JURISPRUDENCE, STATE OF EMERGENCY (EXCEPTION) AND DECISION: Fundamental Remarks (Observations, Comments) on Carl Schmitt's "Political Theology"

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I.

After a good (*or*: More than) 70 years after its first publication[1], Schmitt's small – thematically somewhat heterogeneous, yet pithy and rich-in-juice, i.e. juicy and succulent – book on political theology retains its full freshness and its complete charm (stimulus, appeal, attraction) (*or*: keeps its coolness (breeziness) undiminished (unabated), its interest, integral (undivided, whole)). This is explained, as I believe, for three reasons (*or*: It seems to be that this is due to three main reasons). First of all: although the constitution (structuring, composition, texture) of Western societies in the course of the 20th century essentially (i.e. substantially and substantively) changed, since oligarchic bourgeois liberalism was replaced and was succeeded by mass democracy, nonetheless, these societies' dominant ideology of legitimation (legitimising

[1] München/Leipzig 1922. Hereinafter, the text of the second edition is cited: Politische Theologie. Vier Kapitel zur Lehre von der Souveränität (= Political Theology. Four Chapters on the teaching (doctrine, theory) of sovereignty), München/Leipzig 1934. The first three chapters are in the „Erinnerungsgabe für Max Weber" (= "The gift of memory for Max Weber, i.e. Max Weber in memoriam", publ. by M. M. Palyi, vol. 2, 1922, pp. 3 – 35, as contained therein. The fourth chapter appeared for the first time in the „Archiv für Rechts- und Wirtschaftsphilosophie" (= "Archive for the philosophy of Right/Law and of the economy") 16 (1922), pp. 121 – 131, and was also included/incorporated in „Donoso Cortés in gesamteuropäischer Interpretation. Vier Aufsätze" (= "Donoso Cortés in a pan-European (total/overall European) interpretation. Four essays"), 1950. A passage from the final paragraph of the first chapter, and some paragraphs from the second chapter, are missing from the text of the second edition. These changes (modifications, alterations, adjustments) are not so "inessential (immaterial, unimportant)", as *Schmitt* asserted in the preliminary remark/note (preface, foreword) of 1934. The deleted passages referred [[taken]] all together to *Erich Kaufmann*.

ideology) – despite all the unavoidable modifications and variations in regard to certain commonplaces – persisted, whereby the optical illusion of a comprehensive continuity comes into being (*or*: begetting with this persistence the optical illusion of a wider/broader continuity). Central amongst these commonplaces remains the belief that the "state under the rule of law (or constitutional state)" („Rechtsstaat") eventually and ultimately (in the end) channels or puts – irrespective of the admitted, fateful (inevitable) discrepancies (divergences) between its theory and its praxis – social-political life into a smooth and linear streambed or (river)bed; through its institutional regulations and modes of settlement [[of matters/disputes]], it makes therefore this living predictable and foreseeable; it takes the deadly and fatal pointedness from conflicts, and vouches for (guarantees) the – on each and every respective occasion – adjusted or (re-)adapted repetition or recycling of the same basic procedures; the process and the form (mould, type, figure) soak up and absorb, as it were, the substance, i.e. they make social and ideological struggles blunt (dull) (*or*: they blunt the political-ideological disputes and conflicts) by compelling those fighting against one another (*or*: forcing the opposed factions) to adopt a common code of conduct, common rules and norms of public action. In this putting forward of the in principle fixed and imperturbable institutional form (type) before, or vis-à-vis, the – of its nature – moved, swelling or even explosive social-political substance, the plan (design, outline) of a permanent (perpetual) peace, of course, shimmers (comes, shows) through and is reflected, or a utopia which is offered at a time and in an age (epoch) of massive world-theoretical discounts, moderations and compromises. But even a half-hearted, equivocal utopia must apply, use and employ the ideological (clever) tricks (sleights of hand) (*or*: obligatorily sets in motion the ideological artifices) of every utopia: it attempts to weed (cast) out (eradicate, obliterate, expel) the out of the ordinary and the perturbing (disconcerting, unsettling) by means of and with the constantly being repeated, and because of that, reassuring (soothing).

Carl Schmitt reminds us – and his reminder carries no less weight in 1995 than in 1922 –, that under the crust of every "normality", even of "democratic normality", elementary forces ferment (brew, fester), or simmer and seethe (are boiling), in order to possibly one day be blown sky-high (explode) and to gobble (up) those who were particularly proud of their own "realism"; that, whoever wants to understand the social-political mechanisms deeper (more deeply), may or must not stand still at "normality", but must know and diagnose to what extent and with what intensity the norm itself is constructed in view of the possibility of the exception, that is, in (the) expectation of the exception and out of angst and fear before it (i.e. the exception) (*or*: under the state of the expectation of/to it (the exception) and of fear of it); and that the legal constructions of the "liberal" jurists and constitutionalists take great pains in vain to project the norm inside the exception, and simultaneously to bury the qualitative element of sovereignty under the quantity of "institutional normality". Certainly, such and similar theses were neither for the first time formulated by Schmitt, nor was their taking on and acceptance restricted to the world-theoretical and political currents standing nearer to him (*or*: to the more familiar to him world-theoretical and political areas). They were e.g. always self-evident for the revolutionary socialists and Marxists – what today seems to be gradually or all the more forgotten, since the in the meantime tamed (domesticated) leftovers (remnants, residues) of the "Left" seek to beautify their political bankruptcy in respect of the original settings of the aim (i.e. objectives) (and parallelly, in relation to that, the parliamentary and ministerial ambitions (jockeying for positions) of those still active as "left-wing" functionaries), through confessions of faith having an effect tragi-comically[i] in "democratic institutions" (*or*: with tragi-comic manifestations of attachment and dedication to "institutions", and zeal for these institution's "unobstructed and smooth functioning"). Indeed, after the shipwreck of the utopia of the East, the "Left" now is seen (shown) to be ready and prepared to heed, espouse and take to heart

(adopt, embrace) the utopia of the West, that is, the utopia of the "state under the rule of law (or constitutional state)" and of linear universal progress on the basis of fixed institutional normality.

Secondly, Schmitt's "Political Theology" (*or*: *Political Theology*) draws its life force (vitality) from the programmatical theoretical connecting of the problem of sovereignty with the anthropological question. This is supposed to mean that behind every positioning (statement) vis-à-vis the first (i.e. the problem of sovereignty), expressly or tacitly, consciously or unconsciously, a perception stands (*or*: is found) as to what man is, which intellectual(-spiritual)-physical forces drive his doing(s) (deeds) (*or*: which psycho-spiritual forces bear and do/execute his action) and determine his social-political behaviour, or, still more generally, what his ontological status is in the universe. The formalistic mythology of the "state under the rule of law (or constitutional state)" wants to suggest the opposite, that to the extent that compliance with the institutionally provided (allowed for, planned) procedure turns into the essence (substance) of the social-political system, the taking of a position on the question of essence (substance) is superfluous; the primacy of the formal (i.e. what is formal, or, form (type)) should make sure that in the same institutional framework very different world-theoretical positions can co-exist and the tolerance of everyone vis-à-vis everyone is realised (*or*: The formalistic mythology of the "state under the rule of law (or state or right/law/justice/equity (constitutional state))" seeks on the contrary to suggest/submit the impression that straight positioning vis-à-vis matters/issues of essence and substance is superfluous, since keeping to the institutional-procedural type (form) is itself (i.e. the keeping to) transformed into the essence of the political regime: precisely the putting first of the type ensures, as is said, that inside the same institutional framework, very different world-theoretical positions can co-exist and the tolerance of all people towards all people can be realised). But even a

small deepening, i.e. going deeply into the facts of the matter/case (*or*: into the real data) permits the ascertainment that today's Western "state under the rule of law (or constitutional state)", just as much as every other political-social formation in the past or in the future too, functionally needs a dominant (ruling) ideology which is interwoven with anthropological axioms. The exercising of the "democratic rights" of the "responsible, mature citizen", from the general right to vote (i.e. universal suffrage), to participation in public discourse as the basic method (procedure, (mode of) proceeding) for the solution of pending social-political questions (*or*: for the resolution of problems), presupposes belief (faith) in the rationality of human nature (*or*: logically presupposes belief in rational human nature); and the inviolability of the person is founded for its part (in turn) on a theory of "human dignity", which in fact found entry into, or is expressly (explicitly) echoed in, certain contemporaneous constitutional texts (constitutions) of ours. Despite the complacent (smug, self-satisfied) illusion that the "state under the rule of law (or constitutional state)" by no means requires and needs (necessitates) – in contrast to earlier forms of the state (state forms) – ideological blessing by any "metaphysics" whatsoever (*or*: ideological cover by some [[kind of]] "metaphysics"), it is no coincidence (accident) that the philosophical and the rest of the literature (philology, belles lettres) about "human rights" e.g. has in the meanwhile become more voluminous than theological writings about the teaching (doctrine, dogma) of man as the image and likeness of God. Of course, there is (there exists) no state-sanctioned anthropological dogma, but simultaneously no perception of man (humans) and no anthropology is ethically, juristically and politically widely accepted if it runs counter to, goes against and or deviates to an – in practice – significant extent from the aforementioned basic (fundamental) theses [[of "human rights" and "(inherent) human dignity"]]. The tolerance of *all* perceptions and views (opinions) is possible only on the basis of the *exclusive* validity (application, enforcement, power, force, cogency) of the principle of tolerance (tolerance

principle). And this also implies and entails, for its part, today's dominant (ruling) anthropological axioms[ii].

Thirdly, the permanent value and worth of Schmitt's treatise lies in the radicality with which the question (matter) of sovereignty is posed – sovereignty, as it is understood, in the legal-constitutional, and not in the sociological sense of the term (sovereignty (Souveränität), not dominance (domination, rule/ruling over others, authority) (Herrschaft)). If the logic of the "state under the rule of law (or constitutional state)" is the logic of institutional normality, inside of which sovereignty seems to be divided and apportioned (out) (shared) amongst several bearers, then the logic of the state of emergency (exception) (emergency situation) coincides with the authentic (actual) logic of sovereignty, i.e. with its immanent tendency to be concentrated in one single bearer, and to become indivisible beyond earlier institutional divisions (or: by putting aside institutional apportioning, to become undivided) both factually (in fact (reality)) as well as conceptually; wherever and whenever, therefore, sovereignty in its whole conceptual fullness is apprehended (*or*: sovereignty is understood fully as a concept), it can hence appear and have an effect only as a united magnitude (*or*: it cannot but appear and act in all of its totality (as a totality of all its sections, sectors or departments)), whereas its (f)actual division (apportioning, sharing) or separation is sooner or later reflected or echoed in the attempts to fully abolish the concept of sovereignty itself. Yet (*or*: Nevertheless, it must be noted that also) the "state under the rule of law (or constitutional state)" can hardly be, or is not in a position, to even function if sovereignty does not remain indivisible (undivided), at least in the sense that a certain organ of the state (state organ) is authorised (entitled) (*or*: has the competence and jurisdiction) to decide about this or that disputed question definitively, conclusively (finally) and unappealably; sovereignty is therefore not divided in the sense that several bearers at the same time, and on their own authority,

function as ultimate, final authorities, but so that not the same bearer decides about all questions and issues, and that each and every respective competence with regard to [[taking]] a decision is fixed (established, settled) in advance, that is, institutionally, and not for instance apportioned (allocated or assigned) or fought over ad hoc (for instance, on the basis of the current, topical ((then and or now) prevailing) correlation of forces in society and politics) (*or*: sovereignty is apportioned and shared not in the sense that a number of bearers simultaneously take final decisions independently about the same matter, but [[such/so]] that the same bearer does not decide about all matters, and that who decides about what, is determined with formal institutional specifications, and is not judged (adjudicated) ad hoc) (for instance, on the basis of each and every correlation of the political-economic forces)). It is known to all that the distance between this concept or schema, and its realisation, remains more or less great, since the so-called separation of powers never ceases to be (stops being) simultaneously or parallelly a competition or rivalry of the powers towards one another, which often through this separation of powers' informal social-political dynamic(s), undermines, erodes, saps or even unhinges (neutralises) the bindedness of the formal-institutional (type). But also irrespective (independent) of that fact, the separation (division or apportioning (sharing)) of sovereignty could have been regarded only as the historically ineluctable, definitive and conclusive rational regulation, when two conditions were a limine fulfilled: a) that what today is defined as normality, lasts forever, and b) that that separation (division or apportioning) would remain unscathed and intact also in the state of emergency (exception), which would lie (lies, is found[[, takes place]]) between two "normalities" (*or*: ... regulation, immune to and unaffected by accidental occurrences (happenings, incidents, events), only a) if what is determined today as normality (normalcy) lasted indefinitely, and b) if it retained its validity and power (cogency) also in emergency situations interposed between two "normalities, i.e. periods of normalcy"). There is no need to say a word

(anything) about the political and intellectual maturity of those who believe and opine that they can (are allowed to, may) guarantee the fulfillment of both these two conditions in the name of History (history)[iii]. Undoubtedly, many "normalities" (have) lasted for a (relatively) long time – but the most amongst them were in a social-political and ideological respect very or totally different from, or entirely the opposite of, the normality of the "state under the rule of law (or constitutional state)", in fact, they found themselves at its antipodes. The "state under the rule of law (or constitutional state)" in today's Western sense, and normality in general (= the lack of a state of affairs (situation), which is generally perceived to be a state of emergency (exception)) by no means constitute, therefore, exchangeable or interchangeable concepts (*or*: do not at all constitute identical (equivalent) magnitudes)[iv]. Likewise, there is no doubt that the "state under the rule of law (constitutional state)" has weathered and survived a number of crises situations (situations of crises) without any losses of substance (substantial losses) – but (nevertheless) the question or problem of sovereignty does not inescapably come (in)to the fore(ground) (*or*: is not necessarily (put) on the table) in every crisis situation (it must e.g. not be posed during or in a period of war against an external/a foreign foe), but only in the cases in which the – howsoever defined – internal-political "normality" (i.e. "normality as to domestic politics) is canceled (annulled, rescinded) or suspended by invoking or appealing to higher legitimising principles (of the "nation" generally and arbitrarily, of "freedom" generally and arbitrarily, of "justice" generally and arbitrarily etc. (and so on and so forth)). Sovereign is whoever can (*or*: has the competence, responsibility and jurisdiction to) bindingly decide when such a case and need are present, that is that [[person or body]] who/which cancels (annuls, rescinds), or has the right to suspend, the law in force (the applicable law), rather than that [[person or body]] who/which enacts and puts it into force, or has put the law into force.

Now the posing of the question (question formulation, examination of the problem) of the "Political Theology" (*Political Theology*) is not in the least exhausted in these three theses, which to my way of thinking (considering and deeming things) (*or*: in my opinion) can be refuted (disproved, confuted) historically and theoretically with difficulty, although they are necessarily combatted – usually and plausibly – for obvious reasons [[both]] ideologically and politically by quite a few sides. Over and above that, Schmitt poses (puts forward, posits) epistemological and methodical (methodological) questions (matters of epistemology and of method), pragmatic historical and political questions (matters of historical and of political pragmatology, i.e. study of praxis), and ultimate/final questions, which concern the history and sociology of ideas. According to my impression (*or*: I believe that) his argumentation in all three fields (sectors) limps (i.e. is lame, stumbles and falters) substantially and considerably (to a serious extent), that is, it is characterised or distinguished by either conceptual unclarity or by inaccuracies in regard to realia (real things or facts), although the constant shifting of the levels of thought, as well as the stylistic brilliance (*or*: the often hard-to-follow fluctuations in his thought and the charming polish (lustre, gloss) of his register and tone) hide these disadvantages and drawbacks even before the eyes of an experienced reader; as far as I know personally, they (i.e. these drawbacks etc.), at any rate, in the existing comprehensive literature, have yet to be brought up (raised)[v].

II.

