Chapter 2:
The Beginnings in Bonn (1926–1928)

The story of Otto Kirchheimer and Carl Schmitt first began in the fall of 1926, when 21-year-old Otto Kirchheimer arrived at the University of Bonn to continue his law studies. At this point, Schmitt had already established himself as a successful and illustrious teacher of constitutional law. He had come to the University of Bonn from the University of Greifswald as of the summer semester 1922, replacing Rudolf Smend who had accepted an offer from Berlin University.

The six years Schmitt spent in Bonn until his own subsequent move to Berlin in 1928 were a particularly productive phase in his academic career. He had previously published his *Political Romanticism* (1919) and *Dictatorship* (1921) and, during his time in Bonn, published a number of other equally famous monographs in rapid succession, including some that are still seen as his most important works to this day. The first was *Political Theology* (1922), which he wrote in the misty atmosphere of Greifswald on the Baltic coast. This was soon followed by *Roman Catholicism and Political Form* (1923), *The Crisis of Parliamentary Democracy* (1923), and books on the Rhinelands as an object of international politics (1925), on the key question of international law (1926), and on referenda (1927). In 1927, he wrote the first version of his essay "The Concept of the Political," which was later expanded into a book. He also completed his magnum opus, *Constitutional Theory* (1928), during this period.

Schmitt established an extensive network of people he deemed culturally interesting or who were important in the academic and political communities. He was a star at the University of Bonn. Students of all faculties enthusiastically attended his lectures, and his presence in Bonn attracted students from other universities, too. Among them was Kirchheimer, who studied intensively with Schmitt for three semesters and completed his First State Examination in law with him. Schmitt also supervised Kirchheimer's doctoral dissertation, which he defended in 1928. Its subject dovetailed with Schmitt's areas of interests: a comparison of the state theories of Western social democracy and Soviet Bolshevism.

1. Schmitt at the first high point of his academic career

In Bonn, Schmitt was at the first high point of his academic career.[1] Born in the western German town of Plettenberg in 1888, he had completed his doctorate in 1910 and his *habilitation* in public and administrative law, theory of the state, and international law in 1916, during World War I. He was first appointed professor in Greifswald in 1921 and moved to the University of Bonn just a year later. Within a short period of time, he had written his way into the top tier of German legal scholarship; he was highly regarded as an author in literary and artistic circles for his brilliant style and his diverse interests which transcended the law by far. The style of his suggestively worded prose oscillated between cynical frostiness and political agitation. He would switch abruptly from rigorous and heavily footnoted academic writing and analysis to the prophetic tone of metaphysical reflections. The experience of taking in his work with these fascinating transitions is surely part of the secret of his success—to this day.

Schmitt agreed with the political views of the overwhelming majority of the constitutional law professors in Germany at the time, a group of approximately 100 people. Constitutional law during the Weimar period was mainly anti-liberal and anti-democratic, and the majority of scholars were shifting to the extreme right (see Stolleis 1999, 120–122). What usually distinguished Schmitt from his colleagues was not his positions but, rather, his original lines of argument, his pointed hypotheses, and his brilliant use of language. Besides the monographs he published at breathtaking speed, it was in Bonn that Schmitt wrote the first essays in which he cautiously inched his way toward the controversies of the day in constitutional law. The theoretical foundation for his legal opinions was his criticism of legal positivism, liberalism, and parliamentarism laid out in his monographs.

These initial practical opinions interpreting the constitution include essays on Schmitt's reading of Article 25 of the Weimar Constitution on the right of the President of the Reich to dissolve the Reichstag; he granted the President very extensive competence in this matter (see Schmitt 1924b). They also include his interpretation of the dictatorial power of the President of the Reich in accordance with Article 48 of the constitution (see Schmitt 1926c). Here, Schmitt advocated strictly regulating the dictatorial power of the President. The social democrats were also calling for such a law to prevent abuse of Article 48. Both the right-wing conservative President of the Reich Paul von Hindenburg and the Reichswehr (the armed forces) saw such a law as an unwelcome limitation of his presidential power and did everything in their power to ensure that nothing of the sort was adopted. A few years later, Schmitt revised his position on limiting presidential power.[2]

Although Schmitt cannot be declared a supporter of the right-wing parties on the basis of his initial legal opinions, he was unequivocally perceived to be on the political right during his time in Bonn, even if various facets of his positions were difficult to pin down.

