Schmitt Fever: The Use and Abuse of Carl Schmitt in Contemporary China

The article examines “Schmitt Fever”, the reception and influence in contemporary China of the thought of Carl Schmitt, the German legal, constitutional and political theorist notorious for his endorsement of National Socialism. It argues that an understanding of Schmitt Fever provides new insights into contested terrain and fracture lines of contemporary Chinese law and politics. By examining the way Schmittian concepts such as “friend-enemy”, “sovereignty”, and “decisionism” are deployed by three contending groups of scholars — the “China Path”, “New Left” and “Liberal” schools of thought — it shows the limitations of socialist and Marxist thought in contemporary debates, and a crisis in legitimacy regarding the foundational ideas that sustain and inform contemporary debates regarding the future direction of China.

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China is fascinated by Carl Schmitt.¹ The reception and influence of Schmitt’s works in China have been so extensive and far-reaching that it has even been called “Schmitt Fever”.² Why the German legal, constitutional and political theorist notorious for his endorsement of National Socialism has assumed such prominence in socialist China is puzzling. But as we will argue in this article, this puzzle is also a revealing question, a valuable entry point for understanding the nature of politics in contemporary China.

Schmitt Fever can be explained in part as another instance of the increasing international salience of Schmitt in legal and political thought.³ But this observation should not obscure the specifically Chinese aspects to Schmitt’s increasing influence. For example, Schmitt’s influence is evident in the theoretical debates regarding the contemporary role of classical Chinese thought and how it is challenged by “modernity”.⁴ But beyond Schmitt’s

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³ For an overview of the international context see, for example, ALAIN DE BENOIST, CARL SCHMITT: INTERNATIONALE BIBLIOGRAPHIE DER PRIMÄR- UND SEKUNDÄRLITERATUR (2010); JAN-WERNER MÜLLER, A DANGEROUS MIND: CARL SCHMITT IN POST-WAR EUROPEAN THOUGHT (2003); Richard J. Bernstein, The Aporias of Carl Schmitt, 18 Constellations 403 (2011).

⁴ See, for example, GLORIA DAVIES, WORRYING ABOUT CHINA: THE LANGUAGE OF CHINESE CRITICAL INQUIRY (2007); Zhou’s discussion of contemporary Chinese philosophy and specifically the works of Liu Xifeng, Zhao Tingyang and Gan Yang: Zhou Hong, Quanguduo Beijing Xia “Zhongguo Daochu” de Shijie Yiyi [World Significance of the “China Path” Against the Globalisation Background] 5 Zhongguo
contribution to these philosophical debates, a significant source of Schmitt’s influence can be traced to the way his thought has been employed in contests over political legitimacy, national sovereignty and foreign affairs in contemporary China. Schmitt Fever, we would therefore argue, warrants closer examination because it provides valuable insights for students of Chinese politics, jurisprudence and political philosophy. In trying to understand and explain Schmitt Fever, especially how Schmittian concepts and formulations are appropriated and deployed, we see how ideas shape and are in turn altered by political practice. Equally, the strategic use of ideas — the use and abuse of Schmitt — provides new insights into contested terrain and fracture lines of contemporary Chinese politics and constitutionalism.

Scholars in China and the west have sought to understand Schmitt’s influence in contemporary China by locating him within the larger political struggles between liberals and the “New Left”. In this article we build on this scholarship by providing an overarching account of the way specific Schmittian concepts are deployed within three larger approaches — the “China Path”; the “New Left” and Liberalism in China. Our core argument is that Schmitt Fever reveals the important philosophical and political dimensions of the legitimacy contests in contemporary China. Philosophically, the recourse to Schmittian concepts to repair Marxism confirms the theoretical limitations of relying on Marxism in China to repudiate the challenge of liberalism and democracy. Politically, these theoretical contests reveal a crisis of legitimacy and the limitations of an instrumentalist view of ideas. If concepts are nothing more than weapons to defend and justify power, it is difficult for them to sustain a more ambitious or overarching “ideology” to found and sustain political legitimacy.

In the discussion that follows we start by detailing the reception of Schmitt’s thought in China. We then argue that his thought has been taken up by three contending groups of scholars — specifically those who promote the “Chinese Path”, the “New Left” and finally the Liberals. As we demonstrate, all these scholars use Schmitt to advance and justify specific visions of Chinese constitutionalism and politics. In our concluding comments we argue that Schmitt Fever reveals the extent to which modern western ideas and concepts dominate Chinese politics, how the Chinese recourse to Schmitt reveals the limitations of Marxist thought, both substantially and in terms of popular legitimacy, and finally the nature of the Schmitt contestation allows us to see more clearly the character of the struggle for China’s future.

