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for forgetting that "there really are value differences in modern society, there really are historically legitimate claims in competition with each other." Acknowledging these differences, she concludes, is a precondition to resolving them "in a peaceful and rational way," which German defenders of homogeneity from Schmitt to Habermas supposedly could never do.

Although perhaps a useful point to make against Schmitt, such an argument presented to Habermas is simply kicking in an open door. For it is precisely his definition of modernity that emphasizes the pluralist decentering of worldviews, which can only be reconciled, if at all, through a process of rational discourse. Such a process presupposes difference and heterogeneity and refuses to overcome them with a decisionist act of sovereign will. What can Kennedy mean by "a peaceful and rational way" of dealing with oppositions, if not a discursive process similar to the liberal ideal of communicative rationality that Habermas has so eloquently defended?

What makes Kennedy's charge of a uniform "German" tradition so ironic is not merely that it fails to register how indebted Habermas has often been to American theorists like those invoked in his essay on civil disobedience. The irony is compounded because Kennedy herself seems to fall unwittingly into a distinctly German tradition, that of the apolitical constitutional state in which there is no reasonable way to challenge the legitimacy of the existing laws. It is surely a singular impoverishment of contemporary political thought, as well as political practice, to intimate that anyone who fails to accept this model is following in the footsteps of that celebrated champion of democratic rights, the Nazi crown jurist Carl Schmitt. It is no less a travesty of 20th century intellectual history to claim that the Frankfurt School learned its politics from so dubious a source. In so arguing, Kennedy has transfigured Schmitt's political theology into a political mythology, whose ultimate purpose can only be to smear what it obviously fails to understand.

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decentering of any unified notion of power or authority. The deconstructionist critique of the logocentric metaphysics of presence is directed precisely at arguments like Schmitt's political theology. Rather than stressing decisions as absolute and pure, they emphasize the undecidability produced by inevitably impure networks of interrelations. Although one might argue that both camps are critical of communicative rationality as the ground of legitimate decisions, they share little else. Thus, attempts to assimilate post-structuralism to a "young conservative" tradition seem to me very questionable. For a recent version of this argument, see Richard Wolin, "Foucault's Aesthetic Decisionism," Telos 67 (Spring, 1986), pp. 71-86.


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Beyond Carl Schmitt:
Political Theory in the Frankfurt School*

Alfonso Söllner

"You argue like Carl Schmitt!" This charge has long been considered slanderous within German leftist circles and could have resulted in political ostracism. Today things are somewhat different, but not too much. When Ellen Kennedy first insisted on Schmitt's influence on the Frankfurt School a couple of years ago in Ludwigshurg, she may not have been aware of the problem Schmitt poses in Germany, and thus may have been taken aback by the defensive reactions of, among others, Habermas. Be that as it may, Kennedy should by now know better than to reiterate the thesis. Despite many qualifications, her argument remains that Schmitt's authoritarian political philosophy in the Weimar Republic was implicitly or explicitly inherited by the Frankfurt School. Her starting point is not Schmitt's well-documented influence on National Socialism, nor his influence on conservative political theory, but the allegedly much greater fascination of German Marxists for a thinker who collaborated with the same totalitarian regime that forced them into exile.

These kinds of political arguments are part of an unfortunate German tradition Habermas labeled the "self-hatred of the intelligentsia" in the 1970s in the context of the well-known debate on the so-called "intellectual causes of terrorism." Those who had hitherto held liberal positions contributed to the polarization of a public discussion concerning the outcome of the student movement by at least implicitly blaming "academic Marxism" for the exploits of the Red Army Faction. Kennedy's essay does not address present issues. Yet, the questionable intent is the same: whoever criticizes the institutions of Western democracy contributes to their destruction.

This is unfortunate, since it detracts from an accurate reconstruction of these ideas. Here Kennedy does exactly what was feared when left-Schmittianism surfaced in the early 1980s: the recycling of a scientifically shop-worn product...
— the theory of totalitarianism. In the following I will limit myself to correcting only a few points and, in so doing, will follow Kennedy’s outline.

**Benjamin: Aestheteician of Political Decisionism?**

Even the way in which Kennedy presents Schmitt’s political theory is not promising. She outlines the inner development of this body of thought beginning with the dark roots from which this lush plant grew at the turn of the century. It was the Germany of a raging irrationalism which had not yet decided its political course — an ambivalent milieu in which nationalist right-wing and revolutionary left-wing movements could momentarily come together. Precisely because of this initial ambivalence, any historical reconstruction must separate subsequent developments. One point where this is possible is Germany’s entry into WWI.

Benjamin did have his initiation in the anti-bourgeois Youth Movement before 1914. However, his inaugural presidential speech to the Free Student Society of Berlin, “Das Leben der Studenten,” is the opposite of what Kennedy thinks. It is not a rapprochement with political irrationalism but, rather, an expression of an apolitical idealism that Benjamin proposed to his fellow students as a way out of bourgeois hypocrisy. He did not join in the war hysteria that followed shortly thereafter; instead, he did what must have been incredibly difficult for an idealist of the German Youth Movement: he openly broke with his beloved but “fallen” teacher, Gustav Wyneken.

