Schmitt's conception of democracy is analysed, several notions need elaborating first. The first is the primacy of the political, which suggests the decisiveness of the political out of other differences in spheres like economics and culture. The second is the friend-enemy distinction, presented by Schmitt as the ultimate distinction through which the political is to be understood (Schmitt 2007, 26). And the third is identification and homogeneity, by both of which political unity and democratic legitimacy can be established (Mouffe 1997, Larmore 1996). Schmitt emphatically refuted liberalism, as mentioned above, because of its negation of the political. For Schmitt, the political enjoys the fundamental and absolute primacy, not in the sense that it always emerges chronologically before the economic, moral, religious, ethical or other conceptions, but that all the different conceptions will transform into political ones if they are 'sufficiently strong to group human beings effectively' (Schmitt 2007, 37). Once the transformation is

completed, it is the most decisive form. The political is not next to or equivalent to other spheres in the ordering (Strauss 2009, 102), but is ultimately ‘authoritative’ (ibid.,104).

If Schmitt’s whole basic thesis is founded on the primacy of the political, it is therefore necessary to ask: why does Schmitt affirm such primacy?

First, it needs clarifying that Schmitt chooses the term ‘the political’ instead of ‘politics’ for the following two reasons. First, what Schmitt intends to convey are the relative and comprehensive aspects of the concept rather than the substantive and narrow aspects of ‘politics’. For example, he sees ‘politics’ as referring to the specific political arrangements or institutions like parties or parliaments. Second, he believes the ‘absolutist’ concept of ‘politics’ (i.e. the specific political arrangements like elections) have been evaded by liberalism and did not want his concept of ‘the political’ to suffer the same fate (Frye 1966, 821). In other words, Schmitt perceives ‘politics’ as a concept specifically and rigidly related to political institutions, while ‘the political’ is more unbounded and less specific (ibid.,821).

The political derives its power ‘from the most varied human endeavours’ (Schmitt 2007, 38), that is, the political exists as long as there are differences that are sufficiently huge among human beings, regardless of which kinds. The differences may be ethical, religious or economic, but they will all transform into the political if they are strong enough to group people into friends and enemies. The crux of the transformation lies in the intensity of the grouping, which ‘pushes aside and subordinates its hitherto purely religious, purely economic, purely cultural criteria and motives to the conditions and conclusion of the political situation at hand’ (ibid.,38). When such grouping exists, it is always the most decisive human grouping, transcending other forms of distinctions. One is inevitably entangled in his attempt to eliminate the political, as this effort would have a prospect of success

only if it becomes political. Liberalism's attempts to abolish the political are doomed because the political is a basic characteristic of human life that no one can escape from (Strauss 2009, 110). In other words, the political is human beings' 'destiny' (ibid.,110).

The political must therefore rest on its ultimate distinction, to which all action with a specifically political meaning can be traced (Schmitt 2007, 26). According to Schmitt, this specific political distinction is between friend and enemy (ibid.,26). Schmitt characterises the political as 'the most intense and extreme antagonism' (ibid.,29) that receives its real meaning precisely because they refer to the real possibility of physical killing (ibid.,33). It depicts the ultimate distinction or opposition between human beings. This does not mean that every form of political grouping proceeds with the sacrifice of human lives, but that the political derives the primacy from such substantial possibility. Hence, the concepts of friend and enemy must be understood in their 'concrete and existential sense, not as metaphors or symbols' (ibid.,27). Notably, 'enemy' is not a competitor in an economic sense, nor an individual that one hates personally, but an adversary collectivity that confronts a corresponding collectivity with real latent threats of deaths in battles. Some might argue that Schmitt's argument for the adversary claim that every political collectivity must be constituted antagonistically in relation to an 'other' is Hobbesian (Abizadeh 2005, 53). However, as Strauss points out, Schmitt's characterisation of 'enemy' is fundamentally different from the Hobbesian one, which is the state of war of individuals, while Schmitt's definition is the state of war of groups (Strauss 2009, 106).

Once the friend-enemy distinction is accepted as the dominant way to understand the political, it follows that within a political entity, there should be *decisive and substantial* homogeneity. 'Decisive' means the homogeneity existing within

a certain entity determines the characteristics of its identity, while ‘substantial’ means the degree of homogeneity should be remarkably noticeable to determine the entity’s identity. The argument above may still sound slightly premature at this point. Indeed, before the conclusion of homogeneity is reached, there remain several concepts that need examination. The first is political legitimacy, or more specifically, democratic legitimacy. As some indicate, Schmitt’s major concern is not universal democratic participation, but ‘political unity’ (Mouffe 1997, 25) or the stability of the political system (Larmore 1996, 177) that is dependent on whether its principles of legitimacy is ‘generally believed to be justified’ (ibid.,177). As a form of government, democracy receives its legitimacy via ‘a series of identities’ (Schmitt 1988, 26), the most fundamental of which is the identity of the governed and the governing. In democracy, a citizen never really gives his consent to a specific act or law but rather to the result that evolves out of the general will (ibid.,26). In reality, however, there is no such a perfect coincidence that the general will of the governed and the governing flawlessly align with each other at every moment. Therefore, the identities on which the idea of democratic legitimacy is founded rest on the ‘recognition of the identity’ (ibid.,26), namely, the ‘identification’ (ibid.,27). Such ‘identification’ means that someone claims to be able to enforce the acceptance of his claims through some set of political forms and institutional arrangements to express the will of the people (Larmore 1996, 179).

It is thus necessary to note that the *demos* does not exist only in the abstract, but is an existential entity that comprises of people of specifically different interests⁴. For Schmitt, it belongs to the essence of democracy that every and all

⁴ It is noteworthy not to conceptualise homogeneity wholly as absence of all kinds of differences, which is theoretically unnecessary and realistically impossible – even among siblings there can exist huge differences. Homogeneity can be sustained as long as the specific differences within

decisions that are made are only valid for those who themselves decide (Schmitt 1988, 25). Hence, for a democracy to be justified, the ones who govern need to be identified as the result evolving out of the general will that is formed with the consent of the others, and thus in line with the interests of the governed. Schmitt repeatedly claims that the concepts in the political, like ‘enemy’, ‘friend’, ‘the governed’ and ‘the governing’, are to be understood in their existential and substantial sense, rather than their theoretical or metaphysical sense. Therefore, it is now easier to observe that the formation of the general will requires an essential degree of homogeneity.

Schmitt does not give enough explanation of Rousseau’s general will in his *The Crisis of Parliamentary Democracy*, as he basically takes his brief interpretation for granted for further arguments to develop. According to Schmitt’s reading, a true state only exists where the people are so homogeneous that there is essential unanimity, and ‘there can be no parties in the state, no special interests, no religious differences, nothing that can divide persons, not even a public financial concern’ (Schmitt 1988, 13). In a word, homogeneity elevates into ‘an identity understands itself completely from itself’ (ibid.,14). It now follows that the formation and the function of a political entity must involve the exclusion or even – when the need arises, the elimination of those who are ‘sociologically and psychologically heterogeneous’ (ibid.,25). Democracy, whose core conception lies in people’s equal right to decide the affairs that would affect their own life, always implies ‘a moment of closure’ (Mouffe 1997, 25).

Such ‘a moment of closure’ fundamentally contradicts with liberals’ belief in universal equality of all humanity. It implies a distinct form of equality than the

are not sufficiently intense to threaten the entity’s identity.

‘formal equality’ in the last section – ‘substantive equality’ (Bellamy 2000, 73) or ‘democratic equality’ (Mouffe 1997, 23). I prefer ‘substantive equality’ in this thesis, as it is more directly related to what Schmitt indicates the ‘substance of equalities’ (Schmitt 1988, 9-13). Schmitt argues that equalities, if not capable of sustaining themselves, lose their substance and become void and meaningless (ibid.,11-12). The substantive equality is realised, conceptually through the distinction between friend and enemy, and practically through citizenship of nation-states, resting on the principle that not only are equals equal but unequals will not be treated equally (ibid.,9).

1.3 The Paradox of Liberal Democracy

If the distinction between liberalism and democracy, or more specifically, between formal and substantive equality is clear, then one might probably wonder how and why such two paradoxical concepts were brought together in the first place. In the 19th century (Schmitt 1988, 2), parliamentarism, as one of the main political embodiment of liberalism, has advanced hand in hand in the closet alliance with democracy (ibid.,2), with the wrongly combined notion of liberal democracy, or its variant like representative democracy. However, after their common victory, the differences between them cannot maintain unnoticed any more (ibid.,2). In this section, their theoretical differences will be examined first before the discussion of the consequences in reality.

According to Schmitt, liberalism and democracy are only contingently related (Schmitt 1988). Liberalism, as abovementioned, is committed to universal formal equality for all humanity. Liberals recognise a plurality of opinions and interests (ibid.,6). When it comes to political settlements, liberals therefore support open and fair discussion in which the parties in question can and will exchange their opinions

‘with the purpose of persuading one's opponent through argument of the truth or justice of something, or allowing oneself to be persuaded of something as true and just’ (ibid.,5) to achieve what is rationally correct and practically acceptable.

