A PECULIAR TYPE OF DEMOCRATIC UNITY: CARL J. FRIEDRICH'S STRANGE
SCHMITTIAN TURN or HOW FRIEDRICH STOPPED WORRYING AND
LEARNED TO DECIDE ON THE EXCEPTION

by

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Submitted in fulfillment of the requirements
For the degree of Master of Arts

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ACKNOWLEDGMENTS

I would like to thank Professor Kenneth Ledford for his invaluable help and guidance at every stage of this project. I would also like to thank Professors Theodore Steinberg and Jonathan L. Entin for their constructive comments.
A Peculiar Type of Democratic Unity: Carl J. Friedrich’s Strange Schmittian Turn or How Friedrich Stopped Worrying and Learned to Decide on the Exception

Abstract

by

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Professor Joseph Bendersky claims that Harvard political scientist and German émigré Carl J. Friedrich’s Weimar-era constitutional ideas were “Schmittian to their core” but that Friedrich’s experience as a naturalized U.S. citizen led him to embrace American liberalism. This thesis argues to the contrary that Friedrich’s Weimar-era thought lacked two essential axioms of Schmitt’s philosophy: that democracy requires a people who are substantively homogenous and that sovereignty even in a democracy can only genuinely be exercised by a single individual. Friedrich, however, played a crucial role in the New Deal reconfiguration of American liberalism by leading a movement among American social scientists during the 1930s and 40s toward playing a more direct role in policymaking. Ironically, the liberal ideas of Friedrich’s that emerged out of this reconfiguration and would persist for decades after World War II contained strong elements of both “core” Schmittian axioms.
Introduction

An academic cottage industry grew up around the German jurist and political philosopher Carl Schmitt in the 1990s on both sides of the Atlantic. Scholars have ever since been asking each other the question “why Carl Schmitt?” Schmitt made a name for himself during the 1920s and early 1930s as a conservative critic of Weimar liberalism whose insights on topics such as dictatorship, sovereignty, and emergency powers posed an important intellectual challenge to the “rule of law” and the viability of pluralism in liberal democracies. But Schmitt gained international notoriety in 1933 when Hitler used his ideas about the Weimar Constitution to justify as “legal” his consolidation of absolute rule in Germany. For several years thereafter, Schmitt served as the chief legal spokesman for the Nazi regime and thereby earned further notoriety as the “crown jurist” of the Third Reich. Although he narrowly escaped trial and conviction at Nuremberg, Schmitt’s association with National Socialism made him persona non grata among intellectuals in Europe and North America. As a result, even those postwar intellectuals who may have shared to some degree Schmitt’s critical stance toward liberal constitutionalism refrained from publicly acknowledging his influence on their work.¹

A number of Schmitt scholars in the 1990s advanced the thesis that Schmitt’s Weimar-era antiliberal ideas exercised a “subterranean influence” on various leading conservative theorists in the postwar United States and is therefore “the intellectual ‘godfather’” of the modern American conservative movement. William E. Scheuerman claimed that Joseph Schumpeter’s market-oriented conception of democracy, Friedrich Hayek’s disparagement of the welfare state as the “road to serfdom,” and Hans Morgenthau’s realist theory of international relations, were all products of a “more or less hidden debate with Carl Schmitt.” Heinrich Meier claimed that Leo Strauss’s 1932 commentary on Schmitt’s The Concept of the Political contained within it “a silent dialogue” and significantly influenced the changes Schmitt made to the 1933 edition of the book.²

Joseph Bendersky is highly skeptical of this “subterranean influence” thesis and characterizes as “highly dubious” the supposed connections between Schmitt and these theorists of American conservatism. Decades of recent scholarship “refuted the 1950s interpretations of Schmitt as someone who undermined the Weimar Republic and saw his ideas come to fruition in the Third Reich.” Bendersky faults Scheuerman and Maier for basing their claims on “erroneous depictions of Schmitt and his ideas” in an attempt to “re-Nazify” Schmitt. He detects an effort by liberal American academics to insinuate fascist sympathies among American conservatives by tying them to Schmitt. To this end, he cites the example of the German-born Harvard political scientist Carl Friedrich, whom he describes as “one of the most prominent liberals in the United States between the 1930s and the 1960s.” Schmitt and Friedrich, Bendersky claims, had a “personal, intellectual, and political” relationship during the Weimar era, and the evidence of Friedrich’s intellectual debt to Schmitt before 1933 is, in his opinion, so apparent that “there is no need to resort to ‘hidden dialogues’ to establish it.”

http://www.iiit.net/~bipin/files/Dawkins/Ethics/Leo%20Strauss%20and%20the%20Rhetoric%20of%20the%20War%20on%20Terror.pdf. Xenos cites Strauss’s correspondences with Schmitt and with Action Française leader Charles Maurras as evidence that Strauss was not merely an “antiliberal” but “an antidemocrat in a fundamental sense, a true reactionary.” Ibid. The idea of Strauss as a conduit of Schmittian ideas to contemporary neoconservatism has also been embraced by a certain libertarian, isolationist section of the American right whose views are most coherently expressed on the website antiwar.com. A 2003 piece for that website titled “There Are No Neocons in Foxholes” claims that “Strauss moved to America from Germany in 1938 on the suggestion of . . . Schmitt” and that his largely Schmittian attitude toward politics had a profound and lasting influence on such notable neoconservatives as Paul Wolfowitz, Richard Perle, Allan Bloom, Francis Fukuyama, Irving and William Kristol, and Project for the New American Century director Gary Schmitt. See Amir Butler, “There are No Neocons in Foxholes,” Antiwar.com, http://www.antiwar.com/orig/butler2.html (accessed March 6, 2011).

Friedrich is remembered today as the “leading authority on constitutionalism in postwar America,” and is widely cited as a pioneering figure in the area of modern comparative government. He is, perhaps, best known for his 1956 collaboration with the young Zbigniew Brzezinski on *Totalitarian Dictatorship and Autocracy*, a book which was extremely influential in publicizing the Cold War idea of “totalitarianism” as a distinctly modern form of tyranny that existed in both Nazi Germany and Stalinist Russia. His most lasting contribution to political science in America was his critique of the behavioralist school, which dominated the field at midcentury. He accused the behaviorists of harboring a complete indifference to ethical, normative values in its analysis of political systems and thus being “incapable of nam[ing] totalitarianism as an evil.”

Yet Friedrich’s most permanent legacy, arguably, was not intellectual but political. His “pivotal” role as an adviser to General Lucius Clay during the Allied effort to de-Nazify Germany after World War II was, in many respects, the culmination of a decade-long movement among American academics toward greater and more direct involvement in policymaking. This movement was led in large part by German émigrés who came to the United States during the 1920s and 30s. Some emigrated after 1933 to escape Hitler but others, such as Friedrich, came years earlier. Friedrich left Germany for America in 1926 to accept a teaching position at Harvard after completing his doctorate at the University of Heidelberg, an intellectual environment where the influence of Max Weber predominated. He spearheaded an American movement for political scientists to

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become political actors in the early days of the New Deal, a time when most of his colleagues adamantly adhered to Max Weber’s insistence that the social sciences be “value-neutral.” With the outbreak of war in 1939, however, Friedrich’s belief that “an educated elite must engage in direct discussion with policy-makers and the public alike” rapidly came to dominate the thinking of political leaders in Washington, and by the attack on Pearl Harbor in 1941, Friedrich was at the forefront of a new and permanent “state-academia nexus” in the United States.  

Bendersky thus considers the “complete neglect” of Friedrich by the “subterranean influence” school of Schmitt scholars to be one of the most “curious aspects” of the Schmitt revival in North America. He identifies only two scholars who have studied the Schmitt-Friedrich relationship in any detail: George Schwab and Hans Leitzmann. Leitzmann’s 1999 book sought “to demonstrate the ‘continuity’ between Weimar political thought and that of the Federal Republic, with Friedrich as a prime representative.” Bendersky considers that thesis “problematic” because it depicts Friedrich as a consistent “‘anti-pluralist, ‘authoritarian,’ who perpetuated Schmittian anti-democratic ideas into the [German] Federal Republic and its institutions” and

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therefore “eschews completely the effects of American liberalism and progressivism on Friedrich and his reciprocal impact on American political science.”

As evidence of Friedrich’s supposed conversion from Schmittian conservatism to Yankee liberalism, Bendersky cites Friedrich’s 1942 book *The New Belief in the Common Man*. Friedrich wrote the book in the wake of the Japanese attack on Pearl Harbor as a manifesto for a new democratic consciousness that could unite the “free” peoples of the world against the looming threat of “totalitarianism.” Bendersky interprets the book as illustrating how Friedrich’s long-held conservative “emphasis on tradition, religion, and community as the foundation of political stability for the United States and Britain” is tempered by a newfound commitment to “the American democratic system” and the hopeful anticipation of “the ‘pan-humanism’ of a new ‘world-democratic order.’”