The only positive piece of evidence for Schmitt’s influence on Benjamin, his 1928 letter which points out the parallels between their respective books on dictatorship and *Trauerspiel*, turns out to be harmless. One wonders what was the objective of Adorno’s later distortions as Benjamin’s editor. Kennedy quotes this letter with great pleasure, without ever wondering what it meant, apart from academic courtesy. The only fact remaining is that, in a cultural study of the 17th century, analogies were drawn between the political aesthetics of the baroque and the theory of absolute sovereignty for an epoch prior to the bourgeois division between artistic subjectivity and princely representation. It would have been much more illuminating to examine when the connection between politics and aesthetics was drawn. Whereas Schmitt aestheticized political thought, Benjamin sought the politicization of art. His entire literary work, and above all his reception of surrealism, culminated ambiguously in his well-known 1936 slogan to the effect that the aestheticization of politics in fascism should be answered with the liberation of the potential for resistance in modern art.

Even though it remained unpublished, Benjamin’s 1921 article, “Kritik der Gewalt,” is one of the most revealing texts of the Weimar cultural scene. It is impossible to appreciate its significance by merely focusing on his characterization of parliament as a “pathetic spectacle” and not taking into account that the moment of “legalized violence” had been missed and that no significant social change had been brought about. This apocryphal text is not primarily concerned with the realization but the explication of this line of thought, which runs from Benjamin’s early theological writings, through his works of literary criticism, to his later theses on the philosophy of history. It deals simultaneously with religious history and the philosophy of language, and he struggles with the question of how reconciliation, the overcoming of alienation, can come about and allow historical progress to escape the curse of the past: the domination of man and nature.

The antithesis to Schmitt’s decisionistic anthropology is to be found precisely here. Not only does Benjamin distinguish legitimate from illegitimate violence, but also from “decision.” The law, writes Benjamin, “[recognizes] a metaphysical category in the spatially and temporally determined decision,” which “raises the need for a critique.” The only “illiberal” aspect of this construct is the rejection of the self-deception of legal positivism in not seeing that the liberal system, and the bourgeois constitutional state in particular, also use violence to legislate and enforce its laws. Criticism begins here, because the reference to ethical goals alone does not yet adequately rationalize the means, the violent form of legislation, or subject it to a more humane supervision. Here we come across a statement which not only sheds light on where such a thoroughgoing critique is to be grounded, but also builds an unexpected bridge to Habermas’ philosophy of language: “there is a non-violent sphere of human agreement totally beyond the reach of violence — the true sphere of understanding, language.”

This already indicates how Kennedy has misunderstood the parallels between Benjamin’s and Schmitt’s lines of thought. Moreover, it emphasizes what later became unmistakable and ultimately tragic in the destinies of these two thinkers: whereas one was able to live in relative comfort in a state consumed by violence, the other fled and committed suicide. As a Jew, a socialist and a member of the avant-garde, Benjamin was the predestined victim of that existential definition of politics which includes not only the distinction of friend and enemy but also the still more fundamental category of the other. In The Concept of the Political Schmitt states unequivocally that the enemy is the other,

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the stranger; and it is sufficient for his nature that he is, in a specially intense way, existentially something different and alien. . . .” As is well known, in 1938 Schmitt did not wait long to translate his ideas into open racism. One needs only to read his denunciation of Hugo Preuss and his 1938 book on Hobbes.13

Kennedy completely neglects this, and the consequences are even more unfortunate than all other philological distortions. To be sure, it is clothed in the sublimated form of philosophical antagonism: the relation of executioner and victim, of “German supermen” and “Jewish subhumans.” If it has become a taboo, this has nothing to do with the consent of the victims but with their silence, whereby the survivors believed they could maintain a despairing solidarity with the anonymous masses of the murdered.14

Kirchheimer: Theoretician of Homogeneous Democracy

The relation to historical time, which in Benjamin’s writings takes the form of philosophical reflection, is more direct and concrete in Kirchheimer. His Weimar writings already exhibit a type of thinking in which theoretical analysis and political involvement are simply inseparable. In addition to the quick-witted metaphors, what he inherited from his doctoral advisor is probably this unity of the abstract and the concrete, of intellectual specification and contextualization. For the sake of argument, however, let us assume the deeper intellectual intimacy that Kennedy ascribes to Schmitt and his “pupil,” which is not unrealistic for student-teacher relations in the 1920s. She is clever enough to restrict the supposed dependence in two ways: first, it does not involve conceptions of political goals; second, she reluctantly admits in a closing sentence that Kirchheimer broke with his teacher after the fall of 1932.