However, as Schmitt points out, the theory of the state set out in *Du Contract Social* contains liberalism and democracy incoherently next to each other (Schmitt 1988, 13).

The façade is liberal: the state's legitimacy is justified by a free contract. But the subsequent depiction and the development of the central concept, the ‘general will’, demonstrates that a true state, according to Rousseau, only exists where the people are so homogeneous that there is essentially unanimity.

Nevertheless, if there is such substantial homogeneity, why would or should there be a contract in the first place? There is simply no place for pluralism in democracy (Mouffe 1997, 30). Schmitt conceptualises politics in such a way that democracy is radically dissociated from liberalism and, more controversially, from the constituted, rule-bound practices of popular election and parliamentary legislation that characterise the ordinary workings of modern democracy (Vinx 2016). In his conception, liberalism and democracy are working in completely opposite directions. The former works in an outward or inclusive direction to include all humanity, while the latter in an inward or exclusive direction to exclude the heterogeneous. Trying to enclose liberalism with democracy will either make liberalism in democratic practice a merely ‘empty formality’ (Schmitt 1988, 6) or democratic practices void and infeasible.

In reality, the fundamental principles of discussion and openness, though still recognised constitutionally, were hardly believed in practice anymore (Schmitt 1988,

3). In contemporary parliaments, the liberal principles have largely given way to ‘a degenerate version’ (Larmore 1996, 181) of the democratic principle, since ‘the real business’ in government takes place not during open discussions, but in ‘secret meetings of faction leaders or even in extra-parliamentary committees so that responsibility is transferred and even abolished’ (Schmitt 1988, 20). Schmitt observes that parliamentarism has become a situation in which ‘all public business has become an object of spoils and compromises for the parties and their followers’ (ibid.,4). Instead of discovering what is rationally correct, it has been solely concerned with ‘calculating particular interests and the chances of winning and with carrying these through according to one’s own interests’ (ibid.,5-6). The open discussion has become simply ‘a superfluous decoration’ (ibid.,6) in the sense that the parties no longer face each other discussing and debating opinions, but as power groups calculating their mutual interests and opportunities for power. The majority are won over through a propaganda apparatus whose maximum effect relies on an appeal to immediate interests and passions (ibid.,6).

Nowadays liberal thinking can only be limitedly implemented in domestic politics, while it appears somewhat feeble when it comes to international politics. Nonetheless, arguably, any citizen in a country can be more or less subject to the foreign policy of other countries. The extents to which they can be subject depend on the geographic, cultural and political relations among the countries. Were international politics conducted purely in liberal principle, there would be no such a thing as citizenship, which is what constitutes the *demos* in democracy, as such boundaries would be eliminated.

The inclusive tendency of liberalism by no means suggests the substantive political equality like equal voting right, which belongs to the realm of democracy. In modern nation-states, political rights are granted through citizenship, a modern

approach to outline a homogeneous group in favour of the practice of democracy. In democracy, only when there is substantive homogeneity among the people can they form an essential unanimity through which ideal identification of the governing and the governed can be achieved. When such identification is achieved, the principle of the legitimacy of the sovereign is justified, and the ‘ultimate stability’ (Larmore 1996, 177) of the political system is founded.

In conclusion, the common victory of parliamentarism and democracy has to some extents concealed the fundamental contradiction between liberalism and democracy. In Schmitt’s views, liberalism, which is committed to formal equality, has an inclusive tendency to encompass all humanity, while democracy stresses on homogeneity within a political entity to achieve the ideal identification of the governed and the governing and thereby the ultimate stability of the sovereign. When the two theoretically contradictory concepts are combined, parliamentarism, a practical realisation of liberal democracy has been exposed to grave crises that make it increasingly further from its founding principles.

2 Arguing Against Carl Schmitt

There are generally three types of criticism made against Carl Schmitt’s theses (Gottfried 1990, 101). The first type involves heated attacks on his person in order to discredit his ideas, and the second mostly comes out of debates that Schmitt engaged in with jurists and historians, concerning specialised scholars almost exclusively (ibid.,101). However, mainly concerned in this chapter is the third type of criticism, which calls into question Schmitt’s political theories, including his conceptualisation of liberalism and his picture of ‘the political’ that are often charged with being ‘contrived and one-sided’ (ibid.,101).

Schmitt strives to demonstrate the theoretically unreconcilable contradiction of liberal democracy. Interestingly enough, one may be surprised by how almost everyone else agrees that liberal democracy is somewhat in crisis, especially considering the actual political developments in the advanced democratic countries. Even though not all agree with Schmitt's conceptualisation of the fundamental contradiction within the notion, philosophers and commentators do not directly go against this contradiction in most cases, but usually attack his views of liberalism and conceptualisation of 'the political' separately. Even those who try to argue for the coherence of liberal democracy (Larmore 1996, 181-186), do not attempt to refute the theoretical contradiction itself, but merely claim that in liberal democracy there contains a ranking of the principles of liberalism and democracy that may guarantee its coherence.

In this chapter, I will present some crucial critiques that specifically target Schmitt's arguments or some opposing ideas that may be used to criticise him. Echoing the structure of the last chapter, the chapter is also divided into three parts. The first part includes some opposing ideas about Schmitt's conceptualisation of liberalism and some defences for liberal parliamentarism. Numerous commentators remain confrontational towards Schmitt's definition of deliberation and its link to the public decision, including Hans Kelsen, Dominique Leydet and Jon Elster. The second part is concerned with critiques of Schmitt's picture of 'the political'. The conceptualisation of 'the political' has been Schmitt's most influential work that is broadly concerned with some foundational ideas like constitution, sovereignty and legitimacy. Nonetheless, this chapter has to remain highly selective due to space constraint, and most critiques presented here centre on the friend-enemy distinction and the transformation from non-political to the political. Included here are mostly the arguments of philosophers like Jürgen Habermas, Andreas Kalyvas and

Giovanni Sartori.

In the end, it is also meaningful to examine some arguments that are less directly confrontational and more focused on the practical productivity of liberal democracy. This type of arguments, though in agreement with the fundamental contradiction between liberalism and democracy, are less pessimistic than Schmitt's, arguing that liberal democracy can still be positively productive in public decision-making even with the theoretical tension.

2.1 A Highly Idealised Reading of Liberalism

Schmitt characterises liberalism as a belief that promotes the value of individuals and universal formal equality enjoyed by all humanity. It is typical of liberals to pretend to be 'neutral' in religious, ideological and political conflicts (Bielefeldt 1998, 24). Nevertheless, for Schmitt, neutrality means lack of substance, weakness and hypocrisy in times of conflicts. In the age of liberalism, what remains its core is simply private and economic interests (ibid.,25). Schmitt disqualifies liberalism due to its negation of the political, that is, liberals' failed attempts to demolish the notion of the 'enemy'. The liberal approach to politics is purely instrumental because it is only for the sake of safeguarding private and economic interests (ibid.,25). Parliamentarism is one of the three main liberal political settlements (Bellamy 2000, 70), with which Schmitt has been mainly concerned. The idea of liberal parliamentarism begins with the belief that the best laws are the product of rational discourse and that legal forms are justified only when they are the outcomes of collective rationality (Schmitt 1988, 2-5), which, put in Kantian terms, is the view that just legislation must always conform to the principle of publicity (Balakrishnan 2000, 129).

Therefore, Schmitt bases his conception of parliamentarism on the value of

rational public discussion by saying ‘all specifically parliamentary arrangements and norms receive their meaning first through discussion and openness’ (Schmitt 1988, 3). What is more open to attacks is his definition of discussion – ‘an exchange of opinions that is governed by the purpose of persuading one’s opponent through argument of the truth or justice of something, or allowing oneself to be persuaded of something as true and just’ (ibid.,5). Quite a few critiques charge this definition of being overly narrow and demanding.

2.1.1 A Demanding Conception of Collective Rationality

Schmitt assumes that rational public discussion is the only process by which parliament can mediate and integrate diversified interests. According to some critics, this assumption is a rather narrow view of how the machinery of parliament might encourage compromises (Leydet 1998, 119). There is a nuanced distinction between the question of how parliament may foster ‘principled agreements’⁵ (ibid.,119), and of how the mechanism imposes on all participants the constraints (ibid.,119). In other words, it is one thing that an agreement is to be justified by being the outcome of rational public debate procedures, and it is another that all parties in the discussion are properly constrained. Those who believe the latter is unfeasible are also likely to reject the possibility of the former. What Leydet suggests here is that the parliamentary game imposes substantial constraints on all parties, which ‘constitute the basic framework in which the more demanding conditions of

⁵ According to Leydet, the distinction between principled and unprincipled agreements made here mirrors the distinction made by Jon Elster between the thin theory and broad theory of collective rationality. Principled agreement only requires formal consistency and goes no further than the aggregation of preferences, while unprincipled agreement implies a normative requirement that rational discussion be conducted in reference to the common good, which may entail the transformation of preferences (Leydet 1998, 127-128).

rational discussion can become realisable' (ibid.,119).

