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Hayek and Schmitt on the "depoliticization" of the economy

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HAYEK AND SCHMITT ON
THE “DEPOLITICIZATION” OF THE
ECONOMY

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Hayek and Schmitt on the “Depoliticization” of the Economy

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Abstract:

Both Friedrich Hayek and Carl Schmitt are critical of the role of economic interest groups in modern democracies. This paper begins by comparing their descriptions of how such groups attempt to obtain favorable treatment from the state (“rent seeking”). The paper then discusses the proposed solutions. Schmitt’s solution, called depoliticization, involves the establishment of an authoritarian state with a corporatist economic system. Hayek, by contrast, argues in favor of limiting the ability of politicians to grant privileges to economic groups. The paper finally asks whether, as claimed in the literature, Hayek’s solution is similar to Schmitt’s in that both attempt to shield the free market economy from democratic oversight. It is argued that Hayek’s solution is not undemocratic (unless one defines democracy as pure majoritarianism), while Schmitt’s solution is not conducive to free markets.

Introduction

There is a growing literature that points to similarities in the thinking of economist Friedrich Hayek and jurist Carl Schmitt. What makes their connection particularly interesting is the fact that the two men are usually perceived as polar opposites. Hayek was one of the most important representatives of classical liberalism in the 20th century, while Schmitt was one of liberalism's fiercest and most eloquent critics. Hayek argued in favor of individual liberty and free markets, while Schmitt used his considerable legal talents to defend National Socialism.¹

Hayek was keenly aware of Schmitt's questionable politics, but also impressed with some of his analysis, especially from the Weimar period. This has led scholars to ask the question of whether Hayek was influenced by Schmitt, or as Jeremy Shearmur put it, whether Hayek should be thought of as "the devil's disciple" (Shearmur 2015).

Three points of comparison between Hayek and Schmitt are regularly emphasized. First, Schmitt's distinction between a "substantive" and a "merely formal" concept of law was taken up by Hayek and featured prominently in *The Constitution of Liberty* and subsequent works (Hayek [1960] 2011: 312–15). Second, both Schmitt and Hayek diagnosed a tension between liberalism and democracy based on the fact that democracy can undermine liberal values (Hayek [1960] 2011:

¹ On Hayek's life and work, see Caldwell and Klausinger 2022. On Schmitt, see Mehring 2014.

166–69).² Third, and related to the previous points, both scholars offered a scathing critique of the role played by special interest groups in modern democracies.

The present paper focuses on the last issue. Both Schmitt and Hayek observed what would be called today “rent seeking” behavior, namely interest groups trying to obtain favorable treatment from the state. While attempts at rent seeking are unavoidable in democratic societies, economists generally assume that this practice has negative welfare effects. The intuition is that money spent on rent seeking activities – e.g., lobbying – is not spent on production, and that successful rent extraction is associated with welfare losses that exceed those of zero-sum redistribution (see, e.g., Hillman and Van Long 2019). Although they did not frame the problem in these terms, both Schmitt and Hayek pointed out that interest group influence on democratic decision-making leads to results that go against the public interest.

In addition to identifying the above-described interest group problem, Schmitt and Hayek also considered possible institutional solutions. Schmitt’s solution, first outlined in a speech given to a consortium of Ruhr industrialists in 1932, involves the creation of a “strong state” in combination with the “depoliticization” (*Entpolitisierung*) of the economy (Schmitt [1932] 1998; see also Schmitt [1933] 1999). Hayek did not use the term depoliticization but said that his own proposed solution would lead to the “containment of power and the dethronement of politics” (Hayek 1979: 128).

² In both cases, Hayek explicitly refers to Schmitt’s work. When discussing the two concepts of law, he points to Schmitt 1926 and Schmitt (1928) 2008. Regarding the tension between liberalism and democracy he cites Schmitt (1926) 1985.

There already is a substantial literature dealing with Schmitt's and Hayek's treatment of the interest group problem (e.g., Bonefeld 2017; Cristi 1998; Irving 2020; Reichhold 2018; Scheuerman 1997; Streeck 2015). However, this literature is less interested in the details of Schmitt's and Hayek's arguments and more interested in showing that the two authors ultimately had a similar objective. It is claimed that despite their differences, both Schmitt and Hayek wanted to shield the free market economy from democratic oversight. The thrust of this literature can be summarized by the notion that both Schmitt and Hayek were proponents of an "authoritarian liberalism". The term authoritarian liberalism was originally coined by Hermann Heller ([1933] 2015) to describe Schmitt's 1932 proposal. It can also be used more generally to describe an authoritarian – i.e., non-democratic – political regime with economic and civil liberties. Today, Hong Kong provides an example of such a hybrid regime (Wintrobe 2018).