Then what remains of Kennedy’s claim? In order to avoid the false alternatives of either psychologizing the problem or turning it into a question of political directions, it is advisable to analyze the leitmotiv in the works of this precocious young socialist. Where in Kirchheimer’s pre-1932 work can one find an analogy to the critique of liberalism that lies at the core of Schmitt’s Weimar writings? It is not enough to show that there is an historical tension between liberalism and democracy. Democracy would have to be positively identified with a homogeneous people — with a substantivist ontology generating an a priori antithesis to liberal ideas and institutions.


As Kennedy maintains, Schmitt’s thinking here is governed by the constantly repeated notion that democracy can only be defined as “the identity of the rulers and the ruled.”15 This is the core of a substantivist ontology, which inverts the emancipatory elements of the liberal tradition — a type of thinking which also defines sovereignty in terms of the state of exception or the political in terms of the exclusion of internal political enemies.16 But does Kirchheimer’s thinking (here we come to the question of accuracy!) parallel Schmitt’s? Let us examine two texts which sound exceptionally Schmittian: Kirchheimer’s 1928 dissertation, and “Weimar and What Then?” of 1930, which is a minor masterpiece of political analysis.

Both texts already contain the infamous metaphors of “formal democracy,” “legal mechanism [read: mechanization of law],”17 “constitution without decision” and “dilatory formal compromise.”18 The section dealing with the relation between democracy and liberalism in his dissertation begins as follows: “The history of the 19th century, the stage of the struggle and ultimate victory of democracy, forgot, because of the bitterness of the struggle, to pursue the question of the possible and continually changing content of the new popular rule. Owing to the absolute equation between the people and democracy, on the one hand, and between liberalism and the bourgeoisie, on the other, this omission is quite understandable. Thereby the antithesis of the purely political was transformed into something social, and from then on certain conceptions of social homogeneity were concealed behind the term ‘democracy.’”19

Here and in other places the word “concealed” is critical. Far from accepting the Schmittian equation of democracy and homogeneity, Kirchheimer is much more concerned with the appeal to democratic goals on the part of various social interest groups to demonstrate their legitimacy, their claims to represent something universal — an ideological tactic employed equally by the bourgeoisie and the proletariat. To the extent that Kirchheimer assumes functional presuppositions of normal democracy, he does not argue from the standpoint of the Schmittian “substance” of the people, but, rather, from a historical and sociological system of thought. A formulation such as: “Nevertheless, no a priori determined opinion belongs to the constitutive attributes of democracy but only a unity of values which transcends the purely political equality of rights,”20 can as

20. Ibid., p. 34.
well be considered a critique of ontology in terms of the sociopolitical transformation of formal democracy. Given the strained relation between liberal and socialist tendencies that Kirchheimer saw as characteristic of Weimar, he understood the "presuppositions for its existence" in "an approximate balance between the warring classes and therewith a resulting tacit agreement; as long as this balance lasts, he who rules should be decided by the electorate and its arbitrary majorities." 21

When still under Schmitt's direct guidance, and not only after 1932 when it became obvious in his model of "two-tiered legality," Kirchheimer's critique was focused on class interests. From the very beginning, the Marxist paradigm was superimposed on theories borrowed from Schmitt. Had Kirchheimer argued primarily as a Schmittian and only secondarily as a Marxist, he had been forced to rely primarily on the fundamental political position of Schmitt's writings, he would then have had to focus on the ontology of friend and enemy, on the decision of the state of exception, on a Volk category whose "substance," racist exclusion, would soon have come to light.

But nothing of the kind can be found in Kirchheimer's work. If in "Weimar and What Then?" he presents the crisis of the Weimar Constitution in terms of the crisis of liberalism (admittedly, with the help of Schmittian metaphors, but also including a rejection of his concept of compromise as too vague), 22 already in 1930 it is quite evident how the failings of the liberal guarantees and institutions of Weimar democracy had come about. This had happened not because of an a priori contradiction between substantive democracy and the alliance of civil rights, parliamentarism and the constitutional state, but simply because the historical compromise that produced the 1919 constitution and which alone guaranteed it was about to be revoked not by the SPD and the Free Unions but by the bourgeoisie and the representatives of the old official elites in the bureaucracy, the Department of Justice and the Office of the President, which had never been removed from power. Along with the rest of Kirchheimer's writings, "Weimar and What Then?" belongs with those of Neumann, Fraenkel and Heller (if somewhat to the left of them). 23

Kirchheimer's criticisms of constitutional norm and reality may be considered superfluous. But the harsh reality of the post-1930 crisis, which makes the end of Weimar so intriguing, 24 should not be overlooked. What is so interesting about "Weimar and What Then?" is both his incandescent view and uncanny prognosis of that process of erosion which eventually doomed Weimar democracy. To turn this upside-down and maintain that Kirchheimer thereby contributed to the destruction of Weimar liberalism indicates a perverse misunderstanding of his designs to save it, which links him with the Social-Democratic thinkers of his time. Of course, he was not directly interested in rescuing liberalism, a tradition which had itself collapsed in Germany long before Weimar; yet there was no doubt that the achievements of liberalism should be incorporated into Social Democracy.