Schmitt points out two grave crises of parliamentarism in *The Crisis of Parliamentary Democracy*. First, party politics has made parliamentary system an empty format, as the real important business takes place behind the veil of open sessions (Schmitt 1988, 19-20); and second, the disinterestedness and impartiality needed of participants to engage in public discussion have been largely missing, making parliamentarism a superficial plenary in which different interest groups calculate their opportunities for power (ibid.,5-6). Accordingly, these two crises observed by Schmitt implies two conditions of his conception of liberal parliamentarism. The first one is the absence of any form of domination within the parliamentary system, and second is the disinterestedness of all participants.

One important opposing idea concerning the majority's domination over the minority within a parliament is given by Hans Kelsen. In *The Essence and Value of Democracy*, Kelsen argues that the true nature of majority-minority relations is not domination, but mutual interaction and influence (Kelsen 2013, 68-70). According to Kelsen, the individuals that make up the social community are essentially divided into two groups and what matters here is that the tendency to form a majority has the effect of 'overcoming the countless impulses' in society, which puts forwards differentiation and division, reduces them to a single, basic contradiction (ibid.,69). When differences arise, there would always be a numerical majority, but that does not mean its will necessarily prevail.

In other words, as explained by Leydet, the existence of both the majority and minority is essential to the formation of 'principled compromises', which mean decisions that can be publicly justified (Leydet 1998, 124). Kelsen later points out that the absolute domination of the majority over minority does not exist in reality (Kelsen 2013, 69). His argument rests on a rather optimistic observation of the so-

called ‘the will of society’, which is already the product of the mutual interaction between the two groups and of compromises of their colliding interests instead of the direct dictate from the majority (ibid.,69). Kelsen also seems to presume the existence of some kind of agency of the two groups, especially the majority group, due to which the majority group will refrain from completely dominating the minority to the point where the latter loses all its power and incentives to still persist within the parliamentary system (ibid.,69). Such total domination would only, in turn, destroy the majority’s position as majority, for there cannot be a majority without a minority.

However, this sounds fascinating but somewhat puzzling, as it presupposes the existence of some shared consciousness within the majority group to refrain from constantly dominating the minority, whereas there is not enough explanation of how such a group consciousness could arise in the first place within a group already comprising of a large number of people who may have distinct purposes among themselves as well. The formation of a majority only entitles its members a shared aim, but does not assimilate or unify them.

Kelsen refutes the theoretical claim that the majority will completely represent and even dominate the minority by saying total domination cannot exist in reality, but he tries to prove that by giving another logical statement rather than a factual one. It is true that the existence of majority in theory necessitates the existence of a minority, but – if we are to focus on factual claims here – as we observe, minority may not be eliminated, whereas it can still suffer from the majority’s domination. The majority is often not a homogenous group, within which people still have their own agendas. For example, there could also exist different opinions in a majority of whether they can or should dominate the minority, and thus it is questionable to claim that the majority would not, out of their own good, want domination over

the minority.

In addition, there is another underlying difference between Kelsen and Schmitt in terms of liberal parliamentarism. Kelsen believes that the aim of the entire parliamentary process is to achieve *compromises* between opposing interests and that the deeper meaning of parliament is that the opposition of the thesis and antithesis of political interests somehow results in a synthesis (Kelsen 2013, 70). Other commentators also challenge Schmitt's definition of discussion as an exchange of opinions for the purpose of persuading and being persuaded (Schmitt 1988, 5). For example, Bellamy disagrees with the purpose of persuasion, arguing that discussion is also oriented to understanding, based on which parties engaged may find what they have in common and aim for a compromise. To the contrary, Schmitt believes that the collective rationality represents *a higher absolute truth* which might not align with and which stand above anyone's particular interests.

This brings back the second condition of Schmitt's conception of parliamentarism, which is the disinterestedness of all participants. If we follow Schmitt's logic that the ultimate aim of parliamentary machinery is some transcendent absolute truth, it is easier to observe, as Schmitt does, that debate participants need to be highly impartial and disinterested of particular interests. It poses crucial questions like whether the participants are moved by selfish interests or by a sincere desire to find what the best solution or the absolute truth is (Leydet 1998, 124). If the participants are simply moved by the former incentive, this is what Schmitt distinguishes as deal-making, while the latter should be the genuine incentive for a real rational discussion. Leydet is highly sceptical of this conception – the requirement that all participants need to be disinterested and not moved by their own private interests seems exaggerated (ibid.,124). The point here is not only about whether one can be wholly disinterested from his private interests in public

discussion, but also about whether one has to be completely so in order to justify his position?

Leydet borrows Jon Elster's arguments to argue for this. In *Arguing and Bargaining in Two Constituent Assemblies*, Elster believes that even the actors whose concerns were purely self-interested may have been forced or induced to substitute the language of impartial argument for the language of self-interest and this substitution matters for the outcomes (Elster 2000, 349). In other words, self-interested participants often try to ground their claims in general principles that refer to the common good to the extent that their self-interest appeals to an impartial equivalent of self-interest. Participants in a public debate may hide their selfish interests to increase their credibility, but Elster goes further to argue that even when arguments are purely strategic and based on self-interest tend to yield more equitable outcomes than bargaining (ibid.,413). According to Elster, the arguments in a public setting 'will prevent the strong from using their bargaining power to the hilt' (ibid.,413). As explained by Leydet, constant reference to the common good and the use of general reasons do impose some constraints (Leydet 1998, 125). More specifically, that candidates promote their images as compatible with and supportive of their constituents' interests to win their votes is increasingly being observed in modern politics. As long as an argument is sufficiently distinct from participants' selfish interests to be accepted by others, it would be enough to characterise rational argumentation as essentially different from deal-making (ibid.,125-126).

2.1.2 Redefining Parliamentary Democracy

Schmitt's characterisation of liberal parliamentarism establishes a strong link between deliberation and decision, sometimes even unnecessarily demanding

(Leydet 1998, 121). The strong link is further affirmed by Schmitt's emphasis on the validity of arguments or decisions that is backed by collective rationality. Schmitt's definition of deliberation here does not stand in a stark contrast with Habermas's communicative action. Schmitt recognises the essence of parliament as public deliberation of thesis and antithesis, in which all parties confront each other's opinions to reach a higher truth that may transcend all parties' preferences (Schmitt 1988, 34-35). In other words, in a Schmittian sense, decisions are justified as being the result of public discussion in which all participants were striving for the objective truth instead of their selfish interests. What remains similar of Habermas's definition of communicative action is the highlights on its rational and cognitive character – to recognise the validity of some claims is to presume that good reasons could be given to justify them in the face of criticism (Bohman and Rehg 2017). What is different in Habermas's definition is the lack of purpose to influence and persuade others and thus to achieve advantage over others (Johnson 1998, 26). This is also a part of Schmitt's thesis that is often open to attacks – according to some critics, Schmitt reduces discussion simply to persuasion and ignores it can also be oriented to mutual understanding (Bellamy 2000, 82), leaving no space for any positive transformation of parliamentary democracy.

Going against this narrow definition of deliberation, Leydet gives a new recognition of the purpose of parliament. She first agrees with Schmitt and Habermas's remark that the main interlocutor within parliament is no longer one's political adversary, but the body of the electorate (Leydet 1998, 121). This is because the extension of the suffrage has changed political parties into 'vote-seeking organisations' and the positions of the parties on a given legislative issue are determined by the competition for the electorate's favour, rather than by the exchange of arguments within parliament (ibid., 121-122). Hence, political decisions

are nowadays less the result of public deliberation than of party strategy (ibid.,122).

By confirming that today's parliament is not a deliberative body in the strict sense as Schmitt suggests, Leydet thus argues that it has nowadays become the 'arena in which government policies are to be justified before the public' (Leydet 1998, 122). That is to say, the purpose of parliament has changed due to the change of the target audience of the public deliberation. In a word, this new recognition of the purpose of today's parliament thus manages to avoid the inherent self-defect within the notion of liberal democracy as Schmitt suggests by subjecting classic liberal principles of parliamentarism to contemporary democratic developments.

2.1.3 Attempts to Reconcile the Contradiction

Generally, according to the opposing ideas above, Schmitt's requirement of non-domination and impartiality within the parliamentary system is neither necessary in theory nor feasible in reality. His critique of parliamentary democracy is premised upon a conception of collective rationality which is extremely demanding (Leydet 1998, 126). Such conception is characterised by some as Schmitt's intentionally partial picture of liberalism to mislead readers towards his negation of liberalism and his preference for an ethnically homogeneous state.

