

THE PROBLEM OF POLITICAL SOVEREIGNTY: HEGEL AND SCHMITT¹

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ABSTRACT: Both G.F.W. Hegel and Carl Schmitt took seriously the problem of political sovereignty entailed by liberal political theories. In *Dictatorship* (1919) and *Political Theology* (1922), Schmitt rejects liberal political theories that argue for the immediate unity of democracy and legality i.e., popular sovereignty. For he thinks they give rise to the liberal predicament, that is, to totalitarian tendencies by undermining political sovereignty.² Hegel, on his part, argues that the immediate identity of the state and the division of powers in liberal political theories gives rise to a similar predicament. Yet given Schmitt's negative assessment of Hegel their positions are seldom related to one another. I argue in this paper that Schmitt's analysis of liberal political theories is similar to Hegel's analysis of Rousseau's liberal ideas. I contend, however, that Schmitt's solution, which collapses the distinction between the executive and the legislative power in favor of the former, fails to secure political sovereignty. Contrary to Schmitt, Hegel claims that the constitutional monarchy is a genuine instantiation of political sovereignty that can maintain not only the division of these powers, but also their unity. In this regard, I argue that Hegel's conception of the division of powers provides a more convincing theory of the problem afflicting

¹ Few authors have written on both Schmitt and Hegel. Only Jean-François Kervégan provided a book-length analysis of their political thought. See Jean-François Kervégan, *Hegel, Carl Schmitt: La politique entre speculation et positivité*, Paris, Presses Universitaires de France, 1992. Kervégan's analysis examines whether Schmitt's theory of decisionism succeeds in interpreting Hegel's political thought. In this paper, I follow another approach, one that brings in Hegel's thought to examine Schmitt's thought, and to show how Hegel goes beyond both liberal political theories and Schmitt's alternative theory. Another author who wrote a comprehensive article on both Schmitt and Hegel, is Richard Dien Winfield. See Richard Dien Winfield, 'Rethinking Politics: Carl Schmitt versus Hegel', *The Owl of Minerva*, vol. 22, no. 2, 1991, pp. 209-225. I agree with Winfield's approach that aims at showing the limits of Schmitt's solution to the liberal predicament in light of Hegel's *Philosophy of Right*. However, I disagree with Winfield's attempt to reconstruct and update Hegel's entire work of the *Philosophy of Right* in order to accomplish this task.

² Both Schmitt and Hegel argue that liberal political theories give rise to what I call the liberal predicament: totalitarian tendencies that undermine political sovereignty. This predicament has been historically witnessed in the totalitarian tendencies of liberal states such as the Weimar republic (1919-1933), USA in the rise of McCarthyism in the 1950s, Russia under Putin and, more recently, USA under Trump's presidency (2016-2020).

modern states than Schmitt's and at least deserves to be taken more seriously by critics of Schmitt's solution such as Hannah Arendt, Leo Strauss, Jurgen Habermas, Andreas Kalyvas and Chantal Mouffe.

KEYWORDS: Hegel; Schmitt; Rousseau; Political Sovereignty; Totalitarianism, Authoritarianism; Constitutional Monarchy

INTRODUCTION

In both *Dictatorship* (1919) and *Political Theology* (1922), Schmitt rejects liberal political theories that argue for the immediate unity of democracy and legality, i.e., popular sovereignty. He claims that popular sovereignty is too weak to secure political sovereignty.³ In the *Philosophy of Right*, Hegel denounces popular sovereignty for similar reasons. What is curious, however, is that Schmitt endorses critical views such as Marx' on Hegel's conception of political sovereignty.⁴ Currently, Schmitt's thought has more currency than Hegel's thought. Authors such as Hannah Arendt, Leo Strauss, Jurgen Habermas, Andreas Kalyvas and Chantal Mouffe appeal to Schmitt not so much because of his solution – liberal authoritarianism – as because of his critique of liberalism. Yet, following Schmitt, these authors are very critical of Hegel, even if they do not fully accept Schmitt's solution. In my view, however, Hegel's *Philosophy of Right* contains adequate conceptual resources not only to critically examine liberal political theories, but also to find a nuanced solution to problems entailed by the idea of popular sovereignty diagnosed by Schmitt.

Liberal political theories argue both against authoritarian forms of government and for the immediate unity of democracy and legality. Thus, Rousseau recognizes the primacy of the legislative power as the core principle of political freedom.⁵ As Schmitt points out, however, the democratic-legal order is

³ Carl Schmitt's most relevant works are: *The Concept of the Political*, trans. G. Schwab, New Brunswick, Rutgers University Press, 1976 (hereafter CP); *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. G. Schwab, Cambridge, MIT Press, 1985 (hereafter PT). Carl Schmitt, *Dictatorship: From the Origin of the Modern Concept of Sovereignty to Proletarian Class struggle*, trans. M. Hoelzl and G. Ward, Cambridge, Polity Press, 2014.

⁴ See Carl Schmitt, 'Hegel and Marx', *Historical Materialism*, vol. 22, nos. 3-4, 2014, pp. 388-393.

⁵ Most contemporary liberal theories accept Montesquieu's critique of Rousseau and consider the division of powers to be significant. Yet, the liberal conception of the division of powers still takes the

not stable. This order is constituted by what Mouffe has called the democratic logic of inclusion and exclusion, which amounts to a fabric of entwined contrary logics.⁶ Whereas the logic of inclusion refers to ‘the liberal ‘grammar’ of equality’, the logic of exclusion refers to the practice of the democratic-legal order, i.e., its tendency to discriminate between ‘us’ and ‘them.’⁷ Schmitt claims that this contradiction between the theory and practice of the democratic-legal order is the predicament of liberal political theories and that the misrecognition of this predicament leads to propagating totalitarianism. Schmitt had witnessed how the liberal Weimar republic became a totalitarian state by politicizing formerly neutral domains such as religion. Such a totalitarian state, he argues, is not just a historical accident, but a logical consequence of the primacy given to liberal parliamentarism.⁸ Thus, Schmitt argues for an alternative theory of politics: on his account, liberal totalitarianism can only be overcome if primacy is given to the executive power rather than the legislative power.

Schmitt’s theory rests mainly on the claim that the sovereignty of the state lies in the will of the executive power, i.e., the power that takes the ultimate decision on the distinction between ‘friend and enemy’. The sovereign power, he argues, averts liberal totalitarianism by determining who is a friend and who is an enemy (PT 13).⁹ Yet Schmitt’s alternative solution poses its own problems and fails to secure a genuine conception of political sovereignty for two reasons. First, Schmitt considers a political state to be primarily defined by its opposition to another political state. In so doing, he ignores his initial goal, namely, overcoming the totalitarian tendency within the state. Second, he attributes sovereign power to a particular will that decides on the exception. In this regard, he fails to

legislative power as primary, whereby the former is only relevant for the sake of the check and balance of powers.