"A democracy can give expression to an existing social order, can represent it conspicuously. In confusing the form of democracy with its content, one omits to give this system a political program." 25 Such sceptical formulations do not amount to a public confession, as Kennedy apparently thinks when she reads Kirchheimer as equating democratic theory and the militant democracy that only became known subsequently in West Germany. Neither does it set the scene for an antiliberal program. Rather, it seeks to demonstrate that democracy must create a socialist substructure if the class struggle in a traditionally anti-liberal country like Germany is to function on the level of parliamentary compromise. Even more to the point, these formulations mark a stage in the development of the political relation between classical Marxism and modern political sociology that indicates the extent of Kirchheimer's distance from Schmitt. It was not Schmitt but the generation of émigré social scientists who contributed to overcoming the split between positivism and metaphysics, liberalism and substantialism, that had been aggravated by the late arrival of modernity in Germany. Kirchheimer and the Frankfurt School had no significant part in this process, which first became possible after emigration. 26

Here we must deal briefly with the development of modern social and political science, which alone can provide criteria necessary to settle controversies of this sort. A comparison of Schmitt with the members of the Frankfurt School would be especially interesting if approached in terms of the opposition between internal and external exile. Like his intellectual comrades Heidegger and Jünger, after 1945 Schmitt never felt the need to engage in self-criticism. By comparison, Kirchheimer, Neumann and Marcuse, whatever their relations to their former teachers, moved far beyond their Weimar beginnings. Because of their confrontation with liberalism, especially in America, they were able to create an entirely new type of social and political theory.

Did the Frankfurt School make Schmitt Taboo?

What Kennedy says about the formative period of the Frankfurt School is so baseless that it is almost pointless to refute it. Her thesis boils down to an attempt by the exiled Institute for Social Research to conceal Schmitt's sinister presence. The Frankfurt School's internal cohesion amounted to a kind of self-

21. Ibid., p. 35.
22. Kirchheimer, "Weimar," p. 154. One should also read footnotes!
26. This is discussed more fully in Helmut Dubiel, Wissenschaftsorganisation und politische Erfahrung (Frankfurt, 1978); Wolfgang Bonns, Die Entdeckung des Tatsachenblicks (Frankfurt, 1982), esp. pp. 154ff.; as well as my Geschichte und Herrschaft (Frankfurt, 1979).
isolation in America. But this was a precondition for the viability of a group which sought to remain focused on developments in Germany. Be that as it may, this cohesion was not so total and impenetrable as it might appear. Otherwise, Neumann and Kirchheimer would never have succeeded in working their way into the inner circle and been able to do their work.

This was essential in the situation of exile and is essential to locating the works of Neumann and Kirchheimer in the Frankfurt School. Nevertheless, it is false to claim that Marcuse’s 1934 essay on liberalism ended the critical confrontation with Schmitt. One needs only to read Neumann’s 1936 article on the structural transformation of law to recognize his revealing reference to this alleged taboo, not to mention his Behemoth, which in its theoretical passages on law and the state seems to have a maniacal fixation with “the most intelligent and reliable of all Nazi constitutional jurists.” Later, there is no longer any conclusive exposure of such a penetrating critique of Schmitt’s role in mediating the transition from Weimar positivism to the political theory of National Socialism, or of his veiled ideological justification for imperialist wars of aggression. The fact that Kirchheimer, having settled accounts with his teacher between 1932 and 1935, no longer dealt systematically with Schmitt is simply explained by his turning to more important matters. He became even more interested in the legal practices and institutional changes brought about by the Nazis. Here he discovered that the apparently regressive thought of the critics of Weimar democracy turned out to be surprisingly modern to the extent in which it was incorporated into the terrorist regime - a phenomenon Kirchheimer called the totalization of “technical rationality.”

At any rate, the smaller circle around Horkheimer was not concerned with institutional and political analysis but sought to explore the conditions that allowed the economic crisis in Germany to generate the Nazi dictatorship. For the sake of argument, let us assume a continuity between liberalism and fascism, which is in fact the basis of both Marcuse’s and Horkheimer’s investigations as well as Horkheimer’s and Fromm’s analyses, and which gives rise to the suspicion of Schmittianism. Kennedy simply fails to note two significant points concerning the theoretical model of the Institute for Social Research. The first is that changes in consciousness can only be explained within a sociohistorical and ultimately economic framework. Only then can the question of continuity and discontinuity be decided. Marcuse’s essay on liberalism already suggests that the continuity between classical liberalism and proto-fascist thinkers can only be assumed in a limited area: in the naturalistic view of the economic order. In all other areas, such as political theory, philosophy and science, it amounts to the opposite: the disavowal and even destruction of the bourgeois-liberal heritage.