1 Most of the biographical information in this section is based on Neumann (2015) and Mehring (2014a and 2022a).

2 See Chapter 3, p. 91–96.

He was part of the complex discourse of right-wing Catholic intellectuals vacillating between authoritarianism and anarchism. He published some of his essays in the Catholic magazine *Hochland* and considered the French antisemitic magazine *Action française* essential reading. He quoted the anti-Enlightenment theoreticians of the Catholic counterrevolution Joseph de Maistre, Louis de Bonald, and, above all, Donoso Cortés to support his political views, and had already positioned them to refute the arguments presented by the allegedly shallow authors of the Romantic period in his book *Political Romanticism* (see Schmitt 1919). In the final chapter of *Political Theology*, written in 1922, he drew on these theoreticians of the Catholic counterrevolution and their plea for a dictatorship to develop a methodological distinction between a type of legal thought oriented toward norms and one based on fundamental decisions (see Schmitt 1922, 53–65). In his book on parliamentary democracy, he praised Cortés's vision of a "bloody, definitive, destructive, decisive battle" (Schmitt 1923a, 69) against both the liberal and the revolutionary actors of the Enlightenment. It was abundantly clear to all his readers at the time that Schmitt was waging a war on two fronts: against liberalism and against Marxism.

Schmitt did not commit himself to a particular political party during his Bonn years. In 1923, he took a few days to consider whether to accept the offer from the Catholic Zentrumspartei (Center Party) to run for the Reichstag. In the end, he turned it down because he felt that the party's support for the Weimar Constitution and parliamentarism was too strong (see Mehring 2014a, 144). He held no sympathies for Adolf Hitler's small extreme right-wing party, either. Like many nationalist-minded university professors of his time, his views were most closely aligned with the Deutschnationale Volkspartei (DNVP), which was *völkisch* (of the *Volk*, chauvinistic-nationalistic, antisemitic; see Glossary), right-wing, and hostile to the Weimar Republic. Looking abroad, he was fascinated by Italian fascist Benito Mussolini's dictatorship and traveled to Italy multiple times for this reason.

Despite all his successes, which resonated far beyond Bonn, Schmitt felt himself to be "in a terrible state" and an "outsider"[3] vis-à-vis his Bonn colleagues—as he wrote to Smend, with whom he was still on friendly terms at the time. As a Catholic who disagreed with the church's prevailing dogma, and as a social climber, he was never really comfortable with most of his peers. He maintained a closer relationship only with theologian Erik Peterson, who insisted on the authoritative and dogmatic core of Christianity and advocated for Catholicism to make a fundamentalist about-face. Schmitt also agreed with Peterson about the eschatological role of Judaism as the "delayer," which guaranteed the existence of the Christian Church in the interim.[4] Schmitt felt he was both ignored socially and intellectually superior. His successes notwithstanding, he was extremely sensitive to criticism even in his years in Bonn. When critical comments on his work on parliamentarism had been published in a number of journals, he wrote to Smend that he felt "isolated in my profession" and complained that "4 Jews against one Christian—pounce on me in all the journals."[5] Unlike during the short time he had spent in Greifswald, Schmitt

3 Letter from Carl Schmitt to Rudolf Smend dated 11 September 1928 (Schmitt 2010, 76).

4 See Meier (1994).

5 Letter from Carl Schmitt to Rudolf Smend dated 21 May 1925 (Schmitt 2010, 44).

felt beleaguered by what he suspected to be Jewish old boy networks at the University of Bonn, as evidenced by his diary entries from 1925 to 1928.