Let us begin with methodical (i.e. methodological) questions (or matters of method), which mainly relate to or concern the epistemological status and the way of knowing, i.e. cognitive modes (cognition), of jurisprudence (the legal science). Schmitt's intention is to widen (extend, expand, broaden) the field of

cognitive possibilities of his discipline through the creative use of sociological concepts and points of view; he does not want to lift (abrogate, abolish), i.e. obliterate (wipe out, delete, erase) the intellectual autonomy (self-sufficiency) and the specific character of jurisprudence by looking at this same jurisprudence as a historian and sociologist of law (right/justice-equity), but he would like to renew it from the inside by the fusion of two ways of looking at things. Accordingly, his difficulties do not come into being from the, in themselves, absolutely legitimate parallel or alternating use of the juristic and of the sociological way of looking at things, but rather from the undertaking of their unification (or crossing/intersection) with one another, which, incidentally, remains at (the) programmatic (element/aspect) (or what is programmatic), without being tackled head-on, and with the help of an epistemologically reflected instrument thoroughly and in detail (which ends up at a sound theoretical result); where it looks as if this happened, there, a more attentive look shows that here in reality it is a matter of analogies or metaphors, i.e. of transitions from one logical and thematic level to another, without the concatenation (nexus or interconnection) of the concepts and of the assertions being logically or historically compelling as to their connection. Thus, whereas Schmitt in the third section of his treatise e.g. announces a demonstration of the structural correspondence between jurisprudence and theology as disciplines, structural parallels (or merely political connections (conjunctions)) between central concepts of theology, and, of political science or political philosophy (the teaching or the philosophy of the state and of the polity (of states and of polities)), are offered to the reader, as if what was to be demonstrated had already been proved, i.e. as if on the basis of previous discussions and analyses it has been accepted already as evident that jurisprudence, and, the teaching in respect of the state (of states) and of polities (legal science, and, political science) or the philosophy of the state, are, or can be taken as, equivalents, and hence constitute alternatingly and indiscriminately, the second or other (hetero)

limb of a structural comparison with theology. The confusion is augmented and intensified because of the fact that Schmitt seems to not be conscious of the difference between the methodical(methodological)-cognitive aspect, and, the content-related aspect (the aspect of content). The passage from *Leibniz*, to which he refers (*or*: which he cites/quotes) in this context[2], in order to back up (corroborate, confirm) the structural analogy between theology and jurisprudence, exclusively concerns the methods of knowledge (cognitive methods) of both disciplines, irrespective of the structural similarities or differences of/in their content. But when Schmitt himself sets about and attempts (undertakes) the comparison between jurisprudence (or the teaching of the state(of states/polities) (political science)), and, theology, (then) he does not go into the question (theme) of the methods of knowledge (cognitive methods) in general (otherwise, he would have to e.g. explain what a revelation could mean for a jurist (legal scholar/philosopher) as a jurist (legal scholar/ philosopher) (*or*: ... explain how a jurist, *as* a jurist, draws (reaps, obtains, gains) teachings by revelation)), but he concentrates – and focuses his attention – exclusively on the content-related (i.e. what is the content) (*or*: on matters of content), i.e. on the concepts, whose content is reduced to their own logical structure, proving through exactly this reduction, the "structural analogy" between jurisprudence and theology (this is the case (*or*: this is what happens) with both concepts of the state of emergency (exception) (emergency situation), and, of the miracle)[vi]. Let it be noted that the reduction of content to its logical structure implies no thematic detachment (distancing, breaking away, cutting) from the sphere of the content-related, i.e. of content in general, if we think of this sphere in its contrast to the sphere of the methods and modes/ways of knowledge, as we in fact have to do it (so) also here (*or*: if we understand it, as

[2] Ibid., p. 50.

we ought to, in its contrast (contradistinction) to the sphere of cognitive methods or modes).

Apart from the epistemological and knowledge-theoretical/gnosiotheoretical (i.e. pertaining to the theory of knowledge) gaps and shortcomings (inadequacies) in Schmitt's thought, Schmitt's confusion has (*or*: these confusions have) to do with their proudly (festively) declared orientation towards models, or attachment/dedication to thinkers, like *Bodin* or *Hobbes*, that is, to theoreticians who outlined and developed their thought constructions and theories in times in which the modern differentiation of the social sciences only began to appear (emerge); that is why they start unproblematically from an arbitrary inclusion of the juristic question formulation (problem examination) in the teaching of the state (of states (polities)) (political science) (as well as the other way around), and they did not have to endeavour, as Schmitt does (it), to connect the two ways of looking at things or disciplines with each other by taking as their run-up/start the irreversible and consequential (rich-in-consequences) fact of an already highly specialized jurisprudence (*or*: and they did not seek contrariwise, like Schmitt, to couple (pair) the two, taking as their starting point an already specialised (specialist) legal science). The return (throwback, regression, flashback) to the state of affairs *before* the differentiation – of the disciplines and of the sciences – situation, by no means provides an automatic and epistemologically satisfactory solution to the problem of the bringing together and of the reunification of the disciplines and sciences *after* their differentiation – and indeed not only because the character of jurisprudence (legal science) changed in the process of this differentiation, but also because the classical teaching in respect of the state (of states) and of polities (political science), or, the philosophy of the state (of states), in essential methodical (methodological) and content-related points, differs or is distant from newer or contemporary sociology (the knower of *Montesquieu's*

ambivalent (with two natures) work may know what the turn from the former to the latter implies and entails). If Schmitt had methodically proceeded in his analysis with epistemological coherence and strictness, then he ought to have answered the question directly and in a justified, substantiated manner with evidence, whether the – actually desirable – widening of our general field of vision beyond the borders of modern "positivistic" jurisprudence (legal science), under today's given circumstances and conditions, can be realised (or is fatefully possible) only in the form of an abandonment of jurisprudence as such, for the sake of a sociological way of looking at things (*or*: for the benefit, for instance, of sociological considerations), which indeed refers (refer) to the same objects, yet otherwise would turn out to be essentially different than (to) the specifically juristic (what is specifically juristic). In other words: Schmitt speaks as if the unity or identity of the object constitutes/constituted a sufficient condition for the unification of the (consideration and way of looking at as many) disciplines treating this object, and as if the inclusion of sociological points of view and considerations in the investigation of the object of jurisprudence (legal science) would produce (yield, constitute) ipso facto (eo ipso) a widening (expansion, broadening) of the juristic way of looking at things (legal consideration) *as* the juristic way of looking at things (legal consideration). It appears to me to be obvious that this cannot be the case (*or*: that the opposite/reverse happens/is happening). No jurisprudence (legal science) can explain why and how the basic provisions of a constitution were formed when one disregards the juristic-technical aspect; why the general right to vote (universal suffrage) applies, or why the form of the constitution (constitutional form or the polity) is republican and not monarchical, which only the historian or the sociologist can make clear and explain, whereas the jurist (legal scholar/philosopher), since he does not want to make use of any historical and sociological analyses, deals with the content of each and every respective constitution as his object only in the form this content is expressed or imprinted

in each and every used juristic conceptuality (*or*: in the legal concepts used). The usual invocation of, or appeal to, the "will of the legislator (law-giver, lawmaker)" does not actually constitute a sociological or historical argument (*or*: does not constitute mainly the saying, i.e. making of, a sociological or historical argument), but an artifice or commonplace of juristic (legal) hermeneutics.

In order to sum up the above: Schmitt was undoubtedly right when he laments (bemoans, bewails), or when he ascertains, the limited cognitive possibilities, and in general the narrow horizon, of modern specialised jurisprudence (legal science), however, he errs when he opines (thinks) he could burst (break) open (blast) the boundaries (limits) *as* a jurist, and after the breaking/bursting open (blasting) of the boundaries (limits), he could continue remaining (simultaneously) a jurist (legal scholar/philosopher) in the modern sense. It is two entirely different things to show from the outside the boundaries (limits) of jurisprudence (legal science) and – *as* a jurist, even if with the assistance of sociology – from the inside, to seek possibilities for the widening, i.e. extending and expanding, of these same boundaries (*or*: to where these boundaries can be spread out (extended etc.). In particular, the difficulties in the argumentation of the "Political Theology" (*Political Theology*) arise from the fact that the juristic (legal) problem of sovereignty should be, or is, illuminated from the aspect (i.e. point of view or through the prism) of the state of emergency (emergency situation). Because jurisprudence (legal science) exists (there) where a more or less cohesive legal system (system of right-justice-equity-law; Rechtssystem) exists, whereas the state of emergency is exactly that state of affairs or situation in which the law is suspended or was just (i.e. only very recently just) formed. The contradiction is, of course indirectly and unwillingly (involuntarily) admitted by Schmitt himself, when he, for his part, contends and explains in two different passages that he wants to apprehend the

question/problem of sovereignty as a jurist[3], however on the other hand, he thinks that a phenomenon like the state of emergency is not of a juristic character or legal texture[4]. If, however, the latter holds true (applies) – as it does hold true (apply) in actual fact –, then a *juristic* (*legal*) handling (treatment) of the question and problem of sovereignty on the basis of the criterion of the state of emergency will at best (*or*: cannot but) be one-sided or short-sighted. With regard to Schmitt's evasive and enigmatic mode (manner) of argumentation, it is here highly characteristic that *Anschütz*'s positivistic perception[vii], according to which jurisprudence cannot (*or*: no legal science can) apprehend the state of emergency (exception) (emergency situation), Schmitt does not contradistinguish (or refute) any juristic (legal) train of thought, but invokes, in Anschütz's positivistic perception's disproof, a "philosophy of concrete life" not explained and expounded in (exact) detail[5], whereby he passes (goes, crosses) fully unrestrictedly and unreflectedly over to an entirely other epistemological level. Had he, nevertheless, gone somewhat more deeply into the analogy between miracle and state of emergency – an analogy, upon which he principally supported the structural parallelism of theology and jurisprudence towards (i.e. as between) each other –, then he would have to ascertain that jurisprudence (legal science) cannot conceptually deal with, and overcome (dominate), the state of emergency for exactly the same reasons for which also the *intellectual* apprehension of the miracle is impossible with theological means (*or*: which render impossible the mental comprehension of the miracle with the argumentative arsenal (weaponry, armoury) of theology). The theologian *believes* (*has faith*) in the miracle, he holds it (i.e. considers) it to be

[3] Ibid. (= *Politische Theologie. Vier Kapitel zur Lehre von der Souveränität*, Munich-Leipzig 1934), p. 27 („durch die Präzisierung des juristisch Wesentlich" = "through the specification (making precise, precise/ accurate definition/determination) of the juristically essential (element)").
[4] Ibid., p. 13 („aber ob der extreme Ausnahmefall wirklich aus der Welt geschaffen werden kann, das ist keine juristische Frage" = "but whether the extreme case of emergency/exception (emergency case) can be got rid of and effaced from the world (eliminated, wiped off the face of the earth), that is not in the least a juristic question/matter").
[5] Ibid., p. 22.

empirically given in the past, and he expects it in the future, i.e. he believes *that* it will occur, and is, nonetheless, incapable of predicting (forecasting) *how*, *when* and *where*. Not otherwise is it different with jurists (*or*: The same as regards the legal scholar or philosopher/jurist). Even if the jurist/etc. is radically cured, i.e. liberated or freed, by the utopia of the state under the rule of law (constitutional state) of permanent (perpetual) normality, and again, he can merely make a statement (*or*: he cannot state anything else but simply) *that* the state of emergency (exception) (emergency state) is always something to be expected (anticipated, reckoned upon), but he will be just as little as any other person in a position to foresee the *how*, the *when* and the *where* this state of affairs (i.e. of emergency) will occur – he can therefore hardly describe the facts (of the case) (*or*: the real incidents/circumstances) in advance in order for them to be subsumed under the commensurate juristic (legal) formula. However, without such a description and such a subsumption, there is no jurisprudence (*or*: legal science does not exist).

At this point we must linger and persist somewhat by taking (picking) up the thread from the thread's end in respect (*or*: from the aspect) of the concept of sovereignty. To the extent which in(to) the analysis of sovereignty, pragmatic (sociological, political, historical) points of view (considerations) are included (slip, worm their way), it is emphasised (*or*: the finding emerges) that the actual exercising of sovereignty more or less deviates from the provisions (what is provided for) of/in the text of the constitution. The old and very (or most) useful distinction of English constitutionalists between *political* and *legal sovereignty* does not coincide perhaps conceptually with this deviation entirely, yet it is fertile and elastic enough in order to imply clearly that in times of normality, i.e. in regard to a more or less stable equilibrium of social-political forces, sovereignty is distributed or apportioned/allotted in actual fact to several bearers, whose (pro)portion/share grows or diminishes (increases or decreases)

from time (period/age) to time (period/age), and from case to case; it should be noted that this tendency towards the division of sovereignty takes place constantly (always), even though it has an effect on each and every respective occasion in a different sense, irrespective of whether the constitution (polity) is parliamentary, monarchical or for instance dictatorial, since every constitution (polity) has its own normality and its own concept of normality (*or*: ... to a number of bearers, albeit in an unpredictable and changing dosage, regardless of whether the regime is parliamentary, monarchical and or dictatorial). If we now assume (accept, take as the underlying assumption) that the specific (element), i.e. the distinctive feature, of the state of emergency lies in the intellectual condensing (intensification, deepening) of sovereignty into one single concept with one meaning (*or*: into one single unambiguous concept), and at the same time in its political concentration in one single bearer, so it turns out that the juristic handling and treatment (*or*: then we shall ascertain that the legal tackling/confrontation) of the problem of sovereignty in a state of emergency (exception) by no means can bridge the gulf between (*or*: cover in advance and with certainty) constitutionally provided (intended, planned) sovereignty, and the actual exercising of sovereignty; this gulf can in a state of emergency be just as large or small as in a normal state of affairs too (*or*: this distance wavers as much as the corresponding distance wavers in epochs (eras, times, ages) of normality). Put differently: the juristic-constitutional regulation in respect of the exercising of sovereignty in a state of emergency can certainly provide for *who* ought to exercise the sovereignty, however it does not contain or constitute any guarantee that the, in relation to that, person provided for or the, as regards that, organ provided for – and not for instance the "strong man" in the wings – will in actual fact exercise the said sovereignty (*or*: In other words: the legal-constitutional regulation of the exercising of sovereignty in a state of emergency can provide for, of course, *who* will exercise this sovereignty, however it does not at all constitute a guarantee that de facto (in actual fact) a "strong man"

waiting in the wings will not exercise such sovereignty). Over and above that, such a juristic-constitutional regulation in respect of the exercising of sovereignty in a state of emergency can never precisely determine under what conditions those who are entitled to the annulment (abolition, revocation) of the law of normality may make use of their power and authority (*or*: Moreover, the said regulation is not as a matter of fact in a position to determine, beyond who has the right to suspend the laws of normality, under what precise circumstances this suspension is allowed to take place); sentences like for instance "disturbance of public order (or disturbing the peace)" can be interpreted in various ways – and the more the interpretative room to move (leeway) of that person who is chosen in regard to the exercising of sovereignty in a state of emergency (*or*: who is envisaged as exercising the emergency powers), so much the more the field of activity of the exact juristic/legal (impersonal) regulation is narrowed and constricted, so that we may say that exactly the bursting (breaking) open (blasting) or transcendence of the boundaries and limits of every juristic (legal) regulation, and consequently also of every jurisprudence or legal science, represents and constitutes the (more) essential feature of the actual exercising of sovereignty in, or under the circumstances of, a state of emergency. This holds true a fortiori in a historically weighty case, which Schmitt, as we are still to see (*or*: as we shall see below), seems to fully ignore: we are dealing with the case in which from the state of emergency, not the juristically-constitutionally intended (scheduled) and already established – but an entirely new – power emerges as sovereign, e.g. a revolutionary movement or party (*or*: the case where through the state of emergency, [[what is]] given prominence as sovereign is not the legally provided for sovereign and already established power, but a power which is entirely new, for instance a revolutionary power).