My claim is that Bendersky has the Schmitt-Friedrich relationship backwards. His narrative has Friedrich beginning his career at Harvard in the 1920s with ideas about constitutionalism and liberalism that were “Schmittian to their core” and then becoming inspired by American liberal political traditions which temper the Schmittian nature of his ideas over time. A close reading of Friedrich’s unpublished lecture material and published books and articles, however, reveals that these Weimar-era intellectual affinities between Schmitt and Friedrich were superficial at best. The two shared, in the broadest sense, a *decisionist* theory of constitutionalism that identified the “constitution”

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of a democracy with the willful constitution-making act of its people as distinct from the legal norms contained in its written constitution. They thus both firmly disagreed with the positivist doctrine of Hans Kelsen, whose “pure theory of law” proposed that nations could literally be governed by laws and not men. But whereas Schmitt’s decisionism played a crucial role as the foundation for his theoretical attack on liberalism as the basis for a democracy’s constitution, Friedrich’s decisionism undergirded his defense of liberalism as the practical measure of what makes democracies “constitutional” to begin with.8

The “core” of Schmitt’s decisionist constitutionalism during the Weimar years was that liberalism stands fatally in contradiction to democracy. Schmitt defined democracy specifically as the perfect “identity of governed and governing.” Such identity logically presupposed a politically unified population capable of speaking with a “general will.” Liberalism, however, was a “consistent, comprehensive metaphysical system whose purpose was “to thoroughly compromise all possibilities of state action.” Its norms of divided powers and individual rights restrained the state from representing or implementing the will even of overwhelming majorities, much less the entire “general will.” Liberalism thereby made the democratic identity of ruler and ruled impossible.9


Friedrich rejected two key assumptions underlying the validity of Schmitt’s antiliberal argument. The first of these was the idea that the identity of ruler and ruled necessarily presupposed a *substantively homogenous* citizenry. Schmitt recognized equality among citizens as an essential prerequisite for this identity, but he added that this equality must be “political” as opposed to merely “legal.” The former type of equality referred to an essential *sameness* by which one citizen could distinguish a fellow citizen from a noncitizen. The latter, by contrast, referred simply to the equal protection of the laws—something which in theory could be applied without distinction to citizen and noncitizen alike, as is implied in the equal protection language of the U.S. Constitution’s Fourteenth Amendment.\(^{10}\)

For Friedrich, the identity of ruler and ruled required not a homogeneity of substantive identity among the people but a *community of values*. Democracy was possible where the people were substantively heterogeneous so long as public opinion unanimously supported certain fundamental political principles. More specifically, Friedrich identified the liberal political principles of limited government and individual rights as the “fundamentals” that every citizen had to support in order for democracy to be possible. A community of values would create the conditions that were necessary to sustain governing institutions capable of “integrating” a heterogeneous plurality of wills into a single “general will.”\(^{11}\)

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\(^{10}\) Schmitt explains his concept of democratic substantive homogeneity concisely in *Constitutional Theory*. See *Constitutional Theory*, 255-67.

\(^{11}\) Throughout his career, Friedrich consistently felt that direct democracy posed a mortal threat to liberal constitutionalism. This threat was the subject of the concluding chapter of his 1937 treatise on constitutionalism, *Constitutional Government and Politics*. See Carl J. Friedrich, *Constitutional Government and Politics: Nature and Development* (New York: Harper & Brothers, 1937), 473-500. Friedrich’s emphasis on unanimous values as the basis of the general will can be seen in his 1929-30 lecture notes. See Course Lectures, “Gov 8, 1930,” March 17, 1930, HUGFP 17.60, box 11, Friedrich
The second core assumption of Schmitt’s that Friedrich rejected was the idea that only an individual, personal “sovereign” was capable of fully representing the “general will” and thereby implementing in practice the democratic identity of ruler and ruled. A legislative parliament was incapable in Schmitt’s view of such representation because it did not speak with a single will but rather reflected the aggregate of individual voters organized territorially and by party. The liberal conception of the parliament as representing a “unity of the plurality of interests and parties” was an illusion. The legislature was nothing more than an arena in which the “emissaries and agents” of the various factional groups within society fought one another for control and influence over the state. Because such representation” was based upon the “legal” equality of all voting individuals, parliaments treated insiders the same as outsiders, betraying its mandate to represent only those who are part of the community and defend them from the outsiders. While Schmitt accepted in principle the democratic idea of popular sovereignty that emerged out of the French Revolution, he, like Hobbes, believed that such sovereignty in practice could only be exercised by a single individual.\textsuperscript{12}

To Friedrich, however, the fact that individual political leaders had conscious political wills that enabled them to take decisive action was the very thing that precluded them from being able to represent the entire people. Friedrich located such “static” representation in the greater “dynamic” process of limited and divided government that emerged organically out of a fundamental unanimous agreement on liberal principles.

Sovereignty as an internal, domestic political concept was something he considered to be mostly irrelevant in modern liberal democracies. Friedrich did, however, look to centralized state bureaucracies as institutions uniquely suited to serving this “sovereign” function due to their subordination simultaneously to multiple departments of government, their hierarchical structure, and their professional competency requirements. Such bureaucracies derived their “responsibility,” however, not from the personal “sovereign” representative characteristics of top bureaucrats but from the tendency of administrative bureaucracies “to be neutral with regard to the interests and opinions that divide the community.”

By 1940, however, Friedrich’s distance from Schmitt on these two assumptions had narrowed significantly. He abandoned wholeheartedly his belief that liberal democracy required a conscious unanimity of liberal values and claimed instead that dissent and disagreement on fundamental political values distinguished it from all other forms of government. Instead, liberal democracy’s viability rested on “a peculiar kind of democratic unity” that was defined behaviorally in terms of general culture of tolerance for differences in identify or belief and respect for the rule of law that is reflected in ones actions. By emphasizing the centrality of tolerance for dissent, such democratic habits and customs formally allowed for an infinitely pluralistic political space. But functionally, it imposed a substantive homogeneity of conduct that would have been far more at home in Schmitt’s Weimar-era writings than was the community of values.

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concept that defined Friedrich’s thought back when he and Schmitt were still on speaking terms.\(^\text{14}\)

The “common man” who is the metaphorical main character in the book Bendersky cites as evidence of Friedrich’s turn away from Schmitt was in fact the name by which Friedrich designated the substantively homogenous liberal democratic citizen. One could hold a limitless variety of political beliefs or identities and still be a common man so long as one acted on one’s particular beliefs or identity in a restrained, cooperative, and above all, lawful manner. If democracy was the identity between ruler and ruled, then a liberal, restrained government could only democratically represent a community of liberal, restrained people—a community of common men.\(^\text{15}\)

Because of its basis in purely “legal” (as opposed to “political”) equality, Friedrich’s former community-of-values model of liberal democracy was indifferent to substantive homogeneity. It provided the citizen no means of distinguishing friend from enemy externally or internally. The peculiar democratic unity of the common man, however, defined the national enemy simply and universally as any individual, group, or foreign state that does not act in the restrained manner of the common man. Such

\(^{14}\) Friedrich’s abandonment of “agreement on fundamentals” first appears in his 1939 piece “Democracy and Dissent.” See Friedrich, “Democracy and Dissent,” The Political Quarterly 10, no. 4 (October 1939): 571-82. In his course lecture the following year, he reiterated his newfound view to his students. See Government 5, “The Concept of the Constitution,” October 24, 1940, pp. 16-17, HUGFP 17.60, box 10, Friedrich Papers. Friedrich would make the non-importance of agreement on fundamentals one of the central themes of his theory of the common man. See New Belief in the Common Man, 151-86.


Professor Helmut Kuhn criticized the Friedrich’s common man principle at the time for just this reason, writing that, like its totalitarian antithesis, it “en throne[d] a sovereign who need not be checked, because he is expected to check himself.” Helmut Kuhn, “The Common Man on Trial,” The Review of Politics 6, no. 1 (January 1944): 19.
“uncommon” behavior was fundamentally “totalitarian” and as such posed an existential threat to the common man and his democracy wherever it surfaced.\textsuperscript{16}

Totalitarianism was a word that Friedrich began using suddenly toward the end of the 1930s around the same time he began abandoning “agreement on fundamentals” in favor of substantively homogenous behavior as the basis for democracy. It was a term that in Friedrich’s usage stressed the supposedly universal commonalities of all political extremities from far left to far right. To call a movement or a government totalitarian was to imply that it was immaterial whether that movement or government claimed to represent the proletariat, master race, or any other political constituency; it was the common man’s enemy regardless.\textsuperscript{17}

Whereas Schmitt’s obsession with substantive homogeneity stemmed from an extreme hostility to and a desire to undermine the liberal ideals of individualism and pluralism, Friedrich’s sudden embrace of substantive homogeneity around the outbreak of World War II in Europe reflected an attempt to universalize these ideals in anticipation of America’s emergence as a world superpower. The common man, Friedrich explained, was “everyman,” but common men \textit{constituted politically} formed a substantively homogenous, exclusive unity capable of distinguishing friend from enemy. Yet because the common man was identified by his tolerance of heterogeneity, the constitutional

\textsuperscript{16} See \textit{New Belief in the Common Man}, 151-86.

\textsuperscript{17} See ibid., 163-60; Government 5, “The Concept of the Constitution,” October 24, 1940, p. 16, HUGFP 17.60, box 10, Friedrich Papers; “New Democratic Constitutions,” 217-18, 221; “Representation and Constitutional Reform,” 127, 7n; “Military Government and Dictatorship,” \textit{Annals of the American Academy of Political and Social Science} 267 (January 1950): 3-4; “The World Significance of the New Constitution,” \textit{Annals of the American Academy of Political and Social Science} 285 (January 1953): 42-43. Friedrich tied his conviction that centralized bureaucracies were necessary for democratic stability to his identification of political extremism with totalitarianism and as the common man’s enemy, though he did in the early to mid 1930s, before “common man” and “totalitarianism” became terms of art that defines his writing. See \textit{Responsible Bureaucracy}, 28; Manuscripts, etc., “Some Thoughts on the Politics of Government Control,” p. 17, HUGFP 17.60, box 28, Friedrich Papers.
democracy that represented his interests on the world stage could only have one legitimate enemy, and that was totalitarianism.\textsuperscript{18}

Friedrich’s own role as a leading figure in the movement toward an American “state-academia nexus” from the mid-1930s onward would result in his embracing in substance while simultaneously rejecting in form the other core axiom of Schmitt’s thought he rejected during Weimar: the Hobbesian principle of the personalized sovereign. During the Weimar period, though, Friedrich maintained that administrative

\textsuperscript{18} New Belief in the Common Man, 7, 296-317. In Totalitarian Dictatorship and Autocracy, Friedrich and Brzezinski identified “six basic features” of totalitarian political systems which together amount to the negation of tolerance and restraint:

1. an official ideology, consisting of an official body of doctrine covering all vital aspects of man’s existence to which everyone living in that society is supposed to adhere, at least passively; this ideology is characteristically focused and projected toward a perfect final state of mankind, that is to say, it contains a chiliastic claim, based on a radical rejection of the existing society and conquest of the world for the new one:

2. a single mass party led typically by one man, the “dictator,” and consisting of a relatively small percentage of the total population (up to 10 percent) of men and women, a hard core of them passionately and unquestioningly dedicated to the ideology and prepared to assist in every way in promoting its general acceptance, such a party being hierarchically, oligarchically organized, and typically either superior to, or completely intertwined with the bureaucratic government organization;