**Carl Schmitt in China**

Few scholars in China knew of Carl Schmitt until the 1990s, when the prominent philosopher Liu Xiaofeng began publishing articles on him. From 2003 to 2012 Liu translated into...
Chinese all the major works of Schmitt, as well as important western commentaries. This gave rise to an extensive scholarly interest in Schmitt, with numerous articles published especially in political science and constitutional law. In his original works, Liu argued that Schmitt should not be read politically, but in terms of intellectual history. Yet Schmitt’s influence has not been predominantly philosophical, for example as part of a postcolonial attempt to “decentre” western concepts as Liu Xiaofeng proposed. Nor have we seen a transformation of his teaching due to its transplantation into the Chinese context. Instead, the majority of the Chinese scholarship on Schmitt consists of books and articles that deploy Schmittian concepts to advance specific political claims. Why is Schmitt Fever predominantly instrumental? The answer can arguably be traced to both philosophical and political sources. Philosophically, the instrumental use of Schmitt can be traced to the modern Marxist predisposition that regards all thought as inherently or unavoidably “ideological” so that there is no possibility of “disinterested” philosophy. Politically, as we note below, we have the twofold influence of state censorship that seeks to control the terms of political debate, and the specific nature of contemporary Chinese disputes over legitimacy that have made Schmitt’s ideas especially useful intellectual weapons in such political contests.

In the discussion below we will examine which of the Schmitt’s ideas have been taken up and used politically as well as what such use suggests about the nature of contemporary political contests in China. There is of course a great diversity in the way different scholars have deployed Schmitt. But for our discussion we will take the view that there is sufficient commonality in contexts and approaches to argue that Schmitt Fever can broadly be understood in terms of a contest between three groupings of scholars — the “Chinese Path”, the “New Left”, and the “Liberals”. Scholars in the first group argue for a Chinese Path (Zhongguo Daolu), which is also the official line of the Chinese government. The other two groups agree in rejecting the Chinese Path, but then diverge significantly on what they advocate. The New Left favour more equality and democracy, criticizing liberalism and the market system, and in effect calling for a return to a romanticized Mao era. The third group, the Liberals, support further political reforms aimed at a liberal democratic order as well as additional market reforms.

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7 See, for example, Shuangli, supra note 5.
8 He advised in particular to focus on German as opposed to North American secondary literature. See also Sapió, supra note 2, at 106.
10 The problem of lost in translation, or alternatively, as the famous political leader Yanzi Chunqiu (578-500 BCE) is reported to have said, the Southern Orange transplanted to the North, across the river Huai, becomes something inferior: "Ju yu Huai, wei Zhi".
11 See Marx’s Thesis Eleven: “The philosophers have only interpreted the world in various ways; the point, however, is to change it”. Whether classical Chinese thought also favoured the pragmatic over the theoretical or metaphysical (Deng Xiaoping’s “crossing the river by feeling the stones”) is an important question that cannot be explored in this context: see generally Chenyang Li and Franklin Perkins eds. CHINESE METAPHYSICS AND ITS PROBLEMS (Cambridge University Press 2015).
China Path

The collapse of the Soviet Union presented a significant warning and challenge to China. Eschewing the “Washington Consensus”, China has since pursued its own direction founded on the leadership of the Chinese Communist Party (CCP). Chinese leaders hold that there is no single model of development suitable for all countries so that China should draw on, but not copy the experiences or developmental trajectories of other countries. Instead, China will explore and improve a course suitable for herself, now known as the “China Path” or “China Model”. At the first session of the 12th National People’s Congress on 17 March 2013, the newly elected President Xi Jinping declared: “The realization of the Chinese dream must follow the China path. This is the socialist path with Chinese characteristics”. Broadly speaking, the China Path refers to institutional arrangements as the CCP deems fit for China, with the ruling status of the CCP as its defining characteristic. In the academia, there is no lack of defenders of the China Path. To see how Schmitt has been deployed in justifying the China Path, or more specifically, the ruling position of the CCP, it is instructive to examine the approach of Chen Duanhong who is influential and representative in the way he uses Schmittian concepts to advance the interests of the CCP.

Chen in “On the Constitution as the Fundamental Law and Higher Law of the State”, resorts to the Schmittian concept of an absolute constitution to justify the leadership of the CCP. He starts with Schmitt’s Constitutional Theory, and specifically the Chinese translation of the concept of absolute constitution as the “concrete, collective condition of the political unity and social order of a particular state”. Having defined the concept, Chen then examines the principle of power distribution in the absolute constitution, disagreeing with the orthodox view that the distribution of power is determined solely by Article 1 of the Chinese Constitution, which states “The People’s Republic of China is a socialist state under the people’s democratic dictatorship led by the working class and based on the alliance of workers and peasants”. Instead, Chen argues that to understand the distribution of power in China it is necessary to read Article 1 with Article 2 (section 1), which provides “All power in the People’s Republic of China belongs to the people”. According to this systematic interpretation, the sovereign is the Chinese people under the leadership of the CCP, or, put