The challenge to Schmitt's characterization of liberal parliamentarism is premised upon one condition – that the participants are cooperative enough to listen and to reach mutual understanding rather than simply persuasion. The willingness to cooperate implies that the participants do not have to be entirely disinterested of their particular interests. As long as they still need to constantly refer to the common good and general reasons to maintain their credibility among other fellow participants and among those whom they are representing, according to Elster, they are appositely and adequately constrained.

This condition is where Schmitt and his critics diverge. The shift is reasonable if one takes a more optimistic view of politics, and ultimately, of human nature. If one's view of human nature is generally positive, it is reasonably easier for him to argue for greater possibility of establishing understanding and reaching compromises in discussion, and subsequently, easier to find Schmitt's conception overly demanding. Clearly Schmitt places the destination of absolute truth as the ultimate purpose of parliament, while he disqualifies compromises as a principle for any form of government – 'deliberation and compromise has been everywhere in world history...but it is not the principle of a specific kind of state or form of government' (Schmitt 1988, 6). It derives from Schmitt's definition of discussion and his observation that the conduct in parliamentary has been almost exclusively concerned, certainly in the wrong way, with 'calculating particular interests and the chances of winning and with carrying these through according to one's own interests is also directed by all sorts of speeches and declarations' (ibid.,5-6). Certainly two businessmen can discuss and compromise and reach an outcome that is profitable for both by eyeing on their own benefits, but this is not the 'discussion in the specific sense' (ibid.,6), namely, the discussion that should happen in parliament.

The disputes of the purpose of parliament and of the qualification of participants stem from their different views of politics, or more specifically, of people's intentions to engage in politics. They reflect a more fundamental difference – different views on human nature. Human beings are multi-faceted creatures that can be both extremely selfish and socially corporative. If one looks at the social aspect, he is more likely to have a cooperative image of people participating in politics, the social activities that arise precisely due to the need of people coming together to solve bigger issues. However, if one looks more at the selfish or

individual part, what would follow is a distrustful picture of people carrying selfish interests and aiming for biased outcomes. With such an image, it is easier to observe, as Schmitt does, the demanding requirement for people's disinterestedness in discussion if the goal is an ultimately higher truth. The reason for the disputes therefore lies in the fundamentally different views of human nature – whether human beings are to be presupposed by nature good or by nature evil, which makes it harder to negate Schmitt's thesis based on overly demanding conception.

Nonetheless, disagreement is also to be anticipated that such a reductionist explanation is intended to cover up Schmitt's political partiality. Hence, it is necessary to see why Schmitt takes such a pessimistic view of human nature in the first place. In *The Concept of the Political*, Schmitt points out that all political theories can be tested according to their anthropology and thereby can be classified as to whether they consciously or unconsciously presuppose man to be good or evil (Schmitt 2007, 58). The conception of man that whether man is a dangerous and risky being or unthreatening and harmless creature, according to Schmitt, is always decisive for every further political consideration (ibid.,58). As Schmitt observes, what remains in various genuine political theories, is that they all presuppose man to be evil, 'by no means an unproblematic but a dangerous and dynamic being' (ibid.,58). Such a position again reflects Schmitt's negation of liberalism which, according to his conception, claims to represent the alleged universality of all humanity, and presupposes the goodness of human beings while neglects its evilness.

2.2 An Excessively Generalized Definition of Democracy

Schmitt's democratic theory derives its force first from his picture of 'the political' and second from friend-enemy distinction. He argues that the political is not only

real but also necessary as it is given in human nature (Strauss 2009, 111). For Schmitt, the key of the transformation from non-political differences to political grouping lies in the intensity of the differences, that is, the transformation completes itself when the grouping evokes feelings that are so intense that it may lead to actual physical killing. The intensity arouses strong hostility among groups instead of among individuals, which distinguishes Schmitt's conception from a Hobbesian state of nature. This picture of war-prone politics is constantly charged of being too exclusive and one-sided by those who hold more pacifist and optimistic view towards the future.

Another pillar of Schmitt's conception of democracy is legitimacy. For Schmitt, democratic legitimacy comes from the identification of the rulers and the ruled, and a democratic regime is justified when the rulers and the ruled are identical with each other. In other words, for a democracy to be justified, those who rule need to be identified as the result evolving out of the general will that has been formed with the consent of others, and thus that they align with the interests of those who are ruled. Therefore, according to Schmitt's reading of Rousseau's 'general will', there needs to be substantial degree of homogeneity within a political entity for democracy to be able to be justified and to function (Schmitt 1988, 13-14). Accordingly, two emblematic critiques will be given in this section over Schmitt's conceptualisation of the political. The first focuses on the scepticism of his theory of 'intensity' as 'an exclusive prerogative of the political' (Sartori 1989, 66), which mostly includes Sartori and Gottfried's arguments. The second is mainly concerned with the contradiction of group formation and shared consciousness, which is pointed out by Kalyvas and Habermas.

2.2.1 A One-sided Picture of The Political

The central question of this critique is why ‘intensity’ is ‘an exclusive prerogative of the political’ (Sartori 1989, 66). The question originates from Schmitt’s statement that it would be senseless to wage wars on purely religious, moral or economic motives, and that such motives have to be intense enough to transform into political grouping whose force is founded on the possibility of actual physical killing. Sartori charges this argument to be circular and misleading – ‘indeed it adds up to being a *petitio principii*, to repeating in conclusion its premise, namely, that whatever brings about a friend-enemy distinction is political, that whatever does not do that is non-political, and that what is political cancels what formerly was non-political’ (ibid.,67). The circularity, according to Sartori, results from the contradiction that when the intensity criterion does not suffice to qualify the emergence of the political, it has to be extended further in order to include the real possibility of physical killing, which will make the intensity criterion a necessary condition of the existence of the political. However, when the criterion itself is strong enough to bring about the ‘absolute enemy’, it seems a sufficient condition (ibid.,67-68).

It is thus ambiguous to Sartori whether this criterion itself naturally includes the very possibility of actual physical killing or not. Sartori confronts Schmitt with the example of ‘a maximal competitive intensity’ in the domain of economics (Sartori 1989, 67) – suppose that there is such an intensity that survival is indeed at stake and thus physical killing is a very real possibility. According to his reading of Schmitt, such a ‘competitor’ in economic sense still cannot be assimilated as an ‘enemy’ as Schmitt always rejects economic competition being the political. It is confusing, however, why Sartori has to separate the intensity criterion from the possibility of physical killing, and thus, actual war. Sartori’s reading of Schmitt is unusual in this case – as what has been indicated in the last chapter, for the grouping to be political, it has to be intense enough to include the directly confrontational

attitude between two groups that is enough to wage actual wars on each other, and therefore, the intensity criterion is both the sufficient and necessary condition of the emergence of the political.

Moreover, it is not Schmitt's intention that every type of differences have to become political at some point. It is perfectly fine for some differences to stay non-political. Hence, it is not necessary for the intensity criterion having to be extended to include the possibility of death. What is distinct about 'the political' is that it is overarching in the sense that it directly and decisively determines who we are.

Nonetheless, what Sartori draws out from this alleged contradiction is relatively more sensible. Sartori is correct to point out the 'polemical exaggeration' (Sartori 1989, 71) that Schmitt stands out. He is particularly critical of Schmitt's point that all our thinking is polemical and that 'we are at our best when we think against each other' (ibid.,69). By pointing this out, Sartori accuses Schmitt of excluding the 'peace-like politics' in which force is kept in reserve as a last and worst reason, and conflict resolutions are sought by means of covenants courts and other 'rightful' procedures (Sartori 1987, 41-42). He concludes that Schmitt's conception is so narrow that it only includes 'intense, conflictual, hostile, victory-seeking and thus war-like' politics and dismisses 'tranquil politics' (Sartori 1989, 71-72).

2.2.2 The Inherent Contradiction of Constituent Power

It is important to take a glimpse at Schmitt's definition of 'sovereignty' before we arrive at the centre of the critique in question. In *Political Theology*, Schmitt defines sovereignty as 'he who decides on the exception' (Schmitt 2005, 5). This means that sovereignty demonstrates its power when an extreme case arises and existing legal norms fail to give any specific prescription, and thus a legal vacuum is created. At such a 'juridical and political extraordinary' moment, sovereignty refers to the

genuine creation of a new legal and constitutional order by a popular founding decision (Kalyvas 2008, 117). In other words, sovereignty is defined with respect to its constituent power or founding power to create a new constitution⁶. And it is on the sovereignty's identification with the will of the people that the legitimacy of a democratic regime is founded (Balakrishnan 2000, 87-88). Schmitt's emphasis on democratic legitimacy becomes stronger in *The Crisis of Parliamentary Democracy*, where he defines democracy not merely as the identity between rulers and the ruled, but also, in accordance with his theory of the constituent power, as collective self-determination (Kalyvas 2008, 115).