3. a system of terroristic police control, supporting but also supervising the party for its leaders, and characteristically directed not only against demonstrable “enemies” of the regime, but against arbitrarily selected classes of the population; the terror of the secret police systematically exploiting modern science, and more especially scientific psychology;

4. a technologically conditioned near-complete monopoly of control, in the hands of the party and its subservient cadres, of all means of effective mass communication, such as the press, radio, motion pictures;

5. a similarly technologically conditioned near-complete monopoly of control (in the same hands) of all means of effective armed combat;

6. a central control and direction of the entire economy through the bureaucratic co-ordination of its formerly independent corporate entities, typically including most other associations and group activities.

state bureaucracies derived their democratic legitimacy from their lack of a “monocratic structure,” a term Weber had used to associate such bureaucracies with the arbitrary power of individual “charismatic” leaders. As the 1930s wore on, Friedrich increasingly came to believe that a properly trained, permanent elite of “administrative scientists” like himself was necessary to consciously monitor the domestic political situation and subtly maneuver state policy so as to ensure continued restraint by rulers and ruled alike.19

To the rulers, this figure would play the role of consultant, employing his superior wisdom of human nature to assisting policymakers in their duties. To the ruled, he would play the role of "educator" subtly influencing the political behavior of the "common man" so as to protect them from the "poisonous" influence of totalitarian propaganda. But such “educators” would be the opposite of charismatic—their existence and influence would be largely invisible to the general public, whose belief in the idea of their own self-government was essential to political stability.20

This paper traces Friedrich’s constitutional thought from its initial rejection of Schmitt’s “core” assumptions during the Weimar years through the various steps of his transformation as a young Harvard political scientist during the New Deal era to his first articulation of his common man doctrine in the immediate aftermath of Pearl Harbor. I hope to demonstrate that Friedrich’s postwar legacy, whether intellectual or political, represents neither a continuity of Schmittian conservatism from the 1920s through the 1940s nor a partial rejection of Schmittian conservatism in favor of Yankee liberalism but

rather a newfound, revolutionary embrace of Schmittian principles by which Friedrich sought to address the weaknesses of a traditional liberalism that the modern industrial world of the twentieth century had all but buried.

The Weimar Years

The superficial resemblance between Schmitt and Friedrich’s Weimar era constitutional philosophies stems most likely from the common influence of Max Weber on their thought. Weber stood at the center of a paradigm shift in German jurisprudence at the turn of the century whereby the traditional positivist formalism of legal thinking was becoming increasingly infected by the empiricism and pragmatism of the social sciences. Weber developed a dualistic method of understanding the validity of legal norms which distinguished a norm’s sociological validity—the factual probability of its being followed—from its legal validity, which was simply “a logical ought.”

Weber’s influence on multiple disciplines internationally in the early twentieth century was so great that no distinct “school” of “disciples” emerged from his teachings. Rather, his students “took from him a part, without the requirement of remaining faithful to the whole.” Schmitt, who was trained as a lawyer and remained juristically focused throughout his career, was concerned primarily during the Weimar era with identifying the source of a liberal constitutional norm’s legal validity. Friedrich, however, “started in the law and [then] decided [he] wasn’t understanding anything” and thus switched to economics and ultimately to political science. His primary concern, therefore, was identifying the source of a liberal constitutional norm’s sociological validity.22

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Yet Weber’s influence on Friedrich was far more direct and formative than his influence on Schmitt. Schmitt, who was a full generation older than Friedrich, lived through most of this transformative period as an adult whereas Friedrich began his university studies after World War I and entered an intellectual world that had largely been already transformed. Schmitt merely attended various lectures of Weber’s from time to time before Weber’s death in 1920. Friedrich, however, studied directly under Max Weber’s brother Alfred at the University of Heidelberg. During the 1920s, that university was the home of the “Heidelberg School,” a group of young scholars who were dedicated followers of Weber’s political theories. While there, Friedrich participated heavily in the Institute of Social and Political Science (InSoSta), and served as the personal assistant of Max Weber’s brother Alfred, who founded and ran the institute. InSoSta offered “courses and research on national economy, politics, and cultural sociology” and “sought to produce a skilled, democratic elite, which would take its place in Germany’s parliamentary life.” Many of the professional contacts Friedrich made while a student at Heidelberg were to become important partners of his in the United States during World War II, as he helped transform the Weimar ideal of an educated “democratic elite” benevolently guiding the public into an American reality.23

That Schmitt and Friedrich even recognized Weber’s distinction set them both apart from Hans Kelsen, a Weimar jurist whose extreme positivist “pure theory of law” insisted that legal scholarship’s concepts “may only come from the ‘world of ought’” and thus maintained that liberal democracies could literally be governed by laws and not men.

Their mutual opposition to Kelsen put them in the company of other conservative Weimar thinkers such as Erich Kaufmann and Rudolf Smend who understood a nation’s various written constitutional laws to comprise something entirely different from its constitution and who therefore struggled with the challenge of reconciling the two concepts.\(^{24}\)

A common concern of this school was the problem of a state’s “political unity” and the threat that modern industry and mass suffrage posed to it. Political unity was a term frequently discussed by European constitutional lawyers and political thinkers during the politically polarized interwar years. It was an idea that emerged out of the eighteenth-century rationalism of the French Revolution that produced such concepts as the general will of Rousseau and the constituent power of Sieyes. These concepts represented the attempt of Enlightenment rationalists to transfer the traditional concept of state sovereignty from its roots in the absolute monarchies of the seventeenth and early eighteenth centuries to the revolutionary democratic realities of the late eighteenth and early nineteenth centuries. The idea that the entire people of a country, as opposed to an individual ruler, could be “sovereign” was a liberating notion when it was first conceived.

\(^{24}\) See Krioth, “Shattering of Methods,” 47-50. In Constitutional Theory, Schmitt distinguished a constitution’s “political component,” which originates from “a fundamental political decision by the bearer of the constitution-making power” from its “Rechtsstaat component,” by which he meant a series of positive, written guarantees of basic individual rights and separation of powers that “corresponds to the demands of bourgeois freedom.” Schmitt, Constitutional Theory, 77, 90-93. Smend’s Constitution and Constitutional Law (Verfassung und Verfassungsrecht), published the same year described the “constitutional state” not as the fixed product of a static decision but as a living organism with a spirit of its own, that could deviate from the letter of constitutional laws without violating the underlying spirit of the constitution as a whole. See Stephan Krioth, “Rudolf Smend,” in Jacobson & Schlink, Weimar, 207-48. Friedrich’s 1929-30 lecture notes to his comparative constitutionalism course at Harvard discuss the distinction between constitution and “constitutional legislation” in the context of judicial review, which is “easy to justify” when one speaks of the former but “hard to justify” when one speaks of the latter. Course Lectures, “Gov 8, 1930,” December 3, 1929, HUGFP 17.60, box 11, Friedrich Papers. All of the legal and political thinkers in this antipositivist school were influenced the work of the French law professor Maurice Hauriou. See, e.g. Maurice Hauriou, “An Interpretation of the Principles of Public Law,” Harvard Law Review 31, no. 6 (April 1918): 813-21.
but industrial modernity was increasingly pushing it to its conceptual limits as socialist class consciousness, religious identity politics, and a more ethnic, blood-based form of nationalism began to compete with the liberal state itself for the loyalty of a politically awakened mass public. By the interwar years, the contradictions of popular sovereignty had famously reached extreme levels in Weimar Germany, but Weimar’s crisis of political unity existed to some degree and in some form in every industrialized country, particularly after the economic collapse of 1929.25

The eighteenth-century idea of popular sovereignty that informed the early twentieth-century debates over political unity also informed the debate within the German National Assembly of 1919 over whether to adopt Article 48 in the Weimar Constitution. That provision read that if the “public security and order” of the German Reich were “significantly disturbed or endangered,” the president could “utilize the necessary measures” to restore it, “if necessary, with the aid of armed force.” Article 48 also gave the president the right “to provisionally suspend, in whole or in part, the basic rights established” in various other articles of the constitution. Schmitt converted Weber’s analysis of Article 48’s “sociological” validity into an analysis of its “legal” validity in his early work on the nature of dictatorship. In his 1921 book Die Diktatur, Schmitt, borrowing from Rousseau and Sieyes, distinguished two types of dictatorship: sovereign and commissarial. A sovereign dictatorship occurred when “the people” or “the

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nation” as a whole rose up, overthrew an old regime, and forcefully decided to found a new state. The paradigm historical example of a sovereign dictatorship is the French Constituent Assembly of 1789-91. The sovereign dictatorship would then codify various “fundamental” legal norms that would become the nation’s constitutional laws before dissolving itself.\(^\text{26}\)

A commissarial dictatorship, by contrast, existed for the purpose of protecting an existing regime, not as the consequence of its successful overthrow. The constitutional laws that the original sovereign dictatorship set forth existed solely enforce the will of the sovereign people in perpetuity, given the inability of “the people” to directly govern itself on a regular basis. But in times of acute political emergency, these provisions for basic rights and divided government threatened to fatally compromise the ability of the state to adequately meet the exigencies of the occasion, and therefore threatened the state’s very survival. But because the state’s legitimacy was rooted in the sovereignty of the people, whichever public official invoked emergency powers and suspended these provisions had very limited authority in the exercise of his dictatorial powers. He was a mere “commissary” or deputy of the sovereign people, and as such he was obligated to restore the basic rights and separation of powers as soon as the emergency situation had passed.

In *Die Diktatur*, Schmitt described the German president as a commissarial dictator.\(^\text{27}\)


\(^{27}\) For a discussion of Schmitt’s disbelief in the ability of “the people” to directly self-govern, see Renato Cristi, “Carl Schmitt on Sovereignty and Constituent Power,” in Dyzenhaus, *Law as Politics*, 179-95.
Bendersky bases his characterization of Friedrich’s Weimar-era constitutional ideas as “Schmittian to their core” primarily on two articles that Friedrich wrote in the early 1930s on President Hindenburg’s invocation of Article 48 emergency powers. In his 1930 article “Dictatorship in Germany?” Friedrich cited Die Diktatur with approval as having “shown convincingly that there is a vital difference between a specific measure of the president ‘breaking through’ a constitutional limitation and a formal suspension.” After praising Schmitt as “one of the most acute constitutional theorists,” Friedrich credited him with proving that Article 48 was “peculiarly ill adapted” to the purpose of establishing a permanent autocracy. In his 1933 article “The Development of Executive Power in Germany,” which he wrote early in the year when the triumph of National Socialism was still far from a certainty, Friedrich suggested that his colleagues’ more pessimistic analysis of Hindenburg’s emergency rule suffered from “a certain amount of ‘liberal’ prejudice.”

