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HERMANN HELLER AND “AUTHORITARIAN LIBERALISM.” PLEONASM, OXYMORON, OR...? GENESIS AND DEVELOPMENT OF A HISTORICAL-POLITICAL CONCEPT*

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Abstract

In 1933, the year of the dramatic end of the Republic of Weimar, Herman Heller analysed for the first time the concept of authoritarian liberalism in an essay published on *Die Neue Rundschau*. He identifies the risks and ambiguities of this expression, which hides the core of a new social, political, and economic group of power firmly pointed in the conservative direction. In this respect, Heller focuses his criticism on the theorist of this authoritarian turn, Carl Schmitt, who condemns parliamentary liberalism because

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of its pluralism. Schmitt's goal is to achieve the total State. Heller is aware that liberalism is a feeble answer to the ongoing crisis and knows that only a State endowed with adequate authority would be able to ensure the functioning of Parliament and Government, both riven by irreconcilable conflicts.

Keywords

authoritarian liberalism; Weimar Constitution; strong state; free economy

Resumen

En 1933, año del dramático final de la República de Weimar, Herman Heller analiza por primera vez el concepto de liberalismo autoritario en un ensayo publicado en *Die Neue Rundschau* e identifica los riesgos y ambigüedades de esta expresión, que esconde el núcleo de un nuevo grupo de poder social, político y económico que apunta con firmeza en una dirección conservadora. En este sentido, Heller centra su crítica en el teórico de este giro autoritario, Carl Schmitt, qui en condena el liberalismo parlamentario por su pluralismo. El objetivo de Schmitt es lograr el Estado total. Heller es consciente de que el liberalismo es una respuesta débil a la crisis actual y sabe que sólo un Estado dotado de la autoridad adecuada podría garantizar el funcionamiento del Parlamento y del Gobierno, ambos divididos por conflictos irreconciliables.

Palabras clave

liberalismo autoritario; Constitución de Weimar; Estado fuerte; economía libre

Authoritarian liberalism? is the title of the final essay published in 1933 by political Hermann Heller in the German magazine *Die Neue Rundschau* (Heller, 1971a). At that time, he had already fled Germany and headed to London, where he gave some lectures at the London School of Economics during the brief exile preceding his premature passing in Spain.

The spiral of events leading to the tragic end of the Weimar Republic was the inspiration for this paper. The oxymoron, as it was defined (Atzeni, 2021), that gives the title to the brief essay is the indicator of an outgoing political process which, in a couple of weeks, will bring Adolf Hitler to the office of Chancellor of the *Reich*. This *epochemachend* turning point took place within the boundaries of lawfulness, paving the way to the rise of Nazism. The Hellerian paper actually represents a strongly polemical response to the work *Starker Staat und gesunde Wirtschaft* by Carl Schmitt (Schmitt, 1995). This was the text of a speech given at a conference held in Düsseldorf in 1932 within the general assembly of the so-called 'Langnam-Verein', a powerful association of the industrial lobbyists of the Rhineland. It should be noted, however, that among the sources criticised by Heller in his work, behind Schotte, von Papen, and Schmitt, there could be Alexander Rüstow, one of the fathers of ordoliberalism. Heller had already criticised Rüstow and quoted him, albeit implicitly, in the term 'Neoliberal State', which is used critically in the text under discussion (Heller, 1971a, p. 653). The expression 'Neoliberal State' was supposedly coined for the first time by Rüstow in an essay in 1932 (Malatesta, 2021, p. 72).

1.1. Heller was a militant social democrat. To fully understand and evaluate his paper, it is essential to be aware of the political and constitutional situation of those last weeks of 1932. First, it must be observed that Heller's great opponent, Carl Schmitt, strongly criticised the Republic of Weimar. His analysis enjoyed an immense and corrosive success—for a series of reasons that we will explain—within such an explosive social, political, and economic situation.

Die Evidenz des an sich unklaren Schlagwortes vom 'autoritären' Staat beruht also im Nachkriegsdeutschland zu einem Teil auf der Schwäche des demokratischen Regimes. Zum weitaus größeren Teile aber darauf, daß die ratlose Verwirrung, in der sich Deutschland namentlich seit 1929 befindet, es besonders empfänglich macht für jede Diskreditierung der demokratischen Staatsautorität und für den Wunderglauben an die Diktatur." (Heller, 1971a, p. 646)

The counterbalance to these circumstances was represented by the weak and pressing limit of the democratic process, whose levers of power were enfeebled and, in the end, inoperable.

No less serious deal was the ineffectiveness of the Social Democrat political action. This political force was the backbone of the Weimarian experience, which, in the early thirties, with Nazism just around the corner, still had “Germany is not Italy” among its keywords. This was the sign of a non-awareness of the severity of the political crisis and the symptom of a lack of understanding of the *novum* of National Socialism. The problem was that it was not possible anymore to save the Weimar Republic within a liberal-democratic process. Unlike many of his fellow party members, Heller was well aware of the short circuit between the dramatic polarisation of the Weimarian political overview amid extreme left and right wings, the difficulties of building a well-grounded majority on the one side, and the deep distrust of the masses in traditional parties (this last having as an immediate consequence the uncontrolled rise of “*religiose Inbrunst an die Erlösung aus allen Nöten durch den Führer*” (Heller, 1971a, p. 646) on the other.

1.2. The root of the Weimar crisis was in the ruinous defeat of the labour movement and its institutional representative, the SPD. According to Rudolf Hilferding but his vision is embraced by contemporary historiography—“*il destino della socialdemocrazia è il destino stesso della democrazia, quindi il destino dello Stato*” (Rusconi, 1977, p. 145). The working class had represented a bulwark against Nazism, for it was aware of its social role and had actively taken part in the revolution. However, the SPD’s élite was still pivotal in keeping control of the revolutionary process. This élite had immediately brought about a firmly moderate turn, and a clear signal of this course of action was the violent repression of the party’s left wing, as well as the assassination of the leaders of the KPD, Rosa Luxemburg and Karl Liebknecht on the 15th of January 1919. Even if the murder executors were members of the *Freikorps*, the instigator was the social democrat Defence Minister Edward Noske. In addition to Hilferding’s, another authoritative opinion comes to us from historian and activist Wolfgang Abendroth, who analysed the involution of the SPD and the estrangement from its political objectives. The SPD was already prepared to become a ruling party during the war years, but it had been unwilling or unable to rule without the support of the existing institutional system. Thus, the SPD had not been able to break free from the power of influence of the *Reich*, which was rooted in the central administration. The party and the working class collapsed together. The SPD had made inroads into the unity and awareness of the worker’s movement because of the terrible economic crisis and the impending politics of reparations. However, it was unable to carry on the fight both on the institutional and extra-institutional level and to exploit “*le possibilità di democratizzazione nate nei mesi della rivoluzione*” (Rusconi, 1977, p. 506). The road to authoritarian involution was paved and open. Heller’s defence of the Republic was genuine and desperate at the

same time, for he was aware of the dramatic shortcomings in the democratic political practice, whose founders have "*der historische Schuld (...) daß sie das unerschütterliche Gesetz der politischen Macht allzusehr mißkannt haben*" (Heller, 1971a, p. 646): the inseparability of law and power which, in a democratic system, are to support each other, or they both collapse. There cannot be any law without power, and vice versa. Unfortunately, Heller says, the ominous belief in the law that is ruled by itself and is liberated from power is deep-rooted in Germany's cultural tradition. The Republic's founders dramatically separated these instances, thus condemning themselves to inaction and a lack of comprehension of the present. As it has been well said, Heller imported a painful, yet crystalclear conviction: "*fu la debolezza di coloro che avrebbero dovuto difendere la Repubblica di Weimar e la sua costituzione, ancor più della forza di chi vi si oppose, a decretarne la fine*" (Atzeni, 2023, p. 37).