16 CARL SCHMITT, CONSTITUTIONAL THEORY §1, 59ff. (2008 [1928]).
more simply, the leadership of the CCP. This principle of power distribution is the first fundamental law of the Chinese Constitution according to Chen, allowing him to use the Schmittian concept of an absolute constitution to argue for the leadership of the CCP. In doing so, however, he seems to neglect an important distinction Schmitt makes in the “Absolute Concept of the Constitution”, the first chapter of Constitutional Theory, between a sociological and normative conception of a constitution. In the sociological sense, the absolute constitution according to Schmitt means “the concrete manner of existence that is a given with every political unity”, while in the normative sense it refers to “a unified, closed system of higher and ultimate norms”. Chen relies on the first sociological meaning of an absolute constitution, which can be understood in three different ways. First, it refers to a state’s overall political and social order. Here the absolute constitution is the concrete individual state itself, like the German Reich. Therefore, from this perspective, it is incorrect to maintain that a state has an absolute constitution; rather, the state itself is an absolute constitution. Second, that the absolute constitution is a political and social order means that it is a form of the rule and form of the state. This is really about the question of who has political power. Third, the absolute constitution is the principle of the dynamic coming-into-being of political unity. In this context, the state is not understood as something static, but as something that is always becoming, where political unity must be created despite opposing interests and opinions. When Chen claims the leadership of the CCP as Schmittian absolute constitution, he refers to the Chinese political and social order characterized by the paramount power of the CCP. Therefore Chen’s use of the absolute constitution is quite consistent with the Schmitt’s second meaning: the leadership of the CCP is the most profound fact in Chinese political life. To speak with Schmitt, the leadership of the CCP is the form of the state.

Chen, however, in advocating the leadership of the CCP as the first fundamental law of the Chinese Constitution, uses a normative rather than a sociological conception of a constitution. In Chinese, the word “absolute” (juedui) can also mean something beyond any doubt. Consequently, by resorting to the concept of an absolute constitution and calling the leadership of the CCP as the first fundamental law of the Chinese Constitution, he gives the reader the impression that the ruling position of the CCP cannot be questioned, negating any normative examination of the leading position of the CCP. In short, when Chen in “On the Constitution as the Fundamental Law and Higher Law of the State”, maintains that the leadership of the CCP is the first fundamental law of the Chinese Constitution, he hopes to provide a normative justification for the China Path and the leadership of the CCP. Yet he can only do so by obscuring the difference between Schmitt’s sociological and normative absolute constitution.

New Left

The 1990s saw the emergence of a “New Left” school of thought in China. These scholars are different from the Old Leftists in that they no longer refer to class struggle and the

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17 Chen Duanhong, supra note 15, at 494.
19 Schmitt, supra note 16, at 59 and Schmitt, supra note 16, at 62, respectively.
dictatorship of the proletariat, concepts that were commonplace in China up to the end of the Cultural Revolution. Instead, they draw on western postmodern theories, the Frankfurt School and especially Jürgen Habermas. They appear modern and international, not only in using western theories to analyse issues in China, but also in publishing their articles in western left-leaning journals. Yet they are also critical of the west, especially the USA. Similar to Old Leftists fighting capitalism, they denounce the market economy, stressing its incompatibility with socialism. In their eyes, China’s market economy has created a new capitalist class that exploits the working class. Consequently, they regard problems like corruption and inequality arising from the transformation process as rooted in and caused by the capitalist system introduced by the reform and opening up policy of Deng Xiaoping. Their solution is to return to the Mao era, which they romanticize as the golden days of equality. The New Left are also distinct in tending to support Chinese nationalism. They are therefore statists, attaching great importance to maintaining the sovereignty of China. The New Left therefore use Schmitt’s theories in a number of ways. They employ his concept of the “exception” to justify authoritarianism, his “friend-enemy” distinction to explain “class”, and his critique of liberty to defend the primacy of democracy. We address each of these in turn.

State of Exception and Authoritarianism

One of the most famous — or notorious — statements by Schmitt is that the “Sovereign is he who decides on the state of exception”. This statement is often understood to mean that the sovereign is legitimately empowered to decide on the state of exception and therefore is not subject to any constraints. New Leftists use this argument to justify the Chinese system of government. For example, leading New Left scholar Zhang Xudong, in an interview on the occasion of the 110th birthday of Deng Xiaoping, reiterated Schmitt’s thesis that the sovereign may and sometimes even must make decisions to safeguard the existence of the state outside the legal framework. Applying this theory to the Chinese context, Zhang argued that after the death of Mao Zedong, Deng Xiaoping became Mao’s successor and the single sovereign in China. As such, Deng was inside and at the same time outside the existing order, thus not subject to its constraints. His decision to initiate his Reform and Opening-up Policy, and his actions during the 1989 Tiananmen Incident showed that he was not afraid to...
resort to “necessary” means even outside the legal order to safeguard stability and economic growth.