Friedrich’s lecture notes for his 1929-30 comparative government course at Harvard show a similar endorsement of Schmitt’s sovereign-commissarial distinction in Die Diktatur. In his December 18, 1929 lecture for that course, Friedrich placed Hindenburg’s use of Article 48 emergency powers to suspend the basic rights of Germans alongside Woodrow Wilson’s wartime suspension of the First Amendment rights of Americans as twin examples of commissarial dictatorship. But Friedrich in that very same lecture stressed the modern limitations of the “formal” or “juristic” understanding of sovereignty that Schmitt relied upon when writing Die Diktatur. Friedrich explained to

28 Bendersky, “Intertwined Paths,” 13n, 18n; Friedrich, “Dictatorship in Germany?” Foreign Affairs 9, no. 1 (October 1930): 129, 131. Friedrich also in this article called Die Diktatur “an epoch-making discussion to which the writer is indebted for important suggestions for the general analysis here given.” Ibid., 129, 15n. Friedrich, “The Development of Executive Power in Germany,” The American Political Science Review 27, no. 2 (April 1933): 196-97, 28n.
his students that this formal understanding ceased making sense after the transition in European countries from absolute to constitutional monarchy. In the latter type of government, *formally speaking*, “it didn’t matter if [the] substance of [the] law originated in Parl[iament]” since “it became legally binding because [the] monarch proclaimed [it to be so].” But “[r]ealists soon contested” such formal reasoning, preferring a more “realistic” view that acknowledged that, *substantively speaking*, “Parl[iament] imposed its will on [the] king.” The traditional, formal concept of sovereignty, therefore, was no longer useful in justifying “concentration of all power in single hands” in constitutional monarchies, much less in republics, as Schmitt did in *Die Diktatur* when he grounded commissarial dictatorship juristically in Rousseauian notions of popular sovereignty.²⁹

Friedrich maintained, however, that the concept of sovereignty was still useful in modern states as “a power to settle or determine [political] conflicts” among a nation’s citizens. But he rejected the idea that the German president himself possessed the absolute disinterested impartiality necessary to personally exercise this modern type of sovereign power, since the president, no less than all of the legislators in the Reichstag, was “elected & a party man.” Friedrich, in fact, saw the modern, independent judiciary as the closest thing in reality to a commissarial dictatorship when it interpreted constitutional laws whose meaning was hotly disputed. Such a power was “contra[ry] to democracy” because it was exercised by “a body least responsible to the people” but was for that reason the “least likely of dep[artments]” to abuse its power. For this reason,

²⁹ Course Lectures, “Gov 8, 1930,” December 18, 1929, HUGFP 17.60, box 11, Friedrich Papers.
Friedrich supported the principle of judicial review of constitutional provisions in Weimar Germany.\textsuperscript{30}

Friedrich’s analysis of Die Diktatur occurred between 1928 and 1933, roughly a decade after Schmitt published the work. In the intervening years, Schmitt’s analysis of the problem of political unity in liberal democracies underwent such a rapid and radical transformation that by the end of the decade, when Friedrich first began citing and corresponding with Schmitt, its most basic epistemological foundations had antithetical to those on which Friedrich was basing his constitutional theory. The conspicuous absence in Friedrich’s articles on Article 48 and dictatorship during this period of any citations to three of Schmitt’s most defining Weimar-era works, Political Theology (1922), The Crisis of Parliamentary Democracy (1923), and The Concept of the Political (1927), only makes sense in the context of Schmitt’s fundamental divergence from the view of popular sovereignty he advanced in Die Diktatur.\textsuperscript{31}

\textsuperscript{30} Ibid., February 3, 1930; Friedrich, “The Issue of Judicial Review in Germany,” Political Science Quarterly 42, no. 2 (June 1928): 200. In this article, Friedrich expresses anxiety over the uncertain prognosis of American-style judicial review in Germany.

\textsuperscript{31} Friedrich did, however, cite three other key works of Schmitt at least once in “The Development of Executive Power in Germany.” He cited the sections of Constitutional Theory that discuss liberal parliamentarianism both generally and in the specific context of Weimar in order to include Schmitt among the majority German constitutional lawyers who Friedrich claimed were of the opinion that “the president is not permitted to nominate to the post of chancellor any person of whom it may be assumed that he does not possess the confidence of the parliament.” Friedrich, “Executive Power,” 191, 13n, 192, 15n. He cited Constitutional Theory again to note the relevance of Schmitt’s insistence upon “the need for homogeneity” in a democracy and his observation that “earlier democratic thought (Aristotle, Levellers, Rousseau, etc.) always presupposed such homogeneity” to the “sharply drawn” economic and religious cleavages plaguing Weimar politics. Ibid., 193, 21n. He then noted that Schmitt’s 1931 book The Guardian of the Constitution “develop[ed] the implications [of the need for homogeneity] for Germany.” Ibid. In that book, Schmitt argued that the president, and not the judiciary, had the final authority to interpret disputed provisions of the Weimar Constitution due to the politically fragmented and ever-shifting nature of German society. See Dessauer, “The Constitutional Decision,” 23. Friedrich faulted Hans Kelsen for “taking the homogeneity [of the German people] for granted” in a polemical piece he wrote attacking Schmitt’s assertion. Friedrich, “Executive Power,” 193-94, 21n. Friedrich’s conception of democratic homogeneity, it will be shown, differed from Schmitt’s to such an extent as to wholly separate Friedrich from the “core” of Schmittian thought. Finally, Friedrich cited Schmitt’s 1932 book Legality and Legitimacy in order specifically to distance himself from Schmitt’s contention that “the first procedural part of the [Weimar] constitution must give way when it comes into a conflict with the second substantive part. Ibid., 202, 46n.
Political Theology contained a radical revision of the analysis of democracy, dictatorship, and sovereignty that Schmitt made a year prior in Die Diktatur. The book’s opening declaration “Sovereign is he who decides on the exception” alone signals Schmitt’s abandonment of his former grounding of the validity of constitutional laws in a revolutionary decision of the sovereign people. By “exception,” Schmitt meant the sort of emergency that in Die Diktatur he claimed “must be met with technical exactitude and temporal finitude by a defined quasi-charismatic commissarial dictator.” But whereas Schmitt viewed constitutional law in Die Diktatur as the supreme, sovereign expression of the people’s will that needed to be restored as soon as possible, he viewed constitutional law in Political Theology as mere “situational law” which lacked any permanent validity. He furthermore viewed “the exception” not as a necessary evil to be tolerated only as long as was absolutely necessary to ensure the state’s survival, but as a promising opportunity for the radical rejuvenation of constitutional laws. In Die Diktatur, it was they the historical constituent power who decided on the norm and the exception by expressly writing into law the procedure for undivided emergency powers and the suspension of individual rights. In Political Theology, it was he the living ruler who decides on the exception and thereby redefines the norm.32

In Political Theology, Schmitt abandoned his reliance on Rousseau and Sieyes as the preeminent authorities on sovereignty in the modern state and instead turned to two earlier theorists of sovereignty who had famously articulated its traditional rationale as a justification for absolute monarchy: Thomas Hobbes and Jean Bodin. Bodin played an important role for Schmitt because of his emphasis on the exception as central to the

concept of sovereignty. Locke, Rousseau, and other rationalist precursors to liberalism ignored the question of the exception in their idealistic attempts to construct a political order in which norms themselves reigned supreme. Bodin’s focus on the exception, however, revealed a very basic point that had been ignored amidst the debate between sociologists and jurists over the validity of norms: that the debate itself presupposes conditions of political stability in which “legal prescriptions can be valid” in the first place, whether one determines their validity sociologically or legally. Schmitt then turned to Hobbes to support his claim that only an individual ruler could “decide on the exception” and thereby make the norm possible. Describing “[a]ll significant concepts” of modern statehood [as] “secularized theological concepts,” Schmitt likened the “omnipotent lawgiver” of Hobbes to the “omnipotent God” of the Bible, and characterized “[t]he exception in jurisprudence” as “analogous to the miracle in theology.”

Schmitt built upon his rejection in Political Theology of the rationalist idea of popular sovereignty as a historical decision of the constituent power in The Crisis of Parliamentary Democracy. There, he denied the capacity of legislative representation to represent any kind of “general will” in the here and now. Liberal principles of mass suffrage, he claimed, had exposed a fatal contradiction between democracy and parliamentarianism. Schmitt’s thoughts on the subject remained largely incomplete and unformed when he first published the book in 1923, but when he published the second edition three years later, he had a more distinctive, coherent theory of this contradiction emerged. In the preface to the 1926 edition, Schmitt defined democracy as “the identity of governed and governing”:

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33 Political Theology, 8, 12-13, 36, 47-48.
Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally. Democracy requires, therefore, first homogeneity and second—if the need arises—elimination of heterogeneity. . . . Equal rights make good sense where homogeneity exists. But the “current usage” of “universal suffrage” implies something else: Every adult person, simply as a person, should eo ipso be politically equal to every other person. This is a liberal, not a democratic, idea; it replaces formerly existing democracies, based on a substantial equality and homogeneity, with a democracy of mankind. This democracy of mankind does not exist anywhere in the world today. If for no other reason than because the earth is divided into states, and indeed mostly into nationally homogenous states, which try to develop democracy internally on the basis of national homogeneity and which, besides that, in no way treat every person as an equally entitled citizen.

Schmitt’s identification of democracy with substantive homogeneity—an existential sameness among a nation’s people that defines that people as such and distinguishes it from other nations and peoples, is commonly cited by those wishing to expose in Schmitt’s Weimar-era writings the seeds of Nazi racial exclusion. But Schmitt never intended to limit the basis of this substantive homogeneity to race or ethnicity. “It can be found,” he wrote, “in certain physical and moral qualities, for example, in civic virtue, in arête, the classical democracy of vertus (vertu).”