Thus, the juristic factual recording (apprehension) (legal provision) or conceptual working out (theoretical elaboration) of the state of emergency can therefore not to a great extent, or essentially, go beyond the elementary proposition that an already established power is authorised (entitled), or has the competency (jurisdiction), to decide upon the suspension (annulment, abolition) of the law/right of normality; only the purely procedural aspect can constitute the object of an in-depth/detailed juristic (legal) handling (treatment or negotiation), but again without it being certain that this handling etc., when the occasion arises (in due course, at some future time), will carry weight or be crucial (and of consequence) in practice. I cannot think of another *juristic* dealing with the problem (*or*: Another *legal* comprehension does not seem to me to be possible), since the juristic comprehension of the state of emergency is possible in so far as the suspension (annulment, abolition) of the legal order (i.e. legal system (system of right-justice-equity-laws); Rechtsordnung) in force is provided for by this same legal order (i.e. legal system (system of right-etc.-laws)), and constitutes a procedurally fairly clearly outlined power/authority of this legal order's/system's highest organ or representative (*or*: and is assigned to a (the) highest representative of this legal order). At least in this sense and based on this presupposition, the legal order/system in force continues to exist after its suspension – the state of emergency can therefore only be juristically apprehended to the extent that the earlier legal order *also* continues to exist (*or*: – indeed, only to the extent that the previous legal order continues to exist *also* inside the emergency situation (state of emergency), is the legal comprehension of the latter possible). That is why it is incomprehensible (unintelligible) to me (*or*: I cannot comprehend) how Schmitt without particular justification (a particular giving of reasons/causes) distinguishes between social-political order and legal order/system, i.e. how he can accept the existence of an order which is still not a legal order/system, and at the same time wants to look at this non-legal order/system as a juristic magnitude (*or*: ... distinguishes between state-

political order and legal order, [[and]] he accepts, hence, the existence of order without it being a legal order yet, and at the same time considers such a non-legal order as a legal magnitude)[6]. Here, also again presupposed is whatever ought to have been proved. Because, as said [[above]], if the legal order/system is suspended in accordance with the (pre-)existing constitutional provisions (legal prescriptions), then it continues to exist juristically (legally) in a state of its own lawful suspension, i.e. it continues to constitute a *legal* order/system; if again the legal system/order is totally dissolved, with it therefore collapses that authority which was authorized to come to a decision on the state of emergency still before the state of emergency, [[and]] then the jurist (legal scholar/ philosopher) must fall silent (*or*: ... authority which had in advance the competence and jurisdiction to decide upon the state of emergency, then legal science has nothing any longer to say), since the juristic-legal magnitudes can relate, or cannot but refer, only to a legal order/system; we may or can talk of an order, which would not be (is not) a legal order/system, only in the very general and, anyhow, not juristic/legal sense, that even in circumstances of civil war, even without a state apparatus and even when state organisation has collapsed, society would continue or continues to exist as a political community in search of a new legal order/system. In any case, a state of affairs is not conceivable (*or*: no state of affairs/situation exists), in which the state in its form hitherto (until today), and with the same established powers, would continue to exist without simultaneously or parallelly a legal order/system to this or that (to a or to b) degree existing.

If we assume that we could separate or divorce the state and law/right fully from each other, and a state order (state system, system of government) was imaginable which indeed does not constitute a legal order/system, but probably despite all that would constitute a juristically-legally clearly, perspicuously,

[6] Ibid., pp. 19/20

intelligibly and unambiguously apprehensible magnitude – if we therefore assume that a state in a permanent (uninterrupted, incessant) state of emergency is juristically-legally conceivable (thinkable, imaginable) –, then also the juristic-legal working out and drawing up of a constitution and constitutional law/right on the basis of exception (emergency), and not on the rule or the norm, would have to be scientifically possible too. I hold/consider such a project to not be realisable (*or*: I do not see how such a thing is possible) – not for pragmatic reasons, not because the world-theoretical presuppositions of the liberal proponents and defenders of the "state under the rule of law (constitutional state)" hold true, and because the perpetuation of an "oriental despotism" or a "dictatorship of the proletariat" would be anthropologically or politically unthinkable and inconceivable, but out of epistemological considerations (*or*: for epistemological reasons), i.e. such which concern and refer to the necessities of the structuring and of the joining together of concepts on the ground, i.e. basis, of a certain science; only a very naive epistemology would postulate that the construction, building or constitution of scientific concepts reflects (mirrors) the composition and texture of what is real, i.e. reality, and is hence itself subordinated to often barely intellectually understandable, and to most frequently chaotic, fluctuations. Schmitt himself never as a *jurist* (*legal scholar/philosopher*) tackled what he promised in "Political Theology" (*Political Theology*): a systematic construction, building or constitution of jurisprudence (legal science) on the basis of the state of emergency (exception), and of the corresponding concept of sovereignty. This was, in any case, not carried out (done, performed) in his own constitutional handbook, in which the state of emergency is discussed in the margins (*or*: is mentioned marginally (in passing))[7]. Such a constructed jurisprudence and legal science would, incidentally, not essentially continue (go further) beyond the

[7] *Verfassungslehre* (= *Teaching, Doctrine and Theory in respect of the Constitution*), 5th ed., Berlin 1970 (1st ed. 1928), pp. 110, 176, 180.

succinct statement that the existing legal order/system could at any moment/time be suspended (annulled, abolished); that is why the fundamental distinction between norm/rule and exception(/emergency) is misleading and invalid/untenable (*or*: there does not exist the need for the fundamental distinction between rule and exception), and with the concept of the norm, the concept of the exception becomes superfluous and is abolished too, and consequently ultimately every juristic-legal concept and every jurisprudence-legal science (is abolished as well) – even if the ideas of ethics (morality, morals) and of right-justice(-equity)-law, which are anything but identified and equated with legal science (jurisprudence), survived[viii]. The abolition of the distinction between norm/rule and exception(/emergency), or the denial of this distinction's pre-eminent juristic/legal status, can indeed support a *political* (no matter whether "correct/right" or not) demand for the overcoming of the "state under the rule of rule (constitutional state)" in the form of the overcoming of this distinction's juristically-legally garnished or dressed-up ideology (*or*: ... demand for the transition to a state or situation different to the "state under the rule of law (constitutional state)"), but it does not at all constitute in any case a piece of evidence or proof for the possibility of a *juristic* (*legal*) apprehension of the exception(/emergency).

The lacking, i.e. defective, distinction between the level of reality and the level of science, as well as the lacking/defective insight into, and recognition of, the fact that the logics of both these levels have to very often contradict each other (*or*: as a rule, clash), constitute therefore the Achilles's heel of juristic-legal epistemology in the "Political Theology" (*Political Theology*). This becomes still clearer if we recall and examine how Schmitt presents Kelsen's[ix] views or rather misunderstands them. Undoubtedly, Schmitt characterises in general correctly the undertaking and the deeper ideological intention of the liberal theoreticians of the "state under the rule of law (constitutional law)" like

for instance *Krabbe*[x], when he, i.e. Schmitt, opines that these liberal theoreticians would try to force imponderable historical and political dynamics into juristic formulae (*or*: when he says that they seek to enclose the imponderable historical-political dynamic in legal formulas), in order thereafter to deduce from the internal coherence of their juristic-legal schema this schema's historical and political inviolability. But it is equally certain and beyond doubt that Schmitt makes a grave mistake as regards interpretation when he lumps Kelsen's position with that of Krabbe together (or tars both Kelsen's and Krabbe's positions with the same brush), and accuses the former (Kelsen) of an identification of his juristic construction with historical and political reality, so that this would be absorbed in the fiction of the "state under the rule of law (constitutional law)" and, as it were, would evaporate (or: when he equates Kelsen's perception with that of Krabbe by imputing (ascribing, attributing) also to the former (Kelsen) the identification/equating of his (i.e. Kelsen's) legal construction with historical-political reality, and together with that, the disappearance of the latter (historical-political reality) in the "state under the rule of law (constitutional law)")[8]. The misunderstanding is so gross (crude) and serious, such that one must ask whether it is intended ([[done]] on purpose). Even if Schmitt could not sufficiently comprehend and appreciate Kelsen's epistemological positions, subtleties and refinements, then he ought to have become perplexed and puzzled (or troubled such that he felt a need to undertake further investigations) by the simple fact that Kelsen had already beforehand criticised Krabbe's positioning in (great) detail, and with the same justification (*or*: and indeed for precisely the same reasons). In actual fact: Kelsen sees (catches sight of, spots) and locates the ideological source of inspiration of Krabbe's juristic construction and theory in the dislike and opposition of the liberal Hollander (i.e. Dutchman = Krabbe) against German

[8] Ibid. (*Loc. cit.*), footnote 1, pp. 30/2.

theories in respect of the state (i.e. body politic) of power (State (i.e. Body Politic) of Power) (power (body politic) state (German power-state theories)), and stresses (or points out) the dependence of the Krabbean "state under the rule of law (constitutional law)" on the idea of natural right(/justice/equity/law) (der Idee des Naturrechts); consequently, Kelsen concludes, Krabbe comprehends the identity (i.e. identicalness, indistinguishability) of the concept of the state with regard to the concept of law(/right) not as a logical problem and problem pertaining to the theory of knowledge (*or*: as a logical-gnosiotheoretical problem), but as a political postulate, which is supposed or about to be realised inside a historical process[9]. This clear statement shows already (*or*: Already this judgement makes it clear) how much Schmitt erred when he opines or considers that the identity i.e. identicalness of state and legal order/system, as meant by Kelsen, is the same as (or equates with) the identity i.e. identicalness of state and (liberal) "state under the rule of law (constitutional state)". Again in the confrontation with Krabbe, Kelsen had asserted (or underlines) that not only the liberal-democratic state, but *every* state, without exception, may or is entitled to be characterised as a "state under the rule of law (constitutional state)", because every state by definition is a legal order/system, irrespective of whether right/justice(/equity)-law and law (Recht und Gesetz) springs from, or has as their source, the arbitrary will (volition) of a despot or the wanting (volition) of a democratically constituted people (folk). Hence, the concept of right-justice(-equity)-law (Recht) does not therefore have the slightest to do with the source of right-justice(-equity)-law (Recht); right-etc.-law is that which applies and is in force by virtue of (thanks to) the means of compulsion and enforcement (imposition) of the sovereign as such, and it is therefore neither (f)actually nor conceptually connected (bound) to certain ethical or political ideals[10]. Kelsen is

[9] *Der soziologische und der juristische Staatsbegriff. Kritische Untersuchung des Verhältnisses von Staat und* Recht (= *The sociological and the juristic-legal concept of the state. A critical investigation (examination) of the relationship between state and law/right*), Tübingen [2]1928 ([1]1920), p. 185.
[10] Ibid., pp. 191, 187, 189.

thinking of exactly of this consistent detachment (or radical severance) of the essence (substance) and of the theory of right-etc.-law, from the ideal of ethics and of politics (*or*: the sphere of ethical-political ideals), when he calls his own founding of jurisprudence (legal science) a "pure teaching regarding right-justice(-equity)-law". The adjective "pure" by no means here points to an ethical or knowledge-theoretical (pertaining to the theory of knowledge) Platonism or idealism (*or*: ethical or gnosiotheoretical idealism), but precisely to such idealism's antipodes, that is, to the freeing of jurisprudence from everything which lies beyond the historically pre-given (*or*: the logically consistent liberation of legal science from idealism).

All the same (Despite all that), Schmitt insists on it, [[i.e.]] counting or including Kelsen's theory amongst, or in, the varieties or variants (variations) of liberal idealism. Schmitt finds fault with and censures the strict distinction between Is and Ought, as it is worked out and formulated by Kelsen, since Schmitt thinks (or because it seems to him) that thereby sociological points of view, and points of view pertaining to state theory (the theory of the state) (*or*: sociological and polity-related considerations), would be (are) banished or excluded from jurisprudence (legal science) as the science of Ought, whereby (through which points of view) he wants to enrich jurisprudence (*or*: in relation to which Schmitt wants to import these considerations into legal science)[11]; and simultaneously Schmitt objects to and reproaches Kelsen that Kelsen would identify (equate) (or identifies/equates) natural law and normative law (*or*: natural and normative law bindedness (determinism, law(rule)-based necessity)) (Naturgesetz und normatives Gesetz) since Kelsen, like the rest of the liberal theoreticians of the "state under the rule of law (constitutional state)" too, in order to make every effort at proving that the "state under the rule of law (constitutional state)" can function just as in a law-bound manner

[11] Ibid., pp. 191, 187, 189.

(deterministically) as nature, i.e. by radically weeding out and excluding infinitely, the exception and the state of emergency[12]. In regard to both these essential questions, Kelsen's position is interpreted completely falsely, i.e. Kelsen's position is entirely misinterpreted. For Kelsen, the clean or radical separation between Is and Ought and the inclusion of jurisprudence (legal science) in the realm of Ought does not in the least mean for Kelsen that right-justice(-equity)-law (Recht) is governed (or it ought to be governed) by ethically understood norms or by some deontology of an ethical – in the end – texture; as we have said, Kelsen rejects every mixing of the scientific with the natural-right/justice/equity/law concept of right-etc.-law (*or*: of the scientific concept of right-etc.-law with any version of natural law) (mit dem naturrechtlichen Rechtsbegriff) – positive right-etc.-law (das positive Recht) as norm and Ought (or as deontology) is therefore something socially and conceptually entirely (absolutely) different than/to the norm and Ought in the ethical and natural-right/etc./law sense (*or*: than the deontology of natural right/etc./law). And the difference between these two opposite kinds of norm and Ought (deontology) is made noticeable amongst other things (inter alia) that the norm and Ought of positive right-justice(-equity)-law – in parallel with, but irrespective (independent) of its each and every respective juristic working out (elaboration) and processing – can become the object of a sociological analysis, whereby it appears as a mutable and changeable (variable) (*or*: fluid and imponderable) product of a just as mutable and changeable social-historical Being (Is), whereas the content of the natural-right/etc./law norm (norm pertaining to natural right-etc.-law) and of the natural-right/etc./law Ought (in contrast to the process of its ideological genesis and formation) goes against or does not accommodate similar sociological and historical reduction, since it is supposed to make up (*or*: its representatives consider it) the outflow of an

[12] Ibid. p. 54.

eternal and immutable Being (Is)[13]. The Ought as natural right(-etc.-law) emerges in a law-bound manner from (comes/flows deterministically out of) such a perpetual Being (Is), but the Ought as positive right-etc.-law – if it is looked at juristically and not historically-sociologically – means or intimates the precise opposite of natural law bindedeness (determinism or law-based necessity) (law bindedness of and in nature), and the designation (appellation, characterisation) of jurisprudence (legal science) as the science of Ought or as normative science, aims exactly at the highlighting and underlining of the principle difference between law as positive right(-etc.-law), and, natural law bindedness (determinism or law-based necessity) (law bindedness of and in nature). At the level of this latter (natural law bindedness), the effect (result of a cause) B constitutes a necessary and permanent consequence or aftermath (resultant) of cause A, whereas in the realm of right(-justice-equity-law), B does not automatically follow A, but on the basis of a command or of a norm and of an Ought, it *ought* to follow: a criminal (*or*: the guilty party to a crime) is not always, automatically and mechanically punished according to the carrying out of his [[criminal]] deed, but he ought to be punished in accordance with the commands (orders, laws, decrees) of the norms of the right-justice-equity-law (legal Ought) in force, although he in reality can escape/elude (avoid) punishment – something which would never have been the case, were the punishment imposed or came about with regard to the necessity of a natural law[14].