The present paper aims to give a comprehensive account of the interest group problem in Schmitt and Hayek. Only after carefully considering their theoretical analysis and their proposed solutions does the paper address the question of whether Schmitt's and Hayek's solutions are similar in that they are both authoritarian. The paper argues that the charge of authoritarianism against Hayek is unwarranted because it is based on the erroneous equation of democracy with pure majority rule.

The interest group problem in Schmitt and Hayek

Schmitt's examination of the interest group problem begins with his 1923 work *The Crisis of Parliamentary Democracy*. Here, Schmitt argues that the role of political parties in the *Reichstag*

parliament goes against the principles of the Weimar constitution. In his view, the actions of the members of parliament are dictated by the parties, which in turn try to fulfill the desires of various social and economic interest groups. Open discussion in the *Reichstag* has become a farce and laws are often made without public oversight:

Small and exclusive committees of parties or of party coalitions make their decisions behind closed doors, and what representatives of the big capitalist interest groups agree to in the smallest committees is more important for the fate of millions of people, perhaps, than any political decision. (Schmitt [1926] 1985: 49–50)

According to Schmitt, this practice violates Article 21 of the Weimar constitution, which states that “The members of parliament are representatives of the whole people. They are only subject to their conscience and are not bound by orders”.³ Schmitt’s diagnosis that the *Reichstag* does not properly represent the German people was shared by left-leaning politicians such as Gustav Radbruch ([1924] 1992).

In the following, Schmitt starts to combine his criticism of the role of parties with the observation that the Weimar Republic is turning into a “total state” with ever-increasing reach and influence, particularly on the economy.⁴ Schmitt contrasts the total state with the “liberal state” of the 19th century, which refrained from intervening in the economy and focused on upholding the rule of

³ All translations by the author, unless indicated otherwise.

⁴ To emphasize this aspect, Schmitt sometimes refers to the quantitative total state as an “economic state” (e.g., Schmitt [1931] 1999: 13).

law (Schmitt [1931] 1999: 7–10). The movement toward the total state is again attributed to the influence of interest groups:

A pluralist Parteienstaat [party-state] becomes “total” out of weakness, not out of strength and power. The state intervenes in every area of life, because it must fulfill the claims of all interested parties. It must especially become involved in the area of the economy, which, until now, was free of state interference, even if it foregoes any leadership in and political influence on the economy. (Schmitt [1932] 2004: 92)

Schmitt’s criticism of parliamentary democracy relies on the distinction between two different concepts of what is meant by the term law, namely a substantive and a merely formal concept of law. Substantive laws are characterized by their “generality, ... definiteness, and permanence” (27). Thus, substantive laws are laws that meet the criteria associated with the rule of law principle.⁵ Schmitt notes that many laws adopted by the *Reichstag* are laws only in the formal sense, as they lack the qualities of the rule of law (20–21).

Schmitt’s distinction between the two kinds of law is intended to cast doubt upon the political legitimacy of the Weimar lawmaking process. He asserts that if the formal (rather than substantive) concept of law is accepted, this means that “the law” is whatever the present majority in parliament wants it to be: “Fifty-one percent produces the majority in parliament; 51 percent of the votes in parliament produces law and legality” (27). Schmitt questions whether laws adopted in this way

⁵ On the substantive or *Rechtsstaat* concept of law, see Schmitt (1928) 2008: 181–96.

account for the interests of the whole German people. He rather sees them as “the momentary compromise of heterogenous power groupings” (43–44).⁶

Hayek’s analysis of the interest group problem can be found in a number of texts from the 1970s. Like Schmitt, he examines the topic as part of a broader discussion of democratic decision-making and the way in which laws are created by parliamentary assemblies. Hayek starts from the observation that there is a difference between lawmaking as “passing laws in the sense of general rules of just conduct” and lawmaking as “[directing] the specific measures of government” (Hayek [1973] 1978: 143). To describe the resulting laws, Hayek uses the Schmittian terms of law in the substantive sense and law in the merely formal sense.⁷ Hayek observes that in modern democracies, parliaments are typically charged with making both kinds of law. Because parliaments can adopt any law or measure that has majority support, he refers to modern democracies as “unlimited”.