Schmitt’s insistence upon substantive homogeneity in The Crisis of Parliamentary Democracy fit together with his rejection of popular sovereignty in Political Theology on the subject of democratic representation during a state of emergency. The “sovereign” dictator who “decides on the exception” could only do so democratically if the demos his absolute rule purportedly served was substantively homogenous. Liberal parliamentarianism, however, rested on the universal rights and equality of all individuals and presupposed a “general will.” This general will in theory resulted from discussion and deliberation among a substantively heterogeneous multitude.

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through their elected representatives in parliament. But in practice, there was no such rational discussion among individuals. There was only dull, determined struggle among consolidated political factions for control over the state. Under such circumstances—and Weimar Germany served as the real-life basis for Schmitt’s theoretical model—the sovereign dictator deciding on the exception would have to decide in favor of certain contending factions and against others. “Democracy,” therefore, “seem[ed] fated to destroy itself in the formation of a will.”

The combined conclusions of Political Theology and The Crisis of Parliamentary Democracy laid the theoretical groundwork for Schmitt’s most famous Weimar-era work, The Concept of the Political. “The concept of the state,” Schmitt began the book by noting, “presupposes the concept of the political.” Schmitt had a particular understanding of the “state,” however, that Friedrich and many others did not share. The state is what John Rawls and Ronald Dworkin would call an “essentially contested concept.” According to their theories, “an essentially contested concept is not vague or ambiguous; rather there is just one concept which is itself essentially contested.” “Popular sovereignty,” for example, is an essentially contested concept in that everybody agrees that it means roughly that “the people” are the ultimate source of authority in a state, but there are serious disputes over how “the people” exercise this authority—directly or through elected representatives—or even who “the people” are. Both of these disputes represent alternative conceptions of the concept of popular sovereignty.

Schmitt’s claim, therefore, that “[t]he concept of the state presupposes the concept of the political,” itself presupposes his own particular conception of the state as necessarily being under the control of a single “omnipotent lawmaker” who “decides on

35 Ibid., 13, 28.
the exception.” Only that conception of the state presupposes a derivative conception of the political as friend-enemy struggle among groups vying for control of the government. Schmitt’s reduction of “political actions and motives” to the distinction “between friend and enemy” must therefore be understood as referring to the struggle between two mutually hostile groups of substantively homogenous individuals for control of the state—that is, a monopoly over the exception.

Other categories that provide individuals with group identities—the religious, the cultural, the moral, the legal, the scientific, and so forth—were “the antithesis” of the political as long as they bore no relation to the capture of state power, but could easily become politicized the moment they took on that quality. Liberalism, with its exclusive emphasis on the rights of the individual against the power of the state, denied the public nature of political friend-enemy groupings and was therefore “the negation of the political.”  

Friedrich’s own conception of the state and of political unity in a democracy around the close of the Weimar period was fundamentally different from Schmitt’s. Friedrich believed that a nation’s constitutional laws were not mere normative ideals whose validity depended on the willful “decision” of a “sovereign” but in fact reflected the living process of government in liberal democracies. Friedrich emphatically rejected the authoritarian ideas of sovereignty that Hobbes and Bodin put forth and instead looked to the writings of Johannes Althusius, who “inverted Bodinian sovereignty by locating it in the people as a corporate and federalized unity, rather than in a monarch.” As a result, representation under Friedrich’s scheme entailed “the decisional relation between

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representative and those represented” and the political unity on which such representation depended entailed depended not on a substantively homogenous identity among the people but on a “community of values.”

The word “values” for Friedrich had a distinctly Weberian meaning. In The Protestant Ethic and the Spirit of Capitalism, Weber rejected the Marxian, historical materialist assumption that “the greater participation of Protestants in the positions of ownership and management in modern economic life may . . . be understood . . . simply as a result of the greater material wealth they have inherited.” Weber claimed to the contrary that a shift in religious values toward frugality and asceticism was as much the cause of the modern capitalist profit motive as it was the effect. Friedrich’s location of political unity in a “community of values” was a reflection of the Weberian assertion that ideal norms themselves are capable of overriding material interests or tribal identities as the primary motivator of social action.

Friedrich’s Harvard colleague Talcott Parsons, a sociologist who first translated The Protestant Ethic and other key works of Weber’s, was an influential presence in Friedrich’s life during the 1930s and his particularly idealistic interpretation of Weber’s social philosophy may likely have informed Friedrich’s conception of “values.” Parsons had begun his college career at Amherst as a student socialist but became increasingly drawn to Weber as a result of the exchange program with Heidelberg. He soon after abandoned his economic, materialist outlook for a more ideal-oriented understanding of human behavior. He had come to believe that “[s]omething other than rational self-

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interest rendered society possible: an element of social solidarity” which he “identified with the principle of ‘common-value integration.’”

Parsons’s translation is now widely criticized as a “Bowdlerization” of Weber’s critical assessment of Marxian materialism. Whereas Weber saw normative ideals and values as “necessary but not sufficient to effect historical change,” “Parsons drained much of the non-normative from Weber’s theory.” During the Cold War, U.S. foreign policy strategists relied on “the Parsonized Weber” in developing “area studies” as “an American alternative to Marxism” that could refute the dependency theory of third-world underdevelopment. This Cold War American discourse banished economic or material explanations entirely from the analysis of why much of the world at the time was failing to industrialize.

The Parsonian influence on Friedrich at that time is strongly suggested in Friedrich’s then-frequent references to “agreement on fundamentals” as the basis for his values-oriented conception of political unity. One passage from “The Development of Executive Power in Germany” expresses this concept quite clearly:

It is well-known that even in England the future of representative democracy is threatened by class antagonism. In trying to combat this class antagonism, Lord Balfour said: “It is evident that our whole political machinery presupposes a people so fundamentally at one that they can safely afford to bicker.” That the English people are so fundamentally at one has been questioned recently by eminent authority; and in this matter

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of homogeneity, asking the question amounts almost to answering it. When the man in the street is being transformed into the class-conscious proletarian, the essential foundation of democracy, a homogenous people, tends to disappear, and democracy with it.

Here again is a passage from Friedrich that appears superficially to be “Schmittian to [its] core.” But there is an ambiguity in Friedrich’s use of the word “homogeneity” that calls this resemblance into question. Is “the man in the street” a falsely conscious proletarian stumbling around high on the opiates of liberalism and individual rights who one day awakens from his slumber and becomes a militant socialist? Or is he a content, apolitical petty-bourgeois who suddenly loses his shirt and draws radical political conclusions from his own humiliating downward social mobility? If he is the latter, then the most obvious means of restoring substantive democratic homogeneity would be the redistribution of wealth. If he is the former, however, then there was never any such homogeneity to begin with for one to restore. Instead, the only unity that could ever have preceded the man in the street’s “transformation” is a unity of fundamental belief among an economically and otherwise heterogeneous citizenry in the moral superiority of liberal constitutionalism over all other forms of government. When Friedrich first began to involve himself in New Deal policymaking in the middle of the 1930s, he promoted this latter type of unity as the sine qua non of democracy.41

Friedrich, American Liberalism, and the New Deal

Friedrich’s influence on the modern liberalism of the New Deal began with his rebellion at Heidelberg against Max Weber’s pessimistic view of the administrative state. Weber viewed the rise of modern industry and mass political participation as going hand-in-hand with the growth of state bureaucratization. To Weber, politics represented a

41 Brick, “Shift away from Economics,” 490-93; Friedrich, “Executive Power,” 194
struggle between contending social groups, as defined by economic class, social status, or partisan affiliation, for control of the bureaucratic machinery of the state. The twin dynamics of democratization and bureaucratization, Weber observed, pulled society simultaneously in two directions: toward an administrative technocracy that denied individuals the liberal political rights they had hitherto enjoyed and toward an increasingly participatory parliamentary democracy. Weber feared, however, that the increasing political polarizations in the twentieth century would so weaken the political unity of national populations that bureaucracy would ultimately triumph over democracy unless individual, "charismatic" leaders arose that could govern in an executive manner with the unified confidence of the people. ⁴²

Friedrich, however, concluded that administrative bureaucracies were not only inevitable aspects of government in the modern world but actually were becoming increasingly critical to the survival of democracy in the industrial age. Friedrich's conclusion was informed chiefly by two political science concepts that were widely discussed in Weimar Germany: the pouvoir neutre idea of Benjamin Constant and Lorenz von Stein and Rudolf Smend's dynamic theory of state integration. The pouvoir neutre referred to a perfectly neutral political figure who stood above politics and could thereby represent the entire nation. Schmitt, echoing Weber's exaltation of the "charismatic" executive, considered the German president to serve the function of the pouvoir neutre. However, he simultaneously considered the president to serve the role of "guardian of the constitution" in interpreting disputed constitutional provisions during times of emergency. These two roles were inherently contradictory in light of Schmitt's characterization of constitutional law as "political" law. If the president's interpretation

the constitution was a political act of decision, his role would not be neutral, and if he remained neutral and above the political fray, he would be incapable of playing the political role of constitutional “guardian.”

Friedrich believed that the pouvoir neutre, conceived as the absolute power of a sole ruling individual or branch of government, was impossible and could only exist in a “relative” sense. This obscure-sounding claim can be better understood in the context of Smend’s theory of intergration. Schmitt located “sovereignty,” as the substantive corpus of “the constitution,” alternatively in a historical “sovereign” decision of an assembled constituent power or in the contemporary “decision] on the exception” by a charismatic executive type. But Smend understood the “constitutional state” sociologically as a living, evolving organism in which legislative powers genuinely were divided from executive and judicial powers and in which basic rights genuinely were respected and enforced. The positive structural blueprint for a limited, constitutional government that was printed on the pages of the constitutional charter was, in Weber’s terminology, an “ideal type,” which represented in the abstract an existing sociological reality.