Schmitt's theory of the constituent power, however, are often under criticism. Habermas accuses Schmitt of presupposing a pre-political, organic and substantive ethnic homogeneity that binds the entity so that the people are capable of acting in a such a way for the sovereignty to be identified with (Habermas 1998, 135). And this ethnic homogeneity is viewed as the 'quasi-natural substrate of the state organisation' (ibid.,135). Such an attribution to ethnic homogeneity, according to Habermas, reflects Schmitt's political preference for an ethnically homogeneous state, which could easily turn into a dangerous political category that justifies the Nazi politics of mass extermination (ibid.,148).

Kalyvas, however, does not entirely agree with Habermas's critique. He points out that Schmitt hardly identifies the people and the constituent power with a pre-political substance and that there is nothing to suggest that Schmitt attributes the

⁶ 'Constituent power' is to be distinguished from 'constituted power'. Constituent power resides in the people to create a new constitution and constituted power is the power delegated to the Constitution and the people's representatives. For a more thorough definition of 'constituent power', see Martin Loughlin's article: The Concept of Constituent Power (as a part of *European Journal of Political Theory* 13, no. 2) and Andreas Kalyvas's article: Constituent Power (as a part of *Political Concept: A Critical Lexicon*: <https://www.politicalconcepts.org/constituentpower/>).

ability of the people to act in a coherent and consistent way as a constituent sovereign is due to a common ethnic origin (Kalyvas 2008, 121). In fact, for Schmitt, the political does not describe its substance, but only the intensity of the association of the people, and he never essentialises the political identity of the people. The friend-enemy distinction is formulated in order to point at a relational and anti-essentialist dimension of political identities (Mouffe 2005, 14-16).

Nonetheless, as pointed out by Kalyvas, Habermas's critique unconsciously indicates a more fundamental defect of Schmitt's theory – 'how can he simultaneously maintain that the constituent subject is both an active and a passive political actor' (Kalyvas 2008, 123)? In other words, the constitution is the product of the constituent power of the people within one political entity, but a people who has not had a constitution yet, namely, a political entity that has not had the sovereignty yet, is not supposed to be capable of collective and conscious action, 'which means it is unable to found consciously and lucidly a new constitution' (ibid.,124). In other words, therefore, a people who has not had a constitution, namely a sovereignty yet, is not supposed to have the constituent power in the first place, so how can a political entity come into being in the first place?

This is a rather strong and reasonable critique. Such a limitation, as far as I see it, results from an unconscious conflation between theory and reality. Schmitt has never referred to ethnic homogeneity as a precondition of the formation of political identities when he formulates the friend-enemy distinction. He refers to homogeneity in a sociological and psychological sense (Schmitt 1988, 25). A nation-state can be contrasted with a country, as the latter needs not have a substantive ethnic homogeneity. However, in reality, the notion of nation-state was founded on an ethnically homogeneous group inhabiting a territory. The emergence of the political is explicated to negate liberalism and thus to justify the foundation of the

state, but it does not necessarily equal the emergence of a new state. In other words, Schmitt justifies the state by making ‘the political’ the necessary condition of the foundation of a state, whereas he does not confirm explicitly that ‘the political’ it is also the sufficient condition. Kalyvas’s critique is theoretically convincing, and Schmitt’s theory in this specific aspect is reasonably questionable. Yet in reality, it is indeed possible that people that have been dwelling together in a community tend to form some shared self-identification first before they have the constituent power.

2.3 The Productivity of Liberal Democracy

Most comments on Schmitt do not directly go against his thesis that liberalism and democracy rest on two unreconcilably distinct principles, but most of them still, for various reasons, rejects his claim that liberal democracy will end up as an actual hodgepodge by arguing that it is still practically productive in several ways as the two principles will not conflict too often (Larmore 1996, 182). As Larmore argues, liberal democracy consists of a ranking of the two principles, a subordination of one to the other (ibid.,182). For example, on the one hand, the liberal freedoms set limits to democratic government, and in particular to the form it usually takes, the majority rule. And on the other hand, democracy, as the ranking is not a ‘makeshift’, is made subordinate to liberal principles precisely because the value of democratic institutions is held to lie in their being the best means for guaranteeing liberal freedoms (ibid.,182). Moreover, the combination and ordering of the two principles, according to Larmore, are exactly what Schmitt ignores in his work (ibid.,182).

One major reason for the necessity of a ranking is the belief that we should not expect the emergence of a completely new form of democracy because liberal institutions are here to stay (Mouffe 1993, 104). Under modern conditions, one can no longer speak of ‘the people’ as a unified and homogeneous entity with a single

general will (ibid.,105). Therefore, as Mouffe suggests, democracy must come to terms with pluralism (ibid.,105). It is only by virtue of its articulation with political liberalism that the logic of popular sovereignty can avoid descending into tyranny (ibid.,105). Mouffe points out that Schmitt's advocacy to replace parliamentary democracy with a plebiscitary democracy is bound to be doomed, for he refuses to acknowledge that under modern conditions, it is no longer possible to form a single homogeneous collective will that is self-identified as the common good, nor for democracy to be conceived on the ancient model of identity of rulers and ruled (ibid.,109).

Schmitt's main target is not democracy, but liberalism, whose pluralism is what he is radically against. Mouffe accuses Schmitt of failing to grasp 'the specificity of modern democracy' (Mouffe 1993, 110). It is true that the principles of liberty and equality cannot be perfectly reconciled in theory, but according to Mouffe, that is precisely 'what constitutes the principal value of liberal democracy' – 'it is this aspect of nonachievement, incompleteness and openness that makes such a regime particularly suited to modern democratic politics' (ibid.,110).

In a sum, the productivity of liberal democracy does not lie in its theoretical coherence, but rather in the actual changes of political conditions, under which it is no longer possible for political entities to be substantively homogeneous as Schmitt suggests, nor thus for the common will identified with the 'general will' of the people to even come into being. The fact that societies are becoming increasingly diversified renders democracy alone not able to guarantee people's political equality and rights. Therefore, concessions have to be made by accepting and subordinating democratic principles to liberal institutions.

To conclude for the whole chapter, Schmitt's arguments have always been under criticism, but interestingly, most scholars do agree that there are some

theoretical tensions within liberal democracy. Instead, what they frequently do is to take issues respectively with his conception of liberalism and democracy. The first critique focuses on Schmitt's conceptualization of liberalism. Schmitt assumes that rational public discussion is the only process by which parliament can mediate and integrate diversified interests, and thus it is required that all participants are impartially constrained to strive for an absolute truth. However, this conception is often accused of being overly demanding. First of all, Kelsen argues that there cannot exist complete domination of majority over minority in reality. Second, Elster argues that the requirement of being disinterested is unnecessary, as participants are adequately constrained so long as they need to constantly refer to the common good to maintain their credibility. Third, Leydet redefines parliamentary as an arena where policies are justified to the public rather than an occasion for debate adversaries to reach an absolute answer.

The second critique focuses on Schmitt's thesis about the political. First, Sartori thinks that Schmitt's conception is so narrow that it only includes 'war-like' politics and dismisses 'tranquil politics', excluding any possibility of positive transformation. Secondly, Habermas believes that Schmitt presupposes a pre-political, organic and substantive ethnic homogeneity, reflecting his political preference for an ethnically homogenous state, which is highly dangerous. And finally, Kalyvas gives a strong critique that the constitution is the product of the constituent power of the people, but a people who has not formed a political identity yet is not supposed to be capable of collective and conscious action.

In addition, there have also been scholars like Larmore and Mouffe who, even though agree with the theoretical tensions within liberal democracy, are more optimistic towards the future than Schmitt, arguing there is a ranking of the two principles to guarantee its coherence. For example, the liberal freedoms set limits to

democratic government, and democracy is made subordinate to liberal principles. They argue for the productivity of liberal democracy because they believe that under modern conditions, it is no longer possible to expect a people of a single homogeneous collective will, and democracy must come to terms with pluralism.

3 Schmitt's Solution and Ours

For Schmitt, the inherent contradiction within liberal democracy is not a condition, but a conclusion of a far broader theoretical framework. By taking up a rationalist account, Schmitt characterises liberalism as an ideology with an inclusive tendency, whose political meaning is realised via the public deliberation in parliamentary, while his conception of democracy is dependent on his theory of 'the political' that clearly emphasises an exclusive tendency of those who are considered substantially different. The opposite tendencies of liberalism and democracy are in fact widely acknowledged. Most scholars do agree with the theoretical tensions within liberal democracy, whereas they disagree majorly in whether the tensions necessarily lead to fatal contradiction as Schmitt presents.

This chapter is concerned with Schmitt's proposal of an alternative to liberal democracy, and what we can make of his claim. Following the last section of Chapter 2, I will first address more about the idea of 'the productivity of liberal democracy' advanced mainly by Larmore and Mouffe. They focus on the adaption of liberal democracy in real-life politics, which constitutes the major question against Schmitt's thesis – if liberalism can be realised, for example, the equal right of freedom of speech, compatibly with democratic principles within a nation-state, why should we keep doubting its practical force and value? To argue against this argument and therefore to reinforce Schmitt's thesis against liberal democracy, I

borrow what Crouch proposes as ‘post-democracy’ to demonstrate that the current situation is going in an opposite way as expected by the proponents.