The Bonn years marked a watershed moment in Schmitt's private life. He had met burlesque dancer Pauline Carita Dorotić in Düsseldorf in 1912; she had led him to believe that she was descended from Croatian nobility. They married in 1915,[6] and thereafter Schmitt proudly signed his publications "Schmitt-Dorotić." It was only some years later that Schmitt realized he had been duped by an impostor who had fabricated her name, age, and descent. Upon taking his position at the University of Bonn, he dropped her name and began to pursue an annulment of the marriage on the grounds of fraud in the strictest criminal sense. Only an annulment would have enabled Schmitt, who had grown up in a strict Catholic milieu, to marry again in the Catholic Church. The protracted divorce proceedings under civil law were not concluded until the spring of 1924, and Schmitt then continued to seek an annulment from the Catholic Church, but unsuccessfully. Schmitt needed some Serbo-Croatian documents translated for the civil proceedings to prove his wife's criminal intent and approached a young student from Serbia who, like him, had arrived in Bonn in 1922. Schmitt and the 19-year-old student Duška Todorović soon became a couple (see Tielke 2020, 15–18). They married in 1926. From the perspective of the Catholic Church, Schmitt was now living in concubinage and so was excommunicated.

The many students who flocked to study with Schmitt were attracted by his charisma. His classes had already been popular when he taught in Munich and Greifswald. He was generally seen as a captivating teacher and a lenient examiner. In Bonn, he quickly managed to create a distinct school of intellectual thought. Those who met him when they were young wrote time and again in their later letters or their published memoirs that meeting him in person was nothing less than an epiphany.

Schmitt personally selected a group of students to participate in a weekly seminar with talks on current topics, and he invited guest speakers. He also presented initial versions of his own deliberations for lectures and essays and encouraged open critical discussions that helped him improve his hypotheses and writings. In 1940, he wrote in retrospect about his famous article "The Concept of the Political" that it only developed "in my seminars in Bonn in 1925 and 1926" (Schmitt 2019, 123). Looking back 50 years later, Ernst Rudolf Huber appreciated in a celebratory speech how all the issues the participants were interested in were discussed "candidly and passionately in an ongoing conversation with Schmitt and each other" (Huber 1980, 131). Schmitt's seminar was a laboratory not only for his students' theses and dissertations but also for his own works.

A number of well-known and influential jurists were trained in Schmitt's Bonn seminar, including Ernst Forsthoff, Ernst Rudolf Huber, Werner Weber, and Hans Barion, who, like most of the attendees, were on the political right wing. Ernst Friesenhahn, who sympathized with the Catholic Center Party, became Schmitt's assistant in 1926. He was the only one of Schmitt's other students Kirchheimer became friends with. Another participant in the seminar was Waldemar Gurian, who had been born a Russian Jew in St. Petersburg and had converted to Catholicism. Schmitt's second wife Duška, the same age as his students, attended occasionally, the only woman to do so. All the people mentioned

6 On Schmitt's first marriage, see Mehring (2014a, 41–60).

here played a role in the eventful relationship between Schmitt and Otto Kirchheimer over the following forty years.

2. Kirchheimer's early studies and his decision to study with Schmitt

When Otto Kirchheimer became part of Schmitt's circle in Bonn, he stood out as a Jew and a socialist in this heavily Catholic milieu with right-wing leanings. Kirchheimer was born in 1905 as his affluent parents' sixth child, seventeen years after his next youngest brother.[7] Little is known today about his childhood except that as a late-born child, he enjoyed the full attention of his parents and the domestic staff. Yet this happy phase lasted only a few years. Even before he began school in 1911, his mother died at 49, and his purportedly less patient older sisters took on the task of raising him. After elementary school, Otto Kirchheimer attended the *Städtisches Gymnasium* (municipal academic-track high school) in Heilbronn. In April 1918, aged 12, he switched to the academic track of the Pädagogium Neuenheim-Heidelberg, a private school in Heidelberg, because his father had fallen ill.[8] His father died just one year later and left his children a considerable estate. Whereas his older brothers used their shares for their own businesses, Otto Kirchheimer's inheritance was held in trust to finance his education. Although his legal guardian was his uncle Ludwig Rosenthal from Nuremberg, his brothers exercised these rights until Otto came of age in late 1926. In particular, his brother Friedrich (Fritz), who was 17 years his senior and advancing his career in the Heilbronn branch of the Dresdner Bank, considered himself responsible for this. Otto Kirchheimer later explained his increasing alienation from his brothers by pointing out how much he had suffered under their patronization and bullying.