“Integration” of the state meant “the continuous, unifying joinder of citizens in a state, not in the sense of a hypothetical or historical social contract, but in that of the citizens’ spiritual experience of belonging and spiritual union.” This constant regeneration and recombination of the different organs and competencies of government functionally

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promoted the political unity of the citizenry regardless of how “homogenous” the people in fact were at any given moment.\textsuperscript{44}

Friedrich viewed the modern administrative state as functionally integrating the “decision-making,” “political” competencies of the executive, legislative, and judicial branches, as well as the various federal subdivisions and municipalities, such that the bureaucratic administration itself was not beholden to the interests of any particular competency but rather combined parts of each of them. Yet he nonetheless maintained that “public administration” as such served an executive or “governing” function. In contrast to a king or an individual president, however, the administrative bureaucracy itself was a \textit{pouvoir neutre} due to its multiple sources of direction and control. As such, it was uniquely suited to moderate the extreme tendencies of parliamentary democracy in a way that was itself “responsible” to popular government.\textsuperscript{45}

Friedrich publicized his views on bureaucracy in 1932 when he published \textit{Responsible Bureaucracy}. The book stressed the modern tension between the antidemocratic function of administrative bureaucracies and the necessity of their existence for the survival of democracy. He identified three defining characteristics of such bureaucracies: “a determinate distribution of offices or functions among the members of the organization” (competencies or jurisdictions), “a determinate distribution of the powers of control and coercion attached to these offices” (hierarchy), and


"determinate qualifications required for the fulfillment of those several functions"
(professionalization). These essential attributes of all administrative bureaucracies both
 guaranteed their political neutrality or "responsibility" and simultaneously made them
 unpopular with the "man in the street" and his parliamentary representatives.  

The "man in the street" was a term Friedrich used to refer the average voting
citizen, whose intelligence was average, whose passions dominated his intellect, and
whose capacity for reasoned, farsighted decision-making was slim to nonexistent. It was
an archetypal political character that would evolve a decade later into Friedrich's
"common man." But the common man was only one side of the man in the street's
duality. The other side of that duality was the antidemocratic "mass man." The mass man
referred to the kind of extreme populist politics that culminated in the type of "revolt of
the masses" that put Hitler in power. In discussing the dark side of the common man's
political character, Friedrich would frequently allude to Jose Ortega y Gasset's statement:
"[w]hen the mass acts on its own, it does so only in one way, for it knows no other: it
lynches." The man in the street to whom Friedrich referred in the early 1930s contained
elements of both the common man and the mass man at a time when Friedrich had not yet
conceptually distinguished one from the other. Because men in the street could vote,
Friedrich believed that only a professional, hierarchal, and "responsible" bureaucratic
apparatus could prevent such a "revolt of the masses" from destroying the stabilizing
liberal values that made liberal democracy tenable.  

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46 Friedrich, Responsible Bureaucracy, 1-5, 17-18.
47 Friedrich New Belief in the Common Man, 41, 15n; The New Image of the Common Man (Boston:
Beacon Press, 1950), xix-xxi; The Philosophy of Law in Historical Perspective (Chicago: University of
Chicago Press, 1963), 196-97, 8n; Jose Ortega y Gasset, The Revolt of the Masses, trans. Anonymous (New
Friedrich noted the fact that administrative bureaucracies of this nature typically arose in order to serve Continental European absolute monarchs in the seventeenth and eighteenth centuries. Thus, when parliamentary democracy finally emerged in such countries, the bureaucracy was fully formed and was able immediately to check the excessive whims of the newly enfranchised mass public. It was less certain, however, to what extent such strong bureaucracies as Germany’s civil service could emerge in countries that had been republics from the start. Given the natural aversion of the “man in the street” to bureaucratic control, it seemed doubtful whether the growth of such control could maintain the political support of the majority. Responsible Bureaucracy focused on the example of the Swiss civil service because it developed out of “a more extreme type of popular government than ha[d] ever been attempted elsewhere on the continent of Europe.”

Friedrich’s explained that “the development of a bureaucracy is nothing peculiar to the government” because “the great industrial enterprises of our time . . . require large staffs for their successful operation” wherever they arise. But Friedrich recognized industrialization as a double-edged sword. The same economic forces that strengthened the administrative state, taming democracy and keeping it safe, also had an extreme tendency to polarize the population, unleashing radical democratic tendencies that threatened to destroy popular government altogether.

The 1933 triumph of National Socialism in Germany confirmed Friedrich’s fear acutely. In “The Development of Executive Power in Germany,” Friedrich expressed a genuine confidence that President Hindenburg would restrain his use his Article 48

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48 Ibid., 5, 84
49 Ibid., 6-7.
emergency powers only in the capacity of a “commissarial dictator” and not fundamentally violate the “sovereign” basis of the Weimar Constitution. His confidence stemmed from the robust strength of Germany’s civil service, which was a function of Germany’s highly monarchical roots. It was precisely because “the German Empire . . . was not meant to be a democracy” that its civil service was able to develop into “an amazingly complex structure in which the chief executive was a composite” and was thereby uniquely equipped to contain the extreme parliamentary politics of Weimar-era democracy. Friedrich therefore concluded that Article 48 posed no existential danger to the Weimar Republic and that Germany would “remain a constitutional democratic state with strong socializing tendencies whose backbone will continue to be its professional civil service.” By the time the article went to press in April of 1933, Friedrich had already eaten his words.50

Friedrich’s horror at Hitler’s rise to power quickly disabused him of any assurance he may have previously had that “responsible” bureaucracies that tempered the passions of “men in the street” without shutting them out completely from democratic participation would arise and sustain themselves naturally, without human intervention. In 1935, he slowly began to offer his elite insights as a scholar of political science to the United States government in the spirit of the Heidelberg School and InSoSta. At the beginning of his first term, President Roosevelt established the Commission of Inquiry on Public Service Personnel “to inquire into and report early in 1935 upon the broad problem of personnel in the administrative, executive, and technical services of national, state, and local government.” Friedrich’s contribution to this commission was a monograph titled Responsible Government Service under the American Constitution.

Here, he applied his Weimar-based theories of political unity and responsible bureaucracy to the challenging task of implementing the New Deal in a way that left the substance and spirit of the American Constitution intact.\textsuperscript{51}

Friedrich made clear his anti-positivist orientation at the very beginning of the \textit{Responsible Government Service}:

When we say “the American constitution,” we mean the American democracy, the American popular government as a going concern, characterized as it is by a bill of rights, a system of separation of powers, popular election of the chief executive, federalism, and local self-government, as well as the peculiar features of American politics which have grown out of these several component parts of the constitution.

Such a conception exhibited the continued influence of both Smend and Parsons on Friedrich’s constitutional thought. The various “constitutional laws” of the United States had remained an institutional reality for over a century, Friedrich claimed, not because of their inherent legal validity, much less because of the sovereign “decision” of the framers at Philadelphia in 1787, but because the American people historically had been united by homogenous \textit{values} that transcended their substantive \textit{heterogeneity}.\textsuperscript{52}

Friedrich cited five historical aspects of “the unique American scene” that allowed this constitutional process to endure for so long: the absence of powerful neighbors, pioneer traditions, the ethnic melting pot, a multiplicity of churches, and the two-party system. In general, however, Friedrich located the unique qualities of American constitutionalism in the universal humanism of American national identity.

“To be a Frenchman is a fact,” he noted, but “to be an American’ is an ideal.”\textsuperscript{53}

\textsuperscript{51} Greenberg, “Germany’s Postwar Re-education,” 19-21; Friedrich, “Responsible Government Service,” v, 3-8.

\textsuperscript{52} “Responsible Government Service,” 8-15.

\textsuperscript{53} Ibid., 3-15
In Friedrich’s estimation, the most serious threat to the survival of this “unique” American constitutional order was not the bureaucratic administrative state that the New Deal was constructing per se but the haphazard, unplanned growth of such a state. Unlike most European countries, Friedrich explained, America lacked permanent state-oriented institutions of higher education that could train civil servants on a scale appropriate to the size of the New Deal state. Establishing such schools was therefore of the utmost importance in preserving American democracy in the brave new political world of the 1930s.\(^\text{54}\)

But Friedrich spoke of a second type of education—education in the “science of public administration” itself, that should be “left to the free educational institutions and their individual initiative.” The art of governing, he maintained, was “so complicated, and so many angles of it require[d] careful application on the part of an able student for several years, that nothing short of a scientifically trained specialist will fully satisfy the training requirements without which an objective, functional responsibility such as we have outlined above is impossible.” Friedrich, here, was cryptically referring to political scientists like himself. He was becoming increasingly convinced that such philosopher-king types were needed at the helm of every liberal democratic state to ensure that the constitution continued to function. The administrative scientist would “understand that both communism and fascism are extremist views born of the failure of actual governments to meet the needs of their peoples[.]” He would, thus, “help in realizing what is sound in their outlook without destroying the fundamental law of the land.”\(^\text{55}\)


\(^{55}\) “Responsible Government Service,” 68-74
Friedrich was at this point still somewhat gun shy about stepping into the shoes of the “scientifically trained specialist” he described. In the preface to *Responsible Bureaucracy*, he had written that “political scientists need to steer clear of the temptation to become [social] engineers, if they have the advance of their science truly at heart.” Max Weber’s insistence that science be value-neutral continued to dampen Friedrich’s enthusiasm for his increasing role in policymaking. *Political science*, however, “suffer[ed] from the fact that its subject matter forms part and parcel of the talk of men in the street” and therefore “all its basic categories [were] tainted by . . . value judgments.” Yet, he continued, “[i]t is one thing to discuss values as to what they are and what they mean, and another to assert their validity.”

Here Friedrich veered dangerously close to tarring his values-based doctrine of democratic homogeneity with the same brush of indeterminacy that plagued Hans Kelsen’s “pure theory of law.” But he rescued his methodology by distinguishing between “intermediate values” and “final values.” The former asked the pragmatic question whether a particular scheme of government “works” while the latter “constitute[d] a marginal problem of political theory and that they indicate[d] one of the points where political science, like every other science, rests upon speculative philosophy.”