1.3. Following the April 1932 State elections, the Prussian Government lost its *Landtag* majority, and on the 19th of July 1932, *Reich* President von Hindenburg issued an Emergency Decree that dismissed the government. Because of its geopolitical weight, those who controlled Prussia controlled the whole *Reich*. The pretext for this emergency measure was the violent riots in some areas of the *Land*. This pretext went down in history as the "Altona Bloody Sunday" and took place on the 17th of July 1932, with clashes between SA members and Communists. Local authorities were not able to keep the riots down, and eighteen people were killed. The Emergency Decree of the 20th of July 1932 removed the Prussian State Government and proclaimed *Reich* Chancellor of Germany Franz von Papen *Reich* Commissioner for Prussia, giving him full powers over all the *Land's* institutions. It was a real coup d'état, and Prussia reacted by seeking an injunction against the *Reich*, the *Preußen contra Reich*, with the State Court of the *Reich* Supreme Court. Together with Bilfinger and Jacobi, Schmitt was part of the board that represented the *Land*; on the opposite side, Heller, with Arnold Brecht, the *Land's* lawyer, defended the parliamentary groups of the Social Democratic Party. The proceeding, though, did not achieve the desired effect, for even though Hindenburg's Emergency Decree was declared unconstitutional, the transfer of power to von Papen had already been completed. Hence, the Court's decision had no effect.

1.4. The confrontation between the parties had already shown one of the major issues of the establishment of a democratic framework (then of the proper sense of authoritarian liberalism), namely the interpretation of Article 48 of the Weimar Constitution, which authorised the President "to take all the measures to restore order and public security, if they are seriously disturbed or endangered within the German *Reich*, intervening, if necessary, with the assistance of the armed forces". For this purpose, he could temporarily suspend,

wholly or in part, the effectiveness of some fundamental rights. From opposite sides, Schmitt supported the thesis of a possible suspension of all the fundamental rights for the safeguard of the Republic, while Heller believed that the authority accorded to the President of the *Reich* could not be an unlimited one in the exercise of full powers and the literal understanding of Article 48 of the Weimar Constitution. The dictator-commissioner holds a mandate that is well definite for time and object: the restoration of the status quo ante, then within the limits of the current Constitution: “*eine unbegrenzte Kompetenz ist eine contradictio in adjecto (...) die außer kraft zu setzenden Grundrechte limitativ und nicht bloß exemplifikativ aufgezählt sind, also keine anderen Grundrechte außer Kraft gesetzt werden dürfen*” (Heller, 1971b, pp. 407, 410).

In this scenario, we are keen to emphasise Schmitt’s opportunistic course of action. His position changes significantly over ten years: in *Dictatorship*, he writes about Article 48 as a clear-cut case of commissarial dictatorship while acknowledging the contradictory duplicity between the seemingly limitless jurisdiction provided by the first paragraph and the jurisdiction delimited by the enumeration of the fundamental rights that could be subject to suspension. Ten years later, between 1931 and 1932, he came to the opposite conclusion.

In the face of a real coup d’état, the last act of the dying Republic, “*kam das höchste Gremium der SPD, vier Tage noch vor dem 20 July einmütig zu dem Ergebnis, bei allem, was kommen möge, die Reichsgrundlage der Verfassung nicht zu verlassen*” (Bracher, 1978, p. 522). The worst mistake Weimar Marxists made in dealing with the rise of National Socialism was staying true to their ideological approach. They just countered “*la sua obiettiva funzione economica (...) le connivenze con il grande capitale e la sua composizione di classe*” but tragically “*negandogli la ‘dignità’ di soggetto politico*” (Rusconi, 1977, p. 453), thus preventing themselves from making a stand against such imminent danger.

2. Heller’s text is definitely a militant one: before being a jurist, a lawyer, and a philosopher of law and politics, he belonged to the SPD, albeit keeping a sharp critical eye. His work aims at uncovering the intents of a merely cosmetic liberalism that was only willing to bring about an authoritarian turn to a predominantly Nazi government. This turning point had already occurred in 1930 with the Brüning governments, but it became evident both with the von Papen government and ever more with the Schleicher government, both already sucked into the coils of the NSDAP. This turning point was supported by Carl Schmitt, who is—with his diabolical mastermind—the real polemical target of Heller’s work. Actually, the *nexus* that Heller establishes between von Papen and Schmitt should be corrected (Malatesta, 2021). Schmitt’s strongest relationship was with Schleicher. The two were friends but Schmitt “*non avrebbe certo speso molte parole*

per protestare contro la sua uccisione" on the 30th or June 1934 (Galli, 2019, p. 46). What could be the meaning, then, of an authoritarian liberalism? What was the meaning of such a pseudo concept hiding more than it might seem? According to classical legal nomenclature, authority "*heißt Macht und Geltung, Ermächtigung und Berechtigung*" (Heller, 1971a, p. 645). It is a key concept of the philosophy of law, for it refers to the correlation between sovereignty and legitimacy: "*Gegen wen oder was polemisiert also die Vorstellung vom 'autoritären' Staat? Hat es jemals einen nichtautoritären Staat gegeben?*" Heller wonders rhetorically (Heller, 1971a, p. 645). To him, authority means power, and the State is—if it wants to exist and remain as such—"ein autoritärer Herrschaftsverband" (Heller, 1971a, p. 645). Liberalism as a political theory, then, can only be based on authority. If we talk about *authoritarian* liberalism, we are talking about a pleonasm that disguises something very different. Apparently, it could be an oxymoron or a pleonasm, depending on interpretation. Actually, the German big bourgeoisie behind von Papen and Schleicher—those who had the *Langnam Circle* as one of their connection points—operated a radical criticism of the Weimarian democracy with a view of a revolutionary conservative turn. In light of this twist, any constitutional authority would have failed to give way to a state of exception that could replace the normative system based on the separation of powers. "*Il liberalismo autoritario non condurrebbe, dunque, ad una depoliticizzazione netta dell'economia, bensì manifesterebbe una sorta di capacità camaleontica dello Stato di farsi presenza e assenza là dove di volta in volta serve*" (Atzeni, 2021, p. 6). It is just hard not to think of Franz Neumann's *Beemoth*. 'An intermittent presence', occasional, depending on the contingent needs, then an exploitative use of the institutions that alters their structure "*e l'uso della politica, tracciando dei contorni che consentano una seminale 'statalizzazione dittatoriale delle funzioni politico-spirituali*" (Atzeni, 2021, p. 6). As pointed out by Neumann, Schmitt makes "*l'errore di fare del pericolo l'elemento centrale del politico e di svaloriare la partecipazione democratica*" (Brindisi, 2020, p. 30–31). In perfect harmony with Neumann, Heller does not accept the Schmittian legislator 'ratione necessitatis' as a justification to the state of exemption: "*Souverän ist also, wer über den Normalzustand durch die geschriebene oder ungeschriebene Verfassung entschieden hat (...) Und nur wer über verfassungsmässigen Normalzustand entscheidet, entscheidet juristisch auch über den Ausnahmezustand, gegebenenfalls contra legem*" (Heller, 1971f, p. 127).