Schmitt’s sovereign theory certainly helps explain China’s transition under Deng’s paramount influence from class struggle to economic growth in late 1970s, as well as the Tiananmen Incident. This approach can also be adopted to understand post-Deng China. Now that Xi Jinping as China’s leader enjoys a status similar to that of Mao and Deng, it is especially tempting to resort to Schmitt to analyse contemporary Chinese politics in these terms. But an uncritical adoption of Schmitt forecloses the question of whether the sovereign is really the one who makes decisions in exceptional cases. Consider, for example, Hermann Heller, a contemporary critic of Schmitt, who argued that the state is a dialectic unity consisting of a power centre, its followers and opponents.26 For Heller, the power of the state, or the will of the sovereign, is the result of actions and reactions among these three groups.27 The history of the CCP ever since its founding in 1921 arguably lends support to the sovereign theory of Hermann Heller, rather than that of Schmitt. From this perspective, the CCP maintained a close relationship with the masses, so that over the years, it became the power centre, with the masses as its supporters, allowing it to defeat the Kuomintang (KMT) and drive it to Taiwan in late 1940s. In short, the New Left needs to confront the alternative sociological perspective that it is equally possible to argue that the sovereign is the state, which consists of the power centre, its supporters as well as its opponents.

Friend and Enemy Applied to Class

For Schmitt, the decisive feature of “the political” is the distinction between friend and enemy.28 If a people no longer make this distinction, it ceases to exist as a political unity.29 Schmitt lamented the European attempts to seek neutralization by depoliticization as he thought such attempts were doomed to failure because every newly found neutral sphere becomes sooner or later a sphere of struggle.

To see how Schmitt’s concept of friend and enemy is employed by the New Left, it is necessary to revisit the importance of “class” in contemporary Chinese debates. Ever since its founding in 1921, the CCP as a Marxist political party has presumed an irreconcilable conflict of interest between the exploited and the exploiting classes. The importance of class as ideology can be seen in the CCP struggle against the KMT, in the founding of the People’s Republic of China (PRC) in 1949 and the subsequent political movements that took place, culminating in the Cultural Revolution from 1966 to 1976. A paradigm shift took place two years after the end of the Cultural Revolution, as Deng Xiaoping turned the attention of the Party-State away from class struggle to economic development, ushering in a long period of rapid economic growth which largely marginalized, without completely abandoning the notion of class struggle. It is in this context of the relative decline in the concept of “class” that the New Left resort to Schmitt to argue for its reintroduction by means of the idea of antagonistic politics. For example, Wang Hui, a noted New Left philosopher resorts to

26 See HERMANN HELLER, GESAMMELTE SCHRIFTEN (1992); DAVID DYZENHAUS, LEGALITY AND LEGITIMACY: CARL SCHMITT, HANS KELSEN, AND HERMANN HELLER IN WEIMAR (1999).
27 Heller, supra note 26, at 352.
29 The origin of the concept can be found in Plato’s REPUBLIC (Book I) where Polemarchus defines justice as helping friends and harming enemies. On Mao’s conception see Mao Zedong, On the Correct Handling of Contradictions among the People, in SELECTED WORKS OF CHAIRMAN MAO TSETUNG, vol. 5, 348–421 (Committee for Editing and Publishing the Works of Chairman Mao Tsetung, Central Committee of the Communist Party of China, ed., 1977).
Schmitt’s “The age of neutralizations and depoliticizations”\textsuperscript{30} to revisit the concept of “struggle between two we” (luxian douzheng), namely, political struggles between different lines within the CCP.\textsuperscript{31} According to Wang Hui, throughout the history of the CCP there had always been conflicting opinions and corresponding political struggles. For instance, various factions within the CCP held different opinions concerning the setback of the revolutionary cause in 1927, and the nature of the Chinese society in the early 1930s. Furthermore, different views coexisted concerning political and military affairs and international politics before 1949, and within the Cultural Revolution itself. For Wang Hui, the competition of different political lines made it possible for the CCP to correct its own errors and innovate.\textsuperscript{32} But this opportunity was lost after the Cultural Revolution, when the victims of the political struggles regained political power and completely negated the different lines within the CCP, laying the groundwork for the “depoliticization” of the CCP. This depoliticization, according to Wang Hui, is not confined to the political life in the strict sense, but has also extended to the economic sphere.\textsuperscript{33} He maintains that the state apparatus gets involved in the economic field in the name of modernization and reforms, resulting in political elites dealing with special interest groups and multinational capital. Through this conspiracy of political and economic elites, state assets are unjustly transferred to private persons in the name of legal reforms of state enterprises’ property rights, with the use of legal forms giving these unjust transfers of public property the appearance of legality.