⁶ See also Karin de Boer, ‘Hegel Today: Towards a Tragic Conception of Intercultural Conflicts’, *Cosmos and History: The Journal of Natural and Social Philosophy*, vol. 3, nos. 2-3, 2007, p. 126.

⁷ Chantal Mouffe, *The Democratic Paradox*, London, Verso, 2000, pp. 42-45.

⁸ In the *Crisis of Parliamentary Democracy*, Schmitt provides a detailed account of how liberal parliamentarism cannot be reconciled with a mass democracy. See Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. E. Kennedy, Cambridge, MIT Press, 1985 (hereafter CPD), p. 9.

⁹ As will be discussed in section 2, an interesting academic debate is still going on as regards the specific target of Schmitt’s critique of liberal political theories. On this, see Chantal Mouffe, *The Return of the Political*. London, Verso, 1993; Renato Cristi, ‘Schmitt on Constituent Power and the Monarchical Principle’, *Constellations*, vol. 18, no. 3, 2011, pp. 352-364.

conceive of the sovereign power as a concrete universal will.

In the *Philosophy of Right*, Hegel provides an account of the constitutional monarchy that allows us to critically reflect on the limits of both liberal political theories and Schmitt's alternative theory of politics as regards the problem of political sovereignty.¹⁰ In this paper, I aim to bring Hegel's account of the modern state to bear on the problem for which Schmitt tried – and failed – to find a solution.¹¹ For this reason, I will disregard the historical order in which Hegel and Schmitt elaborated their views.

Hegel and Schmitt take issue with liberal political theories and political liberalism more generally for similar reasons. As I see it, the central question they both struggled with is how the liberal predicament can be overcome so as to guarantee political sovereignty. Schmitt held that the liberal predicament that consist in the 'us' and 'them' distinction is harmful to political sovereignty. Thus, he argued for a radical solution: the sovereignty of the state, Schmitt claims, must rest on the decision on the 'friend and enemy' distinction. Accordingly, while he seemed to have brought an alternative solution to the liberal predicament, his solution is tainted by the same failure to overcome the totalitarian tendency within the state as liberal political theories.

Seen from the perspective of Hegel, the immediate identity of the state and the division of powers gives rise to totalitarian or authoritarian tendencies by undermining political sovereignty. Thus, Hegel, like Schmitt, argues that liberal political theories give rise to the liberal predicament. Yet Hegel claims that this predicament cannot be resolved by the removal the division of powers as Schmitt argues. Hegel rather argues in the *Philosophy of Right* that the division of powers within a political state must be mediated by a concrete universal will that

¹⁰ In this paper, I choose to provide a close reading of Hegel's *Philosophy of Right* to elaborate on Hegel's conception of the state. Yet it must be noted that the *Philosophy of Right* has been interpreted in various ways by many authors in the last two centuries, which has led many scholars to take polarized positions.

¹¹ There are various forms of liberalism that can be distinguished by the primacy they grant to the individualist or the communal aspects of the state. All forms of liberalism may not give rise to the liberal predicament. However, I take Rousseau's theory of the state as a paradigmatic form of liberalism, which was dealt with by both Hegel and Schmitt. Hegel argues that the form of liberalism defended by Rousseau can be interpreted as communitarian and individualist liberalism in its origin, and yet is inadequate to secure political sovereignty.

functions as their higher unity, namely, the constitutional monarchy.¹² According to Hegel, the constitutional monarchy is a genuine instantiation of political sovereignty, for it can maintain not only the division of powers, but also their unity.¹³ Thus, he argues, the constitutional monarchy is the only way prevents public freedom from collapsing into a unitary will or power.¹⁴ In this regard, Hegel offers a more promising account of political sovereignty and a nuanced solution of the liberal predicament.

This paper is divided into five sections. First, I will analyse Schmitt's critique of liberal totalitarianism by focusing on his account of the liberal definition of the 'concept of the political'. Second, I will present Schmitt's conception of political sovereignty as an alternative solution to the liberal predicament. Third, I will elaborate on Hegel's critique of liberal totalitarianism by examining his analysis of liberal conceptions of political sovereignty such as Rousseau's. Fourth, I will discuss critical points in Schmitt's conception of the sovereign power from the perspective of Hegel. Fifth, I will analyse Hegel's conception of political sovereignty: the constitutional monarchy. Finally, I will briefly point out how Hegel's defence of constitutional monarchy allows us to both critically reflect on the limits of modern liberal theories of the state and provide a nuanced solution to the liberal predicament that goes beyond Schmitt's.

I. SCHMITT'S CRITIQUE OF LIBERAL TOTALITARIANISM

In his *The Concept of the Political* (1932), Schmitt develops a critique of liberal

¹² It might be argued that republics such Finland and Germany are functioning well, yet those states are not governed by the constitutional monarchy. Of course, the issue is more complex than the traditional political struggle between the right and the left. More importantly, states must embody the rationality of the concrete universal, which constitutes the function of the state as a mediating political power and a higher unity. I am grateful to an anonymous reviewer for bringing out some of these points to me.

¹³ See G.F.W Hegel, *Elements of the Philosophy of Right*, trans. H. B. Nisbet, Cambridge, Cambridge University Press, 1999, paragraph 273 (hereafter PR followed by paragraph numbers).

¹⁴ Contrary to on-going debates among Hegelian scholars both against and for absolute monarchy in Hegel's defense of the constitutional monarchy, Hegel shows that the constitutional monarchy is the only way to save public freedom from totalitarian and authoritarian forms of political domination. For an argument against what they consider to be the position of Hegel that defends absolute monarchy, see Z.A. Pelczynski, 'Hegel's Political Philosophy: Some Thoughts on Its Contemporary Relevance,' in Z.A. Pelczynski (ed.), *Hegel's Political Philosophy: Problems and Perspectives*, Cambridge, Cambridge University Press, 1971. For an argument for what they consider to be the position of Hegel that defends absolute monarchy, see F. R. Cristi, 'The Hegelsche Mitte', *Political Theory*, vol. 11, no. 4, 1983, pp. 601-22.

conceptions of political sovereignty by examining concepts such as the state and politics.¹⁵ He begins his analysis by stating, contrary to liberal political theories, that any conception of the state presupposes the concept of the political. The term ‘state’ commonly refers to ‘the political status of an organized people in an enclosed territorial unit’ (CP 19). Schmitt argues that definitions like these, which also inform Rousseau’s conception of the state as immediate unity of democracy and legality, are too weak to provide a proper definition of the concept of the political, which is the key to establish political sovereignty (CPD 14).

According to Schmitt, the term ‘political’ in liberal political theories is not properly defined, but, rather, is commonly identified with the term ‘politics’. The term ‘politics’, in turn, is commonly described in contrast to other ideas: politics and economy, politics and morality, politics and law, or politics and civil law, etc. More specifically, liberal political theories consider politics or the concept of the political to pertain to ‘legal or administrative decision in particular cases’ (CP 21). For that reason, the concept of the political in liberal political theories appears merely as ‘a practical way of delimiting legal competences of cases within a state in its legal procedure’ and do not provide ‘a general definition of the political’ (CP 22).