2.1. One of the forerunners of this radical change—prior to a permanent state of exemption that took place from February 1933 when Hitler became *Bundeskanzler* of Germany in a way that could not be predicted exactly—is certainly Carl Schmitt, the most influential and controversial conservative jurist. He was Schleicher's friend during

the last years of the Republic and carried out an intense political and theoretical activity in support of the right-wing government, actively working to solve the severe crisis of those months. On some level, distinguishing between theoretical and practical dimensions, we could speak of two different Schmitts: on the one side, there is the theorist with adamantine and flawless intelligence, the author of an analysis of European significance who was even called by a significant part of German jurists, *Vater der Verfassungsväter* until after the war (Preuß, 1993) to emphasise his importance. On the other side, we have an engagé politician, who acted in an extremely ambiguous and hazy way from 1930 to 1933 making “*veri e propri contorcimenti*” and “*lampi di genialità, opportunismi, ingenuità, malcelate ambizioni*” (Galli, 2019, p. 47). In these continuously and suddenly mutating scenarios determined by the deterioration of the situation, Schmitt’s position formulates a hypothesis of a commissary dictatorship replacing the Parliament by application of Article 48 of the Weimar Constitution. This article gave the *Reich* President the powers of the state of exemption, allowing him to suspend fundamental rights. Now the question is: was such extensive power, with a faintly delimited mandate—as in Schmitt’s interpretation, the President could suspend all the fundamental rights—still in the frame of a commissary dictatorship, and therefore of the law of the Republic? Namely: “*la proposta schmittiana è ancora interna alla Costituzione vigente, o ne è un superamento di fatto?*” (Galli, 2019, p. 47).

2.2. A response to these questions comes right from Schmitt. In his most important text, *Verfassungslehre*, he wrote

Eine Diktatur insbesondere ist nur auf demokratischer Grundlage möglich, während sie den Prinzipien liberalen Rechtsstaatlichkeit schon deshalb widerspricht, weil es zur Diktatur gehört, daß dem Diktator keine tatbestandsmäßig umgeschriebene, generell normierte Kompetenz gegeben wird, sondern Umfang und Inhalt seiner Ermächtigung von seinem Ermessen abhängig sind, so daß eine Zuständigkeit im rechtsstaatlichen Sinne überhaupt nicht vorliegt. (Schmitt, 2003, p. 237)

It is evident here how Schmitt is setting up an equation between democracy and dictatorship, and the result is a *Kompetenz-Kompetenz*, the supreme validation of sovereignty. This last, instead, by completely emancipating itself from the parliamentary form of the State, loses its features of the commissary dictatorship, i.e., a delimited competence over time and object as required by the democratic interpretation in the furrow of Roman law outlined by Heller who was following Bodin’s model (Pomarici, 2010). The final result is a dictatorship that by subrogating all the power in its representative,

turns him into the sovereign of a new order. According to Wolfgang Schluchter (1982), what is still alive and yet unrealised in Heller's thought is his conception of democracy, which is the polar opposite of Schmitt's idea of the identity-representation dialectic. The *crux* here is the dialectic between One and the multiple, in which the multiple is an ever-present source of sovereign power through the representation. The two-way relationship between One and multiple is continuously reformulated in its content, a form of life for which Heller has been struggling arduously and in vain and whose central points were the need for redistribution by criteria of equality and the duty of the State to respect the ethical creed of its citizens and not to impede its implementation (Schluchter, 1982). Neither more nor less, therefore, than the claim contained in Marx's *On the Jewish Question*: overcoming alienation between man and citizen as the highest political value, albeit as an asymptotic objective. However, the signature of his 'democratic constitutionalism'—as the latest volume dedicated to the rediscovery of his thought defines Heller's theory of the State (Frick & Lembke, 2022)—also represents, in the Weimarian climate, the singular character of his contribution, that is, the struggle for a constitutional welfare State, of which he is considered one of the forerunners. It has been correctly noted that

la debolezza delle democrazie post-belliche doveva essere considerata l'effetto di un processo storico-politico che aveva visto il riconoscimento dei diritti fondamentali all'interno di un contesto per altri versi caratterizzato da una crescente ineguaglianza sociale, e quindi dal sostanziale isolamento della classe operaia. L'«omogeneità» realizzata da e attraverso lo Stato di diritto si era rivelata puramente 'giuridico-formale': mancava quella 'sociale', appunto. (Lagi, 2019, p. 236)

2.3. To explain the meaning of authoritarian liberalism, authoritarian State, or strong State (*Starker Staat*), as Schmitt would rather call it, and hence a crucial torsion in the ideal conception of liberalism, Heller resorts to the relationship between the State and capitalist economy.

Im neunzehnten Jahrhundert hatte der preußisch-deutsche Konservatismus den bürgerlich-liberalen Kapitalismus, der alle überlieferten Bindungen auflöste, entschieden abgelehnt. Ohne allerdings die Entwicklung dieser Wirtschaftsform hindern zu können, hatte der Konservatismus damals die Kraft besessen, dem liberalen Bürgertum seine politischen Wertungsweisen einzuimpfen und es allmählich zu feudalisieren (...) Im zwanzigsten Jahrhundert vollzog sich der umgekehrte Prozeß. Der großbürgerliche Kapitalismus zeigt die größere Assimilationskraft,

dem Konservativismus werden alle antikapitalistischen Hemmungen genommen und der letzte Tropfen sozialen Öles entzogen; zum Vorsitzenden der ehemaligen konservativen Partei wird der frühere Kruppdirektor und Zeitungsmagnat Hugenberg. (Heller, 1971a, p. 650)