Wang Hui’s solution to this injustice is the repoliticization of politics, which will result in the rectification of the unjust distribution of wealth that ensued the privatization process. He does not explore the fundamental theoretical difference between the Marxist concept of “class” and the Schmittian friend-enemy distinction. But in one respect the antagonism that Wang wants to revive does remind one of the extreme measures Schmitt advocated regarding the treatment of enemies, a similarity that is not addressed by Wang. Indeed, he does not explain how the “unjust” distribution of wealth will be corrected through the repoliticization of politics, perhaps because he does not want to give undue attention to the previous brutal struggles inside the CCP and in the general society, especially the violent confiscation of property of landlords and capitalists in the communist revolution before the founding of the PRC and the political movements afterwards. This approach seems to be repeated by other New Left thinkers such as Cui Zhiyuan who has proposed that the Cultural Revolution should take place every seven or eight years.\textsuperscript{34}

\textit{Democracy versus liberty}

Schmitt is famous for his attack on parliamentary systems, arguing that modern parliamentary practice has deviated from its liberal ideal of reaching agreement through rational discussions, deteriorating to a method for the bourgeois to defend their established interests.\textsuperscript{35} Schmitt also argues that the parliamentary system is inconsistent with democratic principles because the will of the people cannot be expressed with secret votes at the ballot box, which means that parliament is unrepresentative and therefore undemocratic. Unlike the parliamentary system which is not democratic, a dictatorship, though illiberal, is not


\textsuperscript{31} Wang, supra note 20, at 44.

\textsuperscript{32} Wang, supra note 20, at 17.

\textsuperscript{33} Wang, supra note 20, at 47.

\textsuperscript{34} Zhiyuan Cui, Fahui “Wenge” zhong de Heli Yinsu [Give Full Play to Positive Elements of the “Culture Revolution”] Yazhou Zhoukan [Asian Weekly] 47 (May 26, 1996).

\textsuperscript{35} CARL SCHMITT, THE CRISIS OF PARLIAMENTARY DEMOCRACY (1985 [1923]).
necessarily anti-democratic according to Schmitt. From these remarks, it is not difficult to draw the conclusion that Schmitt himself does not clearly articulate: a parliamentary system should be replaced by some kind of dictatorial system under which the will of the people is expressed through acclamations at public gatherings. This conclusion is confirmed by Schmitt’s endorsement before 1933 of dictatorial presidential powers as well as his later cooperation with the Nazis.

The New Left take a similar stance concerning the relationship between liberty and democracy. Consistent with Schmitt’s attack on liberal elements of the constitutional order, the New Left censure protection of individual rights as endorsed by the Liberals and call for more democracy. To understand this use of Schmittian concepts, it is helpful to view it within the larger debates between the New Left and Liberals in contemporary China. Since the 1990s, Liberals have been quite successful in advocating legal protection of individual rights, as is evident from constitutional amendments such as the 1999 changes recognizing the notion of rule of law (Art 5, s 1); and the 2004 constitutional amendments protecting human rights (Art 33, s3), private property (Art 13, s 1), and the private sector of the economy (Art 11 and 13 CC). These changes were also evident in general society, which now had a greater awareness of individual rights. The mood of this period is captured by Xia Yong’s edited book The Epoch Marching towards Rights: On Development of Chinese Citizens’ Rights. Yet the increased recognition and protection of individual and property rights did come with significant costs. The privatization of numerous loss-making state and collective enterprises resulted in economic inequalities, where millions of workers were laid off, while former managers often became the new owners of the privatized enterprises, with their newly acquired property rights enjoying legal protection. The laid-off workers felt abandoned and questioned the legitimacy of the privatization. Against this background, the New Left regarded the privatization process as an illegitimate appropriation of state assets by political and economic elites. They attacked Liberals who were in favour of market reforms as aristocratic or even oligarchic, and detached from the people. They viewed the legal order, which should ideally protect individual rights of all citizens without prejudice, as serving the interests of the elites who profited from the privatization at the cost of laid-off workers. The titles of two articles by Gan Yang – “Antidemocratic Liberalism or Democratic Liberalism?: “Liberalism: Aristocratic or Democratic?” – nicely capture the tone and substance of the New Left approach. According to the New Left, traditional political elites use the state apparatus to give a legal and just appearance to the corrupt transfer of state assets to private persons, creating new social inequalities. To correct the new unequal social arrangements, it is necessary to unmask the deception and corruption concealed by such legal arrangements.

36 See, for example, CARL SCHMITT, CONSTITUTIONAL THEORY § 17, III. 2, at 265-6 (2008 [1928]). On Schmitt’s conception of democracy see Andreas Kalyvas, “Carl Schmitt and the Three Moments of Democracy”, 21 Cardozo L. Rev. 1525 (2000)


38 There are no official statistics of the laid-off workers. Figures from the National Bureau of Statistics offers a clue: in the year 1994, 112.14 million and 76.40 million persons were employed in state enterprises (guoyou danwei) and collective enterprises (jiti danwei) respectively. These two figures for the year 2001 are 76.40 million and 12.91 million respectively. Altogether 55.68 million (roughly 4.4% of the whole population) fewer persons worked in the public sector: see http://www.stats.gov.cn/yearbook/indexC.htm, http://www.stats.gov.cn/yearbook2001/indexC.htm.