Schmitt further argues, that in liberal conceptions of the political the identity of state and politics is taken for granted as self-evident or stable. Yet the ‘equation of state=politics’ in liberal political theories leads to a serious failure to properly

¹⁵ Two issues that are related to Schmitt’s conception of political sovereignty has instigated an ongoing academic dialogue among scholars. The first issue concerns what specific elements Schmitt considers to be juxtaposed in the liberal conception of popular sovereignty. The second issue concerns what specific target Schmitt has among the elements juxtaposed in his critique of popular sovereignty. As regards the first issue, Chantal Mouffe holds that the elements that are juxtaposed in liberal political theories are liberal individualism and mass democracy. As regards the second issue, Mouffe argues that Schmitt’s target in his critique of liberal political theories is liberal individualism, but not mass democracy. See Mouffe, *Paradox*, p. 45. Richard Dien Winfield, for his part, argues that Schmitt considers the juxtaposed elements in the liberal political theories are liberal parliamentarism and mass democracy. Contrary to Mouffe, Winfield argues that Schmitt’s diagnosis of liberal political theories is right all the way down. He only refrains from endorsing his solution – liberal authoritarianism. Regarding Schmitt’s target in his critique of liberal political theories, Winfield claims that mass democracy is his main target. See Winfield, ‘Rethinking Politics’, pp. 209-25. As I see it, both Winfield and Mouffe, in their own way, conclude that Schmitt is right in his claim that liberal political theories cannot overcome liberal totalitarianism. Yet, Mouffe conceives mass democracy as a paradigmatic form of governance that should be maintained. Winfield, rather, consider liberal parliamentarism to be a paradigmatic form of democratic governance, contrary to Mouffe, who tries to find a way - pluralist democracy - that saves mass democracy.

distinguish state and social spheres (CP 22). Accordingly, the affairs of state become social matters, and vice versa (CP 22). Thus, domains such as religion, culture, education, and the economy lose their neutrality and become usurped by politics. Schmitt argues that the equation of the social realm and the state leads to a totalitarian state that rejects the 'neutralizations and depoliticizations of important domains' (CP 22). In such a state, everything is up for political power grab, which results in the inner depoliticization of the state and, thus, the collapse of the distinction between the state and the society as a whole.¹⁶

Schmitt's critical analysis of liberal political theories is complemented by an attempt to disentangle liberal political theories from their totalitarian tendency. Introducing a new definition of the political, he does so by arguing for the primacy of political sovereignty, i.e., of the power that takes the ultimate decision on the 'friend and enemy' distinction. In the next section, I will elaborate on Schmitt's conception of political sovereignty.

2. SCHMITT'S CONCEPTION OF POLITICAL SOVEREIGNTY: LIBERAL AUTHORITARIANISM

Schmitt's conception of political sovereignty aims at averting the liberal predicament. According to Schmitt, the liberal predicament consists in the contradiction between the theory of equality within the democratic-legal order and its practice, namely, its tendency to discriminate between 'us' and 'them'.¹⁷ Schmitt argues that the latter distinction defines the democratic-legal order, but, at the same time, harms political sovereignty. His solution develops in two steps. First, he conceives of the distinction between 'us' and 'them' within the democratic-legal as the distinction between 'friend and enemy' on which the concept of the political rests. Second, he claims that the 'friend and enemy' distinction depends on the decision of the sovereign power to be actualized.

Schmitt claims that the 'friend and enemy' distinction constitutes 'the utmost degree of intensity of a union or a separation, of an association or dissociation,'

¹⁶ Winfield collaborates this point. He states: 'As much as the "total state" may seem to render everything political, it achieves a thorough depoliticization by collapsing all institutional boundaries so that the state can no longer possess any politically distinctive features'. Winfield, *Rethinking Politics*, pp. 209-210.

¹⁷ Mouffe, *Paradox*, pp. 42-45.

hence the concept of the political (CP 26). Accordingly, all political actions and motives can be reduced to this distinction. For Schmitt, the ‘friend and enemy’ distinction is an inherent reality and real possibility of politics in general, which cannot be denied, since nations necessarily group themselves on this distinction (CP 28). Thus, Schmitt considers the ‘friend and enemy’ distinction to be ‘an ever-present possibility for every people existing in the political sphere’ (CP 28).

Schmitt claims, however, that the ‘friend and enemy’ distinction cannot be decided by a general norm, but only by the actual participants, who can correctly judge the concrete situation. On his account, ‘each participant is in a position to judge whether the adversary intends to negate his opponent’s way of life’ (CP 27). In this regard, the objective nature of the political, Schmitt argues, consists in deciding who is a friend and who is an enemy (CP 27). He further argues that only the sovereign power, which possesses the power required to decide who is a friend and who is an enemy, can actualize the concept of the political that consist in the ‘friend and enemy’ distinction. The sovereign power, Schmitt states, ultimately ‘decides whether the normal situation actually exists’ (PT 13).¹⁸ Thus, Schmitt departs from liberal political theories by asserting that the normal situation arises from a sovereign decision rather than a norm.

In both *Dictatorship* (1919) and *Political Theology* (1922), Schmitt seeks to establish the correct interpretation of the concept of political sovereignty contained in the German constitution. In these works, he attempts to refute the liberal interpretation of Article 48 of the Weimar republic constitution. This

¹⁸ Apart from Renato Cristi, most scholars of Schmitt, including Kalyvas and Mouffe, do not defend Schmitt’s liberal authoritarianism, but, rather, try to legitimize what they consider to be his ‘concept of the political’, that is, mass democracy. See Cristi, ‘The Monarchical Principle’, pp. 352-364. I did not come across any text that directly responds to Cristi’s defence of Schmitt’s liberal authoritarianism. Cristi argues that constituent power is key to asserting the legitimacy of mass democracy. Cristi welcomes Andreas Kalyvas’ critical views that considers constituent power, represented by Hans Kelson, to be a fiction. Yet Kalyvas is well aware that tyranny would arise from the close connection between sovereignty and constituent power. To remedy this consequence, he offers two conceptions of sovereignty: repressive and generative. Drawing on Schmitt, Kalyvas concluded that the legitimacy of democratic representation to be dependent on constituent power. That means that Schmitt, in Kalyvas view, accepts the collective origin of constitutional laws. Cristi, for his part, argues that this recognition of collective origin of the constitutional law does not of itself entails support for democracy. For Schmitt clearly states that power and authority must have primacy for the constitution to be actualized. Cristi claims that we should not forget that Schmitt is ‘a bitter adversary of democracy’ (p.352). Thus, Cristi defends Schmitt’s monarchical principle as key to his conception of sovereignty and constituent power.

article, he argues, accepts the sovereignty of the president, but simultaneously burdens the sovereign power with the control of the parliament by the division of powers.¹⁹