The second section of this chapter focuses on Schmitt’s explicit or implicit proposal of an alternative to liberal democracy. It might be easy to conclude in *The Crisis of Parliamentary Democracy* that he advocates replacing liberal democracy with plebiscitary democracy in which the entire electorate is given a vote and invited to accept or refuse a law. However, there are scholars arguing that Schmitt’s attitude changed significantly in his later work like *Constitutional Theory*⁷ and *Legality and Legitimacy*⁸, and interpreting that Schmitt’s state and constitutional theory can be the foundation for a complete normative theory for ‘constrained democracy’ (Schupmann 2017, 203) that constrains mass democracy within the practices of constitutionalism (ibid.,212). I will briefly explain Schmitt’s attitudes towards plebiscitary democracy, pushing further the discussion about Schmitt’s views of democracy. Schmitt’s concerns about democracy, regardless of the forms, reflect a deep dilemma created by the political commitment to democracy.

In the final section of this chapter, I will go a bit beyond Schmitt by combining his proposal for democratic states and Crouch’s diagnosis of the current situation to argue for a shift of our attention when we conceptualise contemporary democratic theories. At the end, the chapter will end with my argument that it is time to stop cheering the victory of liberal democracy. Instead, it is time to shift our attention to a more egalitarian version of democracy, and thus essentially, to protect

⁷ The version used in the thesis was translated and edited by Jeffery Seitzer, and was published in 2008. Schmitt, Carl, Jeffrey Seitzer, and Ellen Kennedy. *Constitutional Theory*. Durham: Duke University Press, 2008.

⁸ The version used in the thesis was translated and edited by Jeffery Seitzer, and was published in 2004. Carl Schmitt, Jeffrey Seitzer, and John P. McCormick. *Legality and Legitimacy*. Duke University Press, 2004.

democracy from liberalism.

3.1 Where Are We Now?

Larmore and Mouffe's theories represent a major challenge to Schmitt's thesis. Ever since the Second World War, the West has gained utter confidence for democracy, in particular liberal democracy, in which liberalism plays an important role in contrast to totalitarianism. The confidence has been boosted by developments brought with capitalist economy and the end of the Cold War. Therefore, Schmitt's polemic against liberal democracy sounds particularly shocking in an era where the victory of liberal democracy is still largely celebrated. Although the theoretical contradiction is no longer new to readers, the adaptation of liberal democracy in real-life politics is still widely accepted and supported.

It is time, however, for us to calm down and take a look at where we are now in terms of democratic practices.

It is true that at one point in the early 21st century, democracy could be said to be enjoying a world-historical peak (Crouch 2004, 1). More nation-states around the world are accepting democratic arrangements like free and fair elections than at any previous time (ibid.,1). In the meantime, however, as pointed out by Crouch, in the established democracies of Western Europe, Japan, the US and other parts of the industrialised world, matters are less optimistic (ibid.,1-2). Even if election, free debates and the rule of law are all functioning, the dynamism of the political system is moving elsewhere (Crouch 2016, 71). The current situation is conceptualised by Colin Crouch as 'post-democracy' (Crouch 2004, 4):

Under this model, while elections certainly exist and can change governments, public electoral debate is a tightly controlled spectacle, managed by rival teams of professional experts in the techniques of

persuasion, and considering a small range of issues selected by those teams. The mass of citizens plays a passive quiescent, even apathetic part, responding only to the signals given them. Behind this spectacle of the electoral game, politics is really shaped in private by interaction between elected governments and elites that overwhelmingly represent business.

According to Crouch, democracy has moved in a parabola (Crouch 2004, 5) – if we trace the parabola of democracy, we pass a co-ordinate twice: going in towards the centre of the parabola, and then again at a different point on the way out. The theoretical importance of this parabola indicates that democracy is not returning full circle to pre-democratic conditions in the history. Instead, we are located at a different point in historical time and carry the inheritance of our recent past with us (ibid.,5). By outlining a parabola of democracy, Crouch argues that while the superficial forms of democracy still remain strongly present – and today in some respects are actually strengthened – politics and government are increasingly slipping back into the control of privileged elites in a pre-democratic manner (ibid.,6).

Several prominent phenomena are listed as the symptoms of post-democracy: (1) boredom, frustration and disillusion have settled in after a democratic moment; (2) powerful minority interests have become far more active than the mass of ordinary people in making the political system work for them; (3) political elites have learned to manage and manipulate popular demands; and (4) people have to be persuaded to vote by top-down publicity campaigns (Crouch 2004, 19-20).

Economic globalisation is considered as the most obvious driving force of post-democratic politics (Crouch 2004, Crouch 2016). Large corporations whose interests have frequently outgrown beyond the reach of nation-states exercise their

power over transnational territories, while democracy has still largely been trapped within individual nation-states. Economic globalisation and technological innovation have made it easier for large corporations to extend their business transnationally and to choose at will places whose regulations and fiscal policies are more favourable for them. The multinational corporations can threaten to leave a country if its regulatory regime becomes less attractive and increasingly states compete over their 'investment-friendliness' to attract more investments. In other words, therefore, political power has also been increasingly exercised by international business, whereas 'democracy has simply not kept pace with capitalism's rush to the global' (Crouch 2004, 29).

Another consequence is that the political class is finding itself increasingly unable to relate to voters through parties, while business elites and lobbyists are providing either increasingly congenial company or providing a combination of offers and threats, as well as a market ideology that gives them clear guidance as to what they should do across a wide range of policy areas (Crouch 2016, 71-72). In the meantime, the participation of democratic citizens has become increasingly passive. To specifically stress this concern, Crouch makes a distinction between positive citizenship and negative citizenship (Crouch 2004, 13-14). On the one hand, groups and organisations together develop collective identities, perceive the interests of these identities, and autonomously formulate demands based on them, which they sequentially pass on to the political system. On the other hand, people blame and complain, and the main aim of political controversy is to see politicians called to account and held up to public scrutiny. Democracy requires both the approaches to citizenship, but worryingly the negative is now receiving considerably more emphasis (*ibid.*,13). It constantly reflects the idea that politics is only the affair of the elites.

The prominent formal components of democracy still exist within post-democracy, whereas we should expect, according to Crouch, more erosion in the long run (Crouch 2004, 22-23). For example, the disparities between the rich and poor keep growing; politicians answer primarily to the concerns of a handful of business leaders, whose special interests that public policies are more prone to; the poor gradually cease to take any interest in the process whatsoever and do not even vote. Crouch even predicts that the USA, which has long been a pioneer of (liberal) democratic advance, should also be the one to show the strongest such return to an earlier time (ibid.,23).

Crouch also acknowledges the tensions between liberalism and democracy: ‘the more that there is insistence on the criterion of equality of political capacity, the more likely was it that rules and restrictions would be developed to reduce inequalities, threatening liberalism’s insistence on free and multiple means of action’ (Crouch 2004, 17). However, Crouch’s project is very different from Schmitt’s. He still stands within the framework that liberalism is a necessity of the thriving of maximal democracy. On the other hand, liberalism ‘will always proceed in a systematically distorted way’ unless it is properly balanced ‘by healthy democracy in the strict sense’ (ibid.,18). In this sense, Crouch’s opinions are similar to the proponents of liberal democracy that the principles of liberalism and democracy keep each other in check to ensure its healthy function.

Crouch’s work is valuable for its diagnosis of the current phase of democracy. Schmitt insists that in modern parliaments liberalism has been made subordinated to democracy, whereas Crouch points out that democracy has also been undermined and endangered by liberalism. Crouch’s notion of post-democracy can point to two directions: liberal democracy can be either doomed in practice or preserved as a healthy means to politics. In other words, it is one thing that liberal democracy is

not functioning healthily like the ideal, but it is another that it cannot or will not. This is a reasonable question to be expected – does the fact that liberal democratic practices are not working ideally necessarily suggest that it cannot or will not improve to be closer to the ideal? Furthermore, does the current worrisome situation of liberal democracy necessarily mean the ideal itself is equally undesirable?

Schmitt clearly objects to the ideal itself due to its inherent tension. Once he manages to prove the contradictory claims of liberalism and democracy, he has all the reason to reject the possibility of positive transformation of something self-contradictory. However, if we take a look at Larmore and Mouffe's arguments, we would have the idea that liberalism and democracy, which may have different claims, may not necessarily contradict each other all the time. This is where the strength of their argument lies – at the moments when they do not contradict each other, they can help each other function healthily.

The idea itself sounds fascinating, but it may require more scrutiny. It is true that democracy should be constrained in one way or another before it transforms into mob rule. However, the thing here is whether the primary constraint on democracy should be liberal principles. The ideal from of liberal democracy is certainly more desirable than the worrying situation that we face now, but it is not necessarily more desirable than other forms. Since the proponents of liberal democracy defend it by stressing its practical value, the idea is greatly undermined when its practical value cannot be sufficiently realised.