⁶ In a 1958 afterword to *Legality and Legitimacy*, Schmitt argues that the wide acceptance of the formal concept of law in Weimar Germany was attributable to the influence of legal positivism (Schmitt [1932] 2004: 96–97). Legal positivism maintains that whether a law is valid – i.e., whether it has the status of law – depends on the manner of its creation rather than the merits of its content. Schmitt’s opposition to legal positivism was shared by Hayek (see Nientiedt 2021).

⁷ See Hayek (1960) 2011: 312–15. While Schmitt employs the distinction between the two kinds of law to polemicize against the content of certain Weimar laws, Hayek treats it as a theoretical contribution. However, the legal significance of this distinction is unclear (Posner 2003: 281–83).

Hayek's main issue with unlimited democracy is that parliaments can adopt discriminating measures that only benefit small groups.⁸ Because of this possibility, he assumes that politicians will threaten to withhold their support for certain policies unless their constituents receive special treatment (Hayek 1979: 10). In an unlimited democracy, forming a majority requires politicians to grant privileges to numerous parties:

[Democratic government] will be forced to bring together and keep together a majority by satisfying the demands of a multitude of special interests, each of which will consent to the special benefits granted to other groups only at the price of their own special interests being equally considered. (99)

Thus, Hayek describes a process known today as vote trading or logrolling (see, e.g., Mueller 2003: 104–27). Similar to Schmitt, Hayek points out that the parliament of an unlimited democracy is powerful only in the sense that it has a broad range of competencies: “The apparently paradoxical fact is that a nominally all-powerful assembly ... is necessarily exceedingly weak and wholly dependent on the support of those splinter groups” (Hayek [1976] 1978: 156–57).

In another parallel to Schmitt, Hayek argues that interest group influence leads to a situation in which the results of the legislative process do not reflect the interests of the whole people, or even a majority of the people. There are two aspects to this argument. Firstly, because of the possibility of vote trading, Hayek assumes that individual decisions made by majority rule do not need to reflect majority opinion on the issue at hand (Hayek 1979: 10–12). Secondly, he maintains that

⁸ The alternative is that they would be bound to only adopt general rules of conduct (see below).

“true agreement” (i.e., unanimity) can only be reached with regard to general rules of conduct, not with regard to discriminatory measures (17–19).

In summary, Hayek’s analysis of unlimited democracy bears strong similarities to Schmitt’s analysis of Weimar interest group politics.⁹ Both authors paint a picture of a democratic state with a broadening range of competencies, which at the same time is unable to resist the pressures of special interests that use the state as a vehicle for their own purposes. Both authors employ the distinction between two kinds of law to highlight the large amount of discretion possessed by modern parliaments. And both argue that the results of democratic decision-making procedures are often not in the public interest.¹⁰

Depoliticization as the solution to the interest group problem

It was noted earlier that Schmitt uses the term total state to describe a state that acts on behalf of (economic) interest groups. Somewhat confusingly, a state that can withstand the influence of such

⁹ Hayek himself acknowledges his intellectual debt to Schmitt in this regard: “[The] weakness of the government of an omnipotent democracy was very clearly seen by the extraordinary German student of politics, Carl Schmitt, who in the 1920s probably understood the character of the developing form of government better than most people” (Hayek 1979: 138 fn 11).

¹⁰ When Hayek invokes the public interest, he refers to the unknown interests of all individuals that make up a society (Hayek 1976: 1–30). When Schmitt invokes the same concept, he refers to the interest of the people as a whole. Schmitt’s writings are based on the premise that a functioning state acts as a unified “political entity” with a general will (e.g., Schmitt [1932] 2007: 37–45).

groups is also called a total state, albeit a “qualitative total state”. This state is “*total in the sense of quality and energy*” (Schmitt [1932] 1998: 217) as opposed to total in the quantitative sense.¹¹ From the qualitative total state, also called the “strong” state, “proceeds the ordering effect that overcomes the confusion and antagonism of the diverse interests” (229).