**Political Unity as Behavioral Conformity: Friedrich’s Schmittian Turn**

In 1937, Friedrich published *Constitutional Government and Politics*, a comparative government treatise that first presented the theory of constitutionalism he had been developing since he began teaching at Harvard in an organized and systematic

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56 *Responsible Bureaucracy*, xi, 8-9.
57 Ibid., 8-9.
fashion. That same year, moreover, his Harvard colleague in the sociology department Talcott Parsons, with whom Friedrich would soon found the American Council for Democracy and the Harvard School of Overseas Administration, published *The Structure of Social Action*. That book marked Parsons's own turning point away from economics and political theory and towards psychology and anthropology. As part of his “shift away from economics” Parsons would gradually abandon the pseudo-Weberian emphasis on “values” which had characterized his work since the late-1920s and which was strongly reflected in Friedrich’s theory of political unity as “agreement on fundamentals.” Into the 1940s, his work would increasingly focus instead on “the anthropological concept of ‘culture,’” a mainstay of the emerging functionalist school in the social sciences. Friedrich’s work would follow suit.\(^{58}\)

Nineteen thirty seven marked an important turning point for Friedrich in several respects. As war drew ever closer in Europe and the Supreme Court formally gave its blessing to the New Deal at home, Friedrich stepped out in front of a the movement among political scholars at America’s top universities for “a more direct participation of academia in the strengthening of democracy” that would “go beyond the training of future state functionaries to influencing everyday policy-making” and transform social scientists into a “responsible” administrative elite that would “engage in direct discussion with policy-makers and the public alike.” That year, Friedrich succeeded in convincing the Harvard university board to open the Graduate School of Public Administration, an idea he had first proposed back in 1934 but which the board had stubbornly resisted until Roosevelt’s landslide re-election in 1936 “convinced [them] that the near future would

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witness the unavoidable ‘growing invasion of government into every aspect of [the] nation’s life.’” In many ways, Friedrich was at last realizing in the United States the grand ambitions of the Heidelberg School and InSoSta that had played a formative role in his early education under Alfred Weber. But Friedrich’s own distinctive ideas about American liberalism and constitutionalism, which were generally influenced but not determined by his intellectual roots in Weimar, would be decisive in shaping his new political role.59

*Constitutional Government and Politics* represented a transitional moment in Friedrich’s thought, occupying the threshold in his intellectual development between conscious unanimity and behavioral conformity as the basis for political unity, and between a cautious, arms-length approach to mixing social science with policymaking and a full-on embrace of such mixing. More importantly, however, the book marked the beginning of Friedrich’s contemporaneous abandonment of the *almost*-Schmittian decisionist conception of sovereignty and the state he had retained from the Weimar-era and embrace of a *genuinely* Schmittian conception of “totalitarianism” as the universal, global enemy of liberal democracy, constitutionalism, and the “common man.”60

Friedrich explained in the preface that he was writing the book “for those who are puzzled about the future of constitutional government and democracy” and that it put “the present disturbances in proper perspective.” Referring self-consciously to his optimistic 1933 prognosis of his native country’s future in “The Development of Executive Power in Germany,” he openly conceded that “the doings of the Nazis” made him “look like a

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60 *Constitutional Government and Politics* was the last publication of Friedrich’s in which he advanced the proposition that “an underlying sentiment of unanimity is a necessary condition for making a constitutional charter a political force.” *Constitutional Government and Politics*, 141.
fool.” He insisted, however, that “the present barbarities” would in time “be abandoned” and that “finer, more noble conceptions of life” would “reassert themselves.” The book, he wrote, wanted “to be a wheelbarrow of stuff toward the new structure which is to be reared in the not too distant future.”

Yet the substance of the book had a far more objective and detached quality very much in tension with the political vision Friedrich hinted at in the preface. “[M]odern political science,” he concluded the first chapter, “is not concerned with the forms of government, nor is it concerned with the ideal form of government.” Rather, “it is concerned with the instruments or techniques of political action in terms of the objectives they are supposed to serve.” The book’s pragmatic approach was reflected in Friedrich’s frequent use of the word “constitution” as an adjective or a verb. Part II is titled “Constitutionalizing Modern Government.” The “making of a constitution” is an ongoing “political process” instead of a historically fixed act of decision. The constitution is a “technique of effective and regularized restraint,” and governments are constitutional or unconstitutional to the extent to which they are, respectively restrained or unrestrained. Emergency dictatorial powers, moreover, are only legitimate insofar as they are “constitutional,” which is to say, restrained. “The modern political scientist inquiring into the political process of constitutionalizing a government must study the technique of establishing and maintaining effective restraints on governmental action,” he maintained, and “not allow himself to be sidetracked by other concepts.”

One concept that Friedrich did in fact get sidetracked on in the book, however, was the power of mass communications technology and modern propaganda techniques.

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61 Ibid., xv-xvi.
62 Ibid., 19, 101, 103, 106, 208-23.
to override the cultures and traditions that had politically unified liberal societies like the United States and Britain for centuries:

It is no longer possible for us to look upon traditions and customs as God-given or natural, as was done by Burke and many of his contemporaries and predecessors. We know that these traditions are created by men, that they can be manipulated, in short, that propaganda permeated our existence on every side.

The onset of World War II would make the issue of antiliberal propaganda a primary concern of Friedrich’s, but it had not been something that had preoccupied him very much prior to then. One reference to it he made in 1932 in the introduction to Responsible Bureaucracy, however, is telling. “The man in the street is an enemy of the political scientist,” he wrote, “but the politician and the political propagandist are far worse.”

While Friedrich most likely never intended it as such, his use of the word “enemy” in that statement adds a curious twist to Schmitt’s friend-enemy idea in The Concept of the Political.

Friedrich’s argument in Responsible Bureaucracy was that unelected, hierarchical administrative bureaucracies were necessary to prevent the excesses of democracy from destroying popular government altogether. The enmity—in the Schmittian sense of the term—between the man in the street and the political scientist is not mutual but one-sided. The former considers the latter a political enemy for imposing cumbersome state institutions on him against his will with an attitude of unwarranted paternalistic condescension while the latter alone knows that this is all for the former’s own good and that he is in fact the former’s true friend. The propagandist (and to a large extent the politician too) have the reverse relationship to the man in the street in that they convince

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63 Ibid., 142; Responsible Bureaucracy, 1.
him they are his friends when all the while they are using him as a cheap pawn in their pursuit of political power and are therefore his greatest enemies.\textsuperscript{64}

It is worth noting that "scientific" was one of the categories that Schmitt listed as an "antithesis of political." Schmitt apparently foresaw knowledge and epistemology as being capable of becoming politicized the way religion, culture, or economics could. Friedrich's division of society into unthinking men in the street on the one hand and the political scientists, politicians, and propagandists vying for control over them represented, in 1932, the embryonic outline of the universal Schmittian opposition between constitutionalism and totalitarianism he would develop during World War II as he became increasingly involved in actual policymaking. But he would first have to reconcile his political role as a "responsible" administrative "guardian" of constitutionalism engaged in a collective struggle with others like him against unscrupulous, antiliberal propagandists for control of the public mind, with his scientific role as a neutral observer of governments who defined constitutionalism as a process of restraint.\textsuperscript{65}

One of the first steps Friedrich took to achieve this reconciliation was to emphatically repudiate the concepts of "the state" and "sovereignty" not merely as unhelpful to modern political science but as comprising evil, totalitarian "ideal types" of sorts, an entire value system that was antithetical to constitutionalism. In Constitutional Government and Politics, Friedrich no longer considered the sovereignty idea to be useful as "a power to settle or determine conflicts," as he had seven years prior in his 1929-30 lecture notes, but he had not yet attributed to it this nefarious status. He merely

\textsuperscript{64} Responsible Bureaucracy, 89.
\textsuperscript{65} See Schmitt, Concept of the Political, 23; Friedrich, New Belief in the Common Man, 114-16.
remarked that "[i]t was in the pre-democratic period" that the idea "was destined to play its most significant role in modern government." He also distinguished the "group of human beings" who "perform definite functions which the community at large considers worth while" from "some mysterious super-entity as is suggested by the word 'state.'"

But two years later, in his article *The Deification of the State*, Friedrich characterized "[t]he 'state' as some kind of neutral god charged with looking after the national interest" as "central in all dictatorial ideologies." He traced the historical development of the sovereign state idea from the ancient Greeks through Hobbes to Rousseau, and distinguished "the rule of the people" in a "constitutional" democracy such as the United States from "the people in the Rousseauistic sense of a mass of equal atoms, welded by a mystical general will into some sort of living organism." 66

Friedrich's reference in the article to "the inherent contradictions" between "the idea of popular sovereignty and the constitutional state (Rechtsstaat)" reaffirmed his rejection of Schmitt's grounding of political unity in substantive homogeneity, a position Friedrich had held since Weimar. But here he specifically cited the example of the United States, where "neither of these antithetical notions really took root," as living proof of the superiority of his approach:

The people were never envisaged as some mystical whole which could make "ultimate decisions," nor was the government, admittedly organized according to and limited by a constitution, ever given a mystical transcendence and all-inclusiveness. The people were seen as containing both those governing and those governed, divided into changing groups which were fighting for temporary ascendancy and predominance. Outside of purely academic circles, the folk speech talked about the people, the country, the government, the law, the constitution,—sovereignty and the state were "hifalutin."

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What this proved, Friedrich maintained, was that “the state does not exist.”

Friedrich’s lecture transcripts from 1940 show a further development of Friedrich’s repudiation of “the state” and “sovereignty”:

In the totalitarian philosophy you have the re-emergence of the conceptions of both the state and sovereignty. It is particularly striking in the Italian Fascist state, but it is just as characteristic of the others. You know it is one of the most common observations that all these totalitarian systems stress allegiance to the state, and claim for that state, whatever it may be, a position beyond all moral or communal controls. The reason for that is that the Hitlers, the Mussolinis and the Stalins find themselves in exactly the same position in which the builders of the bureaucratic organizations in the 16th and 17th centuries found themselves,—only instead of wishing to integrate by force a state that was territorially divided into many small parts, they now wish to integrate an economic society in which the power has been dispersed into working men’s organizations and the like. In other words, what we are confronting is a re-emergence of a political situation which resembles the time of Bodin and Hobbes. Problems of integration are altered. It isn’t a question of territorial integration, of bringing together all the scattered little feudal parcels that constituted France, but it is now a question of the great business enterprises and the great labor organizations, both in relation to each other and as between themselves.