Kirchheimer attended the private school for five years up until the summer of 1923 and began to develop a special interest in politics, literature, and history. After the 1919 revolution, as a young student, he met older students who sympathized with the communists and the leftist socialists. His involvement with Die Kameraden, the German-Jewish branch of the Wandervogel movement, began during this time.[9] Die Kameraden had been established as a nationwide organization in 1919 because many of the other Wandervogel groups discriminated against Jews, some even refusing to accept them into their own ranks. Open to Jewish as well as non-Jewish youths and students, Die Kameraden was strictly anti-Zionist and had several thousand active members in various locations across Germany. Equal rights for all members, coeducation, promoting special communal experiences, and a love of nature were among its principles (see Trefz 1997). Kirchheimer participated in events and hikes organized by Die Kameraden on a regular basis and became an eloquent speaker propounding socialist ideas in the group.

7 The biographical information in this section is based on Anschel (1990), Kirchheimer-Grossman (2010), Buchstein (2017a), and a number of unpublished documents mentioned in the footnotes.

8 At the time, the school year in Germany began after Easter, following a Christian tradition, not after the summer vacation.

9 Originating in the early twentieth century in Germany, Wandervogel was a movement mostly of school and university students who, inspired by Romanticism, sought to liberate themselves from the constraints of modern industrial society on hikes in the great outdoors.

He had to move to a new school in 1923 to be able to complete his *Abitur* (academic-track high school degree). He passed the entry examination of the *Städtische Realgymnasium* in Ettenheim near Lahr (Baden) and spent the 1923/24 academic year there, completing his *Abitur* in March 1924. According to the school's register of grades, Kirchheimer's grades were mixed; he did particularly well in the literary subjects and less so in the natural sciences.[10] After obtaining his brothers' permission to study law, Otto Kirchheimer took up his studies at the university in Münster in the summer semester of 1924.[11] He did not study law as he had promised his brothers, however, but enrolled in the Faculty of Philosophy instead. He had decided on Münster to attend the lectures of philosophy professor Karl Vorländer, a neo-Kantian whose writings on socialism and Marxism he had already read as a high school student. Kirchheimer financed his studies with his inheritance, managed by his brothers. He left them in the dark about his departure from the studies they had agreed on and, on Vorländer's advice, subsequently switched to the field of law.

As a university student, Kirchheimer was politically active in the local Sozialistischer Studentenverband (Socialist Students' Association). At this time, he had already joined the SPD, the German Social Democratic Party.[12] He remained active with Die Kameraden. Eugene Anschel, his closest friend during his student years, reported in his memoirs that when he began his studies at 18, Kirchheimer proudly called himself a Marxist and tried to get his fellow members of Die Kameraden excited about discussing philosophical problems on their long hikes. He also described how Kirchheimer identified with the leftist wing of the SPD in the political discussions and was familiar with various contemporary socialist and communist theories such as those of Max Adler, Rosa Luxemburg, Paul Levi, and Lenin. He had constantly read aloud on train rides, either from the newspaper or from philosophical texts by Plato and other classical philosophers.[13] Kirchheimer only spent one semester in Münster. Besides Vorländer's classes, he also attended ancient historian Friedrich Münzer's lectures. At the time, Vorländer was working on a comprehensive history of the theory of the state spanning the period from the Renaissance to Lenin (see Vorländer 1926) and was already lecturing on the subject—which piqued Kirchheimer's intense interest.