To the second point we can only briefly allude. What is decisive for the early Frankfurt School is political irrationalism and its predisposition for the regressive-repressive fusion of the leader and the masses. Here we see the discontinuity between liberalism and fascism, although clearly Horkheimer and Fromm both recognized the authoritarian undertones inherent in the bourgeois notion of freedom. The test case for this, as we know from The Authoritarian Personality, is antisemitism or, more generally, ethnocentrism. Since Kennedy is not concerned with a balanced analysis but, rather, with a scandalous exposé of the Frankfurt School, nothing further need be said in defense of Horkheimer and his circle.

In this regard, there is still more fat for the fire. What is the significance of the fact that Horkheimer and Adorno, after their return to Germany, were so concerned to keep their work in the 1930s under wraps? What are we to make of the delayed translation of The Authoritarian Personality, which in America was accepted as a classic study of National Socialism and was even occasionally used as a guide during the occupation of Germany? Finally, and this brings us up to the present: Why did Habermas have to go to Wolfgang Abendroth in Marburg to qualify as a university lecturer with a work acknowledging a greater debt to Horkheimer and Adorno than to any other tradition of German social science? All this has to do with taboos the returnees felt compelled to honor in Adenauer’s Germany — taboos less of Schmitt than of the official enemies of this repressive society, i.e., communism and Marxism.

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29. Ibid., pp. 68ff. and p. 93ff.
30. Ibid., pp. 194ff.
32. See Wolfgang Bonn, Die interdisziplinäre Materialismus, in Wolfgang Bonn and Axel Honneth (eds), Sozialforschung als Kritik (Frankfurt, 1982), pp. 31ff.
34. I do not here wish to pursue this counting of citations, even though Habermas’ writings provide a tempting proving ground for it because he was from the beginning one of the most receptive thinkers of the postwar period. But it should be made clear what a burden of proof one takes upon oneself in drawing such a direct and certain line from the Weimar right to the 1960s West-German left. It is not that no connection exists, but rather that it is impossible to do it justice if one proceeds, as Kennedy does, to pluck individual threads from a very complex web. Citation analysis is well
recommend to Kennedy that, in defending her thesis of the hidden but decisive influence of Schmitt on Habermas’ thought, she restrict herself to the measure of objectivity this quantifying method provides. She would not do all that badly when, for example, it comes to Strukturwandel der Öffentlichkeit. She could avoid getting into theoretical problems, but could nevertheless prove that Schmitt is disproportionately cited (specifically nine times), whereas other such figures in post-war Germany, Ernst Forsthoff and Werner Weber in particular, are respectively cited six and five times.

With respect to Habermas’ early writings, what is his theoretical core? Is it democracy conceived as a “Weimar substantiality” that here celebrates its rebirth, which is to repeat a question already posed to Kirchheimer — whether one is arguing ontologically and in a latently völkish manner with this “identity of the rulers and the ruled” (Schmitt) so that any given democracy is doomed from the start? Kennedy refutes herself by constantly emphasizing the great gap between Schmitt’s and Habermas’ political values. As for the allegedly structural analogies in their arguments, she clearly betrays the speculative character of the parallels she draws when she admits that an identical theory of democracy is “only negatively expressed” in Habermas and must therefore be “logically presupposed.”

Habermas’ writings do contain formulations such as: “Democracy works toward the self-determination of humanity, but only when this is realized is it true democracy.” Further: “Characteristic of the liberal constitutional state is the contradiction of proclaiming the idea of democracy, and in a certain sense also institutionalizing it, while in fact promoting a domination of minorities on the basis of a social hierarchy.” But this has nothing to do with a denunciation of liberalism; it is nothing short of the anathesis of the whole line of argument presented by Schmitt in his Crisis of Parliamentary Democracy. If the point of this type of investigation is to contrapose the idealistic claims of old European liberalism to the reality of the Weimar party-state — the notorious results of plebiscitary democracy — then Habermas’ epistemological interests clearly lead elsewhere.

The presuppositions for this shift are different. In a polemical context it is sufficient to refer to an inmanent theoretical viewpoint. There is thus no denying

aware of its limits. It recognizes that positive and negative citations must be distinguished, that quantification is plausible only as part of a comparison of such citations, that citations must be considered contextually; finally and most importantly, it when it comes to theories, that all this only makes sense in the context of the given thinker’s complete line of argument. No trace of such methodological considerations are to be found in Kennedy’s joining of an anti-democratic Weimar thinker with one of the most prolifically pro-democratic West German thinkers. See Eugene Garfield, Citation Indexing: Its Theory and Application in Science, Technology and Humanities (New York, 1978); D. Edge, “Quantitative Measures of Communication in Science: A Critical Review,” in History of Science, 17 (1979), pp. 103ff.

36. Ibid., p. 18.

that even a scientific historian often runs the risk of valuing the proclaimed principles of a thinker over undercurrents more difficult to grasp. In Habermas’ political writings, however, everything is relatively straightforward. They are so deeply imprinted with “immanent critique” that it is difficult not to see it everywhere.