When Schmitt, therefore, reproaches Kelsen that Kelsen identifies (equates) normative law bindedness (determinism or law-based necessity) with natural law bindedness (etc.), then he confuses two different levels with each other. At

[13] Cf. in relation to this positing of the question (question formulation) and problem examination P. Kondylis, Montesquieu: Naturrecht und Gesetz: *Der Staat* 33 (1994), pp. 351-372, esp. p. 352ff., 366ff.. [[= Ch. III, p. 38ff., of the English translation of P.K.'s *Montesquieu and the Spirit of the Laws* at www.panagiotiskondylis.com (= translator's addition to the footnote)]]
[14] Footnote 9, p. 75ff..

the level of reality and or of real phenomena, normative law bindedness and natural law bindedness remain for Kelsen two – of their very essence (substance) – totally different magnitudes. A form-related, i.e. formal or morphological – by no means ontological – parallelism exists only at the epistemological level, where the logical coherence of juristic systematics, i.e. of systematic legal science, lets the impression come into being (gives the impression) of a copy of likewise totally coherent natural law bindedness (determinism or law-based necessity in respect of and in nature). But from Kelsen's perspective, jurisprudence, i.e. legal science, can achieve such systematic cohesion (unity, cohesiveness) (*or*: systemicity and cohesion) only because it – like every other science too – represents and constitutes a fiction, i.e. it moves at the level of ideational magnitudes, at that (level) of discontinuities; and the incessant, unremitting, unforeseen fluctuations of living human reality must be shoved (thrust, pushed) aside in order to make room or make way for the regularities and the generalisations, which alone allow the building (construction, constitution) of a systematic science – and there cannot be another *science* (or, and no other *science* exists). That is why the putting first of the general and of the regular constitutes an epistemological necessity, and it says nothing about, or has no relationship (nothing to do) with, the way and manner one assesses the specific weight of the exception and of the state of emergency inside of the empirical reality of social-political life. It seems to me that Schmitt misconceives and mistakes basic cognitive given facts and necessities when he indirectly addresses to Kelsen the question as to why Kelsen constructs (constitutes) a legal system (system of right-justice-equity-law; Rechtssystem), instead of contenting himself as a positivist with the "law [[as it is]] thrown" at him[xi], i.e. the irregular heap of laws[xii] [15]. With a not strictly systematised right-justice-equity-law, only current praxis in its contradictoriness

[15] Footnote 1, p. 54.

could, however, be satisfied, not a discussion of – or approach to – right-etc.-law and such related phenomena, with systematic scientific intent. Schmitt wants to broaden (expand, widen), and at the same time (*or*: together with that), make more flexible, juristic-legal thought – conjoining (coalescing, conflating) such thought with sociology and the study of polities – in order however to be able bring such thought within the vicinity of a "philosophy of concrete life", equipping/giving it (with) competencies which this juristic/legal thought cannot have; conversely, Kelsen regarded (looks at) the teaching of right-justice-equity-law (legal science) as a coherent and – towards the outside – coherent, united and closed system, exactly because he harbours no illusions (*or*: has far clearer cognizance/awareness/insight) about (as regards, into) its boundaries (limits) – and only when the boundaries/limits towards the outside are clear, is the systematic building/construction and constitution of the internal (inner) space in respect of knowledge (cognitive space) possible.

As an argument against the normative character of jurisprudence (legal science), Schmitt cites (adduces) the – in itself undisputed (undoubted) – fact that in the area of right-justice-equity-law, between the general rule and the concrete decision, there is always a distance (interceding, mediating), and that is why the life of right-etc.-law is shaped, in its connection with a concrete bearer, much more by the rule, rather than by the decision[16]. The question, however, is not (that) as to whether it is (things are) so in the life of right-justice-equity-law (the unbridgeable chasm between rule and decision, by the way, is also acknowledged and accepted by Kelsen, who often got on the subject of the impossibility of a complete practical realisation (implementation) of norms in respect of right-etc.-law at (their) face value (*or*: who often stressed that the norms/rules of right-justice-equity-law are never realised entirely)[xiii]), but whether jurisprudence as a systematically organised whole is able at all to

[16] Footnote 1, pp. 41/42.

apprehend the life of right-etc.-law as it is acted out beyond the norms of right-etc.-law. Were jurisprudence in actual fact in the position to intellectually (mentally) deal with or tame the distance or chasm between rule and decision, i.e. to conceptually fix and crystallise not only the rule, but also the innumerable (infinite) cases of its application through a decision or through decisions, then also the praxis of right-justice-equity-law would be in the position to bridge the gulf between rule and decision, since it could have specified in advance the rule with regard (*or*: by apportioning in advance the rule) to every individual decision. But that will never succeed (*or*: But this will forever remain impossible). Jurisprudence (Legal science) is normative not because it programmatically ignores the gulf between rule and decision, but because it, out of dire need (i.e. necessity), and in the knowledge of its own boundaries, can move or moves in the area (at the level) of norms as Ought, which are supposed to determine (govern) the behaviour of the subjects of right-etc.-law, regardless of whether they (the norms as Ought) actually do it or not; the deviation between norm and behaviour becomes belatedly (i.e. after the fact) explained by sociological, psychological etc. instruments [[of knowledge, study, analysis and theory]] (*or*: by psychology, sociology, etc.)[xiv]. As paradoxical as it may sound: whoever sets jurisprudence (legal science) the task of cognitively apprehending the reality of the decision in its autonomy vis-à-vis the fiction of the rule, is basically desiring that the jurists themselves take (make) the decisions (*or*: whoever seeks from legal science to enclose in its cognitive space the reality of decisions is like seeking from the legal scholars or philosophers themselves to take the decisions)[xv]. Because if they (the decisions) are taken by someone else, then the jurist (legal scholar/philosopher et al.) cannot do anything more than register (record) them (*or*: write/note them down) – and since he, as a jurist, can register (record, etc.) the decisions not as psychological or as political, but only as juristic(-legal) facts, then he must register them in turn as (new) rules or as applications of rules (*or*: he will write them down again as a (new) rule or the

application/implementation of a rule). From a juristic (legal) point of view, nothing else is possible (or an option), unless the jurist is – *in his capacity* (*property*, *quality*, *character*, *trait*) as a jurist – identical with the sovereign (*or*: except if the legal scientist is, *as a scientist*, himself sovereign). It should be added (*or*: Let us add) here that the pointing out of the distance between rule and decision by no means constitutes an argument that could strike (a blow against) or affect exclusively the liberal "state under the rule of law (constitutional state)". This distance or chasm is just as old as the norms of right-justice-equity-law themselves, and it cannot be overcome even by a "philosophy of concrete life": Even this ("philosophy of concrete life") is necessarily restricted to registering or ascertaining the said distance or chasm; because this distance/chasm can be overcome only by the abolition of *every* norm (rule), *every* right-etc.-law, *every* jurisprudence.

As we have already alluded, insight into the cognitive boundaries and limits of jurisprudence does not in the least necessarily coincide with the pious wish for (wishful thinking as regards) a conclusive eradication of the state of emergency (exception) from the world of politics, as Schmitt implies, by simply standing the double-sided position of his opponents on its head. The assertion that "normality" encompasses – in the form of fixed norms of right-etc.-law – the entire social-political reality, or the covering of reality, through systematically structured norms of right-etc.-law guaranteeing the eternal absence of the state of emergency, is one thing (*or*: It is one thing to assert that "normality" in the form of fixed norms/rules of right-etc.-law covers the whole of social-political reality, and that this "normality" will never know of the/a state of emergency if it is totally covered by fixed norms/rules of right-etc.-law); and an entirely different matter, is the ascertainment that the state of emergency is apprehended only very imperfectly, if at all, by the specific conceptuality of jurisprudence (legal science), without the contribution of other cognitive branches. Certainly,

the unavoidable, inevitable cognitive distance of jurisprudence (legal science) from the state of emergency can be transformed or translated into an avoidable practical (preventable factual) political distance; jurisprudence can, in other words, be made – with political intent and conviction – into an apologist of dominant (ruling) "normality" (*or*: that is to say, legal science can be attached out of political intention to the "normality" in force). This (meta-)development is psychologically very likely and most frequent, however, it is not logically necessary, and furthermore, it by no means has an effect exclusively or preferentially in favour of the liberal "state under the rule of law (constitutional state)": because every regime wants "normality" in its own sense, i.e. according to its own understanding of "normality", and for its own purposes and goals; an anachronistic and reactionary regime just as much as a revolutionary government just one minute after its establishment [[each of which wanting its own "normality"]]. Nonetheless, the epistemological binding (adherence, attachment) of jurisprudence to "normality", and its instrumental character resulting from that do not hinder (obstruct) it from possessing an awake, i.e. alert, consciousness (awareness) of the meaning of discontinuities in the development (*or*: an intense sense of the significance of the dissolutions regarding continuity) of right-justice-equity-fairness, and indeed in a systematic interrelation or correlation, i.e. in the light of the ascertainment that the foundation of the legal order (i.e. legal system (system of right-justice-equity-laws)) in force is created exactly at the time of such discontinuity, and its (the legal order's) composition depends directly upon the social-political character of this same discontinuity (*or*: ... that the foundation of the legal order in force is laid in a period of the dissolution of the continuity of right-etc.-law, and the legal order's character is directly dependent on the character of this dissolution). *This* assumption or acceptance of the discontinuity, or the assumption/ acceptance of *such* a discontinuity, does not stand in the way of the systematic building/construction and constitution of jurisprudence (legal science), which

takes place between two discontinuities, by deriving from the preceding legal order (i.e. legal system (system of right-justice-equity-laws)), the fundamental principles of the existing legal order/system, and whilst being able to say nothing about (*or*: whilst being incapable of comprehending) the next legal order/system.

The prominent (outstanding) place which Kelsen reserves for (or gives to) the phenomenon of revolutionary change to right-justice-equity-law, and indeed the connection of revolution to the crucial element of normative power/force, unmistakably shows that Kelsen's perception about the nature and the boundaries/limits of jurisprudence represents nothing less than a pretext in order for the "state under the rule of law (constitutional state)" to be released (or freed) from (*or*: ... shows that Kelsen's perception of the texture and the boundaries/limits of legal science constitutes, on the contrary, but a pretext – and nothing else – for the "state under the rule of law" to get rid/rid itself of) the nightmare of the state of emergency. Just as Schmitt compares or parallels the state of emergency with/to the miracle of theology, so does Kelsen characterise as a "miracle (in the area) of right-equity-justice-law" (Rechtswunder, θαῦμα στὸν χῶρο τοῦ δικαίου) that deed or act which constitutes the legal order (i.e. legal system (system of right-justice-equity-laws)) (*or*: from which the legal order comes/flows), although it as a deed or act, is found outside of every legal order, that is, in the legal Nought (Nil, Nothingness), and in itself is arbitrary, in fact possibly unjust[17]. Exactly such deeds (acts) (the Russian Revolution of 1917 is mentioned as an example), prove in Kelsen's eyes the validity, conclusiveness and correctness of his thesis of the normative and deontological character of the legal order/system in contrast to the blind character of compulsion (compulsive, coercive character) of natural law bindedness (determinism, law(rule)-based necessity) (the law bindedness of nature):

[17] Footnote 9, pp. 246/247.

because such profound changes (or radical transformations) take place only in the realm of right-etc.-law, never in the realm of nature[18]. It is self-evident (understood) that the jurist *as* jurist (the legal scholar or philosopher *as* legal scholar or philosopher) investigates such deeds and acts not in regard to their political dimension, since this lies and is found beyond the juristic construction or fiction, but in their in their interrelation/correlation with the founding of the (new) systematic unity of right-etc.-law in the framework of the (new) legal order/system. The primordial (protogenic, primary) and fundamental norm of the (new) legal order/system, upon which henceforth (into the future), the unity of the right-etc.-law and at the same time the possibility of its systematic juristic-legal apprehension depends, installs the highest, supreme power (authority), which from this time on is legitimised to put, or bring into force (*or*: to enact/institute/decree) norms of right-etc.-law. Although the fundamental norm, from the political point of view, is shaped, pushed through and put into place by the highest (supreme) power/authority, the character and action (operating, working) of this highest power (supreme authority), from the perspective of the logic of right-etc.-law, is deduced (derived) from the fundamental norm, and adapts itself and adjusts to such a fundamental norm; if the fundamental norm e.g. commands (orders) a dictatorial government, then no parliamentary regime is possible without the replacement of the fundamental norm in force by another, and so on and so forth (etc.). From that emerges, again, that the fundamental norm as the foundation or power base of the legal order/system in force, does not represent and constitute an empty Ought, from which nothing can be deduced in a logical-unobjectionable i.e. without-logical-objection (logically impeccable or faultless) manner, but it is concrete (specific) and rich in (full of, ripe with) content[19]. Consequently, and this is significant, the formalistic-typified/in types and normative-deontological character of

[18] Ibid., pp. 96/97.
[19] Ibid., p. 101, (foot)note.

jurisprudence/legal science, i.e. the(,) of necessity(,) (necessarily) abstract and general apprehension of the magnitude "norm" (*or*: "Ought") at the epistemological level, does not prevent therefore in the slightest the ascertainment of the concrete content-related charging (loading) of this magnitude, i.e. the Ought, at the level of reality – in fact, completely on the contrary: only the abstract generality, i.e. the potentially unrestricted (unlimited) content-related receptivity of the norm or Ought at the epistemological level allows this norm/Ought to be filled with the most different content(s) at the level of historical and political reality; allows it, in other words, to register (record, write down) the empirical reality of right-justice-equity-law in its entire great variety and multiformity, without this great variety etc. having to be amputated in accordance with the political preferences of the jurist (legal scientist); exactly this amputation could not be avoided if the norm(/Ought) were occupied (full, filled, being used) at the epistemological level not abstractly-formally, but in advance partially or wholly in terms of content. As much as this might appear to be methodologically and epistemologically disconcerting or strange to the unversed and unknowledgeable [[legal and or political theoretician]]: only the expulsion of the political (element) into the area (domain) lying beyond the fundamental norm, that is to say, into the extra-legal area (domain), enables insight into (or the ascertainment of) the (f)actual dependence of the legal order (i.e. legal system (system of right-etc.-laws)) on the most different political decisions. The clean separation (*or*: The distinction) between politics or political science, and, jurisprudence (legal science), does not mean or suggest the eradication (weeding out, uprooting) of the political factor from the life of right-etc.-law, but it has an exclusively and purely epistemological character: next to the pure teaching of right-etc.-law, a pure teaching of politics comes into being and is created through that (thereby)[20].

[20] Ibid., p. 253.

From this methodical, i.e. methodological, standpoint, two important things come into consciousness: that right-etc.-law is no goal/purpose, but merely a means, i.e. a mechanism of compulsion (coercion, necessitation) in the service of goals/purposes, which transcend this means of compulsion (jurisprudence (legal science) has a correspondingly instrumental character); and that, notwithstanding all of that, political power and authority can exist only (or: cannot but exist) in the form a legal order/system if such power/authority wants to be constituted as a state. State power can only be a power which creates or enacts/institutes right-etc.-law, and without its conversion into such a power, political power and authority remains beyond the cognitive range and knowledge/cognitive interest of jurisprudence (legal science).

According to my impression, between Kelsen's general positioning, as it was outlined above, and the general thought schema which carries (bears, supports) the analyses of the "Political Theology" (*Political Theology*), central parallels and analogies exist. If we look at Kelsen's fundamental norm not in regard to its purely juristic (*or*: strictly legal) aspect, but in regard to its political substance, then separating this view of Kelsen's fundamental norm from that which Schmitt calls "decision" is a fairly small distance (*or*: then few things separate Kelsen from that which Schmitt calls "decision"); in both cases the legal order (i.e. legal system (system of right-etc.-laws)) appears, at any rate, to be dependent on a transcending political magnitude (*or*: the "legal order" is presented as depending on a political magnitude which transcends it). Common is also the insight into the instrumental character of jurisprudence (legal science), even though Kelsen expresses this insight openly, by opining (considering) that jurisprudence (legal science) could of its essence and nature not (cannot) be anything else, whereas Schmitt only indirectly hits upon, comes across or proceeds to make the same ascertainment, i.e. in the form of a protest and of an (epistemologically confused, muddled and false, mistaken) demand

for the cognitive widening (expansion) of jurisprudence through (*or*: mixing of legal science with) sociological and political points of view and considerations. Let it be noted that these analogies or parallels are not completely missed by Schmitt (*or*: Schmitt does not entirely ignore these analogies); he himself, incidentally, alludes to them when in the preliminary note of 1934 (*or*: "Preliminary Observation" of 1933) he characterises juristic positivism as "degenerated" and customised (adjusted, adapted, brought-into-line) decisionism (*or*: legal positivism as a theory of the decision on the one hand, however, not genuine, but rather, compromised with regard to the given order of things). This turn contains perhaps a hint that the reasons which may have moved Schmitt, in relation to that, even at the cost/expense of serious misunderstandings and mistakes, to seek a(n) fight (engagement, contest, tussle) with, or to oppose, Kelsen all along the line, instead of looking (out) (keeping one's eyes peeled, being on a lookout) for commonalities (common ground) or at least soberly taking note of what separated Kelsen from liberal jurists (legal scholars/philosophers) in the mould of Krabbe. The difference of the political positions and preferences as between each other was on both sides unbridgeable[xvi], and Kelsen's celebratory confession of faith in parliamentary democracy constituted obviously for Schmitt enough reason to interpret the theory of right-justice-equity-law of the Austrian in the light of Kelsen's declared political liberalism (*or*: from the perspective of his liberal political positioning). If, however, Schmitt himself was free or political prejudices, and consequently was in the position to evaluate Kelsen's scientific theory (positioning) purely scientifically, without having to misinterpret it or perceive it erroneously, in order to be able to combat it politically, then Schmitt ought to have exercised his criticism/critique from an entirely different standpoint: he then should not have asserted that Kelsen's scientific theses were the expected outflow of his political confession of faith in the liberal "state under the rule of law (constitutional state)", but he had to demonstrate that Kelsen's political

confession of faith contradicts Kelsen's own scientific principles or, at any rate, does not necessarily (unconditionally) logically interrelate with such principles.