Following the advice of some of his socialist friends, Kirchheimer switched to the University of Cologne, a Catholic reform university, in the fall of 1924. He enrolled in *Staats- und Rechtswissenschaften* (law) for two semesters, but then spent most of his time

10 The information on Kirchheimer's career at high school is based on the research findings of Reinhard Mehring (see Mehring 2014b, 39–41).

11 The information on Kirchheimer's studies is based on: Otto Kirchheimer, *Lebenslauf* (27 December 1927). Universität Bonn, Archiv der Juristischen Fakultät, Prüfungsakte Otto Kirchheimer, Promotionen 521/28, No. 500–524.

12 According to his daughter Hanna Kirchheimer-Grossman in a personal conversation on 12 September 2021. The exact date when he joined the party is not known.

13 Anschel also recounted anecdotes from the time they spent in the German-Jewish hiking club in his memoirs: during a hiking trip with Die Kameraden in 1924, Kirchheimer suggested that everyone put the food they had brought with them on a large table and then distribute it following the communist formula "to everyone according to their needs." According to Anschel, this went terribly wrong (see Anschel 1990, 79–80).

studying with sociologist Max Scheler instead of attending law lectures. Scheler was famous for his theories of capitalist culture and his sociology of knowledge and ideology (see Frings 1997). As a member of the Sozialistischer Studentenverband, Kirchheimer quickly made more friends with like-minded students in Cologne. Anschel reported that when he visited Kirchheimer's place in Cologne, he found a portrait of Lenin on the bookshelf. Asked about its political meaning, Kirchheimer had responded that he admired Lenin as a politician impassioned with a strong will but rejected his belief system and the Russian communists' ideology (see Anschel 1990, 83).

Kirchheimer's relationship with his future wife Hilde Rosenfeld also began during his year in Cologne. He had met her by chance on a train while traveling with Anschel. She was a law student at the nearby University of Bonn. It was not so much law that immediately brought them close but, rather, their political discussions. Hilde Rosenfeld held strong sympathies for the KPD, the German Communist Party, and her political preferences oscillated between the SPD and the KPD. Otto Kirchheimer was proud of having won her back for political work in the SPD after spending long nights discussing politics with her. To Kirchheimer, his relationship with Hilde Rosenfeld also meant direct access to the leading figures of the leftist wing of the SPD. She was the daughter of Kurt Rosenfeld, Prussian Minister of Justice from November 1918 to January 1919 and a member of the left wing of the social democratic faction of the Reichstag from 1920 onward. Rosenfeld had a colorful political past and was a celebrity in leftist socialist circles.[14] Along with Paul Levi, he had been Rosa Luxemburg's lawyer and one of her closest confidants for many years. Rosenfeld enjoyed a legendary reputation as the successful defense attorney for the Rote Hilfe, the magazine *Weltbühne*, and prominent authors such as Carl von Ossietzky and Kurt Tucholsky.[15]

On Scheler's advice, Kirchheimer enrolled in Berlin for the 1925/26 winter semester. He spent two terms there; the Rosenfelds helped him find accommodation in the western part of the city. He matriculated in law, enrolling in lectures and seminars taught by public law experts Rudolf Smend and Heinrich Triepel and criminal law expert Eduard Kohlrausch.[16] He also took advantage of what Berlin had to offer, attending lectures and discussions at the Deutsche Hochschule für Politik (DHfP), or German Academy for Politics, which was located opposite Berlin university in the center of the city across from Berlin castle.

Kirchheimer and Smend soon grew closer. Born in 1882, Smend had become a professor in Greifswald back in 1909, during the German Empire, and taught at the University of Berlin from 1922 on. His political sympathies were with the right-wing Deutschnationale Volkspartei (DNVP), which opposed the Weimar Republic, but he kept his distance from the extreme right wing. Despite his conservative political orientation, he quickly began

14 On Kurt Rosenfeld's biography, see Ladwig-Winters (2007, 247–249).

15 *Rote Hilfe* was a KPD organization to provide support and care for communists persecuted by the state. The *Weltbühne* was considered the most sharp-witted weekly of the leftist-socialist intelligentsia in the Weimar Republic.