Schmitt argues that liberal constitutionalism, represented by Hans Kelsen, is an ‘attempt to spell out in detail the case in which law suspends itself’: the case of the exception (PT 14). The question, however, is ‘from where does the law obtain this force, and how is it logically possible that a norm is valid except for one concrete case that it cannot factually determine in any definitive manner?’ (PT 14). Liberal constitutionalism, Schmitt argues, is untenable, for the exception arises from a decision rather than from the norm itself. Even if liberal political theories, due to their radical rationalism, argue that only the normal situation is the object of scientific interest, the decision on the exception is a legal problem that cannot be ignored. It is the exception that confirms not only the rule but also the existence of the norm itself. Schmitt, thus, argues for the primacy of the sovereign power, for without the decision of the sovereign power there is no way to establish either the normal situation or the ‘numerous secondary concepts of the political’ (CP 30). Schmitt claims that the ‘friend and enemy’ distinction, i.e., the decision as to what counts as the normal situation rather than the emergency situation, is key to the concept of the political. Such a distinction is clearly revealed in real combat, in which case the sovereign power must take quick decisions. The fact that only this extreme case reveals the sovereign power does not mean that the exception lacks ‘its decisive character’, but, rather, ‘confirms it all the more’ (CP 35). The exceptional cases, Schmitt argues, express ‘an especially decisive meaning which exposes the core of the matter’ (CP 35).

In short, Schmitt claims that the liberal predicament can be averted by comprehending the political in terms of the distinction between ‘friend and enemy’ and the sovereign power that decides on this distinction. As I see it, his diagnosis of liberal political theories rightly points out the liberal predicament. Yet Schmitt tried to secure political sovereignty as the ultimate decision-making

¹⁹ The controversial part of Article 48 states that: ‘If, in the German Reich, public security and order are considerably disturbed or endangered, the *Reichspräsident* may undertake necessary measures to restore public security and order, and if necessary, may intervene with the aid of armed forces. For this purpose he may suspend, temporarily, in part or entirely, the basic rights as provided in articles 114, 115, 117, 118, 123, 124, and 153.’ See Schmitt, *Political Theology*, p. xlvi.

power by relying on the ‘friend and enemy’ distinction. Accordingly, he recognizes a plurality of a homogenous political states that are sovereign. Yet, Schmitt’s conception of political sovereignty cannot avert totalitarian tendencies within a single political state. What is more, he considers any particular will that decides on the exception to be the sovereign power. Accordingly, Schmitt fails to resolve the problem of political sovereignty within the liberal political theories and secure a genuine conception of political sovereignty that consists of a concrete universal will. The next two sections elaborate on the problem of liberal totalitarianism and Schmitt’s alternative politics from the perspective of Hegel’s *Philosophy of Right*.

3. HEGEL’S CRITIQUE OF LIBERAL POLITICAL THEORIES: THE CASE OF ROUSSEAU

Hegel is probably the first philosopher who established a clear distinction between civil society and the state. In the *Philosophy of Right*, Hegel claims that the state is ‘the actuality of the substantial will’ (PR 258). This substantial will is the will of the members of the state, who actualize their private interest in civil society and identify themselves with the universal will of the state as their own will. Hegel claims that the state, in contrast to civil society, is ‘the unity of objective freedom (i.e., of the universal substantial will) and subjective freedom (as the freedom of individual knowledge and of the will in its pursuit of particular ends)’ (PR 258). Accordingly, the form of the substantial will is the ‘self-determining action in accordance with laws and principles based on thought hence universal’ (PR 258 add). The state, thus, is the ‘absolute and unmoved end in itself’, which is the self-sufficient sphere of freedom (PR 258). In this regard, individual freedom can have a rational and universal form, rather than an arbitrary and private form (PR 268).²⁰ Hegel claims that only within the state can ‘union as such’, that is, one’s membership within the state, be ‘the true content and end’ (PR 258 add). Thus, individuals must conceive of the state as that which

²⁰ For a clear articulation of the distinction between civil society and the state, see Karin de Boer, ‘Democracy Out of Joint? The Financial Crisis in Light of Hegel’s *Philosophy of Right*’, *Hegel Bulletin*, vol. 33, no. 2, 2012, pp. 36-53. De Boer clearly explains how the principles of universal and particular interest figure in civil society and the state in a totally different manner and acknowledged the critical potential of this insight to democracy today. Yet she refrains from accepting Hegel’s optimism, according to which the tension between these two principles to be resolved in the constitutional monarchy.

allows them to lead a universal life and live in equality. As Hegel puts it, just as this end is ‘the highest right in relation to individuals’, so is membership in the state ‘the highest duty’ (PR 258).

In the *Philosophy of Right*, Hegel acknowledges that Rousseau is the first author who recognized political virtue as the defining feature of the state. For Hegel, political virtue refers to the act of willing the rational, rather than merely pursuing arbitrary ends (as is done in the context of civil society (PR 257)). In this regard, Hegel considers Rousseau to be right in pointing out ‘the will as the principle of the state, a principle which has thought not only as its form [...] but also as its content’ (PR 258). The state, as Rousseau claims, is the immediate unity of democracy and legality in which people make their own law and abide by it. Unlike earlier social contract theorists, Rousseau conceives of the state as a democratic-legal order, according to which there is no absolute gap between political freedom and the authority that actualizes it. Hegel acknowledges Rousseau’s social contract theory as more advanced than his predecessors, and, like Rousseau, he conceives of the state as a sphere of substantial will in which what individuals privately pursue is the same as what they actualize in the public sphere (PR 272).

From the perspective of Hegel, however, even if Rousseau conceives of the democratic-legal order as an end in itself, he fails to maintain his key discovery at a higher level. He rather conceived of political virtue merely as ‘the determinate form of the individual will’ (PR 258). This means that Rousseau took the democratic-legal order to be ‘the common element’ that arises out of ‘the individual will as a conscious will’ (PR 258). In so doing, he failed to conceive of the union of individuals as standing on its own. He rather presupposed atomistic wills that form a common will through a contract, which takes place among themselves to make law by all and to apply it to all. Any contract, Hegel argues, is the result of the arbitrary will and opinions of individuals, who reach a form of consent at their own discretion. Thus, the common will as conceived by Rousseau is a mere aggregate of individual wills, rather than the whole, that is, a concrete universal will. Only the latter, however, can establish a type of political virtue that contains its own freedom and authority within itself. Thus, Hegel argues that Rousseau’s understanding of the rationality of a contractual state is doubtful, since he reduces the state to ‘the unity and interpenetration of universality and

individuality', while the state must actually be the unity and interpenetration of particularity and universality, i.e., a concrete universal will (PR 258).