In terms of its political system, Schmitt’s strong state is an authoritarian state – best exemplified by Benito Mussolini’s fascist Italy – that rules by means of military force and mass propaganda (216–17). There are no democratic elections and the state’s powers are unconstrained by constitutional provisions:

[The strong state] does not allow forces inimical to it, or those that limit or divide it, to develop within its interior. It does not contemplate surrendering new powers of coercion to its own enemies and destroyers, thus burying its powers under such formulae as liberalism, rule of law, etc. (217)

How does the strong state deal with the issue of economic interest groups? According to Schmitt, what is required is the process of “depoliticization”. The term reflects the idea that the development from the liberal state of the 19th century to the quantitative (weak) total state of the Weimar period was a process of “politicization” of all areas of life, including the economy (216). However, Schmitt does not want to go back to the liberal state.

¹¹ On the distinction between the quantitative total state and the qualitative total state, see Schmitt (1933) 1999.

Depoliticization means “the segregation of the state from non-state spheres” (221). To explain what he has in mind, Schmitt draws a threefold distinction in the domain of economics, namely between the “*economic sphere of the state*”, the “sphere of the free, individual entrepreneur” and a third “intermediate *non-state, but still public sphere*” (224–25), which he refers to as “autonomous economic administration” (*wirtschaftliche Selbstverwaltung*). This latter part of the economy includes “industrial and commercial chambers, non-voluntary unions of every sort, associations, monopolies, etc.” (226). Schmitt is adamant that the process of depoliticization requires the expansion of the sphere of autonomous economic administration.¹²

Thus, the process of depoliticization of the economy is in fact the process of strengthening corporatist institutions. A well-known definition states:

Corporatism [is] a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically ordered, and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and support. (Schmitter 1974: 93–94)

Under corporatism, economic interest groups are officially recognized by the state and endowed with a representational monopoly. Examples of corporatist institutions include the aforementioned mandatory associations of employers and employees, but also government involvement in

¹² “Without an autonomous economic administration ... a real new order would be hardly thinkable” (Schmitt [1932] 1998: 226).

collective bargaining or required employee representation on company boards. The economic system introduced by the National Socialists after 1933 had many corporatist elements, although with a bent toward emphasizing employers' interests (Pryor 1988). Today, corporatism still plays an important role in many European countries, including Germany. The concept has now become politically associated with social democracy.

From a legal perspective, Schmitt's approach to the interest group problem is supported by what he calls the "theory of concrete order" (*konkretes Ordnungsdenken*). This theory, formulated in 1934, posits that law is a means to realize specific political objectives. According to Schmitt, law does not create order; instead, it serves the goals of an existing political order (Schmitt [1934] 2004: 48–49). He contrasts this view with the liberal notion of the rule of law, where political authority is subordinate to the law and where therefore "law destroys the concrete kingly or leadership order (*Führerordnung*)" (50).¹³

Schmitt illustrates the theory of concrete order by pointing to the National Socialists' Work Order Act of January 1934 which enabled government-appointed officials to supervise labor relations and for example set wages. In Schmitt's reading, this law compelled the business and labor interest groups to serve the whole people:

In the place of wage agreements steps a wage order. Entrepreneurs, employees, and workers are leaders and followers (*Führer und Gefolgschaft*) of a firm, working together

¹³ It should be noted that Schmitt's advocacy of discretionary, non-general laws became much stronger around the year 1933. On this "break" in his legal theory, see Maus 1998.

for the advancement of the firm's aims and for the common good of *Volk* and state; both appear as members of a common order, a community with a public-legal character. (94)

As we have seen, Schmitt's solution to the interest group problem is the establishment of an authoritarian state in combination with a corporatist economic system. Hayek's solution, on the other hand, is to restrict the discretionary scope of economic policy. He situates this approach in the intellectual tradition of constitutionalism. The basic idea is that the supreme power of the lawmaker should itself be limited by law. Hayek does not propose to limit the application of democracy as a decision-making procedure, but rather says that all government power – whether democratically legitimated or not – should be subject to certain constraints (Hayek 1979: 98–104).

More specifically, Hayek wants to prevent arbitrary decisions by changing the “particular institutions by which we have tried to realize [democracy]” (139).¹⁴ Similar to the representatives of modern public choice theory, he emphasizes that the interest group problem is closely connected to the functioning of the prevailing institutions:

We have no right to blame [politicians] for what they do, because it is we who, by maintaining the present institutions, place them in a position in which they can obtain power to do any good only if they commit themselves to secure special benefits for various groups. (135)

¹⁴ On the distinction between the basic ideal of democracy and its current institutional realization, see Hayek (1967) 1978: 92–97.