Historically, the liberal State originated with the idea of withdrawing from civil society, and this separation was based on the idea of two connected worlds with different functions: the State set up all the financial, military, administrative, and juridical means in order to guarantee the *safety* of civil society, which, in turn, was intended for private *production and profit*. This was the division of tasks between the two spheres. So here it is the sense of the nightwatchman State, the minimal state that does not take action on society's productive activity. The State of non-intervention gives up total control over individuals, leaving freedom of trade without imposing any rules. However, such a sharp distinction between the State and the individual in the age of the big monopolies seems unachievable. Clearly, in this new situation, it is impossible for the State to ignore—also just from a liberal perspective—the economic situation, considering that the major capitals pervade the economic life, threatening its balance. Nowadays, from a liberal point of view, the State needs to have its own policy to safeguard its citizens' economy. What is, Heller wonders, this authoritarian liberalism about which Schmitts is talking if the *Starker Staat* gives up its authority as soon as you start discussing economics? (Heller, 1971a, pp. 650–651). The key point of Heller's criticism includes the core sense of the authoritarian operation, that is, the 'double' movement: on the one side, *the "Rückzug des 'autoritären' Staat aus der Sozialpolitik"* leaving the field open to all the economic forces of the big capital and, at the same time, "the authoritarian dismantling of welfare policy" at a time of tragic unemployment, as well as *"Entstaatlichung der Wirtschaft und diktatorische Verstaatlichung der politisch-geistigen Funktionen"* (Heller, 1971a, pp. 652–653). The aim is not the national budget but rather the dismantling of the remaining resistance within the SPD and the trade unions. Heller clearly describes the turning point: preparing under the cover of authoritarian liberalism and behind Carl Schmitt's words at the Langnam Circle. It is not by chance that the title of his work has a question mark. Schmitt *"im Grunde kennt er nur einen einzigen 'autoritären' Staat, nämlich die faschistische Diktatur nach Mussolinis Muster"* (Heller, 1971a, p. 647), which Heller had studied during his long stay in Italy and was the subject of his wide essay *Europa und der Faschismus*. The idea of the dictator that *"in antiker Simplizität' mit Hilfe einer einzigen Diktaturpartei dem gesamten politischen Leben den Willen eines einzigen Mannes gewaltsam*

aufzwingt" (Heller, 1971a, p. 647). Heller sees beyond the authoritarian operation of depoliticisation of the economy. He sees its ill-concealed purpose:

alle Einrichtungen und Denkformen des demokratischen Rechtsstaates um ihren Autorität gebracht, als rationalistischer Unsinn des achtzehnten oder neunzehnten Jahrhunderts dargestellt und die Weimarer Verfassung durch eine entsprechende Interpretation ad absurdum geführt werden. (Heller, 1971a, p. 647)

Schmitt's science of law, Heller says, turns the Constitution from being "etwa ein Rechts-normzusammenhang" into "eine 'Entscheidung', der Parlamentarismus eine unsinnige Einrichtung, welche durch Diskussion die ewigen Wahrheiten feststellen will, und jede Verfassungsgerichtsbarkeit ein Gift, welches dazu bestimmt ist, das Deutsche Reich auf den Stand seiner Machtlosigkeit im siebzehnten und achtzehnten Jahrhundert zu bringen" (Heller, 1971a, p. 647).

As can be noted, in such a tragic time, Heller came close to Kelsen's positions—both on the idea of the Constitution and in his evaluation of the legal constitutional review he had stigmatised in his essay *Rechtsstaat oder Diktatur*.

2.4. Contemporary capitalism organised in its complex forms cannot escape some kinds of planning: an authoritarian State willing "die 'freie Arbeitskraft aller wirtschaftstreibenden Menschen' zu sichern" cannot slide out of the economy. "Er wird gerade auf dem ökonomischen Gebiet autoritär, und zwar sozialistisch auftreten müssen" (Heller, 1971a, p. 653). This matches perfectly the projects of a plan-state flourishing all over Europe during the interwar years (also in the Soviet model), which at the time originated an extensive body of literature. Large amounts of capital are concentrated in monopolies, generating an increasing number of economic instruments and political tools for the democratic State. It is, therefore, ruinous and inconceivable, in Heller's view, if not through deception, to think of a radical separation between politics and the economy. In a political democracy, the economic leaders are perfectly able to gain a predominant position:

Ihre Kapitalmacht gestattet es ihnen auf dem Umweg über die Parteikassen, über die Zeitungen, das Kino, Radio und die große Zahl von sonstigen Mitteln der Massenbeeinflussung, die öffentliche Meinung zu dirigieren und so indirekt eine enorme politische Macht zu entwickeln. Aber auch direkt durch ihr der Staatsgewalt gegenüber betätigtes wirtschaftliches Schwergewicht, unter anderm durch Finanzierung der direkten Aktion politisch-militärischer Stoßtrupps, ferner durch ihren ökonomisch-technischen Sachverstand und Überblick, welcher der Bürokratie überlegen ist, und endlich durch ihre starken internationalen Beziehungen Einfluß zu entfalten. (Heller, 1971h, p. 235)

If, in Schmitt's view, the total State emancipating itself from the politicisation of economics is the *κατ'ἐξοχήν* State, Heller tells a different tale. It is right that economic politicisation is the *definitive* front on which the contemporary State must operate to safeguard the working masses. In the long run, Heller says, the political leaders need more than indirect political influences, for these influences are threatened in their effectiveness by the provisions issued by the democratically controlled legislator. This separation of political power from social-economic power is not going to last. This is what happened, albeit in an innovative form, with the seizure of power by the National Socialists. However, Heller writes in his *Staatslehre* that an independent bureaucracy, one that is endowed with an administrative *ethos* and professional honour, one which is not easily corruptible, in combination with a working class able to contest through its own print media and political organisation, could dramatically reduce the political influence of economic leaders. But the political leaders, as compared to the bureaucracy and the working class, seem less able to exercise the political power that is theirs by right in order to curb the economic powerhouses (Heller, 1971h, pp. 200–201).

2.5. But Heller does not embrace the idea of the end of the liberal democracy. He believes that it is not impossible to hold together individual rights and pluralism while noting the conciliatory nature of liberalism, as opposed to the imperative radicalism of democracy. On this crucial point, he could not disagree more with Schmitt. This last sharply separates liberalism from democracy, thus assuming dictatorship as the highest form of democracy. To Heller, instead, pluralism is an essential value to be defended; hence, liberalism and socialism seem like the two historical forms of manifestation of contemporary democracy: in its political function, liberal democracy means emancipation from the bourgeoisie, whilst social democracy is emancipation from the working class (Heller, 1971g, p. 333). Unlike Schmitt—who radically and axiologically opposes liberalism to democracy, the *clasa discutidora* to the plebiscitary decision—for Heller, the criticism of the limits of liberalism does not lead to an option against liberalism (Heller, 1971g, p. 333). Indeed, liberalism and democracy come from one source (Dyzenhaus, 1997, p. 187), so his criticism is aimed at the *Bürger* turned into a *Bourgeois*:

Bourgeois ist der durch seine gesellschaftlich-politische Sicherheit in jeder Hinsicht saturierte Bürger; von keinem Zweifel gestört, weil von allen zeitlichen und ewigen Fragengelöst, ist er über sein persönliches und gesellschaftliches Dasein völlig beruhigt. Nichts weist ihn über seinen gesellschaftlichen Wirkungswert hinaus; er ist der nur sich selbst wollende Mensch. (Heller, 1971c, p. 629)

The *crux* of the issue is democracy, its sense, and function: Heller vigorously defends it by going to the root of the problem. It is not about turning democracy into a dictatorship; it is about defending its reasons to the hilt.