16 Otto Kirchheimer, *Lebenslauf* (27 December 1927). Universität Bonn, Archiv der Juristischen Fakultät, Prüfungsakte Otto Kirchheimer, Promotion 1927/28, No. 500–524.

to appreciate Kirchheimer, a young leftist socialist. [17] During the year Kirchheimer was studying in Berlin, they had a number of discussions, and their political differences did not stand in the way of an amicable relationship.

It would be no exaggeration to describe Smend as Kirchheimer's first academic mentor. Kirchheimer became familiar with Smend's particular anti-positivist approach to legal theory and tried to combine it with the revolutionary Marxist Georg Lukács's critique of legal positivism (see Lukács 1923). At the time, Smend was completing his magnum opus *Verfassung und Verfassungsrecht* [Constitution and constitutional law], published in 1928. This book presented his theory of integration, which he is known for to this day. Smend promoted a kind of early cultural turn in constitutional law, examining the factors binding a state together.

At this time, Smend was a member of the DNVP but he referred to the social democratic legal scholar Hermann Heller multiple times in his theory. The methodological core of the theory of integration is a type of thought that seeks to resolve opposite positions within one another. With this approach, he opposed both Marxism and Carl Schmitt's theory (see Smend 1928).[18] It was Smend who suggested to Kirchheimer that he should follow his interests in the theory of the state with Schmitt in Bonn, and recommended him personally to Schmitt,[19] with whom Smend had an almost friendly relationship at the time.[20]

Kirchheimer switched to the University of Bonn in the fall of 1926. Relocating to Bonn also suited him very well in terms of his private life because Hilde Rosenfeld wanted to complete her studies in Bonn, too, and their relationship had become serious. Kirchheimer followed Smend's advice to read Schmitt's most famous writings in the summer before he moved to Bonn. Schmitt's books, with their diverse topics and literary references, must have seemed like a treasure trove to a young left-wing intellectual like Kirchheimer.

According to political scientist Wilhelm Hennis's report about a conversation he had with Kirchheimer about his decision thirty years later, Kirchheimer was impressed by Schmitt's broad knowledge and his polemic style and he wanted to learn as much as possible to apply to left-wing politics from Schmitt, his theory of dictatorship, and his pointed criticism of parliamentary democracy.[21] On the basis of Schmitt's book *Dictatorship*, in which he had claimed that he intended to update the counterrevolutionary theory of dictatorship to provide a response to the Marxist theory of dictatorship of the proletariat, Kirchheimer viewed Schmitt as a kind of "Lenin of the bourgeoisie."[22] It is

17 Wilhelm Hennis, who had studied with Smend and was a friend of Kirchheimer's from the 1950s, recounted this in a conversation with the author on 26 September 2009.

18 On Smend's legal theory, see Korioth (1990).

19 Wilhelm Hennis, a political scientist and one of Smend's most famous students, in a conversation with the author on 26 September 2009.

20 The volatile relationship between Schmitt and Smend is documented in their correspondence (see Schmitt and Smend 2011).

21 Wilhelm Hennis in a conversation with the author on 26 September 2009.

22 John. H. Herz used this expression in a conversation with the author on 15 November 1985. On Schmitt's and Lenin's structurally similar views of politics, power, state, and dictatorship, see Bolsinger (2001).

difficult, however, to judge whether this second-hand explanation is correct because it may have been a retrospective rationalization.

3. The famous professor and his student

Kirchheimer was only twenty-one when he moved to Bonn in late September 1926. He contacted Schmitt shortly after his arrival with a letter from Smend in hand. Schmitt mentioned his new student's courtesy call on 11 October in his diary: "The student Kirchheimer came and enrolled in the seminar."[23] Kirchheimer studied with Schmitt for three semesters. In the 1926/27 winter semester, Schmitt ran a seminar entitled *Staatstheorien* (Theories of the state), lectured on *Völkerrecht* (International law), and taught *Verwaltungsrechtliche Übungen* (Tutorials in administrative law). Kirchheimer attended all three classes. Schmitt's lectures were crowded but his seminar was generally attended by no more than ten students, with doctoral candidates forming the core. Kirchheimer, the recent arrival from Berlin, was the only one whose political orientation was clearly on the left. He was also the only Jewish student in Schmitt's inner circle.