And indeed: in the attempt to support/back up parliamentary democracy by means of scientific (that is not merely ethical or political) arguments, Kelsen made the same logical mistakes which he himself uncovered so astutely when he combated the teaching of natural law. At/As to its core, his argumentation regarding this coincides with the theses which *Popper* (Popper) popularised after the Second World War: value-free (axiologically free)[xvii] science shows the relativity of values, and the ascertainment of this relativity calls, for its part, for a willingness, or inspires a preparedness/readiness, to renounce, forego and to abstain from struggles over ultimate world-theoretical questions, and through that consolidates mutual respect and tolerance[xviii]; relativism and scepticism would hence constitute (*or*: are thus) the ideological foundations (bases) of modern parliamentary democracy[21]. As (The way) I think, this syllogistic reasoning is not as perspicuous and self-evident as it appears. The value-free way of looking at things (value-free consideration (contemplation, observation)) (*or*: Axiological freedom) itself ceases to be value-free (axiologically free), when it holds value freedom (axiological freedom) to be a value with morally (ethically) beneficial effects. If value freedom (axiological freedom) could be characterised at all as a value, then this would be possible only in the methodical, i.e. methodological (not ethical) sense, and only with regard to the activity of science – of course, if and in so far it can be empirically demonstrated that value-free (axiologically free) science is cognitively the most fertile (fruitful, productive) science. Leaving aside (Overlooking, Disregarding) that value-free (axiologically free) scientific activity makes up neither quantitatively nor qualitatively an influential area (or weighty sector) of social life, the transfer(ence) of a methodic (methodological) principle from the level

[21] „Von Wesen und Wert der Demokratie", *Archiv für Sozialwissenschaft und Sozialpolitik* 47 (1920/21), pp. 50 – 85, esp. 83/84.

(field) of the observation of society, to the level (field) of society or social life itself, remains logically highly precarious (*or*: most unsound). Because whilst this principle at (in) the first-named level (field) [[of science]] can successfully be actuated (activated), or act (operate) only in its method(olog)ical purity, i.e. irrespective of its chance (contingent, possible, potential) mixing (blending, being mixed in) with psychological factors, at the level of society (*or*: in the second field), it is no longer reckoned or anticipated to act with such a purely method(olog)ical usage, or in the same way (since one cannot expect that humans en masse will heed a principle out of/from which absolutely no instruction as regards behaviour (behavioural command) can be deduced, inferred or derived (*or*: since it cannot be plausibly anticipated that all people will adopt a methodological principle from which absolutely no instruction of practical social behaviour emerges or arises)), but it is hoped that value (axiological) freedom will have an effect and act through its probable (plausible or presumptive) psychological consequences. Present here is a logically inadmissible (or impermissible) transition from the methodical, i.e. methodological, to the psychological (*or*: Here, a logically unallowed μετάβασις εἰς ἄλλο γένος (= passing over/transition (in)to another genus/species/kind) takes place), that is to say, from the genus of (methodo)logical, to the genus of psychological, magnitudes. Nonetheless, a correlation of methodical/ methodological or logical, and, psychological magnitudes with each other, could be effected and or managed only if the former were originally and always charged or loaded with certain contents, which for their part would correspond with certain psychological attitudes (positionings, stances) (*or*: For the correlation of the former (methodological magnitudes) with the latter (psychological magnitudes) to be absolutely convincing, the former would have to already be loaded or charged with certain content, corresponding to the content of certain psychological stances). But whereas the psychological and moral (ethical) stances, of necessity, are connected with certain content(s),

which are turned against other content(s) (e.g. tolerance against intolerance), value freedom represents a method, which must be free of a certain psychological content exactly because it raises or makes the claim of being able to – in terms of understanding and alternately – make its own, or appropriate, all psychological and all moral contents (*or*: axiological freedom constitutes a method empty of certain content, precisely because it has the ambition to approach in terms of comprehension *all* psychological and *all* ethical contents). On the basis of the principle of value (axiological) freedom, it cannot be decided (or nobody can pass judgement) whether scepticism and tolerance are to be preferred (favoured, given priority) (*or*: are a preferable life stance to) in regard to blind, unshakeable and intolerant belief or faith. Still more (Further still): at the level of the value-free (axiologically free) observer, scepticism and relativism crop (pop) up (appear) even then – or even more so (*or*: probably precisely) then –, when opposing (conflicting) or inimical social groups, which make up the object (subject matter) of the value-free way of looking at things (*or*: axiologically free consideration), very firmly, absolutely believe in their own truth on each and every respective occasion (*or*: each and every side on its own behalf), and display (exhibit) the corresponding intolerance; but at the level of socially active subjects, whose psychological stances are supposed – as it is said – to support the functioning of parliamentary democracy, *these same subjects themselves*, and not merely their value-free (axiologically free) observer, would have to regard their own views and world-theoretical stances (positionings) as relative, or just as good and right (correct), as those of every other person. Such a state of affairs is, however, psychologically and sociologically highly unlikely (*or*: It is not probable that something like that will happen). And it is two entirely different things whether every individual holds his own views to be relative, or whether people all together believe in the socially sanctioned ideology of tolerance and of (moderate, it goes without saying) scepticism. This should/ought to mean (*or*: This means/signifies): to the

extent tolerance and scepticism prevail and predominate socially (or are socially pushed through and imposed), they do that (*or*: they are imposed) not because certain scientific positions are gradually internalised by (*or*: permeate, saturate and soak degree-by-degree/gradually) the members of society, but because they constitute new ideologies which were spread and disseminated (propagated, diffused) on the basis of the same mass-psychological laws, and determine action, like the earlier (previous) or opposing (conflicting, counterposed) ideologies too[xix]. Nonetheless (*or*: But also again), when (as soon as) the corroding, undermining and subverting inner/internal logic of scepticism surpasses and outstrips its socially acceptable functions, and the calling into question of the objective (continued) existence of values goes beyond and exceeds (the) socially bearable (tolerable and endurable) boundaries, new values are summoned (called up, conscripted), in reference and as to which every doubt is made a taboo and prohibited, and which, as we said at the outset (*or*: as we have already mentioned/referred to) interrelate and mesh/engage with ultimate anthropological assertions and justifications (dicta, judgements) ("human rights", "human dignity"). The sociological analysis of the network (mesh, plexus, netting) "scepticism – tolerance", as well as the values which have an effect by supplementing (supplementarily) or by compensating (compensatingly), can show that it is a matter here of complementary aspects of a many-sided ideology, which is interwoven with the overall internal organisation of the mass-democratic social formation. If this organisation in (regard to) its foundations were to be convulsed and shaken, then one would in vain reckon in relation to that, or expect that, scepticism and relativism could in themselves continue to guarantee (carry on guaranteeing) the social application of the principle of tolerance (tolerance principle) (*or*: reckon on or expect the

perpetuation of socially accepted scepticism as the ideational foundation of tolerance)[22].

III.

We began the discussion of historical-political pragmatic questions (*or*: of the problems of historical and political pragmatics (i.e. pragmatical matters)), which Schmitt's treatise raises (throws/brings up) or poses, with a reminder of one of our earlier ascertainments: the impossibility of an adequate juristic (legal) apprehension of the state of emergency is reflected in the fact that the – concerning this – provisions of the constitution can contain little which is concrete; most concrete is the provision regarding who is authorised to decide about the declaration of the state of emergency, and how, in the process, he/one is (matters are) supposed to proceed (*or*: is echoed in the fact the related constitutional provisions can define few things specifically beyond *who* has the competency and jurisdiction to decide in relation to the need for the declaration of the state of emergency). If now the constitution can determine who (individual or body (corporation, i.e. collective)) has this authority, then it must relate obviously to an already established power (*or*: If however it can be provided for (foresee) (as to) who (individual or collective body) has this competence/jurisdiction, this provision obviously refers to an already established power), even if this takes place indirectly (e.g. in the form of the competence/jurisdiction of the Roman senate to appoint a temporary dictator, if of course previously it (the senate) itself has decided on the need to declare a state of emergency). This established power can in times of normality exercise full *political and legal sovereignty* or only one of both [[types of sovereignty –

[22] Cf. in relation to that *P. Kondylis*, Ohne Wahrheitsanspruch keine Toleranz, Frankfurter Allgemeine Zeitung v. 21. 12. 1994 („Geisteswissenschaften"). [[see *The Political in the 20th Century* = III, 1 "Universalism, relativism and tolerance".]]

political and legal[xx]]], or both in part, or one of both in part (in – on each and every respective occasion – different and changing combinations); the said esatablished power can, therefore (in other words), *and* in epochs/times of normality, either politically or constitutionally be at the centre of attention and govern in the foreground, or else stay away and keep back from the political limelight (spotlight), in order to come to the fore dynamically at the critical moment, and declare the state of emergency. Either way, however, we are here dealing with an already established power, and Schmitt, who insists on the possibility of a juristic-legal apprehension of the state of emergency, must, because of that, be restricted and limited a limine and de facto to the looking at this state of affairs (*or*: to the consideration of this situation) from the point of view of the established power(s). This remains not without (*or*: This entails) certain consequences, first of all with regard to the sense, i.e. meaning, of *legibus solutus*[xxi]. If the sovereign, as sovereign, is not bound by the laws which he himself creates and enacts (institutes), and simultaneously represents and constitutes an already established power, then he can – in order to make use of Kelsen's distinction –, abrogate (override) or suspend the force/power of those norms of right-justice-equity-law which characterise and constitute the legal order (i.e. legal system (system of right-etc.-laws)) in times of normality, however, he cannot revoke (cancel) or suspend the force of the fundamental norm of the constitution (polity), since exactly this fundamental norm founds (establishes, entrenches) his own sovereignty. In this case, the revocation (cancelation) or suspension of the normal legal order/system is undertaken obviously only with the aim of suppressing (repressing) threatening dangers to such legal order (such a legal system), and of returning (going back) to the same earlier legal order/system after the successful suppression (repression) (of threatening dangers). Were the (ultimate) aim not the return to the earlier legal order/system, then the state of emergency would constitute no mere exception, and it would as such not arise (emerge, pop up, appear) at all in the thoughts

world of jurisprudence (*or*: and it would not even be able to be provided for (foreseen) at all as such, even if abstractly, with the conceptual means of legal science).

To the rule, Schmitt counterposes (contrasts) (*or*: Against the rule, Schmitt sets) the exception, to (against) normality, the state of emergency, whereby (in relation to which) he obviously holds both these antithetical conceptual pairs (pairs (in respect) of (the) concept(s)) to be equivalent. If, however, we may (can) consider the rule and normality to be juristically-legally and sociologically synonymous concepts, then the exception constitutes a more extensive or much wider (broader) concept than the state of emergency, as this appears to be (*or*: is seen/viewed) from the perspective of an already established power. The exception contains repression (suppression) only because it contains uprising (insurrection, insurgency) – and besides (furthermore), the exception can be indeed – through the victorious repression (suppression) of the uprising and the return to the earlier rule – ended (terminated) (*or*: the exception can have as an outcome, victorious repression, and the return to the earlier rule), however just as much can the exception flow into the repression/suppression of the repression/suppression, into a victorious uprising and the setting-up (establishment, institution, formation) of a new rule. In the latter case, the exception is connected with a much more radical concept of sovereignty than in the first case, and at the same time, it exceeds (goes beyond) the cognitive possibilities of jurisprudence still more than [[what]] the simple state of emergency (does it), which an established sovereign in the sense of his own sovereignty should declare and manage, without changing the fundamental norm of the constitution. The sovereign, who lifts, i.e. cancels or revokes the rule because he is sovereign on the basis of that which the rule provides for and prescribes/stipulates for the exception, is something essentially different than that sovereign who arrives on the scene (*or*: is born/comes into being) outside of

the rule, that is, inside of (within) the exception and through it, in order to put or set up and constitute the (new) rule on his own authority (or based on one's own power(s) and self-sufficiently). Here the *legibus solutus* is meant and practised (activated) literally, i.e. the right-etc.-law in force is put aside in toto, with it (the) established sovereign power in the legal sense crumbles and collapses (*or*: sinks without a trace), and the naked question/problem of political power or dominance (dominant authority) and of the radical restructuring of the polity or political community, is now posed (stark nakedly, in a raw or exposed (naked) manner). Whoever through their political activity puts on the agenda (makes the order of the day), and achieves, such a restructuring by creating the (new) fundamental norm of the constitution (*or*: and seeks to constitute the fundamental norm/rule) of the state from (inside of) the normative Nought (Nil, Nothingness), that person is sovereign in an essentially different sense than him who cancels, revokes or suspends the normality of the legal order/system in the name of the/an already existing fundamental norm. Schmitt is not aware (conscious) of the meaning of this distinction between both concepts of sovereignty, and this has as a consequence – as we are yet to see and shall explain below – serious misunderstandings in the area of the history of ideas.

Both concepts of sovereignty now correspond, for their part, with both different concepts of the exception, of/about which we have just spoken. Had Schmitt deepened the parallel, i.e. parallelism, between miracle and state of emergency, then he would have ascertained that the concept of the miracle has two very different meanings too, and that this ambiguity (double interpretability) (*or*: its twin version) is put down to (is due or appends to) two very different traditions in the history of theological thought. Just as the exception can temporarily revoke, cancel or suspend the force of a rule, so too, a miracle can only momentarily disrupt or interrupt existing natural law bindedeness (determinism or law-based necessity) (law bindedness of and in

nature) without stirring or touching on this natural law bindedness's functional bases. And just as the exception can set (put) aside or suspend a rule, in order to put in its place a new rule, so too can the miracle, as the condensed (intensified) expression of the absolutely unbound godly/divine will, amount to the revocation and overturning of (the) existing natural laws, and their permanent replacement by other laws. We do not have to go, in this context, into the known long theological debate over the *potentia oridinata* and the *potentia absoluta dei*, but merely briefly point it out. When *Duns Scotus, Ockham* and later *Descartes* (at first against the deterministic influences of Arabic Averroism on Christian theology, and then against the late-scholastic Jesuitical interpretation of Thomism), asserted the primacy or stressed the superiority (supremacy) of the latter vis-à-vis the former, they did not merely have the power of God in mind, (*or*: they did not simply mean the power/strength/force of God) to interrupt/disrupt by way of a miracle (*or*: through/with miracles) a natural law bindedeness (determinism or law-based necessity) (law bindedness of and in nature), which basically remains singular and irreplaceable. Over and above that, they believed that although we today cannot but thus think and act, as if our known natural law bindedness were the sole possible natural law bindedness, nonetheless, the absolute power of God would at any moment be in a position, and able, to replace today's physical and mathematical laws in force with entirely different laws. Such a change (transformation) would, to formulate it in such a way, represent and constitute the total miracle.