One illustration is enough, since it directly connects liberalism past and present and borrows from Dialectic of the Enlightenment. As Horkheimer states, immanent critique is defined by the fact “that it accepts . . . bourgeois ideals, be they those which its [the bourgeoisie’s] representatives still promote, even if with some distortion, or those which, despite all manipulation, are still recognizable as the objective sense of institutions both technical and cultural. . . It gives expression to the contradiction between faith and reality and thereby remains closely tied to current circumstances.”

If there is in Germany an alternative to “Weimar substantialism,” this is its sharpest formulation. The strategic democratic result is already clear in the introduction to Student und Politik, which demonstrates the danger of political apathy in a still shaky democracy in West Germany. The contradiction between norm and reality, shown to be inherent in historical liberalism, is not directly applied to the present. Habermas is much more concerned with demonstrating how it follows from the historical development of the liberal constitutional state and how this can be changed. This historical transformation is the central focus of Strukturwandel der Öffentlichkeit and is even strengthened by its solution being centered on a sociological model of explanation. Habermas traces the complex “historical process” of the tense relation between democratic norms and social reality from its beginnings in the bourgeois public sphere of the 18th century to its changes in the 20th century. As major factors in this process he identifies: politically, the introduction of universal suffrage; sociologically, the rise of mass parties and interest groups; culturally, the use of the media for expressions of opinion.

In order to correct the impression that this is an apocryphal late work by Schmitt, one does not need to list all the places in which immanent critique unfolds. Kennedy makes it look as if Habermas can only pose the split between

37. Ibid., p. 53.
41. For example: “We certainly are not trying to understand civil rights historically from social conditions in order to devalue them as pure ideology, but precisely to prevent these ideas, after their actual basis is removed, from losing all sense and even coming to justify what they once promised to liberate people from: the remaining substantial violence of political domination and social power, which is neither willing nor able to be legitimated by publically discussed or rationally grounded purposes.” Jürgen Habermas, Theorie und Praxis (Neuwied, 1968), p. 86. If Ellen Kennedy cannot take the trouble to cite this work even once, she might have at least found something worthwhile in the writings of Habermas, e.g., “Zum Begriff,” op. cit., p. 54; Strukturwandel, op. cit., pp. 14, 101 and 102ff.
constitutional norms and social reality through Schmitt. Nothing could be more misleading. The construction of the welfare state is at once a global fact of European democracies whose recognition is simply a question of having a sense of historical reality. The fact that the victory of what Kirchheimer called the “catch-all party” and the increasing mass mediation of the public sphere leads to a relative uncoupling of the electorate from parliamentary decisions is also an accepted commonplace. The thesis of Strukturwandel der Öffentlichkeit has become the common property of West-German political science.

Only by keeping those connections in mind is it possible to appreciate Habermas’ beginnings, because only here is one within that political theory which split in the 1950s and 1960s over the question of what consequences followed the rise of the welfare state, multi-party democracy and the mass mediation of the public sphere. Whereas Forsthoft, clearly in line with Schmitt’s thought, undertook to show that the welfare state destroys the principle of the liberal constitutional state (with consequences today’s neo-conservative thinkers draw on once again), Abendroth argued that the principle of equality becomes real only in the welfare state. It is here that we must explore the link with Habermas’s political theory — a theory which comes to terms with the historical results of social democracy and liberalism. Its demands for an increase in participation (as Willy Brandt voiced it ten years later: “Risk more democracy!”) was not conceived in opposition to representative democracy but as its redemption and fulfillment. In Student und Politik, for example, it was directed at unions and bureaucrats.42

Just how much of a Social Democrat Habermas was from the start can be seen not only in the label of “left-wing fascism” he applied in 1968 to rebellious students who took literally and unconventionally the idea of participation, but also in the cautious conclusion of Strukturwandel der Öffentlichkeit: “Under conditions of welfare-state mass democracy the communicative cohesion of the public can only be established in the sense that the formally narrow circulation of ‘quasi-public’ opinion, together with the informal sphere of public opinion in the making, becomes mediated through a critical public discourse sparked by a public sphere internal to this organization.”43 This totally and systematically immanent idea is already sociologically broken if one begins by insisting that it is a question of “empirically determining what scope and effect this tendency has; if it is largely a progressive or perhaps regressive tendency.”44

If such formulations, in their downright finicky application to mass democracy, have something to do with theories of substantial democracy and anti liberalism, then political theories which view the representative system from the perspective of the concept of praxis in antiquity, as in the democratic theories of Hannah Arendt or Hennis,45 are Schmittianism raised to a higher power.

Here is a level of comparison that deserves further exploration. Whereas Kirchheimer, for example, remained, as he himself admitted, an atheoretical “producer of political analyses,”46 there is in West Germany a dubious renaissance of political philosophy. Compared to many normative-philosophical works of the Freiburg school, Strukturwandel der Öffentlichkeit is eminently historical and concrete.