More generally, Hegel holds that liberal political theories conceive of the interest of individuals as the ultimate end for which they are united in the state. Conversely, the duty of individuals to be members of the state becomes an optional matter, for private interest is always an optional and contingent matter. Hegel notes that such abstract unity 'were invested with power' such as in the French revolution, and 'they afforded the tremendous spectacle [...] of the overthrow of all existing and given conditions within an actual major state' (PR 258). In other words, the liberal conception of the state disregards all existing institutions as an external authority that must be removed and replaced with abstract conception of equality (PR 5). Hegel, thus, rejects liberal totalitarianism because he takes it to result in a reign of terror rather than actual freedom.

From Hegel's perspective, liberal political theories such as Rousseau's mainly fail to conceive of the mediated aspect of the democratic-legal order as internal to that very order. Such theories, rather, conceive of the mediated aspect of the democratic-legal order as a dormant spirit (PR 258 add). In this case, the state is nothing but an instrument for the realization of the individuals' interests, rather than an end in itself. One of the reasons why Rousseau did not make the distinction between the legislative and the executive powers within the democratic-legal order is that he did not doubt the virtuousness of the political leaders. He optimistically held that the democratic-legal order is a stable order in which law is made by all and applied to all.

Hegel claims that the liberal conception of the democratic-legal order, which argues for the immediate unity of democracy and legality, ignores the essential moment of its existence, namely, self-consciousness. Since 'the absolute end of reason' is to make freedom actual, the state must be present in the world as an active spirit, which 'consciously realizes itself therein' (PR 258 add). Hegel claims that the state is actual 'only when it is present in consciousness, knowing itself as an existent object' (PR 258 add). Thus, any conception of political sovereignty, he argues, must begin 'with the essence of self-consciousness' that 'realizes itself as a self-sufficient power of which single individuals are only moments' (PR 258). In this respect, Hegel claims that the particularity of the substantial will must be conceived of as the self-determination of the universal self-consciousness. Seen

from the perspective of Hegel, Rousseau, thus, fails to comprehend the democratic-legal order as possessing its own mediating power within itself.²¹ This, in turn, leads to his failure to comprehend the division of powers and political sovereignty in accordance with the nature of the concept (PR 273).

To conclude, Hegel, like Schmitt, rejects popular sovereignty as conceived by Rousseau and other liberal theorists as too weak to secure political sovereignty. As was discussed above, both Schmitt and Hegel develop their views on the problem of political sovereignty by critically reflecting on liberal political theories. In the next section, I argue that, seen from the perspective of Hegel, Schmitt's alternative theory of politics fails in securing political sovereignty and that Hegel is better able to show how liberal totalitarianism can be overcome within the state.

4. A HEGELIAN PERSPECTIVE ON SCHMITT'S CONCEPTION OF POLITICAL SOVEREIGNTY

As I see it, Hegel's critique of the position put forward by Schmitt can be easily seen if we examine the way the two authors interpret the predicament of liberal political theories. Seen from the perspective of Hegel, Schmitt's diagnosis of liberal political theories is right in pointing out the unstable status of the democratic-legal order. Schmitt claims that the idea of the immediate unity of democracy and legality cannot reconcile liberal parliamentarism and mass democracy. Schmitt, thus, rightly argues that the primacy given to the democratic-legal order in liberal political theories can never secure a genuine conception of political sovereignty, for the democratic legal order ignores a pure decision-making power that unfolds within the democratic-legal order itself. Any

²¹ See Arthur Ripstein, 'Universal and General Wills: Hegel and Rousseau', *Political Theory*, vol. 22, no. 3, 1994, pp. 444-67. Ripstein states that 'Hegel's account of the relation of rationality and the will' is similar to Rousseau's account, for 'it supposes that who one is and the scope of one's responsibility depends on interaction with others, and seeks to provide a shared evaluative perspective from which all are free', but 'unlike Rousseau, Hegel insists that a perspective that is shared because one accepts the judgment of others cannot do the job' (p. 451). In other words, political leaders can diverge from the general will and pursue their own arbitrary will. Thus, there must be some other way to maintain the stability of the democratic legal order.

conception of an immediate democratic-legal order entails the power that posits it in practice, that is, the executive power.

What is more, Schmitt rightly argues that the misrecognition of the liberal predicament leads to propagating liberal totalitarianism, especially because liberal political theories cannot make a clear distinction between the state and society. Schmitt considers this predicament to be one of the reasons that preclude liberal political theories from securing political sovereignty because the lack of a clear distinction between the state and society ultimately results in the internal depoliticization of the political sphere. He states that this risk can only be averted by granting primacy to the sovereign power, i.e., the power that decides on the 'friend and enemy' distinction. Thus, Schmitt takes any particular will that makes the decision on the 'friend and enemy' distinction as a sovereign power. In this regard, he seems to be able to overcome liberal totalitarianism as well as secure a genuine conception of political sovereignty. Seen from the perspective of Hegel, however, he fails to achieve both objectives, namely, overcoming liberal totalitarianism within the state and providing an account of a genuine conception of political sovereignty.

As I see it, Hegel follows the same line of thought Schmitt takes to some length, yet he departs from Schmitt at a specific juncture, i.e., at the point where Schmitt tried to resolve the liberal predicament by conceiving of the liberal predicament as that which precludes securing political sovereignty. Schmitt tried to secure political sovereignty by relying on the 'friend and enemy' distinction. Contrary to Schmitt, Hegel considers the predicament of liberal political theories to be a basic determination of modern states. For Hegel, the liberal predicament that consists in the 'us' and 'them' distinction amounts to the division of powers because the democratic-legal order contains its own executive power, which is internal to the democratic-legal order. To put it differently, liberal political theories conceive of a political state as an immediate unity and fail to conceive of its mediated aspect as internal to that order. Thus, the immediate unity of the democratic-legal order within a state such as France during the revolution cannot be what it is without possessing its own mediating power, hence the necessity of a division of power. The question, however, is how such an order can overcome its contingency, or particularity, and can be conceived of as arising out of a

concrete universal will rather than a particular will.²²

From Hegel's perspective, a genuine conception of political sovereignty, namely, the constitutional monarchy, is the key to solving this challenge. On his account, the sovereign power, contrary to Schmitt, cannot be a particular will that decides on whether the normal situation or the emergency situation obtains. Schmitt, as Leo Strauss has argued, merely replaces the primacy of the legislative power in liberal political theories with the primacy of the executive power.²³ Admittedly, Schmitt grants primacy to the executive power, since the very primacy of the legislative power cannot be what it pretends to be unless it possesses an executive power within itself. Schmitt's view, in this regard, is more advanced than liberal political theories, for he does not take the democratic-legal for granted, but, rather, recognizes such order as unstable unity that might collapse into an emergency situation. Yet Schmitt holds on to the sovereign power's decision, which is too abstract to secure political sovereignty.

What is more, Schmitt's conception of political sovereignty denies the division of powers within a political state so as not to undermine the power of the sovereign. In this regard, Schmitt did not actually go beyond liberalism, but returned to the predicament of liberal political theories, which according to him collapses the division of powers into a unitary power. Thus, Schmitt did not overcome liberal totalitarianism, which was, as was discussed in section 1, his main objective. He rather replaced liberal totalitarianism with a type of authoritarianism that suffers from the same defect.