Perhaps one reason why Schmitt in his concept of the exception does not include (with/in [[it]]) the total miracle of revolution as the creation of a new fundamental norm, is perhaps that (the) revolution can be apprehended with the conceptual means of jurisprudence (legal science) still less than the state of emergency as it appears from the perspective of an already established power – although, as we know, also in the latter case, the cognitive possibilities of

jurisprudence (legal science) are restricted/limited. The fact that Schmitt in the "Political Theology", does not make the distinction between the momentary and the total miracle, strikes us as strange (or is disconcerting) all the more this corresponds with the incisive (concise, succinct) distinction between commissarian (i.e. of the commissars, Party officials and functionaries) and sovereign dictatorship, which had been briefly brought/carved/worked out beforehand (1921) in Schmitt's "dictatorship"-book. The reason why the "Political Theology" on this important point does not make appropriate (pertinent) use of the nuanced conceptuality of the "dictatorship"-book – and also may not (cannot) do so without essentially changing the basic (fundamental) concept –, lies, in my opinion, in Schmitt's, now as a matter of priority, efforts to widen the knowledge competence of jurisprudence; but precisely the phenomenon of the sovereign dictatorship makes clear the boundaries and limits of knowledge, and consequently the (relative) right-etc.-law of "positivistic' jurists. Between the "Political Theology" and "Dictatorship" exists, therefore, a logical discrepancy, just like, incidentally, between the "Political Theology" and the "Concept of the Political" (see below). Thus, Schmitt could not demonstrate either convincingly that jurisprudence *as* jurisprudence could be enriched by the sociological point of view, which epistemologically would be compatible and consistent with it (jurisprudence) (*or*: either tangibly, the possibility of the enrichment of legal science, as legal science, with the assistance of sociological considerations epistemologically compatible with regard to such legal science), nor did he dare to introduce and to use these sociological points of view (the criteria of sociology) [[up]] to all their ultimate consequence, i.e. in and up to all their extreme consistency. Because a complete (full) sociology of the exception would self-understandingly be obliged to treat/handle, or be extended to, both kinds of exception, just as much as a comprehensive theology of the miracle would equally have to discuss the momentary, partial and the total miracle as

well as the conceptual and ontological difference/distinction (contrast/ opposition) (as) between each other. The one-sided interest for the sovereign as the already established power effects and brings about, therefore, a marked weakening or suspension of the sociological intent(ion). But this same one-sidedness has a further consequence which concerns the definition of the political and the use/usage of political analysis. In "The Concept of the Political" (the *Concept of the Political*) Schmitt quite rightly (very/most correctly) represents or supports the thesis that the concept of the political is more comprehensive (wider, broader) than that (concept) of the state; political, therefore (consequently), is not merely that which has to do with, and refers to, the act(ion)s of governments and of established authorities, but to everything which takes place in the public social area (realm, space), and groups or polarises those concerned around the friend-foe-axis (*or*: the relation(ship) of friend-foe). Irrespective of whether the friend-foe-relation can make up (constitute) in the strict logical sense the specific feature of the political or not[xxii], in any case, the separation between the political and the state, and the subsumption of the latter under the former, implies (*or*: would supposed to have entailed) that the discussion of the exception from the broader perspective of the political, and not from the narrower perspective of the state, should ensue. However, Schmitt, does precisely the opposite of that, since he thematises the state of emergency exclusively within the context of an already established sovereign power and authority, and consequently narrows the concept of the exception. He concentrates or focuses the political on the state, and he correspondingly outlines the structure of the state of emergency: the legal order (i.e. legal system (system of right-etc.-laws)) or the rule of normality is revoked, cancelled or suspended, however, chaos does not follow, but the state remains (stays on), and it wants to assert itself and be saved; the state is the force which keeps/saves/protects the state of emergency from being converted (or turning) into chaos (*or*: the state is the element which does not let the state of emergency

coincide with chaos)[23]. By overlooking that *such* a state, despite the revocation or suspension of the norm of right-etc.-law (*or*: of legal order), continues to support the fundamental norm of the constitution (polity), and hence does not emerge (come) from the normative Nought (Nil, Nothingness), Schmitt identifies the state with the element of the decision, and contradistinguishes to this identity, the identity of (the) right-etc.-law and of (the) rule – whereby he misjudges and overlooks that (the) legal order/system is not entirely, and not in its full sovereign radicality, revoked or suspended, if the exception of the rule was provided for and foreseen in the rule itself (*or*: by the same rule), which in practice-politically is actuated/activated in the form (shape) of an already established power as the proponent of the fundamental norm of the constitution (polity). Since in this manner the state becomes the sole bearer of the decision (*or*: As, in this way, the state has as its exclusive bearer the state), the political (das Politische) shrinks to the state [[so that the political and the state are]] together (*or*: politics (ἡ πολιτικὴ) correspondingly shrinks to the state). Yet the state would have no reason to declare the/a state of emergency and to be identified with the element of the decision, if it did not face considerable (notable) political foes, who would be just as capable and willing to take decisions and to strive – they too – for the revocation or suspension of the legal order/system in force (perchance (possibly) including the fundamental norm of the constitution (polity) as well), in order to, of course, put in its place (*or*: replace it with) their own (fundamental norm of the constitution/polity). No way of looking at things (consideration) may leave that out of consideration if it wants to take seriously sociological and political points of view and factors.

The state as decision constitutes in Schmitt's eyes (*or*: for Schmitt) the antipodes of the liberal "state under the rule of law (constitutional state)", and of the parliamentary or democratic regime or polities in general. Here crops up, as

[23] Footnote 1, pp. 18/19.

I believe, an additional difficulty of a historical-political character (*or*: Here it seems to me that an additional difficulty of a historical-political texture raises its head (arises)), since the political contempt/disdain/scant regard for, or rejection of, this [[parliamentary or democratic]] regime (*or*: these polities), and the definition of sovereignty with the help of the criterion of the state of emergency, interrelate neither logically nor empirically (*or*: are not connected as between each other either according to logic, or according to empirical necessity). Schmitt's definition can, in other words, be equally applied to an absolutistic monarch and a (bourgeois-)liberal parliament, if only the latter is allowed to, or has, the jurisdiction/competence to decide about the declaration of a state of emergency. We already referred to the Roman example, where the decision was taken by a collective body, whilst assigning or delegating at the same time the decision's practical processing to an (obviously non-sovereign) dictator, and we could refer to other examples, for instance from English political history (suspensions of the force of the Habeas Corpus Act). In any case, both Bodin as well as Hobbes, whom Schmitt characterised as the classical theoreticians of sovereignty, did not have the slightest reservation, or had no difficulty, in ascribing the attribute of the sovereign in the same sense and with the same emphasis, to a monarch, an oligarchy and a democratic assembly[24]. The form of the constitution (polity) and the definition of sovereignty, therefore, have nothing to do with each other and constitute two entirely different magnitudes. Also, a completely different question or matter is whether a liberal parliament as a sovereign (corporate, i.e. collective) body can act in regard to a state of emergency just as effectively in a political respect as for instance a self-ruler (i.e. autocrat, monarch, etc.) or an aristocracy (*or*: as an authority/power centred/concentrated/focused in/on one person or a few people). If one, in the answer to this question, does not want to sacrifice the sense of the historically

[24] Six livres de la république, Part II, Ch. 1; Leviathan, chap. XVII (a Man or an Assembly of Men).

concrete to his political sympathies, then he can merely say the following in relation to that (*or*: he cannot but say the following): in the distant and in the recent past there were flexible and sluggish (lethargic, cumbersome, unwieldly), peaceful and split (cloven, cleft) (*or*: compact and dichotomous (divided)), self-acting/automatic and manipulated (corporate, i.e. collective) bodies, just as much as determined (resolute) and undecided (irresolute), capable and incapable, reasonable (understanding, visionary) and shortsighted (myopic) monarchs and dictators. The, as they happen/by chance, a priori theoretical and political arguments for and against the one or the other form of constitution and polity, or the one or other sovereign, mean very little with regard to the concrete performance (achievement, result) of the sovereign at a given historical moment. Still more: the historical key of/to a regime does not first depend on whether the sovereignty in it is united and indivisible, irrespective of place, time and circumstances (conjuncture). Someone, who most certainly understood something about politics, namely *Niccolò Machiavelli*, wanted to say exactly this when he ascertained that Rome owed its grandeur (greatness) to the constant conflict between patricians and plebeians[25].

IV.

The questions and problems pertaining to the history of ideas and the sociology of knowledge, which will occupy us subsequently/afterwards (*or*: in conclusion), are connected in the "Political Theology" (*or*: loom on the horizon of the *Political Theology* in the tightest nexus/connection/interrelation) with a frontal attack against the smug (complacent, self-satisfied) self-understanding of the New Times[26]. The New Times believed that they could be consistently

[25] Discorsi sopra la prima deca die Tito Livio, I, ch. 4.
[26] Cf. *C. Schmitt*, Politische Theologie II. Die Legende von der Erledigung jeder politischen Theologie (= The legend of the dealing with/carrying out of every political theology), 1970, esp. p. 109ff..

detached, and could break away (cut loose), from the dark (gloomy, tenebrous) theological past, and that the human spirit(-intellect) totally and conclusively freed through/by the co-effect (co-operation, collaboration, co-action, interplay, interaction) of autonomous Reason and empirically tested (examined) knowledge. However, by discarding the content(s) of theology, they replaced them with their antipodes, whereby they unwillingly and unconsciously let their thought be determined negatively by the world view and the way of thinking of the opponent. Instead of simply saying goodbye (bidding farewell) to theology as something outdated and indifferent, the New Times were forced to take theologising and theological decisions. The secularisation of ideas was carried out and executed likewise under the wings, i.e. influence, of theology, whose systematic and conceptual superiority, as Schmitt believed (thought, opined) and stressed, was confirmed in this manner. – On this point, it can of course be questioned whether the structural correspondence of theological and profane (secular) concepts in themselves can be derived (concluded, inferred, deduced) from (*or*: really proved in themselves) the systematic superiority of the former, or whether such structural correspondence is due to the common origin (provenance) of both from underlying thought structures (*or*: subsumption under/to superior and more general structures of thought) grown together and knitted with anthropological and cultural constants; were this the case, the truth, and were e.g. the distinction between a From Here (i.e. This World or Life) and a From There (i.e. That World or Life), looked at as, and given, a conceptual structure (structure of the/a concept), already with belief (faith) in the meaning of human life (regardless of the theological or non-theological justifications (foundings) or rationalisations), then the priority of theological thought vis-à-vis the secularised thought of the New Times could be characterised as merely a chronological priority (*or*: would basically only be chronological). Yet the discussion and investigation of such a question, whose mere formulation, incidentally, surpasses Schmitt's thought horizon (horizon (framework, context)

of thought), would take/lead/drive us far[xxiii]. The fact remains that in the here interesting historical epoch, theology constituted (yielded, produced) the positive or negative starting and reference point of the broader world-theoretical, but also narrower social-political, confrontation, since all sides soon found out that between one's own theological and one's own political positionings, existed not a chance (coincidental) and symptomatic, but, that is, a logical and systematic-structural interrelation. The merit (service or offer) of the "Political Theology" in this area consists in that it makes this interrelation emphatically clear (*or*: it reminds us and projects emphatically the interrelation above). Because as far as the (what is) content-related is concerned, Schmitt remains by and large a repetition of that which one finds in *Bonald* and *Donoso Cortés* (*or*: Because as far as it concerns this interrelation's content, Schmitt in general simply repeats what Bonald and Donoso Cortés pointed out)[27].

[27] Only the most succinct/concise passages are to be referred to here: [[the Greek-language article actually includes passages by Bonald and Cortés not included in the German version of the article. I shall now proceed to include in this footnote within further double brackets [[]] such passages and other text by P.K. in Greek, but not included in the German-language version of the article.]] [[Since the texts are difficult to access (inaccessible), particularly for the Greek reader, I shall cite here a few characteristic excerpts. First, from Bonald: "The, in the main, democracy rejects with manic zeal from political society every visible and fixed united power/authority, and does not see the sovereign/ruler but in the *subjects* or the people: thus, atheism rejects from the universe the united and first cause and does not see it but in the results of the causes or the matter. In the system of the latter (i.e. the people as atheists), matter created everything; in the system of the former (i.e. subjects as democrats), the people have the right to do everything, such that we could call them democrats, atheists of politics; and atheists, rabid and furious [[types]] or Jacobins of religion". To "royalism", "theism or Christianism/ Christianity" corresponds politically, whereas the bourgeois-liberal faction is characterised as follows: "The *impartial*, moderate, constitutionalists of 89 are placed between the democrats and the royalists, like the deists between the atheists and the Christians; and that gave, justly, to the constitution which they invented/concocted the name *royal democracy*. They wanted a king; however, a king without definitive volition, without independent action; and as Mably, the party's theoretician, used to say to the Poles, *a king who accepts the most pious vows of faith, but who does not have at his disposal but a shadow of power/authority*. In these characteristic [[aspects]] one can recognise the ideational and abstract God of deism, God without action, without presence, without reality" (I translate/I am translating from the French text of his study of 1805 [[and I C.F. am translating from P.K.'s Greek translation of the French – I do not have the time to "play" with the French text – you can do that yourself, dear reader, if you are interested and have the time – translator's addition to the footnote]] *De la philosophie morale et politique du 18e siècle*, in *Oeuvres*, v. X, Paris, 1819, pp. 128/9). From Donoso I select the following characteristic excerpt: "Now we are entering, sirs, the second period [of the history of civilisation/culture, after the period of Catholicism], which I called negative, which I called revolutionary. In this second period we have three denials, corresponding with the three first affirmations. First denial, the, as I shall call it, denial of the first degree to religious order: God exists, God reigns; however, God is found so high up that He cannot govern human affairs. This is the first denial, the denial of/in the first degree, in this negative period of civilisation; and what corresponds/is commensurate with this denial of divine providence in political order? In political order, the progressive party appears corresponding with the deist, who denies Providence, and says: "the king exists, the king reigns; however, he does not govern" [[A-HAHAHAHAHAHA!!!!!!!! It's like in a Western mass democracy: the two or three major Parties and Parliament/Congress etc. exist, but (aesthetically as a matter of subjective Taste, absolutely FILTHY and

DISGUSTING, VILE, HORRENDOUS, HORRIBLE, WICKED, EVIL, SATANIC, SATANIST, SATANIC CIRCUS MONKEY) Jews at elite level GROSSLY DISPROPORTIONATELY – and by no means exclusively or by a majority – govern (with their pseudo-Protestant/Catholic/Secular/Atheist Stooges and or Collaborators et al. – translator's addition to the footnote]]. In this way, sirs, constitutional monarchy, as it is understood by the progressives, denies the government; thereafter, to religious order comes the pantheist, and he says: "God exists, however God does not have a personal existence; God does not have a person/face, and since he is not a person/does not have a face, neither does He govern, nor does He reign. God is all that we see; He is all that lives, he is all that moves; God is mankind (humankind/humanity)". This is what the pantheist says; so that the pantheist denies the personal existence, if not also the absolute existence [[of God]]; he denies the kingdom and Providence. – Following that, sirs, the democrat comes along and says: "Power/Authority exists; however, power/authority is not a person/face, neither does it reign, nor does it govern; power/authority is all that lives, all that exists, all that moves; hence, it is the multitude/throng/crowd, hence there is no better means of government than universal suffrage nor a better government than democracy". – Thus, sirs, pantheism in religious order corresponds with the republic in political order. Thereafter, another denial comes along, which is the final denial; denial does not go any further or beyond that. Behind the deist, behind the pantheist, the atheist comes along and says: "God neither reigns nor governs, neither is he a person/face, nor a multitude; He does not exist" [[That's exactly how absolutely filthy (subjectively seen as a matter of Taste) Jews macro-historically get to GROSSLY DISPROPORTIONATELY within the context of mass democracy govern, you fucking "smart" Retards!!! – translator's addition to the footnote]]. And Proudhon appears, sirs, and says: "There is no government". Thus, sirs, one denial calls for the other denial, just like one abyss calls for another abyss. Beyond this denial, which is the abyss, nothing exists, nothing exists except for the many kinds of darkness, thick, impenetrable kinds of darkness" (I am translating from the Spanish text of the parliamentary speech of 1850 with the title *Discurso sobre la situacion general de Europa*, in *Obras*, v. II, Madrid 1970, pp. 459/60. In a more rhetorical form, the same thoughts are found in ch. VIII-X of the second book of the *Ensayo sobre el catolicismo, el liberalismo y el socialismo*, 1851, in the same volume, p. 592ff..]] *Bonald*, De la philosophie morale et politique du 18e siècle (1805), Oeuvres, v. X., Paris 1819, pp. 128/129; *Donoso Cortés*, Discurso sobre la situacion general de Europe (1850), Obras, Vol. II, Madrid 1970, p. 459; cf. ch. VIII – X of the second book of the Ensayo sobre le catholicismo, el liberalismo y el socialismo, 1851, in the same volume, p. 592 ff.; here are also found the anthropological statements, which Schmitt cites. Also, other counter-revolutionary authors made – around the middle of the 19th century – use extensively of such analogies (*or*: These analogies were often formulated by counter-revolutionary authors in the middle of the 19th century), especially under the impression of the events of 1848, see e.g. *J. Stahl*, Die gegenwärtigen Parteien in Staat und Kirche, Berlin 1868, p. 108 ff.. Cf. *Tocqueville's* short, but very incisive and concise remarks and observations on the internal kinship between the pantheistic and democratic spirit are also worth recollecting/being reminded about: De la démocratie en Amérique, vol. 2, Paris 1840, Part I, ch. 7. Finally, I must bring to the attention of the reader a short and entirely neglected article of an author, who is otherwise unknown to me. I shall cite some passages: "... God was once absolute and in the course of the centuries became all the more constitutional ... Therefore, modern God had to step-by-step, like all other modern kings, put up with the constitution. He was bound/tied to all things, to which he earlier was not bound/tied, to which he was bound/tied ... God and Man were separated from each other by an enormous/tremendous gulf/chasm. Now, they drew increasingly closer to each other ... The image of God became, like every time (always), an image (i.e. a representation of what is comprehended mentally) of the times/age/epoch. Heaven/The sky became such an image of each and every respective world ... The once hard fist became the soft caressing hand of a weak father, who puts up with (tolerates) more and more, and in the end, everything. Yet God still remained at least elevated above all men, constructed out of other stuff (material), not with them consubstantial (of the same/equal essence/substance/nature, identical in character) ... The monistic schools of thought (tendencies, directions) of the New Times changed that, Hegel, the democrat, with his principle: everything is an idea, but everything is one!, and modern additional monists. Amongst them there is no longer any difference. God, world and man are, as one knows/we know, in them one, God, Goethe, and every shoe-cleaner or cobbler (shoe-repairer) are one, good and evil (bad), sin and every virtue are one. Whether Hegel constructs everything from above, or Darwin, everything from below, that does not matter (*or*: does not have any significance). Everything, in the end, comes together in a big stump (rootstock, rhizome). Egalité and Fraternité have broken out, escaped and erupted. There is the right/proper French republic ruling, reigning and dominating in the Locus 'de Deo' (= in (the) place 'of God') ...": *A. l'Houet*, Der absolute, konstitutionelle und republikanische Gott: Religion und Geisteskultur 5 (1911), pp. 69 – 71. Schmitt must have known (*or*: most probably knew) this article, because it was mentioned by *Kelsen* as well, loc. cit. (footnote 9), p. 228, (foot)note 2.