39 Gan 1997 and 1999 respectively, supra note 20.
doing so, the New Left criticize the Liberals for claiming the nonpolitical nature of market activities by placing liberty over democracy. Liberals not only attack democracy in the name of liberty, they also attack equality in the name of individual rights to justify the legal exploitation of public property by the minority. Consequently, the New Left call for wider democracy at the cost of liberty as the solution to social injustice. But like Schmitt, they do not illustrate clearly how this shall be realized. Their writings only hint at what kind of democracy they flirt with.

The New Left use of Schmitt in this context is therefore primarily as a weapon to attack liberalism in the name of democracy. But what remains unclear is the substantive notion of democracy they advocate. The New Left’s tendency to view the Cultural Revolution favourably, combined with their opinion that the present state apparatus, under control of political elites colluding with capitalists, cannot be reformed to represent the interests of the masses, indicates that they are in favour of the kind of democracy that flourished in the Cultural Revolution, where the masses can directly participate in government operations. In this respect it is comparable to a Schmittian dictatorial system with the will of the people expressed through acclamations.

**Liberals**

Liberal ideas, dormant till the end of the Cultural Revolution, enjoyed a revival in 1980s and 1990s, due in part to the introduction of works by liberal thinkers like Hayek into China. Liberals endorse a liberal democratic order, with a special focus on the promotion of rule of law. The popularity of Schmitt with the China Path and New Left scholars has to some degree

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40 See, for example, Wang, supra note 20, at 47, 48, 155.

41 See, for example, Wang Hui’s endorsement of “mass participatory democracy” (or democracy with the participation of the masses: dazhong canyushi minzhu), which was a feature of the Cultural Revolution in its initial stages (Wang, supra note 20, at 14). See also Cui Zhiyuan who argues for the Maoist “big” democracy (daminzhu) (Cui, supra note 34). In doing so, however, he seems to misinterpret the Maoist distinction between big and small democracy: Wang Sirui, Jinri Zhongguo de Zuopai Guangpu [The Left Spectrum in Today’s China], in SICHAO — ZHONGGUO “XINZUOPAI” JIQI YINGXIANG [TREND OF THOUGHT — THE “NEW LEFT” IN CHINA AND ITS IMPACTS] 302 (Gongyang, ed., 2003).

extent forced liberals to confront Schmitt and his claims in a Chinese context. They have done so by questioning the relevance of Schmitt’s insights for China, and by substantially repudiating his core concepts of friend and enemy, decisionism and democracy. Yet to a certain extent liberals too have used features of Schmittian thought, such as the concept of sovereignty, to advance their claims.

Responding to Schmitt-based critiques, liberals have attempted to deny the relevance of Schmitt for contemporary China. For some, Schmitt’s writings, including those published in the 1920s before his cooperation with the Nazis, are closely linked with Fascism and therefore should not and cannot be regarded as philosophical works. In a similar vein, other scholars have attempted to discredit Schmitt by arguing that his attack on liberalism should be confined to the specific case of the Weimar Republic and is therefore not applicable to contemporary China. For Gao Quanxi Schmitt’s critique of the Weimar constitutional order does not apply in China because China is not like the liberal Weimar Constitution without sufficient means of self-protection. Moreover, there is no lack of a sovereign that does not make decisions — the people’s democratic dictatorship is not only enshrined in the constitution, but also practiced in reality. Therefore, there is no need to use Schmitt to remind us to distinguish between friends and enemies.

Gao’s arguments seem compelling to the extent that Schmitt’s attack was in the first instance directed against the liberal Weimar Constitution. But it is equally true that Schmitt did not limit his insights to the Weimar Reich, extending it to parliamentary democratic systems in general. As China is not presently a parliamentary system, it does seem that Schmitt’s arguments may not be relevant in the first instance. But if Schmitt’s critique holds, then a parliamentary democracy is not the suitable goal for Chinese political reforms. It is therefore not sufficient for liberals to point out that China does not have a liberal order and therefore is “immune” to the Schmittian critique of liberalism because in doing so they implicitly but unintentionally presume China will never have a liberal constitutional order, which runs counter to their ambitions.

**Friend-Enemy**

Unlike those scholars simply denying the applicability of Schmittian critique of liberalism, some other liberal-leaning scholars engage critically with Schmitt’s core opinions with the Chinese context in mind. Liberals in China have been especially critical of Schmitt’s distinction of friend and enemy, with Xu Ben typical of this approach. For Xu Ben, Schmitt assumes knowledge of the enemy as the basis of the political, with the meaning of the personal existence or one’s own identity dependent on knowing who is the enemy or the hostile state. This question, however, is not political, but theological and metaphysical. In this sense, what Schmitt here proposes is a political theology, where questions are not answered through reasoning, but by belief or will. Therefore, the political distinction between friend and enemy in effect revives the theological problems of piety, questions concerning the nature of obedience or disobedience to God, and the difference between believers and non-

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43 They therefore reject attempts to separate the early works from those in the Nazi period: see Xu, supra note 41, Zhengzhi Shenxue de Jiaoxun, at 67, 68. This point of view is not widespread in China, in part because the extent to which Schmitt’s earlier works should be read in light of his later cooperation with Nazis is an open question.