These considerations help us understand the history of West German political and social science and Habermas’ subsequent developments. With respect to the internal logic of his development, Kennedy’s judgment is doubly distorted: first, she misses the decisive turning point that a book like Legitimation Crisis first made possible, i.e., the revision of the foundations of sociology through the integration of Luhmann’s systems theory; second, she seems unwilling to recognize what her own premises are best at revealing, i.e., the reception of the Anglo-Saxon philosophy of language, the so-called “linguistic turn.” Just how skewed Kennedy’s whole perspective is becomes transparent when she attempts to apply it to contemporary issues. Her argument breaks down when she tries to bring together the Habermas of the 1980s with plebiscitary aspirations. Her reference to his treatment of the problem of “civil disobedience” is so obviously proof of the contrary, one must begin to suspect her of less than honest intentions. She knows that Habermas’ guide for his carefully balanced discussion of civil disobedience is not Schmitt, but Rawls (and Dworkin).47 She knows too, that the justification of the “state of exception” is explicitly made conditional on other factors, and that the distinction between legality and legitimacy remains within the structure of a procedural consensus theory. Finally, she could not have overlooked just what this whole enterprise is aiming for: “even in Germany to make civil disobedience comprehensible as an element of a mature political culture,”48 or, one might say, the propagation of Anglo-Saxon standards of normality.


46. Kirchheimer, in the foreward to Politik und Verfassung, op. cit., p. 7.
48. Ibid., p. 81. The decisive argument in Habermas reads: “The problem of civil disobedience can arise only under certain conditions in a fully intact constitutional state. But then the law-breaker can assume the plebiscitary role of the sovereign citizen only in an appeal to the current majority. Different from a resistance-fighter, he recognizes the democratic legality of the status quo. For him, the possibility of a justifiable civil disobedience only arises from the fact that some laws can be illegitimate even in democratic states, although admittedly not according to some private moral code, special right or privileged access to truth. Authoritative are only those moral principles open to everyone, which the modern constitutional state hopes will be freely recognized by its citizens. Here it is not a question of the extreme case of a criminal regime, but of a normal situation that will arise again and again, because the realization of legitimate constitutional premises with universal applicability is a long, historically convoluted process often characterized by errors, uprisings and defeats.” Compare this with the formulations

43. Habermas, Strukturwandel, op. cit., pp. 270ff.
44. Ibid., p. 269.
45. Interesting here are, for example, Wolfgang Hennis, Politik und praktische

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It would be possible to end here, were it not for the temptation to end on a positive note. As problematic as it may be, if one views the politological writings of the 1960s from the perspective of The Theory of Communicative Action, measuring the distance that separates them from the legal theorists of both the right and the left at the end of the Weimar Republic, it is possible to discern a continuous and dominating trend of the Westernization — or Americanization — of an intellectual tradition that arose from German intellectual history. What occasioned this development is precisely the post-1983 intellectual emigration which, though at first an involuntary and violent break with Weimar, became an immensely positive factor of cultural coalescence. This had intense repercussions on West Germany in the 1950s and 1960s and made an important contribution to a process that might also have occurred without it. The fact that this process was both delayed and hastened by Hitler is an intriguing paradox.

To locate Habermas' intellectual beginnings in this scenario involves having to deal with an interesting ambivalence: his relation to the earlier Frankfurt School. One must also come to grips with another paradox: the fact that there is an outspoken conservative wing in this school, which also claims to be "critical." At least after their return to Germany, Horkheimer and Adorno retarded more than promoted Westernization. Among other things, this was due to the fact that, for all their criticism of the Hegelian-Marxist tradition, they still held to an historical and philosophical way of thinking. This is also true of Habermas, as evidenced in the method of immanent critique, which is incomprehensible without some residue of the philosophy of history. This is certainly a substantialist residue, which plays a large role both in immanent theory and its historical effects, but one very different from anything imagined by Kenney. Habermas does attempt to recover the idea of a political mediation between the theory and practice that had been abandoned in Dialectic of the Enlightenment. In so doing, he turns a resigned metaphor into a concrete cultural-political program: "The philosophy of history made practical."49

of a certain thinker in 1932 when he describes the place of his critique of liberalism: "In view of the president's use of emergency decrees, the German state appears in its present concrete constitutional reality to be based on a combination of administrative and judicial authority, which finds its ultimate justification within the framework of the legitimacy of plebiscitary democracy. Yet the expression of will in the referendum is not normative but, as the term 'people's plebiscite' aptly expresses, simply a willed decision ... The people can only say yes or no; they cannot advise, deliberate or discuss; they cannot govern or administer; they cannot set the norms, but only sanction those set before them. Above all, they cannot ask questions, only answer those put to them with yes or no." The keystone of this critique concerns: "the fundamental alternative recognition of the substantial components and powers of the German people or the maintenance and continuation of the functional neutrality of values, with the fiction of an equal chance, whatever the contents, goals and trends." Schmitt, Legality und Legitimität, 2nd ed. (Berlin, 1968), pp. 92ff. and 97. In view of the evidence, it is not surprising that one finds the suspicion of populism in Kennedy's article hidden in the last footnote, reinforced with a quotation from someone other than Habermas.