3.2 Schmitt's Proposal

When one reads *The Crisis in Parliamentary Democracy*, which was first published in 1923, one may quickly jump to the conclusion that Schmitt endorses plebiscitary democracy as a replacement to parliamentary democracy (Mouffe 1993, 109), in

which aggregate secret wills are formed and expressed. However, Schmitt's arguments in *The Crisis in Parliamentary Democracy* are not really unequivocally positive as expected (Schupmann 2017, 63). Although he indeed believes plebiscitary democracy is somewhat better in expressing people's will, he also argues that the dictatorial forms can be totally compatible with democratic procedures, sometimes even more capable of producing the acclamation of the people and being a direct expression of democratic substance (Schmitt 1988, 16-17). In other words, as Schmitt suggests, dictatorships like Bolshevism and Fascism are certainly anti-liberal, but not necessarily anti-democratic (ibid.,16). The possibility that dictatorial approaches may seem as compatible with democratic procedures to produce direct public will does not make them as legitimate as parliamentary democracy. In fact, Schmitt concludes that the will of the people is something manufactured and manipulated, whether one uses parliamentary or plebiscitary procedures (ibid.,28-29). Plebiscitary democracy is only relatively more legitimate than parliamentary one.

However, by 1928, Schmitt's attitude changed in his *Constitutional Theory* and *Der bürgerliche Rechtsstaat* (Schupmann 2017, 63). He criticises plebiscitary democracy as well as parliamentary democracy in the sense that people make no actual decision in either form of democracy. In plebiscites, people often take the path of least resistance and choose the easier option – whatever that may be (Schmitt 2008, 305). Therefore, eventually, the real power resides in the hands of those who have the capacity to phrase and pose the questions to the public in the first place (Schupmann 2017, 63). In this sense, plebiscitary is as impotent and manipulable, if not more, as other forms of democracy (Schmitt 2008, 304), and therefore receives the same objections Schmitt ventures against parliamentary democracy.

Schmitt strengthens this argument in his book *Legality and Legitimacy* that was first published in 1932. He condemns plebiscitary democracy for exacerbating the

already problematic majoritarianism by presupposing an authority posing questions (Schmitt 2004, 89-90). The question-posing authority is the true representative of the people and the plebiscite merely confirms that representation by acclaiming it (Schupmann 2017, 63-64). Schmitt objects to how a referendum only needs a slight majority to approve a constitution amendment. At the end, Schmitt is equally critical of mass democracy in which will formation can be manufactured and of parliamentary democracy in which decisions are made behind the veil of secret negotiations.

It seems that even though Schmitt has tried to explore numerous forms of democracy that could take place (especially in Weimar), he never has an explicit and vocal proposal. Schmitt's doubts towards the existing forms of democracy reflect a fundamental dilemma presented by the political commitment to democracy as phrased by Schupmann: 'either states undermine the principles they recognise as their deepest commitment by constraining popular sovereignty when it goes too far, or they permit their citizens to undermine the principles they recognise as their deepest commitment through legal revolution' (Schupmann 2017, 210). In other words, adhering to purely democratic proceduralism is as dangerous as anti-democratic rules. Therefore, such a dilemma requires a choice between 'the commitment to value-neutral democratic proceduralism and the system of meaning provided by basic rights' (ibid.,210). In this sense, the radical commitment to democracy without regard for other checking elements is 'self-undermining': the amendment procedure can be turned on itself. Essentially, what Schmitt argues is not the commitment to the will of the people as the coherent foundation for the state, but 'the validity of the will, the normative power of the factual' (ibid.,211).

Schupmann is right to say that Schmitt defends a form of 'constrained democracy' based on his state and constitutional theory to make a choice between

the options abovementioned. If Schmitt, as interpreted by Schupmann, does not conceive the legitimacy of the state dependent on the will – be it the will of the people or of a monarch or an authority, then the answer to the question should be the constitutional constraints on the will. This is what Schupmann conceptualises as ‘constrained democracy’ within the practices of constitutionalism (Schupmann 2017, 212), that is, Schupmann borrows Schmitt’s arguments to defend a reconciled combination between the commitment to democracy and to liberalism. In Schupmann’s words, Schmitt defends a form of constrained democracy that constrains mass democracy and is committed to the basic rights enforced by the state, rather than the unanimous will of the people. This refers to a hierarchy of legitimacy between democratic procedures and basic rights – the commitment to basic rights should be guaranteed even if a democratic will adhered to the procedures appeals to abandon the rights.

Schupmann’s theory is valuable in the sense that it offers a method to reconcile democracy and liberalism without having to restore parliamentary democracy, and conceptualises Schmitt’s critiques of liberal democracy somehow as an unorthodox defence for it (Schupmann 2017, 200). The crux of his attempt lies in his conception of what the ‘basic rights’ entail exactly. However, what I disagree is Schupmann’s interpretation of the ‘basic rights’ as individual liberty rights ‘guaranteed to each individual a negative status free of external interference’ (ibid.,211). I argue, to the contrary, the conception of ‘basic right’ that is based on ‘negative freedom’ misses the crux of the crisis of liberal democracy by combining Schmitt’s thesis and Crouch’s observation of post-democracy.

3.3 An Egalitarian Version of Democracy

Notably, much of the scholarship on democracy was produced in a context

characterised by cold-war ideologies in which freedom and equality often stood in opposition to each other (Sigman and Lindberg 2018, 1). Democracy was associated with capitalist societies embodying principles of freedom, competition and self-determination, while communist societies, by contrast, were characterised by planned economies and autocratic governance, often justified by the pursuit of absolute equality. The contrast has resulted in the fact that the most widely accepted and implemented principles of democracy more or less reflect liberal principles more than egalitarian principles.

If, following Schupmann's argument, Schmitt's thesis was only an unorthodox defence for liberal democracy, then the 'basic rights' that Schmitt wanted to use to constrain the democratic practices would be an appeal to individual liberty rights. What is missing in this analysis, however, is the emphasis on egalitarian principles. Liberty and equality are both important for every form of democracy, whereas different versions tend to stress different ranks of values. Liberal democracy tends to emphasise the legal protection of individual freedoms, fair elections and constraints on rulers, while does not necessarily see equality as a necessary component. Liberal democracy does not require equality *per se*, but rather the protection of inequalities that are seen as a 'natural' part of society (Sigman and Lindberg 2018, 3).

Notwithstanding that the egalitarian principles have been made subordinated to liberal principles under the dominance of liberal democracy, equality has always remained central in democratic theory. An egalitarian version of democracy, however, stresses on that 'citizens across all social groups are equally capable of exercising their political rights and freedoms, and of influencing political and governing processes' (Sigman and Lindberg 2018, 2). Therefore, in contrast to liberal democracy, egalitarian democracy emphasises 'the actual provision of rights

and freedoms as it relates to the ability for the polity to exercise sovereign discretion to rule over itself' (ibid.,3).

Whereas Schupmann conceives the 'basic rights' as individual liberty rights, I argue that if mass democracy is to be constrained by the political commitment to the 'basic rights', the rights should be primarily concerned with equality. There are three main dimensions under the broad principle of equality: 'equal protection of rights and freedoms, equal distribution of resources and equal access of power' (Sigman and Lindberg 2018, 2). In other words, an egalitarian version of democracy is centred more on the individuals' equal rights to effectively engage in politics. Egalitarian democracy is premised upon the belief that the good or interests of everyone should be weighed equally and the assumption that 'a substantial portion of adults are adequately qualified to govern themselves' (Dahl 1989, 97). An egalitarian democrat believes that the majority of the adult members of an entity are sufficiently qualified to participate in collective decision-making. Therefore, when collective decisions are made, no one is better qualified than others to be entrusted to make the decision, and no citizen's claims are to be considered superior to those of the rest. Compared with liberty, equality can better reduce 'resentments and frustrations' (Dahl 1971, 82) of some social groups, leading to more universal acceptance of the system and wider participation in politics.

Now we go back to Schmitt's thesis – the fundamental reason that he argues against liberal democracy is its self-undermining legitimacy, and the contradiction between liberalism and democracy is the very central reason why the legitimacy of liberal democracy is self-undermining. Democracy represents the idea that free and equal people making collective decisions that potentially affect all members of the group, while institutions of contemporary liberal democracy strongly favour an elitist approach to political issues, removing social power from the people and

transferring to intellectual and business elites (Cerovac 2014, 32). In the meantime, when liberalism loses its power to provide the political system with effectiveness, to be more specific, when people, especially poor classes of the society, cease to take an active role in politics and leave the space all for powerful business leaders, liberalism has overturned democracy, and therefore liberal democracy has also lost its legitimacy. As a violent opponent of liberal democracy, Jacques Rancière argues in his book *Hatred of Democracy*, that contemporary liberal democracy has oligarchic form and relies on popular acceptance of a rule by a minority group that has succeeded in representing itself as the special elite (Rancière 2009, 52-54). According to Rancière, liberal democracy is a betrayal of the fundamental principles of democracy, as it is ‘an oligarchic alliance of wealth and science that stakes a claim to all the power’ (ibid.,78).