44 Gao, supra note 41.

45 Xu, Zhongguo buxuyao zheyang de “zhengzhi” he “zhuquanzhe jueduan”, supra note 41. Xu draws on the arguments of Heinrich Meier, Revelation or He that is not with Me is against Me, in THE LESSON OF CARL SCHMITT: FOUR CHAPTERS ON THE DISTINCTION BETWEEN POLITICAL THEOLOGY AND POLITICAL PHILOSOPHY 66 (1998).
believers. Schmitt’s call for a politics based on religious inspiration therefore excludes reason and potentially justifies irrational prejudices, and thus is diametrically opposed to constitutionalism.

Xu Ben and the liberals are correct in criticizing the Schmittian distinction between friend and enemy on the grounds that it can lead to a situation where almost anyone can be persecuted as the enemy of the people. But there are other possible ways to interpret this distinction. For example, as Böckenförde points out, the Schmittian distinction between friend and enemy may have a peacekeeping function. Because the political is monopolized by the state, only the state can make the distinction between friend and enemy, limiting or not allowing all other conflicts. In this sense the Schmittian distinction of friend and enemy might be compatible with or even serve to promote the cause of liberalism in China.

**Decisionism**

Schmitt’s concept of the exception justifies the sovereign as defender of the constitutional order. As the self-proclaimed liberal He Baogang admits, a sovereign with unlimited powers might bring order to an anarchical society, and therefore might be justified. But there is no guarantee that the sovereign would really try to restore the constitutional order. The decision of an unrestrained sovereign might equally lead to a worst outcome. In view of this possibility, liberal constitutionalists like He argue in favour of a normative approach. This does not exclude adjustment or redesign of relevant norms to deal with new circumstances. Though on occasion it may be necessary to deviate from concrete norms, the meta rule (yuan gui ze) of liberalism should never be violated. Ji Weidong, another well-known liberal scholar, holds a similar opinion. Regarding Schmitt’s claim that a constitution is the overall decision of the people and a compromise means nothing but the avoidance of a decision, Ji Weidong defends separation of power to ensure the legitimacy of the decision. Norms should be followed, but with sufficient accommodation of special circumstances. In this sense, the liberal order characterized by rule of law allows some scope for discretion, compromise and decisionism, balancing the need for strict legal norms and discretion.

As an exceptional state is by definition unforeseeable and cannot be regulated in advance it presents a real challenge for liberals who advocate constitutionalism. The Schmittian solution is a sovereign to restore order. While Schmitt maintains that the sovereign may act on his own judgement free from any external restraint, liberals in China still adhere to a normative approach: He Baogang proposes a meta rule in line with liberalism that shall still bind the sovereign; Ji Weidong allows legally prescribed procedures to be flexible. But He Baogang does not make clear what the meta rule is and how it shall bind the sovereign in an exceptional state, while Ji Weidong does not directly face the real challenge of whether the legal rules can be so flexible that they do not constitute any substantial constraints for the sovereign. To this extent Schmitt usefully compels liberal scholars to consider and articulate how they think the sovereign power can be efficiently bound.

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46 See Meier, supra note 44, at 66.
49 He, supra note 41, at 73–80.
50 Ji, supra note 41, at 12–15.
Democracy

Schmitt attaches great importance to democracy and denies that the parliamentary government is based on democracy. He does so because he argues that democracy presupposes homogeneity among the people. In a Rousseauian spirit, he argues that the opinions of private persons as expressed in a secret vote are nothing more than the sum of the individual views and therefore cannot produce the general will, confirming that the sphere of the state and the public has been privatized. Schmitt’s solution to this problem of ascertaining the will of the people is to claim that it can be expressed through acclamation at gatherings.\(^{51}\) This view is fundamentally rejected by Chinese liberals because they argue that it is a justification for an authoritarian system. This is because though acclamation at public gatherings is somewhat public, it only reflects local public will, which is more limited and of shorter duration than the one expressed at the ballot box. Accordingly, the will of the people can never be expressed at public gatherings. The only possible mechanism to determine public will is still the solution of liberal democracy: the right to know and freedom of speech should be guaranteed so that individuals can actively and meaningfully participate in political decisions; legal procedures need to be established and improved upon so that representatives of the people are subject to supervision.\(^ {52}\) In confronting Schmitt, liberals reveal the radical nature of his democratic commitment and the distance between it and representative democracy.