Hayek makes a concrete proposal how the existing institutions could be improved. This is his well-known and controversial “model constitution” (105–27).¹⁵ In essence, he proposes a bicameral legislature where one chamber is charged with making substantive laws, i.e., general rules of conduct, and the other chamber is charged with making non-general laws. The discretion of decision-makers in the second chamber would be restricted by the rules laid down by the first chamber. The proposal assumes that the members of the first chamber are elected for a long time – Hayek suggests 15 years – and are not eligible for re-election.

Under the model constitution, Hayek argues, interest groups would find it much more difficult to influence the process of lawmaking. The basic idea seems to be that the members of the chamber confined to making general laws would have little incentive to serve particular groups.¹⁶ Instead, Hayek assumes that they would adopt “proper” legislation based on broadly shared conceptions of justice and the interest of the public at large:

Legislation proper ... should not be governed by interests but by opinion, i.e. by views about what *kind* of action is right or wrong – not as an instrument for the achievement of particular ends but as a permanent rule and irrespective of the effect on particular individuals or groups. (112)

Since Schmitt’s depoliticization proposal is supported by his theory of concrete order, it is interesting to note that Hayek engages with and rejects this theory. He contrasts Schmitt’s theory

¹⁵ For a comprehensive assessment, see Müller 2015.

¹⁶ However, as pointed out by Barry 1979: 192–93, general laws can at least in principle be chosen in a way that still discriminates between groups.

with his own theory of spontaneous order where social patterns emerge from the uncoordinated actions of individuals within a framework of general rules.¹⁷

The abstract and general rules of law in the narrow sense ... aim not at the creation of an order by arrangement but at creating the conditions under which an order will form itself. [The conception of law as a means of order-creation], which is the conception prevailing in the totalitarian states, has characteristically been given its clearest expression by the legal theorist who became Hitler's chief legal apologist, as "concrete order formation" ... This kind of law aims at creating a concrete preconceived order by putting each individual on a task assigned by authority. (Hayek 1964: 464–65)

To conclude, Schmitt's and Hayek's solutions to the interest group problem are very different. While Schmitt's ideal strong state is an authoritarian state that pacifies conflicts between different social groups by force, Hayek wants to reform liberal democracy in order to make it more difficult for interest groups to influence the lawmaking process in their favor.

Does Hayek's solution to the interest group problem deserve to be called authoritarian?

The existing literature on the interest group problem in Schmitt and Hayek acknowledges that their proposed solutions are not identical. At the same time this literature argues that the two solutions are still similar in that they are both authoritarian. Consider this assessment by Renato Cristi: "While Hayek emphasized the typical liberal limitations on the state, he did not object to the formation of a strong state. He thought that strong authoritarian governments could ensure the

¹⁷ See also Hayek 1973: 71.

necessary depoliticization of civil society” (1998: 167–68). Apparently, the term depoliticization in this quote does not refer to Schmitt’s 1932 proposal but is used in a broader sense. The same general conclusion is reached by William Scheuerman, who says that “Hayek is ultimately less distant from Schmitt than he claims. ... His own institutional vision is hardly altogether free of the authoritarianism evident in Schmitt’s proposals” (1997: 183).

In what sense is Hayek’s solution to the interest group problem authoritarian? The literature converges on the idea that what makes his solution authoritarian is that it leads to “the insulation of a politically instituted market economy from democratic politics” (Streeck 2015: 365).¹⁸ Hayek is not accused of being a defender of Schmitt’s particular brand of fascist authoritarianism. Instead, he is accused of being *undemocratic* because he wants to shield the free market from the influence of democratically elected bodies. The charge is one of depoliticization in the sense alluded to above, namely in the sense of establishing the primacy of the economic over the political (for this usage of the term see Bourdieu 2002).

As described in the previous chapter, Hayek believes that the interest group problem can be mitigated by limiting the discretionary scope of economic policy. In his view, rent seeking behavior is incentivized by the ability of lawmakers to grant privileges to certain groups. The extent to which lawmakers are able to grant such privileges is in turn determined by the prevailing political institutions. Because Hayek wants to limit rent seeking and rent granting, his solution

¹⁸ See Cristi 1998: 166–68; and Scheuerman 1997: 177–84.

necessarily involves placing limits on what democratically elected politicians can decide.¹⁹ This idea is exemplified by the model constitution: The limitation is that the actions of the members of the second parliamentary chamber are bound by the rules laid down by the members of the first chamber.