Schupmann may be right that Schmitt seeks to constrain democracy within the practices of constitutionalism, but the constraints should by no means be the appeals to liberal practices – be it liberal political institutions or legal protection of negative liberty rights. These liberal practices are justifiable on their own basis, but not helpful when it comes to democratic practices. If the political commitment to democracy is to be sustained, liberal principles should be prioritised over by democratic or egalitarian ones. To make the situation even harder, in contemporary scholarship and political practices, liberalism is somewhat inevitably defined related to democracy.

It is by far clear that liberal democracy has created a narrow sphere in which intellectual and economic elites are overwhelmingly in control of the discussions of and the influence on public policies. Liberalism thrived with the flourishing of market economy, but neither market economy nor liberalism prioritise equality as their central idea. In theory, liberal democracy is a self-contradictory combination,

while in reality, it was an ideology to distinguish the Western societies from their enemy, namely, communist countries, and later, under its superficial victory, became an undereffective and unjustifiable political settlement. If democracy is still universally valued as the best form of government so far, it is time to stop conflating democracy with ‘distinctively liberal traits’ (Sigman and Lindberg 2018, 1) and to shift our attention from liberal principles in democratic theories to a more egalitarian version of democracy. It is time to produce and develop abundant theories of egalitarian democracies, and thus to protect democracy from liberalism.

In a sum, by borrowing Crouch’s notion of post-democracy, I argued that the current practices of liberal democracy are not working like the ideal hoped by its proponents. Liberal and democratic principles are significantly undermining and degenerating each other. Then I examined Schmitt’s rather implicit proposal for an alternative to liberal democracy. Schmitt places particularly important emphasis on the legitimacy of democratic states, in which sense neither liberal democracy nor plebiscitary democracy can fulfil his aim of justifying the state. Nonetheless, Schupmann uses Schmitt’s state and constitutional theory to argue for a form of ‘constrained democracy’, which echoes Schmitt’s implicit proposal of constraining mass democracy within the practices of constitutionalism. In other words, such an attempt tries to create a hierarchy or ranking between the legitimacy of democracy and the appeal to basic rights. Schupmann conceives the basic rights as individual liberty rights, which, as I argue, is a misconception of the crisis of liberal democracy.

To the contrary, I believe that if mass democracy is to be constrained, the constraints should be egalitarian principles, instead of liberal practices as Schupmann suggests. Nevertheless, both liberty and equality are important for democratic theories. The problem is which one we should prioritise when conflicts arise. If the political commitment to democracy is to be sustained, then it is time

that we stop cheering for the historical victory of the alliance of liberal democracy and shift our attention to more egalitarian version of democratic theories.

Conclusion

Given the pervasiveness of liberal democracy since the last century, it usually takes more courage to challenge its logic and effectiveness. The West has still remained largely powerful in terms of setting and explaining the agenda in political discourse. Under the circumstances, people often get intuitively confrontational towards those who question liberal democracy, or liberalism and democracy respectively. In the meantime, however, anti-liberal and anti-democratic thoughts keep recurring when people have seen the problems when they exercise liberal democracy in various contexts. It is therefore especially valuable and meaningful nowadays to examine some representative arguments and counterarguments about liberal democracy.

The thesis examined the theories of Carl Schmitt, one of the most influential opponents of liberal democracy in the 20th century. Defenders of liberal democracy often do their job from two perspectives: theoretical and realistic. Schmitt's thesis is influential because he rightly points out the theoretical contradiction between liberal and democratic principles. The contradiction is mainly phrased by Schmitt as the opposite tendencies of liberalism and democracy. He conceptualises liberalism as a non-political project to promote universal formal equality for all humanity, while democracy as a principle to empower 'the people' to decide public affairs within a political entity that is formed by excluding the 'others' with substantial differences. In brief, liberalism represents an inclusive tendency, while democracy represents an exclusive one. When two principles of opposite tendencies are brought together and implemented, liberal democracy is inescapably self-undermining, degenerating

both liberalism and democracy. Realistically, Schmitt's theory is based on his observation of the ineffectiveness of parliamentary democracy in early 20th century, that is, of how parliamentarism greatly un-legitimises democratic practices.

Schmitt's conception of liberalism and democracy has aroused heated debate in scholarship, even if the theoretical contradiction within liberal democracy has been widely acknowledged. On the one hand, the critics frequently take issues with his conception of liberalism and parliamentarism, accusing it of being intentionally misleading and overly demanding. They disagree with Schmitt that the business in parliament does not necessarily require a demanding sense of collective rationality to strive together for a higher absolute truth, but only need to be cooperative enough to reach compromises. On the other hand, Schmitt's theory of 'the political' has been under wide criticism for being deliberately one-sided, ruling out possibility of positive transformation of politics into something calm and peaceful. His interpretation is also criticised for reflecting his political preference for ethnic homogeneity, which is certainly dangerous considering his sympathy for the Nazis. Some critiques of Schmitt's theories are more or less convincing in terms of the specific points they attack, but most of them do not constitute fatal attacks on his fundamental idea.

All the attacks on Schmitt's theoretical framework target at one specific aspect of his counterarguments against liberal democracy, while agreeing eventually with the inherent paradox of the synthetic notion. From the realistic perspective, there are also quite a few scholars who try to defend liberal democracy by stressing its productivity in constraining democratic government with liberal institutions and realising liberal principles with democratic rules. Such productivity of liberal democracy has been people's best hope for it, whereas its adaption in real-life politics has been increasingly disappointing and worrying. Colin Crouch's notion of

‘post-democracy’ greatly proves how liberal democracy has been moving in an undesirable path, on which the superficial democratic formats are still present, while the agenda of politics has been tightly controlled by elites with discourse power and citizens’ engagement in politics is becoming passive and indifferent.

If both the theoretical and realistic strengths of liberal democracy have been significantly undermined, has Schmitt ever proposed any alternative to this rather disappointing system? Schmitt’s has never been a fan of liberalism, whereas he is generally supportive of democracy. People might think by criticising liberal democracy, Schmitt might advocate plebiscitary democracy, in which every citizen has equal right to vote for the public affairs. However, this is not exactly the case. Schmitt observes that while in parliamentary democracy, real business is decided secretly behind the door, in plebiscitary democracy, real power still resides in those who have the capacity to phrase and pose the questions to the public and the latter usually tends to choose the most agreeable path, whatever that might mean to them. At the end of the day, Schmitt is equally critical of both liberal and plebiscitary democracy, as he believes ‘the people’ make no actual decision in either form of democracy.

In fact, Schmitt agrees to constrain mass democracy one way or another in his broader theoretical framework, but the question is with what to constrain it. Some scholars interpret that as a hierarchy or preference between the commitment to democratic procedures and to the basic liberty rights, that is, to constrain democracy with the constitutional commitment to individual liberty rights. This means the commitment to the basic rights cannot and will not be altered by any constitution amendment. Such theorisation makes Schmitt’s thesis eventually an orthodox defence for liberal democracy, rather than a polemic against it. This theory is valuable as it offers a way to reconcile liberal and democratic principles without

having to restore parliamentary democracy, but it leaves out the very central reason for the crisis of liberal democracy – the egalitarian principle.

Liberalism tends to stress the legal protection of individual freedom, whereas usually puts equality on a subordinate position. In contrast to liberal democratic theory, an egalitarian version of democratic theory is premised upon the assumption that the majority of the society is qualified to actively and effectively participate in politics, and no one's interests are considered superior to the rest or better qualified to make the decision for the rest. Advocating equality does not exclude the importance of liberalism – both liberty and equality are crucial in democratic theories, but it calls for a 're-ranking' of the principles. The underlying reason that Schmitt severely criticises liberal democracy is his special emphasis on the legitimacy of democratic states. Any form of democracy in which people cannot make actual decision is not desirable for Schmitt. Therefore, even if Schmitt may not have mentioned explicitly in his work, a desirable and legitimate form of democracy should be centred on egalitarian principle, rather than liberal one. Only in this way can democracy aim for the actual provision of rights and freedoms that are related to the real capacity of the entity to exercise sovereign discretion to rule over itself.

It is true democracy should be constrained to prevent it from becoming mob rule, but it should not only be constrained by liberal institutions. If democracy is to be sustained in a desirable and legitimate way, it should be constrained primarily by egalitarian principles that are embodied in the constitution. The victory of liberal democracy was established less by its inherent strength than by the ideological opposition during the Cold War and the subsequent US dominance. In fact, it is defeatable in theory and problematic in practice. If democracy is still valued as a desirable form of government, it is time to stop cheering for liberal democracy.

Instead, it is time to protect democracy from liberalism by moving to an egalitarian version of democracy.

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