Habermas' early works, particularly Strukturwandel der Öffentlichkeit, reveal a surprising other side when related to the question of fusing German research with Anglo-Saxon culture. What appears as a residue of tradition is actually its most constructive and positive medium. At all stages of his intellectual development, but perhaps most of all at its start, Habermas was clearly conscious of the fact that cultural history is an indispensable undertaking because it deals with the practical establishment of vital traditions.50 The chain of effects that he, together with others, set off in West German political culture at the beginning of the 1960s drew its energy from German cultural history. There was an opportunity which Habermas used to show that even a genuinely German line of thought can have a pro-democratic potential. German idealism, as well as its materialist counterpart in Marx, may historically have been anti-liberal; at least it has often had that effect in Germany. But the face this tradition began to show through Habermas' hermeneutics was turned not against but toward liberalism.51 It was a question (absolutely necessary in postwar Germany) of creating for the externally imposed democracy an autochthonous foundation supported by tradition.

The fact that this project went beyond Weimar substantialism can be seen in a little-known text from 1961, which strikingly proves the untenability of a hidden reception of Schmitt in the Frankfurt School. Not incidentally, it has again to do with the connection between the philosophy of history and the critical mediation of tradition, but now aimed at an especially neuralgic point.52 Here Habermas reconstructs the German-Jewish symbiosis before Hitler, which ended suddenly with the brutality used by conservative revolutionaries — Schmitt, Heidegger, Jünger and others — to cut this inheritance in two. Habermas' very personal position with respect to this horror deserves to be cited, since it touches on a trauma of the German intelligencia (of which Kennedy seems completely unaware) and, at the same time, rips the awareness of continuity in West Germany: "Even though I studied philosophy for years, until I began this work I was unaware of the [Jewish] ancestry of half the scholars I have mentioned. I hold such naiveté today to be quite out of place."53

What looks like a self-reproach from Kennedy's viewpoint is in truth a most articulate documentation of the complex interplay between continuity and discontinuity in German cultural history since 1945. In regard to Habermas, it is the unsurprising and unparalleled self-criticism of a thinker who had less need of it than many others. Such is found in his critique of Heidegger, which reaches back

50. See for example his description of his theoretical biography in the introduction to the paperback edition of Theorie und Praxis (Frankfurt, 1971), pp. 9ff.
51. One could cite as proof his essays on the history of philosophy collected in Theorie und Praxis, as well as his methodologically-oriented book, Erkenntnis und Interesse (Frankfurt, 1968).
52. Habermas, "Der deutsche Idealismus der jüdischen Philosophen" (1961), in Philosophisch-politische Profile (Frankfurt, 1971), pp. 3Tff.
53. Ibid., p. 64.
into the 1950s, which appeared as Adorno’s Jargon of Authenticity was working its way through philosophical seminars.\textsuperscript{54} To this also belongs Habermas’ unbiased reception of the literature of the emigration. As for the collective mentality of post-1945 Germans (and the continuation of authoritarianism), however, he recognizes its most decisive dimension in the predominance of the unconscious in the continuum of identity building. The most suitable tool to investigate this phenomenon was historical and philosophical reflection. It was no accident that his later thoughts on the unity of consciousness raising and vindicating/criticising developed around Benjamin.\textsuperscript{55}

The history of West Germany’s inner soul has yet to be fully explored. In order that it not remain unexplored, and thus subject to the principle of the hidden return of the same, one must join in such reflections as those of Habermas cited here. One will, for example, want to survey the massive stream of émigré literature, which only began to enter the West German political culture in the 1960s. One will have to deal with much ambiguity, with embarrasse profundity and revealing superficiality, but in no sense with the smooth transitions that some recent interpretations of German history suggest. There could also be some surprises. For example, whereas the generation of political scientists who entered academic life after the early 1960s have the self-image of having been raised in the spirit of the émigrés, a recent study reveals the relatively small influence they actually had in the 1950s.\textsuperscript{56}

The erosion of factors that have successfully neutralized the older line of antidemocratic thought could open new channels for its previously restrained potential. A renaissance of aggressive Schmittianism is admittedly improbable. Yet the remythologization of a fascinating line of thought could find no better model than this conservative revolutionary. When the adventurer and the strong man become the norm for liberal society, the aestheticization of politics cannot be far behind. Why should the belated triumphal march Heidegger (thanks to French poststructuralism) be making through the seminars of the Western world not be repeated in political theory? Habermas has recently subjected this process to a biting historical critique.\textsuperscript{57} “Carl Schmitt and the Frankfurt School” is a great topic, relevant not just in Germany. But Kennedy misses her chance. The proper adversaries do not appear, nor is the stage upon which the drama must be played properly set. Let the roles be broadened, the scenery rearranged!

\begin{footnotes}
54. Ibid., pp. 67ff.
57. Jürgen Habermas, Der philosophische Diskurs der Moderne (Frankfurt, 1985), pp. 158ff.
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