Und die Krise der Demokratie? (...) Geistesgeschichtlich ist eine Krise der Demokratie nicht vorhanden (...) Die Demokratie als solche, die unser Denken beherrschende Vorstellung, daß alle politische und gesellschaftliche Macht nur gerechtfertigt werden kann durch den Willen der Machtunterworfenen, ist so wenig in ihrer Herrschaft erschuttert, daß unbedenklich behauptet werden kann, es gibt überhaupt heute keine andere Herrschaftslegitimation, als die demokratische. (Heller, 1971g, p. 329)

Heller is well aware of the severe ongoing crisis—we are in 1932—but circumscribes it to the parliamentary practice and ascribes the responsibility to a transformation of the democratic ideals. We are witnessing, he says, the switch over from a rationalistic-individual democracy to a form of social democracy. ‘Atomistic’ democracy is opposed to a national ideal, which would mean moving towards a democracy capable of engaging the entire national community. The root causes of this technical crisis of democracy need to be sought out in the intensification and generalisation of the democratic practice, which, with the current instruments (most notably, parliamentarism), is unachievable.

3. Kelsenian interlude. Unlike Schmitt, Kelsen does not embrace Rousseau when it comes to political theory. He literally disaggregates Schmitt’s idea of identity as an essential feature of democracy, and Heller will largely agree on this. Of course, says Kelsen, democracy means “*Identität von Führer und Geführten, (...) Herrschaft des Volkes über das Volk*”. But right after he wonders “*Allein was ist dieses ‘Volk’? Eine Vielheit von Menschen*” (Kelsen, 1929, p. 14). And democracy seems to assume that this plurality of individuals represents a unity “*doch ist für eine auf die Wirklichkeit des Geschehens gerichtete Betrachtung nichts problematischer als gerade jene Einheit, die unter dem Namen des Volkesauftritt*” (Kelsen, 1929, p. 15), Kelsen is, therefore, aware of the fictional nature of the unity, just like Schmitt, but arrives at radically different conclusions. On the one side, the Prague-born jurist affirms: it is true that “*nur in einem normativen Sinn kann hier von einer Einheit die Rede sein*”, but just in the sense of “*ein System von einzelmenschlichen Akten die durch die staatliche Rechtsordnung bestimmt sind*” (Kelsen, 1929, p. 15). This implies a hard relativisation of the concept of people:

Stets sind es nur ganz bestimmten Lebensäußerungen des Individuums, die von der staatlichen Ordnung erfaßt werden; stets muß ein mehr oder weniger großer Teil des menschlichen Lebens außerhalb dieser Ordnung bleiben, stets muß sich eine gewisse staatsfreie Sphäre des Menschen erhalten. (Kelsen, 1929, p. 16)

This means that a great mass of individuals remains out of the people intended as a legal entity, and each one for a small part: no individual belongs to the legal people “as a whole” (Kelsen, 129, p. 15). A firm distinction must be made, then, between the people as a subject of the power through involvement in the creation of the State order and the people as an object of the power, thus subjected to norms. The two peoples stay radically disjointed! And this is so clear that

den demokratischen Ideologen eist gar nicht bewußt ist, welche Kluft sie verhüllen wenn sie das ‘Volk’ in dem einen mit dem ‘Volk’ in dem anderen Sinn eidentifizieren (...) Da das ‘Volk’ das die Grundlage der demokratischen Idee darstellt, das herrschende, nicht das beherrschte Volk ist. (Kelsen, 1929, pp. 17, 18)

Democracy is, therefore, far from being based on identity. According to Kelsen and Heller’s views, democracy is based on differences. It originates from differences and not by any assumed natural or ontological homogeneity, as claimed by Schmitt. This is the difference between Kelsen and Heller, on the one side, and Schmitt, on the other: these differences in the dimension of reality, which Schmitt also recognises, are not extinguished in the legal fiction but constitute its structure, operating normatively to settle the difference: “treat all the same cases in the same way”, but also “treat different cases in different ways”. On the level of social reality, political parties are the expression of the divisions within the State, which are purposely arranged by law and politics to give full meaning to democratic ideals and enhance differences. This is the strong connection between democracy and liberalism, hence the organizational structures which are essential to link different opinions and ideologies: “*Nur Selbsttäuschung oder Heuchlei kann vermeinen, daß Demokratie ohne politische Parteien möglich sei. Die Demokratie ist notwendig und unvermeidlich ein Parteienstaat*” (Kelsen, 1929, p. 20).

4. The crisis of modern State, says Heller, is mostly generated by “*welche Stellung man der Regierung in der Demokratie zubilligt*”. Two political ideals are fighting against each other: the first considers government as ‘*geniales Improvisieren*’, while the second as the outcome of ‘*massenautomatisches Funktionieren*’. The latter does not acknowledge an autonomous political value to government but leaves the creation of the unity to the consensus of a “*einstufigen Masse*” that requires “*dazu entweder gar keiner oder doch nur eines Minimums an Führung von oben*”. This is the triumph of nineteenth-century liberalism of the pre-established harmony in which society seems to run by itself and subsequently “*die jede Regierung als vorläufig notwendiges, aber möglichst bald zu überwindendes Übel versteht*” (Heller, 1971d, pp. 613–614). The idea that the law

necessarily implies “*subjektiver Entscheidung und freien Ermessens*” and that the government “*sowohl in der Innenpolitik wie erst in ihrer Tätigkeit nach außen durch Gesetz entweder gar nicht oder nur in bestimmten Beziehungen bindbar ist*” (Heller, 1971d, p. 615). It is the automatism of the law, nomocracy, whose most influential supporter was Hans Kelsen, who claimed that “*der Idee der Demokratie entspricht Führerlosigkeit*” (Kelsen, 1929, p. 79). At the opposite pole of this automatism that would not require any governance, for masses and norms just happen on their own, there is ‘*die politische Geniereligion*’, an autocratic ideal advocated by Carl Schmitt. Heller does not mention it here: the people is ‘*ewig unmündig*, at most it can react to a plebiscite, but at the apex there is “*das Werk genial wirkender Heroen*” (Heller, 1971d, p. 616). Not a government of ‘genius’—in which the community of values is sovereignly at the disposal of the strongman—nor a government of the official—in this case compliance to laws would generate by itself “the essential state authority without any more authority whatsoever”—seem able to face this crisis of democracy. For democracy, especially contemporary democracy, is based, by its very nature, not on the miracle of automatically functioning orders, but on a fragile and complex system of mediations, which is essential to hold the equilibrium of the check and balance structure that characterises it. Instead, these two political deals are based, on negation of mediation, which is considered to be a useless instrument. And the mediation ‘of choice’ in a democracy goes under the name of representation, of decision based on representation:

In jeder, erst recht in einer derart gespaltenen Gesellschaft wie die unsrigen, kann die lebensnotwendige politische Einheit nur durch Repräsentation, d.h. durch eine von den Gegensätzen der koalitierten Massen relativ versälbständigte Entscheidungsgewalt der Regierung hergestellt werden. In der Diktatur ist diese Repräsentation eine souveräne, d.h. von den Beherrschten völlig versälbständigte, ihnen mit Gewalt aufgezwungene und von ihnen nicht abberufbare. In der Demokratie ist die repräsentative Stellung und Bestellung der Regierung eine magistratische. (Heller, 1971d, p. 618)

4.1. In the radical crisis embroiling the Republic, Heller acknowledges that

ohne einen einzigen Artikel der Weimarer Verfassung zu verändern, hätte ein im deutschen Volk und in seiner Führung lebendiger und zielklarer Wille zur Macht in den dreizehn Nachkriegsjahren zweifellos eine unvergleichliche bessere politische und soziale Verfassung Deutschlands zustande bringen können. (Heller, 1971e, p. 413)

We are now in 1932, and Heller considers it inevitable a constitutional transformation whose contours are still unclear, but he is aware that a reformation is indispensable: the legitimising basis of the authoritarian organisation can only lie on the people since it cannot descend from above, but it must come from below. Then, primarily, *“die Ermöglichung eines arbeitsfähiges Parlamentes und einer handlungsfähigen Regierung”* (Heller, 1971e, p. 415). The basis to achieve this is the conviction that a dialogue with political opponents is possible, that it is possible to come to an agreement *through a discussion*. This very condition allows to join the political struggle with an opponent that we do not want to destroy but with whom *we can and we want* to interact. This and nothing else is the common foundation of parliamentarism as a cultural value and is at the core of our democracy. If not, *“erst dort, wo dieses Homogenitätsbewußtsein verschwindet, wird die bis dahin parlierende zu diktierenden Partei”* (Heller, 1971i, p. 427). We are aware of the degree of imposition that was reached in 1933. In this regard, *and only in this regard*, according to Heller’s view:

Von einer grösseren oder geringeren sozialen Homogenität ist also die größere oder geringere Möglichkeit einer politischen Einheitsbildung, die Möglichkeit einer Repräsentationsbestellung und die größere oder geringere Festigkeit der Stellung der Repräsentanten abhängig. Es gibt einen gewissen Grad von sozialen Homogenität, ohne welchen eine demokratische Einheitsbildung überhaupt nicht mehr möglich ist. (Heller, 1971i, pp. 427–428)

4.2. We have already pointed out that Heller considered it a deceiving pleonasm, the idea of authoritarian liberalism. The authoritarian character, therefore, which is obvious for a State that wants to be considered as such, can only exist *“durch drei undiskutierbare Richtpunkte: die autoritäre Überordnung des Staates über die Gesellschaft, namentlich über die Wirtschaft, durch die demokratische Quelle der politischen Autorität und durch die bestimmten Grenzen der Autorität des Staates”* according to the Constitution (Heller, 1971e, p. 413). All this becomes possible, says Heller, only if the State is able to ensure itself a power of action and authoritarian political decision, renouncing once and for all to be the *“Kostgänger privat kapitalistischer Mächte ist (...) sondern sich eine nach innen und außen wirksame Wirtschaftsmacht zueignet”* (Heller, 1971e, p. 413). In doing so, the State demonstrates an understanding of the genuine sense of authoritarian liberalism and its objectives, as advocated by *Langnam Circle* and by one of its guests, Carl Schmitt. Heller points out, concluding: *“Wir wünschen den autoritären Staat, wir bekämpfen aber den totalen Staat”* (Heller, 1971e, p. 415), i.e., a *totale Mobilmachung* demanding total

involvement of the individual, who is fully integrated into the State. Kelsen and Heller absolutely agree on this point. Just like it is happening in Italy, says Heller, with the fascist law of the 24th of December 1925 "*wonach ausnahmslos alle Beamte – einschließlich der Richter und Hochschullehrer – auch außerhalb aller gesetzlichen Vorschriften entlassen werden können wenn sie sich in einen unvereinbaren Gegensatz 'zu den allgemeinen politischen Richtlinien der Regierung' setzen*" (Heller, 1971f, pp. 390–391). So, how is it possible to hope or only imagine eliminating the freedom of thought that has been fought after four centuries through the whole Modern Age? European individuals must inform their social and political actions to a plurality of religious, spiritual, and political values, reinforcing an essential and priceless heritage. The authority of a total State, instead, makes that impossible because "*dessen Autorität weder Rechtsschranken noch Gewaltenteilung noch Grundrechte kennt*" (Heller, 1971e, p. 416). Unfortunately, at the very moment Heller published *Authoritarian Liberalism?* neither that bureaucracy nor that working class whose existence Heller hoped against the upcoming meltdown was standing anymore. It was too late to resist the black wave that was preparing.

5. It is difficult to interpret Schmitt's real plans by imagining him in the centre of a preordained scheme. That was not the case because none of the key political players, much less Carl Schmitt, had full control over political events during those weeks. He wanted, however, to be considered as "*il leader intellettuale di un'operazione politica di 'conservazione politica attraverso la dittatura'*" (Galli, 2019, p. 48). The concept of dictatorship is a key to understanding Schmitt's theoretical path in order to outline its contours within the 'program' of authoritarian liberalism. As a matter of fact, rejecting the idea that Schmitt has been, in essence, a nazi thinker—to classify as such the inexhaustible richness of his thinking would be just wrong—an essential warning must be taken into account: the theory which was developed by Schmitt in the twenties should be considered distinct, for it represents "*il sostrato teorico delle sue elaborazioni dal 1933 in poi, ma non anche quello ideologico*" (Atzeni, 2023, p. 39). From this comes the urge not to shy away "*allo sforzo epistemologico di separare lo Schmitt liberal-autoritario da quello nazionalsocialista*". Schmitt's radical criticism of the liberal democrat structure of the Republic dates back to his seemingly incongruous equalisation between dictatorship and democracy. It could be said that, while highlighting the differences, dictatorship is an intermediate grade on the way to a totalitarian regime. It does not identify with totalitarianism and yet is not completely estranged, for it could represent one of its explanatory keys. Between 1921 and 1923, Schmitt connects the idea of dictatorship as the authentic form of democracy, in opposition to the liberal State form of the twentieth century that would not respect democratic intents. The binomial dictatorship/democ-

racy is fully developed in *Verfassungslehre* and *Der Hüter der Verfassung*, as well as in the works on the Weimarian epilogue. To rebuild the Schmittian route that leads the Plettenberg-born scholar to the theorisation of the *Starker Staat* condemned by Heller as authoritarian liberalism, we need to linger, albeit briefly, on some of these works.