During those years, Schmitt regularly kept a diary in which he praised Kirchheimer multiple times. For example, he noted on 2 February 1927: "Good seminar […], [student Heinrich] Oberheid and Kirchheimer speak very well."[24] In the summer semester 1927, Schmitt offered a seminar on *Einheit und Undurchdringlichkeit des Staates* (Unity and unimpeachability of the state) and lectured on *Politik – Allgemeine Staatslehre* (Politics – General theory of the state) and *Deutsches Reichs- und Landesstaatsrecht* (Public law of the German Reich and the *Länder*). In the 1927/28 winter semester, he taught a *Staatsphilosophisches Seminar* (Seminar on the philosophy of the state), and again gave lectures on *Völkerrecht* (International law) and *Allgemeine Staatslehre* (General theory of the state). Kirchheimer took all of these classes.

While his girlfriend Hilde Rosenfeld focused her studies on criminal and civil law and did not participate in Schmitt's seminars, Kirchheimer was directly admitted to Schmitt's inner circle in his first semester in Bonn. He quickly impressed the group with his intelligent and pointed statements and became one of the undisputed "stars in the seminar" (Mehring 2014a, 203). Yet he made just a single friend in the seminar, Ernst Friesenhahn, who had a liberal outlook and sympathized with the Center Party.[25] Friesenhahn became Schmitt's assistant in 1926. The position involved grading the written exams for Schmitt's classes, finding literature for him, and occasionally teaching his classes as a substitute. Beginning in the autumn of 1927, he had another major task, namely supporting Schmitt in correcting the proofs for his magisterial book *Constitutional Theory*. Schmitt worked so feverishly on correcting the proofs and adding text to them in the early months of 1928 that Friesenhahn could not keep up with him. After

23 Carl Schmitt, diary entry of 11 October 1926 (Schmitt 2018, 97).

24 Carl Schmitt, diary entry of 2 February 1927 (Schmitt 2018, 118).

25 For a biographical sketch of Friesenhahn and his relationship to Schmitt, see Meyer (2018).

Kirchheimer had completed his doctoral dissertation, he helped Friesenhahn with the corrections,[26] learning about Schmitt's rapid way of working in the process.

Schmitt was happy to spend time with his students after class. He was thirty-five when he arrived in Bonn and among the younger professors at the university. He liked to take his students out for walks to discuss their work and academic plans and also enjoyed going out with them after his seminar. He invited them to his place for discussions over beer and wine; sometimes they even got drunk together. Schmitt repeatedly made positive comments after those discussions about Kirchheimer in his diary: "nice conversation with Kirchheimer" about *ius belli*,[27] "nice, especially Kirchheimer,"[28] "Kirchheimer was intelligent and nice."[29] Sometimes he invited Kirchheimer to spend some time with himself and his visitors, for example to walk around town with himself and Waldemar Gurian.[30] Or he met Kirchheimer together with other students such as Werner Weber in the library.[31] The two of them had shorter or longer conversations on an almost daily basis, either in Schmitt's office or in the university seminar room, which housed part of the library for the students. The notes in Schmitt's diary evidence that he valued Kirchheimer as a youthful and stimulating discussion partner even though his political views were diametrically opposed to his own. This seemed to make debating with Kirchheimer all the more alluring and interesting. Schmitt also supported him early on. His diary mentions in a note dated March 1927 that he had arranged for an article by Kirchheimer to be printed.[32]