Furthermore (*or*: And apart from that), other schools of thought (tendencies in thought), like e.g. the Marxist analysis of ideology, had already sharpened and made more acute the sense of structural correspondences between theological-metaphysical and social-political conceptual constructs (constructs of the/a concept) or thought figures.

Now, Schmitt invokes the theoreticians of the counter-revolution not only with the intention of bringing the theological roots of modern politics to light, but also in order to underpin (support) his own teaching regarding sovereignty. According to his interpretation, *de Maistre* and *Donoso* penetrated (imbued or soaked) the concept of sovereignty with the element of the (existential, world-theoretical, political) decision, so that they can set against, or contradistinguish to, this decision (thus imbued) the natural-scientific way of thinking (the thought mode of the natural sciences), which bears/carries and supports the construct of the perpetual legal normality of the "state under the rule of law (constitutional state)". As a decision, the act of the exercising of sovereignty lies or goes beyond and behind every law, i.e. it stems from a will, which creates the law out of the normative Nought (Nil, Nothingness). According to my perception (view), (*or*: I am of the opinion that) Schmitt here attributes to the counter-revolutionary authors views which are precisely the opposite of those they actually supported and advocated, and he does it because he is not aware (or conscious) of the double sense/meaning of the concepts "sovereignty" and "decision". In order for us to better comprehend what is [[said]] below (i.e. comes later), let us recall that Schmitt just as little knew about both different varieties, versions or facets of the exception (victorious repression and victorious revolution), and of the miracle (momentary and total miracle). But the manner in which the exception and the miracle are comprehended, determines the sense in which sovereignty and (the) decision are meant. Does the exercising of sovereignty mean the power to build/construct a state and a

constitution (polity) out of the normative Nought (Nil, Nothingness), i.e. beginning with the (its) fundamental norm, or merely the revocation or suspension of the legal order/system exactly for the purpose of the defence of the existing fundamental norm? Does the decision mean the building (construction) of a world view and a (world-theoretical and political) identity out of Nought (Nil, Nothingness), or does it mean merely the choice between two already existing (present) and known world views and identities?

The double sense/meaning of the concept of sovereignty does not constitute a theoretical juristic-legal problem, which is posed in abstracto irrespective of time and place. On the contrary, the two different meanings of the term, which we want to immediately summarise (synopsise) have accompanied and marked two different epochs and two different perceptions (views) regarding the organisation of the polity or society; here we are dealing with a nodal, i.e. central, point in the history of political and constitutional/legal ideas. The term "sovereignty" was of course not first used by Bodin and Hobbes[28], i.e. it did not arrive on the scene first in connection with its specific new-times meaning, but it has a long pre-history, during which it had a precisely opposite meaning; from that fact, not a few misunderstandings and confusions (much confusion) came into being. In the medieval political and juristic-legal framework the feudal king was indeed characterised as a "sovereign" (sometimes even as "absolute"), but simultaneously it was considered to be self-evident that the circle of his competencies (jurisdictions) was narrow; that is why his "absolute sovereignty" referred to precisely defined objects, and above all he was not allowed to, or could not, legally touch the "vested rights and privileges" of his feudal vassals. This praxis was reflected or echoed ideologically in the perception that the sovereign does *not* create right-etc.-law (and least of all the fundamental norm of the constitution (*or*: and above all, naturally, he does not create the

[28] In relation to the conceptual-historical, i.e. history of the concept, see *H. Quaritsch*, Souveränität. Entstehung und Entwicklung des Begriffs in Frankreich und Deutschland vom 13. Jh. bis 1806, 1986.

fundamental norm/rule of the polity)), because right-etc.-law is god-given, immemorial (age-old, ancient) and immutable (invariable); the task (job) of the sovereign exists exactly in the defence of the since long ago/always applicable legal order/system, or in the protection and safeguarding of the force of this right-etc.-law, that is to say, of the corresponding "vested feudal rights and privileges" through his executive and judicial powers (authority, authorities, competencies, jurisdiction(s)). The concept of sovereignty acquires a diametrically opposed sense/meaning in the New Times. The centre of gravity, i.e. main focus/emphasis, shifts from the protection and safeguarding (preservation) of right-etc.-law, to the creation of right-etc.-law, i.e. from executive and judicial to legislative activity, which increasingly appears to be the lever for the changing of society (*or*: and indeed to the changing of society through legislation). Right-etc.-law ceases to be god-given and unchanging, and is comprehended as an exclusive product of a sovereign will, which not once makes a halt (stops) even before the fundamental norm of the constitution (polity). The state can, accordingly, be manufactured (fabricated, made) just like a machine: in Hobbes, this conviction is found (features, is formulated) next to (in parallel with) a clear confession of faith in the new-times concept of sovereignty, and the interrelation is obvious[29].

We now comprehend without difficulty why conservatives and counter-revolutionaries before and after 1789 saw (beheld) in the new-times teaching of sovereignty, a genuinely revolutionary ideology (*or*: We understand, therefore, easily why conservatives and counter-revolutionaries, before and after 1789, perceived the [[then]] contemporary concept of sovereignty as the pre-eminently revolutionary ideology), irrespective of whether its bearer was an enlightened despot, who through state centralisation, smashed (shattered) and broke up (fragmented) the feudal centres of power (power centres), or whether a

[29] In much greater detail and extensively, on the contrast and difference between both concepts of sovereignty, see *P. Kondylis*, Konservativismus. Geschichtlicher Gehalt und Untergang, 1986, esp. pp. 72ff., 227ff..

liberal-democratic parliament continued and completed the work of absolutism. Against the modern voluntaristic concept of sovereignty, the counter-revolutionaries summon (conscript, mobilise, call forth) the traditional concept of sovereignty, and when they demand (ask for) the dynamic intervention (activation) of the monarch against the revolutionary forces, they then connect with this demand entirely different representations and expectations than those which for instance Hobbes connected with his sovereign. They do not want, therefore, to allow the sovereign a free hand in the legislature, which could turn even against the privileges of the nobility (aristocratic privileges), but – according to the medieval perception – want to equip him (the sovereign) with sufficient executive and judicial powers in order to exorcise the revolutionary danger, if need be with dictatorial means. Their high, rhetorical tones and their emotional, dramatic (emphatic, histrionic, ranting) explanations in favour of the sovereignty of the (counter-revolutionary) monarch and against the sovereignty of the liberally or democratically minded legislature (*or*: legislative bodies), ought not (to) mislead or blind us as to the concrete (specific) content, which they ascribe to the "good" concept of sovereignty, in contrast to the "bad" concept of sovereignty. Incidentally, de *Maistre*(*'s*) and *Donoso's* statements (judgements) on this critical point are more than lucid ((crystal-)clear), and simply summarise the traditional perception of sovereignty, as it had been formed already in the Middle Ages[30]. Recourse to the distant past was no mere Donquichotterie (knight errantry, quixotism), rather it suggested that the enmity of the counter-revolutionaries against liberalism and democracy implied a(n) across-the-board (sweeping) rejection of the New Times.

This short excursus (digression) was necessary in order to be able to locate, i.e. pin-point, Schmitt's error (mistake). His analysis calls or construes the infallibility and the inappellable (irrevocable) decision, the two (both) essential

[30] Die Belege, ibid., pp. 228/230.

features of sovereignty in de Maistre's thought[31], but the said Schmittian analysis does not pose, and delve into, the decisive question at all: how far does the area of force (validity, action, application) of the infallible and the inappellable decision reach (extend) (*or*: how wide is the field of power/force of the infallible and irrevocable decision)? The answer which is given on each and every respective occasion to this question draws a hardly perceived dividing line between the traditional and new-times concept of sovereignty[32]. De Maistre or Donoso never held the decision of the sovereign to be infallible and inappellable in the event (*or*: if) such a decision of the sovereign revolutionised social relations to the disadvantage of the nobility (aristocracy) and the clergy, and on top of that, appeared as an outflow of an autonomous (self-ruled/self-ruling) human will (volition), which would only be answerable (accountable) to itself or only vis-à-vis worldly authorities ("state", "folk"), and would disregard and disdain "godly/divine" right-juristic-equity-law as the guarantor of aristocratic privileges and which – as the counter-revolutionaries believed – entrenched, consolidated and safeguarded the said (above) privileges since the beginning of the world and throughout history until the end of the saec(u)lum (world, earth, century). For a Hobbes, however, such a restriction (limitation) of sovereignty by any godly/divine or natural right-etc.-law, or by any traditional-customary(-conventional) privileges, stands in contrast to sovereignty's concept itself (*or*: Conversely, for a Hobbes, every preliminary binding (enchaining, commitment) of the concept of sovereignty by (or to) any "divine" or "natural" law whatsoever and a fortiori by (or to) any vested right or privilege whatsoever, was by definition opposite to the concept of sovereignty). The fiction of the social contract was here structured in such a manner that *pactum*

[31] Footnote 1, p. 71.

[32] See already my remarks (comments, observations) footnote 29, p. 230, (foot)note 110. The critique of Schmitt's undifferentiated understanding of sovereignty has, in the meanwhile, found entrance in(to) (or has entered) Schmitt-research, see *G. Maschke*, Die Zweideutigkeit der „Entscheidung" – Thomas Hobbes and Juan Donoso Cortés in Carl Schmitt's work, in: H. Quaritsch (Hrsg.), Complexio Oppositorum. Über Carl Schmitt, 1988, pp. 193 – 221, esp. p. 199ff..

societatis and *pactum subiectionis* coincided (whereas the political theory of the Middle Ages and of scholasticism and theology sharply and thoroughly distinguished between them); thus, could the sovereign not only entirely on his own authority, i.e. on his own volition, determine the current subordinated rules of the legal order/system, but also the fundamental norm of the constitution (*or*: its (i.e. the legal order's) fundamental rule) (that is, that which the jurists (legal scholars/philosophers) of pre-revolutionary Europe called *leges fundamentales*). These short remarks (observations) suffice, as I think, to make clear how unfortunate Schmitt's attempt was at presenting Hobbes and Donoso as the children (scions, offspring, progeny) of the same spirit(-intellect).

As in the concept of sovereignty, so also as to the concept of the decision, the question of range (reach, scope) and of the preconditions remains decisive: to what extent are decisions taken on a Nil-Nought(-Nothing)-basis without something or other being regarded as self-evident or settled (or agreed to), i.e. given – without that something or other (*or*: without anything) being pre-decided? Many a decision (*or*: A (Quite a) few decisions) to behave in this way and not otherwise, to go down this and not that path, possess because of that, or obtain, particular and excess intensity, and are taken in, or with, fully existential militancy only because the fundamental world-theoretical problems (*or*: the fundamental problems of the world and of man) are regarded as solved, and absolutely no doubt underlies this solution (*or*: this solution of theirs seems to not accommodate or be receptive to any doubt); the decision as regards personal and practical deployment (participation, engagement, enlistment, mobilisation, action, use; Einsatz = στράτευση), even against the current, comes out of (emerges from) (*or*: constitutes the outcome (result, aftereffect) of) the conviction that certain essential points are once and for all clear and pre-decided, and would (or will) never have to become or constitute the object (subject matter) of new decisions, such as those which every concrete/specific

action demands. Thus, when de Maistre or Donoso decided in favour of the struggle in regard to full existential deployment (engagement, enlistment, mobilisation, action, use), they did it on the basis of convictions in respect of which they thought could not be convulsed, shaken or rocked by anything, and lying beyond the usual deliberated (thought over) acts of choice/choosing between two equally open possibilities (*or*: ... convictions, which they judged to be unshakeable and unwavering and beyond subjective considerations, weighing(s) up or decisions in the current sense). (This psychological combination is, incidentally, not unusual: the revolutionary communists were e.g. prepared for the most extreme existential deployment (mobilisation, etc.) and sacrifice, whilst believing in advance and simultaneously in "iron historical necessity (or law bindedness)"). Schmitt does not distinguish between these kinds and levels of the decision. Spiteful and malicious critics have characterised Schmitt as a "nihilist" because his statement/judgement is (*or*: because he says) that the "pure" decision emerges or is born/created from (inside the normative) Nought (Nil, Nothingness)[33]. With that, however, Schmitt means merely that state of affairs in which the norms of right-etc.-law have become suspended (revoked, cancelled, etc.) or paralysed, something which not in the least must mean the suspension (revocation) or paralysis of all normative principles in the wider/broader ethical sense – in fact, precisely the opposite can occur. Schmitt's mistake is that he talks in such a way as if the normative Nought (Nil) in the juristic-legal sense of the word were a Nought (Nil, Nothingness) in the ethical and world-theoretical sense, i.e. as if *everything* would have to from the beginning and on a Nil-basis be decided. But de Maistre and Donoso would never come to (arrive at) such a thought (*or*: But something like that would never cross de Maistre and Donoso's mind). These (i.e. de Maistre and Donoso) desired and sought the normative Nought as the

[33] FN 1, p. 83.

revocation, cancelation or suspension of the legal order/system and as a dictatorship, because they held that every world-theoretical and ethical doubt, that is, every normative Nought in the world-theoretical and ethical sense to be impermissible (unpermitted) and in fact punishable.