Friedrich’s use of the term “integration” referred back to Rudolf Smend’s dynamic understanding of the constitution as a living organism, a distinctively anti-Schmittian understanding that informed critically Friedrich’s idea of the “responsible” administrative bureaucracy in a liberal constitutional state.

But by 1940, Friedrich was explicitly claiming that the “integrated” constitutional democracy was not some self-regulating system of mutual restraints existing in a state of perpetual motion but required the conscious oversight of “responsible” administrators:

[A] modern constitution essentially represents planning. It represents in its carefully worked out pattern of restraints a governmental parallel to the type of planning that you get in modern business enterprises. In other

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68 Government 5, “Power and the Problem of the State and Sovereignty,” November 21, 1940, pp. 20, 21, HUGFP 17.60, box 10, Friedrich Papers.
words, it is the governmental aspect of modern rationalized society. And if that rationalization breaks down, that process of constitutional government is also apt temporarily to break down.

Such planning made the key difference between genuine, "effective restraints" of a genuinely constitutional system and the mere "paper restraints" of constitutional law, and neither "the state" nor "sovereignty" had anything to do with that distinction.  

Friedrich noted in the same lecture in which he associated constitutionalism with planning that he no longer believed that "fundamental agreement was essential for constitutional order." "Far from agreeing on fundamentals," he reasoned, "constitutional democracy seems to disagree on fundamentals," and the core "characteristic of democracy was dissent on fundamentals." Fundamental agreements, he now claimed, implied "fundamentalism," which was "anti-democratic, either reactionary or fascist (they are related, of course)". 

The abandonment of "agreement on fundamentals" was at the same time an abandonment of the Parsonian concept of a "community of values" that had sustained Friedrich’s thought for over a decade, but Friedrich found a new basis for political unity in a political community characterized by dissent on fundamentals that reflected Parsons’s own shift from "values" to "culture." In place of conscious unanimity on values, Friedrich substituted a behavioral culture of tolerance and restraint:

Nothing is as inimical to the task of that true democrat of holding open as wide an area as possible, as to begin shouting about unity on fundamentals. As a matter of fact, there is a peculiar kind of democratic unity, but it is not being all of one mind. The particular kind of democratic unity is a unity in terms of particular tasks. You may be one thing and I

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70 Government 5, “The Concept of the Constitution,” October 24, 1940, pp. 16-17, HUGFP 17.60, box 10, Friedrich Papers.
may be another thing, and we get together on the specific things that need to be done.

Willingness to compromise one’s values, interests, and even political identity had become for Friedrich the requirement of membership in a democracy.

One particular passage in Friedrich’s 1941 second edition of *Constitutional Government and Politics*, which he renamed *Constitutional Government and Democracy*, illustrates the theoretical consequences of this shift particularly well. In the chapter titled “General Problems of Representation,” the 1937 edition mentions “[i]nsistence on a certain amount of agreement among elected representatives” while the 1941 edition substitutes “really effective compromises.” The 1941 edition adds a sentence about “recurrent integration” that is missing entirely from the 1937 edition. But most importantly, the 1937 edition speaks of “the Fascists’ contempt for elected representatives,” likening the Fascists explicitly to Bodin and Hobbes, while the 1941 edition speaks of “the totalitarian contempt for elected representatives” and omits the reference to those two philosophers in favor of “a single leader, or a small elite, [who] can achieve effective integration.”71

The end of the passage, moreover, is completely different in each edition, and the differences underscore even more vividly the shift in Friedrich’s thinking from a unity of values to a unity of conduct. The 1937 language reads:

Communists and Fascists both maintain that such is the case at the present time, and they both proceed to impose their particular norms. Once one grants their premise—and one has to when their factions grow to any considerable size—he cannot escape from their conclusion, unless he is prepared to adopt an equally radical position... and deny the rights of citizenship to Communists and Fascists (as conservative opinion in the United States tends to do). Such a stand is based on the intrinsically sound

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conviction that a political community under popular government cannot endure where basic and indissoluble conflicts of principle prevail. That is why legislation is of such crucial importance and the peculiar province of representative bodies.

While the 1941 language reads:

Communists and Fascists both maintain that such is the case at the present time, and they both proceed to impose their particular norms. Once one grants their premise—and one has to when their factions grow to any considerable size—he cannot escape from their conclusion. But this is so, not because there is a disagreement on fundamentals; for such we have had all the time. It is so because these particular groups have adopted organized violence as a method of party warfare. Constitutionalism and democracy will, if they are true to themselves, outlaw these methods of party strife, such as private uniforms, police, and the rest. . . . Federal legislation may be desirable. If this is done, there is no need for denying the rights of citizenship, such as our civil liberties, to people whose views are anti-democratic. Compromise is, therefore, essential in making general rules; through agreement and discussion the area of agreement is determined in the representative legislature.

The place that behavioral conformity to a national culture of compromise had by 1941 come to occupy as the basis for political unity in Friedrich’s reconstituted scheme of constitutionalism would be central the following year to the blueprint for a global civil war he set forth in The New Belief in the Common Man. This blueprint would transform American liberal constitutionalism into the universal Schmittian “enemy” of “totalitarianism” that has been intimately familiar to Americans ever since.  

World War II, Totalitarianism, and the Common Man

Friedrich’s common man was identifiable primarily by his safe, predictable “character,” but the safety and predictability of his character stemmed from his mediocre intellect:

"[I]ntellect interferes with character. The more clever you are, the less likely you are to stick by your convictions regardless. The more clever and smart you are, the more likely it is that you will see a way of escaping the

72 Ibid.
consequences of a ‘jam.’ The common man is likely to stick it out. His standards are set. From this standpoint, the antirationalism of our time actually reinforces the belief in the common man. More apt to follow sentiment, the common man is more apt to be consistent."

But the same intellectual dullness that made the common man so politically safe also left his mind exposed and vulnerable the manipulation of the propagandist—the “uncommon man” who seeks to mold public opinion for totalitarian ends. Common men therefore could not rule themselves if they truly thought for themselves, because their “average” capacity for critical reflection was no match for the sophisticated purveyor of ideological poison and the modern communications technology at his disposal. The common man therefore required at all times the guidance of the "educator"—the man of uncommonly superior wisdom who can “mold human beings according to some ideal, according to some standard of what is good, beautiful, and just[.]" The educator was different from and superior to the propagandist because while the former asked “will this idea strengthen or weaken us,” the latter molded minds and opinions without any shred of opportunism. Friedrich identified the administrative scientist—the applied constitutionalist who wisely oversaw the administration of the modern state as this educator. His role was twofold: he was simultaneously a direct consultant to “those who govern” and a permanent intellectual steward of those who are governed.73

Friedrich’s intended audience in “Issues of Informational Strategy,” an article Friedrich published at the height of America’s involvement in World War II, was “those who govern.” The topic he was addressing them on was “the function of information in total war.” Pointing to Woodrow Wilson's Creel Commission during World War I, which employed openly propagandistic methods to maintain public support for the war effort, to

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73 New Belief in the Common Man, 35, 102; “Representation and Constitutional Reform,” 128, 10n.
argue that "actual" propaganda is counterproductive in a total war for democracy. In the current war, Friedrich advised his audience, a "strategy . . . or propaganda of the truth" would be needed to defend the impressionable common man from "the incessant barrage of totalitarian phrases, slogans and word-symbols" without sinking to the level of the totalitarians themselves. This "truthful" propaganda would take the form of mass "education." The "educator" would not lie as the Creel Commission did but would tell the truth in a way that was informed by "functional analysis" and consciously designed to "elicit a certain kind of behavior."74

Friedrich emphasized that this "propaganda of the truth" was an exercise in "political" as opposed to mere "psychological" warfare, and his explanation of what made it so "political" embraced fundamentally the personal conception of sovereignty, with its intellectual roots in Hobbes and Bodin, that Friedrich claimed by then to have rejected as the core of totalitarian evil:

It is generally agreed that political warfare seeks to accomplish two things—(1) undermine the enemy's will to fight, and (2) undermine the will of allies of the enemy to support him. A special case of the latter is the task of diverting neutrals from the enemy and turning them into more or less active supporters of one's own cause. It is evident that these tasks call for a complete and realistic understanding of who is the enemy and who are its allies. A great deal depends on doing this with the necessary precision and accuracy. No effective informational strategy can be devised unless the addressees of such information are known. Let us illustrate this problem in a hypothetical fashion (for the determination of the enemy being a political question, it cannot be authoritatively answered except by the policy-making officials).

"Policy-making official" has a far more banal, pedestrian ring to it than "sovereign," leviathan," and "omnipotent law-giver," but the idea Friedrich was expressing here is identical. The enemy the United States was fighting was not the German people

74 New Belief in the Common Man, 102, 199-202; "Informational Strategy," 78-81.
themselves, who were "[c]aught in the treadmill of the terror" and "driven forward by an inexorable, cruel machine, just like the other conquered people," but their totalitarian "policy-making officials" and all those who supported them on American soil. World War II was not a mere international military conflict involving a "plurality" of separate states, each with their own sovereign interests, allying themselves with other states out of simple convenience. It was a "world civil war"—a fundamental cleavage in the commonwealth of humankind between the forces of light and the forces of darkness, and the fate of the common man and his safe pluralism of political moderation hung in the balance.  

Conclusion

The struggle between the common man and his totalitarian enemy was a polemical theme that in theory resolved the contradiction between the universal values of liberalism and human rights and the particular interests of specific states. In practice, it provided ideological cover for United States to exert its power and influence on a global scale long after the close of World War II and would become a defining rhetorical lens through which to view the world-historical periodization known as the "American century." Friedrich’s synthesis of Schmittian substantive homogeneity and anti-Schmittian liberal universalism not only neuters any real political pluralism domestically by "restraining" all parties but subsumes the international "plurality of states"—"the political entities of various peoples" that Schmitt considered to be "the genuine expression of pluralism, correctly understood"—into a single, exclusive political duality. Without the peculiar democratic unity of Friedrich’s common man and his totalitarian

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75 New Belief in the Common Man, 85.
foil, George W. Bush’s statement “you’re either with us or you’re with the terrorists,”
when addressed to the world, would be utterly nonsensical. 76

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