Seen from the perspective of Hegel, the basic failure of Schmitt theory arises from its assumption that the various powers within a political state can be mediated by a particular will, i.e., an arbitrary will, and considers that to be a genuine conception of political sovereignty. For Hegel, Schmitt's conception of

²² See Arthur Ripstein, 'Universal and General Wills', p. 451. As Ripstein claims that it is 'the problem of acknowledging contingency while avoiding arbitrariness' that still remains a big challenge in order to establish a political state (p. 451).

²³ In a commentary on *The Concept of the Political*, Leo Strauss encapsulates this enigmatic feature of liberalism and Schmitt's affirmation of the political in the following manner: 'Whereas the liberal respects and tolerates all '*honest*' convictions so long as they merely acknowledge the legal order, *peace*, as sacrosanct, he who affirms the political as such respects and tolerates all '*serious*' convictions, that is, all decisions oriented to the real possibility of *war*. Thus, the affirmation of the political as such proves to be a liberalism with the opposite polarity.' (CP 120).

liberal authoritarianism would be the condition of lawlessness, for it means that the particular will prevails over the law. By contrast, the constitutional monarchy as understood by Hegel is a concrete universal will that presupposes public freedom or a political state that is in harmony with civil society, while public freedom also presupposes the constitutional monarchy. Just as the constitutional monarchy presupposes the other moments, including the legislative and executive powers, so do the latter also presuppose the constitutional monarchy, which is their higher unity. Only in this way can the state consist of both public freedom and a rational will that precludes the risk of falling into the traps of totalitarianism and authoritarianism, i.e., the collapse of the division of powers.

The above critical analysis on Schmitt's conception of political sovereignty shows that Schmitt lacked the conceptual resources to overcome the liberal predicament that he rightly pointed out in liberal political theories. Moreover, the 'friend and enemy' distinction mainly applies to a plurality of states rather than a single state. Schmitt's theory, thus, fails to secure a conception of political sovereignty that overcomes the liberal predicament, i.e., one that maintains the division of powers within the democratic-legal order as well as their unity. Thus, Hegel would disagree with Schmitt, especially because he considers the division of powers within a political state to be essential to political sovereignty rather than harmful. Seen from the perspective of Hegel, as will be discussed in the next section, both liberal political theories and Schmitt's solution to the liberal predicament are one-sided determinations as regards their conception of political sovereignty.

5. HEGEL'S CONCEPTION OF POLITICAL SOVEREIGNTY

In this section, I will discuss Hegel's own conception of political sovereignty.²⁴ This

²⁴ Scholars who study Hegel's conception of political sovereignty tend to focus on a specific issue, namely, Hegel's defence of the hereditary monarch. By contrast, I am interested to show the perspective from which Hegel's conception of constitutional monarchy can be seen as a rational conception of political sovereignty, when compared to both liberal and Schmittian conceptions of political sovereignty. Scholars who debate about the status the hereditary monarch in the *Philosophy of Right* consist of three camps. The first camp holds that the hereditary monarch is insignificant within a political state. See Micheal O. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation*, Cambridge, Cambridge University Press, 1994; Klaus Vieweg, 'The State as a System of Three Syllogisms Hegel's Notion of the State and Its Logical Foundations by Hegel's Political Philosophy', in Thom Brooks and Sebastian Stein (eds.), *On the Normative*

can be done in two main steps. First, I will show how Hegel conceives of the division of powers as the basic determination of a political state that is in harmony with civil society. Second, I will show how Hegel defends the conception of the constitutional monarchy as a genuine conception of political sovereignty that maintains both the division of powers and their unity. As regards the first step, Hegel acknowledges that a political state presupposes both the legislative and executive powers. He conceives of the legislative power as the universal aspect of a political state, while he conceives of the executive power as that which shows the subsumption of the particular under the universal political state (PR 278 & 283). As will be discussed in the second step, however, the distinguishing principle of political sovereignty is the absolute self-determination of the state (PR 275).

Hegel claims that the basic determination of a political state is its substantial unity (PR 276). For Hegel, a political state is ‘the actuality of the substantial will’ (PR 258). The substantial will is the will of citizens, who, on the one hand, actualize their private interest in civil society, and, on the other hand, identify themselves with the universal will of the state. In a political state, Hegel argues, particularity is both dissolved and preserved. Thus, any particularity, Hegel argues, is justified in a political state if such particularity is ‘determined by the idea of the whole’ (PR 276).²⁵ In this respect, the idea of the whole is the source of justification for any political action.

Hegel conceives of the universal aspect of a political state as the legislative power (PR 273). He argues that a political state rests on the subsumption of the particular under the universal, which is to say that a political state has its own determinate content within it. For that reason, Hegel argues that a political state consists of not only its immediate unity, i.e., the legislative power, but also of a

Significance of Method and System, Oxford, Oxford University Press, 2017, pp. 124-41; and Pelczynski, ‘Hegel’s Political Philosophy’, pp. 230-241. The second camp argues that the opposite is the case. See Thom Brooks, ‘No Rubber Stamp: Hegel’s Constitutional Monarch’, *History of Political Thought*, vol. XXVIII, no. 1, 2007, pp. 91-119. The third camp tries to find its own way of defending the hereditary monarch. see Mark Tunick, ‘Hegel’s Justification of Hereditary Monarchy’, *History of Political Thought*, vol. XII, no. 3, 1991, pp. 481-96; Bernard Yack, ‘The Rationality of Hegel’s Concept of Monarchy’, *American Political Science Review*, vol. 74, no. 3, 1980, pp. 709-20; and Cristi, ‘The Hegelsche Mitte’, pp. 601-22. Yet none of them properly examines how Hegel showed the logical link between the three powers, which is the main focus of this paper.

²⁵ As was discussed in section 3, the main difference between Rousseau’s and Hegel’s conception of a political state is that, for Hegel, particularity is determined by the idea of the whole and not the other way around. Rousseau, however, puts forward an ambiguous position, since he considers the common will to be arising from individual wills.

mediated unity, i.e., the executive power. The mediated unity refers the moment of particularity, since the latter is subsumed under the universality of a political state. Thus, a political state has also an aspect of particularity as a distinct power: ‘the highest advisory offices’ or the executive power (PR 282).