5.1. The conceptual genealogy that could broadly identify the route towards the *Starker Staat* starts from the structural and axiological separation between liberalism and democracy. They are clearly distinct as State forms: the first is built on the principle of pluralism as a value of the institutional organisation and of civil society, and the second is built on the principle of identity, which is based, for its part, on the principle of representation. The hiatus between reality and fiction made manifest thanks to these dialectics is nonetheless a double level, and this duality originated in re, then ineradicable. On the one side, Schmitt claims that in a democracy, *“die Gefahr einer radikalen Durchführung des Prinzip der Identität liegt darin, daß die wesentliche Voraussetzung – substantielle Gleichartigkeit des Volkes – fingiert wird”* (Schmitt, 2010, p. 215): if the people were not, as it really is, a divided complex and a conflictual entity, it would need a *reductio ad unum* for its representation. *“Je mehr dieses Prinzip sich durchsetzt, um so mehr vollzieht sich die Erledigung der politischen Angelegenheiten ‘von selbst’, dank einem maximum natürlich gegebener oder geschichtlich gewordener Homogenität”* (Schmitt, 2010, p. 214). The datum of reality emerges irresistibly, always, and in any case. The critical point of this irruption into reality comes when Schmitt, in order to set fundamental criteria of democracy against liberalism, deals with the homogeneity of the people of the State. *“Jede wirkliche Demokratie beruht darauf, daß nicht nur Gleiches gleich, sondern, mit unvermeidlicher Konsequenz, das Nicht-gleiche nicht gleich behandelt wird. Zur Demokratie gehört also notwendig erstens Homogenität und zweitens – nötigenfalls – die Ausscheidung oder Vernichtung des Heterogenen”* (Schmitt, 1926, pp. 13–14). Immediately afterwards, in order to prevent misunderstanding, he points out: *“Bei der Frage der Gleichheit handelt es sich nämlich nicht um abstrakte, logischarithmetische Spielereien, sondern um die Substanz der Gleichheit”* (Schmitt, 1926, pp. 13–14). We are not in fiction anymore, then, but in a socio-political reality in the proper sense. These are impressive steps ahead, though they cannot be constrained at the time they were formulated, much less they can be labelled as ‘prophecies’ of what would happen in a decade. I rather discern, within this sharp definition, the pace of classicity of Herodotus’ Histories, in which Otanes, a supporter of democracy (ἰσονομίην) as the government of multitudes (πλήθος), claims: *“in the many (ἐν τῷ πολλῷ) is contained everything (τὰ πάντα)”* (Herodotus, III 80, p. 6). This is the point: the many, the general will, cancels and obliterates the will of the minority. The minority, actually, *unexists*. Since Plato—as it is explained in the political

cycles of Book VIII of *The Republic*—is the undebatable tangent point between democracy and totalitarianism, the State, in Schmitt's view, cannot be based on the contract, which has private law roots and implies differences and conflicts: unanimity, as well as the *volonté générale*, is present or is not present. *Naturally* present, he points out, quoting Alfred Weber (Schmitt, 1926, p. 20). Instead, the contract implies egoism and conflicts between private individuals and their *settlement*, and this is liberalism.

5.2. On the contrary, "*In der Lehre Rousseaus vom Contrat social ist völlige Gleichartigkeit die eigentliche Grundlage seines Staates*" (Schmitt, 2010, p. 229). The core of Rousseau's democracy cannot be found in the game of majority and minority. Even the majority can make mistakes. It is homogeneity that saves and guarantees: "*Man will sich nicht der Mehrheit unterwerfen, weil sie die Mehrheit ist, sondern weil die substantielle Gleichartigkeit des Volkes so groß ist, daß aus der gleichen Substanz heraus alle das gleiche wollen*" (Schmitt, 2010, p. 229). To Schmitt "*die demokratische Gleichheit ist daher eine substantielle Gleichheit. Weil alle Staatsbürger an dieser Substanz teilhaben, können sie als gleich behandelt werden*" (Schmitt, 2010, p. 228). It seems absolutely controversial that, on the basis of modern political concepts, 'the substantial homogeneity of the people' is *a priori*, hence homogeneity and equality are synonyms: if this was true, there would be no need of a formal concept of equality aiming at providing any future progress towards perfection (albeit only asymptotically). Equality is conceived—by Kant, for instance—*pro futuro*, as an open work, an achievement of political action, certainly not data or a precondition, as it will be in Schmitt's view. What is left to define democracy, Schmitt wonders, rhetorically.:

Eine Reihe von Identitäten (...) Daß hierbei die überstimmte Minderheit ignoriert werden muß macht nur theoretisch und nur scheinbar Schwierigkeiten. In Wirklichkeit beruht auch das auf der Identität (daß) der Wille der überstimmten Minderheit in Wahrheit mit dem Willen der Mehrheit identisch ist. (Schmitt, 1926, p. 34)

Democracy is, therefore, an identity, whereas an absolute equality of all individuals as it is postulated by liberalism, would be, Schmitt says, "*eine Gleichheit die sich ohne Risiko von selbst versteht, eine Gleichheit ohne das notwendige Korrelat der Ungleichheit und infolgedessen eine begrifflich und praktisch nichtssagende, gleichgültige Gleichheit*" substantially maimed (Schmitt, 1926, p. 17).

6. If we return to the route that shapes the concept of *Starker Staat*, as Schmitt defines it during a 1932 conference at the *Langnam Circle*, the attachment point is to be found

in the need to radically separate liberalism from democracy: liberal parliamentarism is, in Schmitt's view, the forerunner to the political liquidation of the State, which has now become a pluralistic State of the parties (Schmitt, 1940, p. 187). To Schmitt, this separation is unavoidable in giving back to democracy what has been taken off by the liberal State, i.e., identity and power of the origin. The identity of democracy is immediately related to the idea of dictatorship. But how does Schmitt come to this drift? Through the concept of total State, as it already emerges in *Der Hüter der Verfassung*. It is right in this work that the idea of pluralism as a highly negative concept takes shape, for it undermines the integrity of the State (we recall here the famous *ab integro nascitur ordo* that ends *The Concept of the Political*). Pluralism, in Schmitt's view, generates "*eine Mehrheit festorganisierter, durch den Staat (...) Machtkomplexe, die sich als solche der staatlichen Willensbildung bemächtigen*" (Schmitt, 1969, p. 71). This perversion led to the end of the clear distinction between Politics and Economics the way it had been postulated by 'the great German State theory'. The keywords 'no more politics!' marked the start of the Weimar Republic by solving every social-political problem through 'objective' technical knowledge. This phase was followed by a radical "*Politisierung aller wirtschaftlichen, kulturellen, religiösen und sonstigen Fragen des menschlichen Daseins, die dem 19. Jahrhundert unbegreiflich gewesen wäre*" (Schmitt, 1995, p. 73). Where does the evidence of this perverse process lead? To the emersion of a crucial connotation of the contemporary State. By economising the State and politicising the economy, mandatory evidence stands out: "*Es gibt einen totalen Staat*" (Schmitt, 1995, p. 73). A contemporary state can only be a total State, as each State is pledged to take possession of technical-military instruments. "*Es ist sogar das sichere Kennzeichen des wirklichen Staates, daß er das tut*" (Schmitt, 1995, p. 73). That is its nature, and there cannot be any other, for if the State renounces all of these prerogatives, forced as it is to take control of ever-new weapons to fight the enemy if it does not provide itself with strength and courage, like in a zero-sum game: "*Hat er dazu nicht die Kraft und den Mut, so wird sich eine andere Macht oder Organisation finden, die sie in die Hand nimmt, und das ist dann eben wieder der Staat*" (Schmitt, 1995, p. 74).