In another place I have explicated (*or*: I have shown elsewhere)[34], that no theory of the decision can be adequate (*or*: be theoretically sufficient) if it does not a limine distinguish (dilate or expand) between the decision in the sense of the constitution of a world image and an identity, and the decision in the sense of the mere choice between established (fixed, set) alternatives on the basis of an already draw up (made out, issued) or formed world image and of an already existing identity. If we look at things (matters, affairs) thus, and the decision in the former sense lies in, or at a deeper, existential stratum (layer) or level than the second kind of decision, then we must ascertain that *every* subject decides, since no subject can orientate itself without world-theoretical positioning and without identity inside of the social world. The decision becomes here comprehended as a descriptive concept (i.e. it is merely registered, recorded or ascertained that every subject must decide, anyhow (anyway)), and not as a concept of a normative character (*or*: not as a normative-militant concept) (i.e. no "true" decision as the "correct/right" choice between alternatives (*or*: alternative solutions) is recommended to the subject). The theoretical – even if in an existential respect (*or*: vitally-existentially absolutely) essential and inspiring (spurning on, quickening) – mistake of militant decisionism (*or*: of the militant theory of the decision), which Schmitt together with existential theologians and philosophers represents and advocates, lies in that he identifies the decision with the "genuine/authentic" decision, and accordingly divides (splits) (up) social and political subjects into two groups: those which decide in accordance with all the rules of the decisionistic emotional, dramatic (emphatic,

[34] Macht und Entscheidung. Die Herausbildung der Weltbilder und die Wertfrage, 1984 (= *Power and Decision*).

histrionic, ranting) ritual, and those which cannot or do not want to decide, whereby they are supposed to miss their existential calling (determination) (*or*: [[and]] separates social and political subjects into those who take/make decisions, and those who refuse (decline) to take/make decisions). As I think, this – the dominant – variety (version, variant) of decisionism perpetuates merely the rationalistic prejudices against which existentialism goes into battle, because the statements of the various subjects regarding themselves and their own doing (deeds or acts) are taken at (their) face value, and it is believed that whoever *theoretically*, i.e. *in terms of theory*, speaks up for and declares himself in favour of the great decision realises it more intensively and more effectively than someone who declares himself *theoretically*, i.e. *in terms of theory*, to be against it, by displaying (presenting) his own positioning not as a personal-existential product (*or*: as an aftereffect or result of existential) and hence presumably arbitrary decisions, but as the command of supra-personal-objective authorities (tiers (grades, levels, stages) of jurisdiction) (Reason, History, God, Nature etc.). However, the fact that someone expresses himself and stands for or against the decision or decisionism at the theoretical – philosophical, theological, juristic-legal – level, does not signify anything in the slightest/least about his doing (deeds, acts), but it (the said fact that ...) depends on the concrete situation on the front of the intellect(-spirit), i.e. it is determined negatively by the positioning of each and every respective foe. The liberals asserted and supported that against the "decision", the law bindedness (determinism, law(rule)-based necessity) of the "state under the rule of law (constitutional state)" allegedly eternally reproducing itself (being reproduced), and they did it first of all within the framework of their polemic(s) against the "arbitrariness" of the monarch, and later against revolutionary voluntarism (*or*: the explosions of revolutionary volition); and the right-wing or left-wing foes of liberalism summoned (mobilised, conscripted), for their part (in their turn), the decision and the exception against this self-understanding of liberalism.

Just as therefore Schmitt – rightly – says that the decision being declared and regarded as unpolitical (non-political), is itself a political decision[xxiv], so too he ought to have said that the decision against the decision (more precisely: against the supporters of decisionism) is, for its part, just as much a decision as every other as well, and can in fact be transformed and transmuted (transfigured) into a most highly or an extremely aggressive and effective praxis. However, he does not say it, and accordingly confuses the face value of the statements and judgements with the praxis of those making the statements and passing the judgements, without showing with the help of a historical example or historical examples that there is an, of necessity, i.e. a necessary, interrelation (connection) between both these (i.e. between the said face value and praxis); finally and at the end of the day, liberalism did in fact historically defeat the party (faction) of de Maistre and Donoso, although these (de Maistre and Donoso) had the passion (or the rhetoric) of the decision on their side. Thus, the decision is a deed (an act) and not a statement and judgement about the value and un-value or anti-value of the decision; the decision as deed (act) can in fact accompany or be accompanied very well (by) the sharp condemnations of decisionism, when and if this commands/demands polemical needs. Schmitt seems to judge the deed and historical essence of liberalism on the basis of its ideological self-understanding, as this was reflected, expressed or echoed in its corresponding legal-constitutional constructs or fictions[xxv], normatively and not descriptively. He lapsed into, or succumbed to, such naivety because he – in his personal search for a "true" and "genuine/authentic" decision – understood the concept of the decision normatively and not descriptively (*or*: He would not have perpetrated or acted with such naivety, if he understood the decision descriptively and not militantly and polemically, wanting himself to take a "genuine or authentic" and "correct/right" decision).

Summary[xxvi]

Important theses in Carl Schmitt's „Political Theology" appear today to be no less convincing than seventy years ago. In spite of that, the central argumentation remains unclear and contradictory. Epistemologically and methodologically, Schmitt does not succeed in proving that jurisprudence can integrate historical and sociological viewpoints. Accordingly he is unable to show, counter to the "positivist" jurists, that the decisive phenomenon of the state of emergency can be grasped through specific juristic conceptualization. Moreover, the state of emergency is seen only from the perspective of the contemporary sovereign, and this viewpoint weakens the programmatic connection between the concept of sovereignty and the state of emergency while it unintentionally strengthens the positivistic position. After a discussion of Schmitt's false interpretation of Kelsen's theory, it is shown that Schmitt's contradictions regarding the treatment of the question of sovereignty are bound up with his ignorance of the essential difference between traditional medieval and modern concepts of sovereignty. Donoso Cortés and Hobbes are therefore mistakenly held to be exponents of the same view of sovereignty. Finally it is maintained that Schmitt's one-sided normative interpretation of „decision" entails a false historical assessment of liberalism in which liberal theory is confused with liberal practice.

ENDNOTES

All endnotes, good and bad, partly good and or partly bad, are by the translator and have ***absolutely nothing*** to do with P.K.! Furthermore, no ideological-political normative programme of any kind whatsoever is ever suggested, promoted or otherwise supported. **EVERYONE** INCLUDING ME, INCLUDING YOU, INCLUDING HIM, HER, IT AND THEM ***MUST OBEY AND ABIDE BY THE LAW*** – EVEN THOUGH WE KNOW THAT NOT A FEW PEOPLE WILL BREAK THE LAW AND BE LAW-BREAKERS OR OUTLAWS. AND IF MANY DO IT, DO DAT, THAT'S WHEN THE SHERIFF WITH THE BIG GUN (MAGNUM) LIKE CLINT EASTWOOD IN *DIRTY HARRY* OR CHARLES BRONSON IN *DEATH WISH* (1 OR 2) NEEDS TO RIDE, BE BROUGHT OR HELICOPTERED IN. TIP: ***DON'T READ THE FUCKING ENDNOTES***. READ P.K.'S TEXT VERY, VERY, VERY CAREFULLY. STUDY IT AND LEARN!

[i] We all know from history that the Revolutionary Left was never about elections and "bourgeois" institutions etc., other than using them to seize Power. Since P.K.'s death in 1998, however, it has become more than apparent that what is now known as the "Left" has gone way beyond what P.K. saw in 1994 of – with the USA having just won the Cold War – aping Margaret Thatcher and Ronald Reagan kinds of positions (minus the aggressive "free-market" rhetoric, and perhaps not so keen on (rapid and so extensive) privatisations), – today ludicrously called "far-right" by the ZIO-CONTROLLED or GROSSLY DISPROPORTIONATELY ZIO-PARTICIPATED-IN MASS MEDIA AND ACADEMIA OF FULL-SPECTRUM ZIO-LOBOTOMISATION AND EXTREME-FAR ZIO-RETARDATION (e.g. Kermit the Frog AKA "J.P.") –, and is nothing other than the Ideological and Enforcement-in-Practice Vanguard of Western mass democracy as led and theorised in GROSSLY DISPROPORTIONATE numbers by ZIO-SATANISTS and other ABSOLUTELY DISGUSTING, FILTHY, ULTRA-UGLY ANIMALS LIVING IN TIMES OF THE GENERAL (ZIO) LOBOTOMY, I.E. OF

HATE, MASSIFICATION, ATOMISATION, AND "I AM MY FEMINO-FAGGOTISED HOLES AND GO SHOPPING, TOO" PEOPLE.

[ii] I.e. one is not permitted to make (very) popular the view that all humans – because of genetic and or cultural inheritances and or because of individual traits – are **DEFINITELY NOT** inherently equal. The problem with most elite JEWS in the West is that they vociferously CLAIM "human rights" as "inherent human equality" but at elite-level have – for many various historical reasons – ACCUMULATED GROSSLY DISPROPORTIONATE forms of POWER, WEALTH, INFLUENCE, HEGEMONY, ETC. – and that makes them ABSOLUTELY SICK, FILTHY, ULTRA-UGLY AND DISGUSTING to those of us who know them well or very well but have a HIGH IN-GROUP COLLETIVE CONSCIOUSNESS OF OUR OWN – something Protestants and Catholics until about c. 1980/1990 had LOST far more than Orthodox Peoples due to Massification, Atomisation, Urbanisation, Secularisation, HeavyMetal-Retardation following Rock-n-Roll Tenderisation, FeminoFaggotisation, ZIO-LOBOTOMISATION etc., which – to my great GRIEF – has also spread into GREECE – and that's why **I SHALL ALWAYS CURSE SATAN AND ITS SATANIC CIRCUS MONKEY UNTIL I DIE!!! FUCK YOU, SATAN!!! FUCK YOU, SATANIC CIRCUS MONKEY!!! *DEATH TO SATAN*!!!**

[iii] This sentence was not included in the Greek text, but it's absolutely hilarious – A-HAHAHAHAHAHAHAHAHAHAHAHAHA!!!

[iv] Let's say organised agricultural and or industrial societies, for argument's sake, have existed in fairly well-known history for about 5,000 years. Of those 5,000 years, not even 300 years have been characterised by at least some states which one could call states under the rule of law in the bourgeois-liberal (ideological and or in practice) sense.

[v] So, P.K. is going to do again what hitherto had never be done, notwithstanding the thousands and thousands of pages written about Schmitt's oeuvre by 1994.

[vi] In other words, you can't validly in terms of conceptual clarity etc. just based on the state of emergency and the miracle, then make generally binding – in terms of theoretical consistency – statements, assertions, etc. about jurisprudence and theology in general.

[vii] This is what Wikipedia says (https://en.wikipedia.org/wiki/Gerhard_Ansch%C3%BCtz):

"**Gerhard Anschütz** (10 January 1867 in Halle (Saale) – 14 April 1948 in Heidelberg) was a noted German teacher of constitutional law and the leading commentator of the Weimar Constitution. His principal work (with Richard Thoma) is the two-volume legal encyclopedia *Handbuch des deutschen Staatsrechts*; his constitutional commentary saw 14 editions during the Weimar Republic.

Anschütz, a proponent of legal positivism, taught constitutional law in Tübingen (after 1899), Heidelberg (1900), Berlin (1908) and again Heidelberg (1916). A Democrat by conviction even during World War I, he resigned his teaching position in 1933 after the Nazis seized power. After World War II, he served as a consultant to the US military government and in this position was one of the fathers of the constitution of the Bundesland Hesse."

[viii] In other words, there is either a legal system or there is not. There is no such thing as a legal system which is suspended in a state of emergency and is still the norm to the exception, since in the state of emergency, "non-normal" phenomena are in control and in force and "normal".

[ix] Hans Kelsen (October 11, 1881 – April 19, 1973) was a Jewish-Austrian jurist, legal and political philosopher.

[x] Hugo Krabbe (February 3, 1857 (Leiden) to February 4, 1936 (Leiden)) was a Dutch constitutional lawyer.

[xi] I.e. thrown at him by reality.

[xii] Of reality/the real world, including e.g. both common law, customary law, ecclesiastical law, statutory law, maritime law, international law, etc..

[xiii] A-HAHAHAHAHAHAHAHAHAHAHA!!!!!!!!!!!!! What does that mean if particular groups are very well organised at elite level incl. through primitive secrete society networking, nepotism, collusion, bribery, corruption, etc., etc., etc.. A-HAHAHAHAHAHAHAHA!!!!!!!!!!!!!!!!!!!!!!!!

[xiv] A-HAHAHAHAHAHAHAHA!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! See endnote immediately above!!!!!!!!!!!!!!!!!!!!! And if our friends are GROSSLY DISPROPORTIONATELY in the Main Seats of Sociology, Psychology, etc.,... A-HAHAHAHAHAHAHAHAHA!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!! Well done. The problem is that "there is no way out" barring complete destruction of the whole "wretched system" – and that of course is not a solution if one wants what remains of the West to continue.

[xv] In other words, the Law is one sector of society, and a lot of things "just or otherwise" happen beyond the reach of the Law.

[xvi] Let me put it my way: I say that "P.K. is saying" that if ???s are GROSSLY AND HIGHLY AND OVERLY DISPROPORTIONATELY REPRESENTED at elite levels in respect of various forms of Power, that per se, is absolutely indifferent to Science – apart from describing and explaining it – and if someone is "pissed off" by such a state of affairs and wants to see "something done about it", e.g. Schmitt, then that becomes a "political preference", which in itself should not ever affect scientific observation – one way or another.

[xvii] As explained a number of times on the site www.panagiotiskondylis.com "value-free" is a historical term dating from the 19th century („wertfrei"), if I'm not mistaken, and again, if I'm not mistaken, the reception of Max Weber in the USA in c. 1940s centred around T. Parsons,et al., preferred "axiologically free" as P.K. does in the Greek text, because it denotes that there is no scale of values (value-scale), rather than simply an absence of all values. To be even more accurate, I'd say "non-normative, value-free" would be the best phrase, because then any misunderstanding is cleared up over what a "value" is. Hence, I have the value of being "value-free" and that is why to not contradict oneself, prima facie, I say that I am engaging in non-normative, "value-free" science. P.K. refers either in *Power and Decision* and or "Science, Power and Decision", and or in some interview he gave in writing (I forget which now), to the "value" of being "value-free" as a kind of ascetic stance towards life, because to be absolutely value-nihilist means to not be concerned about anything, which in turn means one just dies when one's body is not being sufficiently sustained to live any longer.

[xviii] A-HAHAHAHAHAHAHAHAHAHAHAHAHAHAHAHA!!! If I were a Zio-USA/UK/France Imperialist, I'd be saying the same thing too, after WW2 – A-HAHAHAHAHAHAHAHAHAHAHA!! How fucking convenient ZIO-TRIBALIST-ZIO-SATANIST, WELL DONE!!!!! But your descendants' TURN **WILL** COME.

[xix] So under conditions of (incipient) mass democracy from the late 19th century, all the way up to the end of the Cold War or at least the 1970s/1980s, the greater part of the public in the West, had varying degrees of nationalistic-racialist beliefs, but the globalising, FULL-SPECTRUM ZIO-USA-LOBOTOMISED minority of the 1960s, by the 1990s and 2000s had – after several decades of anti-white, anti-Christian ZIO-HATE and ZIO-BRAIN-WASHING, with all the attendant SATANIC CIRCUS MONKEY AND SATAN'S ARSEHOLE FREAK SHOWS ETC. – clearly gained the Upper SATANIC-ZIO Hand.

[xx] Though in practice it would just be political sovereignty alone, because how can there be legal sovereignty, as in the functioning of a legal system, without political sovereignty at least indirectly approving of the legal sovereignty being exercised? (Unless, e.g., "judicial/jewdicial activism" makes significant societal changes "happen" without the executive arm of government being able to do anything significant about it, given that the conflict would "not be worth it"?)

[xxi] = "Released from the laws. (1) Not subject to laws. (2) Above the law" (as in the case of a tyrannical dictator or ZIO-USA ZIO-ELITE-LOBBY-DEEP STATE or Communist Party China etc., etc., etc.). Cf. http://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-1209

[xxii] It cannot – the friend-foe-relation belongs to the broader social, too. See *The Political and Man*.

[xxiii] See *Power and Decision* (incl. in the light of *The Political and Man*).

[xxiv] The decision here obviously refers to common and the vast majority of world-theoretical and other decisions – whatever they may be – **cum norms, i.e. militant and polemical decisions**. A strictly value-free, non-normative, descriptive/explanatory stance, is another matter or "decision" altogether, **i.e. the descriptive decision**, and per se it is not political, and only "becomes political or enters the political" when it is misinterpreted in such a way as to put it within the political.

[xxv] This means Schmitt in his polemical zeal did not see Liberalism as just another decision like his own "Authentic" Decisionism, and that's why he got caught up in polemics, and was unable to see that both Liberalism and "Authenticity" are Decisions cum Ideology and cannot be a point of view sufficient for the practice of Scientific Observation as non-normative description and explanation, totally logically consistently and always in view of all the known empirical(-historical) evidence.

[xxvi] The summary in English (not in German) is not included in the Greek text. Personally, I don't see the point of it. The article contains so much more meat and potatoes, that...