Hegel argues, however, that political sovereignty cannot merely be attributed to either the legislative power or the executive power. If political sovereignty is vested only in the legislative power, then it becomes an abstract universality that lacks a ‘determinate content’ (PR 283). If political sovereignty is vested only in the executive power, on the other hand, it becomes a particular will that is arbitrary. Thus, neither of these moments must be given primacy, for neither of the moments can be stable and secure a genuine conception of political sovereignty (PR 276). Hegel writes:

The principle of the division of powers contains the essential moment of difference, of real rationality; but such is the view of the abstract understanding that, on the one hand, it attributes to this principle the false determination of the absolute self-sufficiency of each power in relation to the others, and on the other hand, it one-sidedly interprets the relation of these powers to one another as negative, as one of mutual limitation. (PR 272)

To put it differently, political powers cannot be the private property of an authoritarian ruler or depend on the common will of aggregate individuals, for particular powers, unlike a political state, cannot be ‘self-sufficient and fixed on their own account’ (PR 277). Moreover, Hegel argues that a political state would collapse into a unitary power, as can be illustrated by the idea of popular sovereignty instantiated by the French Revolution.

For Hegel, the political state is unstable unless a third power is present in conjunction with the immediate forms of a political state, i.e., the legislative and the executive powers. Even though a political state emerges as an immediate unity or in a specific time and place in a contingent manner, it must include a concrete universal will so as to guarantee actual freedom (PR 260).²⁶ This must be the case to guarantee that the division of powers within a political state can be in harmony with the sphere of civil society, i.e., the pursuit of private interests. In

²⁶ For an elaboration of this specific point, see Arthur Ripstein, ‘Universal and General Wills’, pp. 444-67. He states that it is ‘Rousseau’s very fear of the contingency of consent’ that ‘collapses his account of community into arbitrariness’ (p. 445).

other words, if the division of powers collapses into an immediate unity of democracy and legality, then the distinction between the state and civil society also collapses.²⁷ Thus, Hegel conceives of the constitutional monarchy as a third power that must be included in the division of powers to secure a genuine conception of political sovereignty. This takes us to the second step, which shows that the constitutional monarchy can maintain both the division of powers and its unity, hence political sovereignty.

As regards the second step, Hegel claims that the constitutional monarchy represents the absolute self-determining power of a political state, i.e., political sovereignty. He claims that the constitutional monarchy consists of the monarchical power, the constitution and the laws as a whole (PR 285). Hegel states:

The third moment in the power of the sovereign concerns the universal in and for itself, which is present subjectively in the conscience of the monarch and objectively in the constitution and laws as a whole. To this extent, the power of the sovereign presupposes the other moments, just as it is presupposed by each of them. (PR 285)

In this regard, the constitutional monarchy contains both the legislative and the executive powers within itself. For this reason, the constitutional monarchy, on the one hand, functions as a mediating power of the division of powers and as a power that precludes the collapse of power into a unitary will. On the other hand, the constitutional monarchy represents the whole of the division of powers, for it is the unity of the legislative and the executive powers. Yet this whole is not just the sum of the parts, but is a higher unity, hence a third power.

Hegel claims that the distinguishing principle of political sovereignty is the absolute self-determination of the state within a political state. He argues that modern states differ from ancient ones in that in modern states there is a specific sphere that guarantees the pursuit of private interest: civil society (PR 262 add). Hegel conceives of the modern state as a sphere of public freedom that actualizes the pursuit of private interest in two ways. First, it allows the pursuit of private interest to be actualized in civil society (PR 260). Second, the modern state brings back the pursuit of private interest to a political state that consists of the division of powers, namely, the legislative and the executive powers (PR 260). Hegel,

²⁷ See section 1 for the elaboration of this line of argument.

however, argues that unless the monarchical power that represents the sovereign power is included in the division of powers, a political state cannot be maintained (PR 260). The monarchical power, Hegel argues, represents the actual willing of what is rational in a political state. Hegel states that political constitutions remain one-sided unless they sustain an aspect of subjectivity within a political state, while simultaneously overcoming the arbitrariness of subjectivity (PR 273 add). The constitutional monarchy overcomes one-sidedness, for it consists of both of public freedom that represents the division of powers and a rational will that represents the unity of the division of powers.

Accordingly, Hegel holds that only the constitutional monarchy is a genuine conception of political sovereignty in the sense that it guarantees both the distinctness of the legislative power and the executive power and their unity.²⁸ He states that just as the constitutional monarchy has 'its own actuality distinct from that of the other rationally determined moments,' so do the legislative and executive powers have 'their distinct rights and duties in accordance with their determination' (PR 286). Only with the presence of a constitutional monarchy in conjunction with other moments can a political state be rationally constituted (PR 286).

The constitutional monarchy, Hegel argues, cannot be 'dragged down into the sphere of particularity' (PR 258). More specifically, it cannot be reduced to a sphere of an authoritarian rule or be equated to the sphere of civil society, for the constitutional monarchy is a self-sufficient unity of inward and outward immediacy (PR 281). Hegel claims that the constitutional monarchy constitutes the 'idea of something unmoved by arbitrary will' (PR 281). That is to say that only if public freedom takes the form of an objective presence, i.e., the form of an organic unity conceived as the constitutional monarchy, can it overcome totalitarian or authoritarian forms of government (PR 281). In this regard, a genuine conception of political sovereignty must involve both the division of powers into the legislative and executive powers and their unity. In other words,

²⁸ This, however, does not mean, as Cristi holds, that 'political power is monopolized by one center of decision, the monarch, who can alternatively decide to irradiate a large measure of his power to other subordinate authorities, or retrieve it in its totality.' See, Cristi, 'The Hegelsche Mitte', pp. 601-622. The same author tried to defend Schmitt's liberal authoritarianism, so it is not a surprise that he tries to reduce Hegel's conception of the constitutional monarchy to the sort of monarchical principle that he finds in Schmitt's conception of political sovereignty. See Cristi, 'The Monarchical Principle', pp. 352-64.

in a rational political state no absolute gap exists between the particularity of moments in their particularity and their totality (PR 272).

Hegel acknowledges the modern constitutional monarchy as a great achievement. Whereas he holds that the ‘hereditary succession to the throne is firmly based on primogeniture’, this type of monarchy is not just a return to the ancient patriarchal principle (PR 286).²⁹ He rather considers the modern conception of the monarchy to have the ‘greatest importance’ for its ‘rational constitution’ (PR 286). For Hegel, the modern constitutional monarchy rightly unites one-sided forms of government. Thus, he claims that in the modern constitutional monarchy ‘the monarch is one individual; several participate in the executive power, and the many at large participate in the legislative power’ (PR 273). Hegel, however, points out that the constitutional monarchy should not just be reconciling the one and the many in terms of quantity, but, rather, constitutes a higher unity (PR 273).³⁰

Hegel rejects a common objection against the monarchy according to which ‘the monarch may be ill-educated or unworthy of holding the highest office’ (PR 280). Such objections, he argues, is ‘based on the invalid assumption that the monarch’s particular character is of vital importance’ (PR 280). He argues that the monarch in a fully organized state, however, is only a final arbiter: ‘the highest instance of formal decision’ (PR 280). Thus, the sovereign power must be viewed as ‘the higher determination whereby the monarch is the absolute apex of an organically developed state’ (PR 286). As was stated above, the absolute apex represents a conceptual relation between the higher unity of the constitutional monarchy and the division of powers.³¹ Accordingly, the sovereign power saves

²⁹ In my opinion, many scholars fail to appreciate the key insight of Hegel’s defence of constitutional monarchy, for they consider the hereditary monarchy to be a ridiculous idea that must be abandoned. See Shlomo Avineri, *Hegel’s Theory of the Modern State*, Cambridge, Cambridge University Press, 1974, pp. 185-89. For a conservative position that is sympathetic to the authority of Prussian government of his time, see Karl-Heinz Ilting, ‘The Structure of Hegel’s Philosophy of Right’, in Z.A Pelczynski (ed.), *Hegel’s Political Philosophy*, p. 109.