6.1. Within this new State the force is ensured not only by military resources but, on the same level, by means of propaganda, cinema, radio, or press that, at any cost, cannot be left in the opponent's hands. Those instruments must be kept under absolute control. Schmitt extends his idea into an unquestionable direction, should there be any doubts about that:

Der totale Staat in diesem Sinne ist gleichzeitig ein besonders starker Staat. Er ist total im Sinne der Qualität und der Energie, so, wie sich der faschistische Staat einen,

“stato totalitario“ nennt, womit er zunächst sagen will, daß die neuen Machtmittel ausschließlich dem Staat gehören und seiner Machtsteigerung dienen. Ein solcher Staat läßt in seinem Innern keinerlei staatsfeindliche, staatshemmende oder staatszerspaltende Kräfte aufkommen. (Schmitt, 1995, p. 74)

So what is, in Schmitt's view, the radical change of direction that characterises the fascist State? *“Der faschistische Staat will mit antiker Ehrlichkeit wieder Staat sein, mit sichtbaren Machträgern und Repräsentanten, nicht aber Fassade und Antichambre unsichtbarer und unverantwortlicher Machthaber und Geldgeber”* (Schmitt, 1940, p. 114). Then, transparency, visibility, honesty, virtue. If not any State can be a total State, there is not a unique type of total State. Within this framework, a ‘normotype’ seems to take shape, comprising a paradoxical isomorphism between democracy and dictatorship. Instead of modern opposition between democracy and autocracy, we should recover, albeit only *implicite*, the classic platonic nexus by which dictatorship and totalitarianism would necessarily arise from liberty and the democratic-liberal *idion*. The nexus between democracy and dictatorship—a progressive sliding from one to another—is analysed by Talmon on the basis of the ideas and practice of the French Revolution, during which the concepts of reason and general will make individual judgement ineffective: “Every member of Rousseau's sovereign is bound to will the general will. For the general will is in the last resort a Cartesian truth” (Talmon, 1985, p. 29). The only true root is equality, even when, instead, democracy as an indefinite horizon should lead to the establishment of differences. Jacobinism in its various forms makes equality a substitute to freedom of thought and action. But equality is openness and comprehension of the differences, not their denial. If the truth is pre-established, the public space of democracy becomes pure appearance and does not establish itself, as pluralism, which its key component, is lacking. What is left is the affirmation of the general will as the truth ‘revealed’ by reason. If public discussion—the Legislative—is considered harmful, thus made redundant, reason (and differences) are inevitably replaced by the leader's will, which is legitimated by their pure virtue. In the end “no incompatibility between the aim of establishing democracy and dictatorial means is conceded” (Talmon, 1985, p. 215).

6.2. Alongside this fundamental concept of ‘total State by strength’ enucleated by Schmitt, which seems the only possible solution to save the Republic, there is another meaning of the expression ‘total state’ corresponding to the German situation in 1932. This is the State that does not recognise any distinction, a *disfigured* State, which occupies any possible space and cannot distinguish anything.

Nun gibt es aber noch eine andere Bedeutung des Wortes vom totalen Staat, (...) Diese Art totaler Staat ist ein Staat, der sich unterschiedslos auf alle Sachgebiete, alle Sphären des menschlichen Daseins begibt, der überhaupt keine staatsfreie Sphäre mehr kennt, weil er überhaupt nichts mehr unterscheiden kann. Er ist total in einem rein quantitativen Sinne, im Sinne des bloßen Volumens, nicht der Intensität und der politischen Energie. Das ist allerdings der deutsche Parteienstaat. (Schmitt, 1995, p. 75)

Using a rhetorical *coup de théâtre*, Schmitt initially establishes the concept of total State as the true and unique contemporary State, then the normotype of a ‘total State by strength’ to which he opposes a ‘total State by weakness’, which must be eradicated, for it is absolutely permeable to the invasion of the pluralism of political parties and their omnivorous interests. Laski and Cole’s pluralistic theories are the outposts of a tendency which was spreading all over Europe (Schmitt, 1940, p. 134). This ‘total State by weakness’ cannot even be qualified as a ‘State.’ Actually, we are faced with an assembling of parties:

Wie sind wir in diesen Staat totaler Schwäche hineingeraten? Näher gesehen, haben wir überhaupt keinen totalen Staat, sondern eine Mehrzahl ltotaler Parteien, die in sich die Totalität verwirklichen, in sich ihre Mitglieder total erfassen, die Menschen von der Wiege bis zur Bahre, vom Kleinkindergarten bis zum Begräbnis- und Verbrennungsverein dirigieren, sich in den verschiedenartigsten sozialen Gruppen total etablieren, und ihren Mitgliedern die richtigen Ansichten, die richtige Weltanschauung, die richtige Staatsform, das richtige Wirtschaftssystem, die richtige Geselligkeit von Partei wegen liefern (...) Der Zwang zur totalen Politisierung scheint unentrinnbar. (Schmitt, 1995, p. 75)

That is exactly how National Socialism will operate, but through a unique party which, as predicted by Heller, will not determine “*Abstinenz des States von der Subventionspolitik für Großbanken, Großindustrielle und Großagrariere, sondern autoritären Abbau der Sozialpolitik*” (Heller, 1971a, p. 652). But there is more. The cornerstone of the nazi economic miracle, “the true basis of the economic miracle was the rearmament process (...) the whole German economy was defined, in the language of Nazism, *Wherwirtschaft*, or war economy”, even if in peace time, whereas the price was paid by German workers who,

deprived of his trade unions, collective bargaining and the right to strike, the German worker in the Third Reich became an industrial serf, bound to his master, the

employer, much as medieval peasants had been bound to the lord of the manor.
(Shirer, 1960, p. 232)

This recovery was led, with full powers, by the genius of Hjalmar Schacht, Minister of Economy of the *Reich*. Even though he pleaded not guilty during the Nuremberg Trials, we can say that "no single person was as responsible as Schacht for Germany's economic preparation for the war which Hitler provoked in 1939" (Shirer, 1960, p. 230). By reversing Schmitt's logic that saw in the 'total State by weakness' all the confusion and disorder of private and public compartments, i.e., State and economy, as he invokes *Starker Staat* as an antidote, authoritarian liberalism seems to Heller the actual triumph of anarchy: "*die Zukunft der abendländischen Kultur nicht gefährdet ist durch das Gesetz und seine Ausdehnung auf die Wirtschaft, sondern gerade durch die Anarchie und ihre politische Erscheinungsform, die Diktatur, sowiedurch die anarchis-tische Raserei unserer kapitalistischen Produktion.*" If we understood this, says Heller, "*die Entscheidung zwischen faschistischer Diktatur und sozialem Rechtsstaates ware ge-fallen*" (Heller, 1971j, pp. 461–462).

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