In line with the interpretation of Cristi, Scheuerman and others, Hayek argues that preventing rent seeking is desirable to protect the economic freedom of the individual and to support the functioning of markets. However, we should question the literature's claim that limiting the application of the democratic decision method must be considered undemocratic (or authoritarian). As a matter of empirical fact, all Western-style democracies are "liberal" democracies in that they combine majoritarian decision-making with constitutional limits on what can be decided. One justification for this has traditionally been the protection of fundamental human rights and especially the rights of minorities.

From the point of view of the economic theory of politics, constitutional limitations are not undemocratic because they are assumed to be the result of a *prior* democratic decision. This is expressed by the distinction between the constitutional and the post-constitutional stage of democratic decision-making (Buchanan and Tullock [1962] 1999). Even if a constitutional provision is not the result of a democratic decision, it is assumed that the provision could at least be changed democratically. As Geoffrey Brennan and James Buchanan put it, constitutional rules

¹⁹ As much is already implied by Hayek's use of the term "unlimited democracy" to criticize certain institutional features of democratic systems. On Hayek's view of democracy in general, see Barry 1979: 186–190; and Caldwell and Montes 2015.

are “quasi-permanent arrangements” (Brennan and Buchanan [1980] 2000: 222). While they are not easily changed, there is a clear legal pathway to doing so.

Thus, it can hardly be suggested that Hayek’s solution is undemocratic simply because it introduces constitutional rules that “insulate” the market economy from day-to-day politics. The constitutionalization of certain rules does not call into question the democratic character of the political system.²⁰ Few scholars would identify democracy with unbridled majoritarianism and even fewer would think such a political system to be preferable. Hayek proposes constitutional limitations that support the workings of the market economy. While one may object to this goal, or his analysis of the rent seeking issue, his approach of constitutionalization is not undemocratic.

This is not to say that the details of Hayek’s model constitution cannot be criticized. As argued by Jan-Werner Müller (2015: 274–78), the laws created by the first chamber would probably not be representative enough of the diversity of societal views, and not responsive enough to changing conceptions of what constitutes just conduct. These criticisms could be addressed by altering the selection criteria and term limit for the members of the first chamber. Even with such changes, the model constitution would serve to illustrate Hayek’s broader claim that rent seeking can be prevented by limiting politicians’ ability to take discriminating measures.

In closing it should be noted that equating the positions of Schmitt and Hayek fails for another reason. Their treatment of the interest group problem does not support the notion that Hayek was an authoritarian; but it also does not support the notion that Schmitt was a friend of free markets.

²⁰ For a similar assessment, see Kolev and Goldschmidt 2021: 520.

This is clear from his insistence that conflicts between interest groups should be resolved by expanding corporatist institutions. As shown by this paper, Schmitt's 1932 depoliticization proposal would – perhaps paradoxically given its name – lead to more discretionary state interventions and a reduced role for markets and entrepreneurial activity.

Conclusion

Was Hayek influenced by Schmitt? The answer is unambiguously yes. The comparison made in this paper focuses on their analysis of rent seeking behavior by interest groups, an issue which both authors discuss as part of a more general consideration of democratic decision-making procedures. Writing during the time of the Weimar Republic, Schmitt observed the phenomenon of “the state as prey” (Rüstow [1932] 2017: 147), i.e., the fact that economic interest groups were able to use the Weimar state (and more specifically its lawmaking process) as a vehicle for their own purposes. Hayek elaborated on the same phenomenon in the 1970s. He employed the Schmittian distinction between two kinds of law to draw attention to the discretionary power of all modern democratic parliaments, while also adding an economic (public choice-type) argument to explain why politicians cater to narrow interests.

Schmitt and Hayek had very different ideas on how to prevent rent seeking. Schmitt's depoliticization proposal entailed that interest groups should be recognized by the state and forced to work together for the good of the community (i.e., corporatism). Hayek, on the other hand, argued in favor of limiting the ability of politicians to award privileges to economic groups. As

shown by his model constitution, Hayek aimed to counteract rent seeking and rent granting by adjusting the institutional setup of liberal democracy.

An important argument of this paper is that Hayek's solution to the interest group problem is not undemocratic by any means and therefore not similar to Schmitt's authoritarian proposal. Although one may disagree with Hayek's pro-market stance or his analysis of the rent seeking issue, characterizing his solution as undemocratic is not convincing unless one equates democracy with pure majority rule. Furthermore, the idea of a similarity between the two solutions is also implausible because Schmitt's 1932 depoliticization proposal does not in fact strengthen the autonomy of markets.

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