³⁰ For an elaboration of Hegel’s conception of constitutional monarchy as a reconciliation of the one and the many, see Eric Goodfield, ‘The Sovereignty of the Metaphysical in Hegel’s *Philosophy of Right*’, *The Review of Metaphysics*, vol. 62, no. 4, 2009, pp. 849-73. Pelczynski, too, follows a similar direction in his interpretation of the constitutional monarchy in the *Philosophy of Right*. See Pelczynski, ‘Hegel’s Political Philosophy’, pp. 230-241.

³¹ Recently, an interesting attempt has been made by Vieweg to clarify this conceptual relation between the three powers. However, unlike Hegel, Vieweg considers the legislative power to be the distinguishing

public freedom by precluding the collapse of the division of powers into a unitary will.

Hegel states that ‘all that is required in a monarch is someone to say ‘yes’ and to dot the ‘i’, since such highest office as the monarchy should be ‘such that the particular character of its occupant is of no significance’ (PR 280). This famous assertion seems controversial, but, as I see it, it simply means that Hegel considers the specific identity of the monarch to have little weight.³² Yet it cannot be taken to mean that he considers the power of such ultimate decision to be insignificant.³³ For Hegel maintains a clear distinction between the legislative and the executive powers as well as the monarchical power, arguing that each one of them has a specific role to play in maintaining the rationality of the state.

Only the monarchical power, however, guarantees political freedom, for it represents a concrete universal will that prevents the immediate forms of a political state, namely, the legislative and executive powers, from collapsing into each other. Thus, neither of the one-sided determinations such as the legislative and executive powers must be given primacy, for those determinations reduce a political state to a finite will that is not necessarily rational. The monarchical power, by contrast, has the form of an infinite will that is rational. In this case, the distinction between the executive power and the legislative power can be maintained, for both are related to their higher unity as their actual unity or a concrete universal will. Thus, the unity represented by the constitutional monarchy and the plurality of powers mutually reinforce each other. In this regard, Hegel states that ‘each member of the whole, in maintaining itself independently, thereby also maintains others in their own distinct character within the rational organism’ (PR 286). Unless all moments are united in a higher unity, the executive power and the legislative power lose their distinctness and risk to collapse into a single power. In the latter case, there would be no political

principle of a political state. He writes ‘the universal, reasonable will manifests itself in the form of the constitution and in the form of the legislative power’ (p. 140). See Vieweg, ‘A System of Three Syllogisms’, p. 140. This interpretation might appeal to the modern readers but undermines Hegel’s key insight into political sovereignty and its critical potential to understand our contemporary political reality.

³² Brooks, by contrast, states that ‘the particular character of the monarch is of great significance. Not only must the monarch be male, but he must recognize the rationality of his inheriting the throne.’ See Brooks, ‘No Rubber Stamp’, p. 118.

³³ As was mentioned above, authors such as Hardimon, Vieweg and Pelczynski hold this view.

sovereignty, but only a totalitarian or an authoritarian rule. Thus, it is only by dint of the constitutional monarchy that the various powers can constitute an organic unity (PR 273).

CONCLUSION

In this paper, I have argued that liberal totalitarianism is the key problem that both Schmitt and Hegel target in their critique of liberal political theories. According to Schmitt, a totalitarian state arises from ignoring the liberal predicament and equating state and politics. Schmitt argues that the unity of legality and democracy as conceived by liberal political theories cannot be an immediate unity, since the law-making power is not a natural authority but consist in the decision of the actors that realize such a legal order. For Schmitt, the solution is a political theory that defends liberal authoritarianism. He argues that the sovereign power must be the executive power that decides on whether the normal or emergency situation obtains.

Likewise, Hegel rejects what he sees as the liberal totalitarianism of Rousseau and others that conceives of a political state as arising from a common will. From Hegel's perspective, even if Rousseau's social contract theory is more advanced than his predecessors, it cannot establish a concrete legal order. The question then is: wherein lies the difference between Hegel and Schmitt?

As I see it, the difference lies in how both authors view the rationality of the liberal democratic-legal order. For Schmitt, the rationality of the democratic-legal order consists of the subsumption of particular wills under the universal political state, which is the task of the executive power. Schmitt argues that political sovereignty rests on a decision as regards the 'friend and enemy' distinction by any particular will, and he considers this decision rather than the norm to be constitutive of a political state. However, Schmitt's position encourages endless struggles for political domination, for political sovereignty is presumed to be forged from the decision on the 'friend and enemy' distinction. For that reason, he did not succeed in overcoming the totalitarian tendency within the state.

By contrast, Hegel acknowledges the liberal predicament as a basic determination of a modern political state. In Hegel's view, the liberal predicament that consist in the distinction of 'us' and 'them' amounts to the necessary division

of powers within a political state that is in harmony with civil society, i.e., with a sphere within which individuals pursue their own private interests. In contrast to civil society, a political state is established by a substantial will that bridges the gap between freedom and authority. Hegel's solution, however, considers a political state to be tainted by the liberal predicament or the division of power, which can be illustrated by a historically contingent events such as the French revolution. Hegel's solution, to borrow Ripstein's terms, rather acknowledges 'contingency while avoiding arbitrariness'.³⁴ Although Hegel acknowledges that a political state arises in a contingent manner, he avoids its arbitrariness in his defence of the constitutional monarchy. He argues that only the monarchical power, rather than an authoritarian power, can maintain both the division of powers and its unity. In this unity, the moments of the division of powers become simultaneously 'organically linked' and 'mutually conditioning' moments (PR 286). The constitutional monarchy, thus, is the higher unity that establishes the rational constitution of public freedom. In this regard, Hegel conceives of the constitutional monarchy, that is, political sovereignty, as the objective guarantee of public freedom.

In sum, I hope to have shown how Hegel goes beyond Schmittian liberal authoritarianism by proposing a more nuanced solution to the threat of liberal totalitarianism. Thus, authors such as Renato Cristi should not reduce Hegel's defence of the constitutional monarchy to liberal authoritarianism so as to suggest that Hegel and Schmitt have a common position. On the other hand, authors such as Chantal Mouffe and Hannah Arendt should not too hastily reject Hegel's defence of the constitutional monarchy.

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³⁴ See Arthur Ripstein, 'Universal and General Wills', p. 451.

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