Statism

While the majority of liberals completely repudiate the relevance of Schmitt’s ideas, some liberals argue that Schmitt could be used to improve liberalism in China. In particular they see Schmitt’s emphasis on the state as providing useful lessons for the liberal cause in China.\(^ {53}\) Liberals in China tend to take a hostile stance towards the state and only focus on the protection of individual rights. The emphasis on rights protection is also clear among constitutional law professors who are often liberals. While the constitution contains far more articles about state organs than about basic rights, the lion’s share of Chinese publications in the field of constitutional law is devoted to basic rights. The reason why liberals in China often do not pay due attention to public powers can be traced back to the fact that the liberalism introduced to China draws on the Anglo-Saxon tradition, where the exceptional state is rarely the focus. This inclines Chinese liberals to neglect the issue of political power and to underestimate the importance of nation-building. In doing so they fail to take note of the special circumstances of the Anglo-Saxon liberal tradition. Yet the absence of profound theories to deal with exceptional states in Great Britain and America does not mean there were no constitutional crises in the two countries. As is well known, the evolution of the constitutional order in Great Britain and America has undergone exceptional situations like the Glorious Revolution in Great Britain, and the three major constitutional challenges in America (Independence, Civil War, and New Deal). The practical resolution of these challenges in Great Britain and America has meant that their relative theoretical neglect has not presented a serious political challenge. In the Chinese context, however, scholars cannot ignore the issue of the state by hoping that the Anglo-Saxon experience will repeat itself in China. Instead, liberals in China could usefully learn from Schmitt to engage with issues like sovereign power and nation-building, and not confine their research to the normal legal order.

\(^{51}\) CARL SCHMITT, CONSTITUTIONAL THEORY § 18, III. 2, 3, 272-279 (2008 [1928]).

\(^{52}\) See, for example, Ji, supra note 41, at 11, 14.

Even, and perhaps especially for the sake of constitutional rights, liberal scholars should pay due attention to the state. Although an influential liberal approach often regards the state as the threat to human rights, the appearance of the welfare state and the realization that many individual rights depend on the state have meant that the role of the state now needs to be reassessed by liberals. That the state must be sufficiently empowered so that it can properly guarantee individual rights has therefore become an important question for a number of liberals. It is in this context that Schmitt provides a salutary reminder to laissez faire liberals to reconsider the role of the state in the modern era.54

Contesting China’s Future

Since his introduction to China in the 1990s, Schmitt has had a significant influence on Chinese thought. Though his ideas continue to influence philosophical debates, the source of Schmitt Fever, or his extraordinary popularity lies elsewhere, in the political use of his ideas. In this article we have examined Schmitt Fever because it shows how western concepts are taken up in China, both philosophically and politically, and how their reception reveals valuable insights into the character of the major political contests in contemporary China.

Philosophically, our examination of Schmitt Fever confirms that western ideas and concepts continue to be taken up and in some cases dominate Chinese thinking and political practice. It also reveals that there is a powerful gravitational pull exercised by politics in China, so that philosophical debates are very soon drawn into political contests on the nature of law, legitimacy and constitutionalism. This has its source in an predominant view, shaped by above all by an influential strain in western modernity, that philosophy is always ‘ideology’ and therefore should be useful, or at the service of politics. This approach is especially powerful because it is the dominant view of the CCP, which controls the scope and substance of debates that will be permitted.

Schmitt Fever and the need to resort to a western thinker who was so closely affiliated with fascism to defend aspects of “Socialism with Chinese characteristics” also questions the role of Marxist-Leninist thought in contemporary debates. The use of Schmittian ideas to justify core Marxist concepts such as equality, class war, and authority of the people confirms the limited purchase of Marxism in contemporary China, both theoretically and in terms of political legitimacy. Moreover, the need to use Schmitt to defend Chinese nationalism shows the extent to which Marxism is no longer able to explain and justify such major political initiatives.

Finally, our examination of Schmitt Fever is also helpful for understanding contemporary Chinese politics. The political use of Schmitt’s philosophical concepts such as the friend-enemy distinction, decisionism and absolute sovereignty as ideational tools or weapons in political struggles allows us to understand the nature of political struggles taking place in contemporary China. To this extent Schmitt Fever is a sort of mirror to the fundamental alternatives China faces in its future direction. What this mirror reveals is an existential crisis in China regarding what it is, what it wants to be, and where it wants to go. The contest between the China Path, New Left and Liberals waged in terms of Schmittian concepts shows the lack of a fundamental consensus on the terms of the debate, let alone the future direction to be pursued. Defense of the current government, nostalgia for a revolutionary past, the promise of liberal individualism, democracy and prosperity and an abiding fear of increasing inequality and injustice that is the consequence of such liberalism are some of the profound concerns revealed from our examination of Schmitt Fever. What is remarkable, however, is the way these debates are now executed in the language of western

54 Gao, supra note 41, at 128 –129.
modernity that draw on a political theology that is simply absent in classic Chinese thought. Schmitt Fever therefore discloses not only the character of the grand political debates, but as importantly the modern registers and new terms in which the great promise of China is being contested.