No other doctoral candidate had a presence comparable to Kirchheimer's in Schmitt's diary during his last two years in Bonn. He had become Schmitt's favorite, his "prize student" (Anschel 1990, 85). To Kirchheimer, his relationship with his mentor in Bonn had an even stronger emotional component. Eugene Anschel, who had been friends with Kirchheimer since they were adolescents, reported in his private memoirs that Kirchheimer had a sink-or-swim attitude and did not normally help other students if they were having trouble with their studies, believing they had to manage on their own (see Anschel 1990, 84). He was driven all the more by Schmitt's approval and persuaded Anschel and other friends of his to study with Schmitt, too. Anschel failed his oral examination with Schmitt and was also appalled by his "military-minded" glorification of the Germans and his rejection of the "pragmatic British trade attitude." To Kirchheimer, whose political views were significantly further to the left than Anschel's, this was no reason to reject Schmitt. John H. Herz, another of Kirchheimer's longtime friends, interpreted the emotional component psychologically in retrospect: Schmitt had been a kind of "father substitute" for Kirchheimer (Herz 1989, 12). Herz even used Sigmund Freud's term "patricide"

26 Information from Ossip K. Flechtheim in a conversation with the author on 13 February 1988.

27 Carl Schmitt, diary entry of 2 June 1927 (Schmitt 2018, 143).

28 Carl Schmitt, diary entry of 23 June 1927 (Schmitt 2018, 148).

29 Carl Schmitt, diary entry of 30 June 1927 (Schmitt 2018, 149).

30 Carl Schmitt, diary entry of 12 September 1927 (Schmitt 2018, 162).

31 Carl Schmitt, diary entry of 14 September 1927 (Schmitt 2018, 163).

32 Carl Schmitt, diary entry of 30 March 1927 (Schmitt 2018, 130). Unfortunately, Schmitt's note in his diary is vague. No article written by Kirchheimer in 1927 could be found in any of the journals or magazines Schmitt had close connections to.

for the nothing less than obsessive way in which Kirchheimer conducted his disputes with Schmitt.[33]

Carl Schmitt generally set his doctoral candidates' dissertation topics. Their stimulating conversations during the "ambulatory office hours" when they went walking together inspired Schmitt to assign Kirchheimer a comparison between the theories of the state of socialism and Soviet communism. Kirchheimer consented enthusiastically.[34] He saw it as an opportunity to define his own position in terms of political theory more precisely between communists, social democrats, and leftist socialists; Schmitt in turn hoped Kirchheimer would critique Bolshevism. Kirchheimer began the writing phase of the dissertation in the summer break of 1927. He submitted the work to the Law Faculty six months later, on 27 December 1927.

4. Evaluating Kirchheimer's dissertation

The title of Kirchheimer's dissertation was *The Socialist and Bolshevik Theory of the State*.[35] The original version of the dissertation has been lost to this day; it is nowhere to be seen in Kirchheimer's or Schmitt's estate or in the files of the Bonn faculty or in the library of any other university. Kirchheimer was not required to submit the dissertation as a printed book to the faculty in order to receive his doctorate. He had applied to the faculty for permission to submit 120 copies of an essay which would be published in the *Zeitschrift für Politik* instead of the printed version of the entire dissertation. "The essay represents a summary of the findings of my dissertation," Kirchheimer wrote in the application to the faculty.[36] Schmitt had already consented to this procedure in advance: "The enclosed essay is a condensed summary of the dissertation and is of particular scientific interest."[37] It is worth taking a closer look at it as a starting point to ascertain how Kirchheimer dealt with Schmitt's theory.

Kirchheimer's essay "The Socialist and Bolshevik Theory of the State"[38] impresses readers in the original German version not least because of its lively style and its rhetorical exaggerations, which do not really come to their full effect in the otherwise very good English translation by John H. Paasche. In some places, his wording displays great similarities to Schmitt's language, also and sometimes precisely in passages where he clearly differs from Schmitt in substance. Kirchheimer begins his article by criticizing the "insufficiently political orientation of bourgeois liberalism" (3). He accuses liberalism

33 John H. Herz in a conversation with the author on 15 November 1985.

34 Ossip K. Flechtheim recounted this in a conversation with the author on 13 February 1988.

35 Letter from Otto Kirchheimer to Dean Heinrich Göppert dated 27 December 1927. Universität Bonn, Archiv der Juristischen Fakultät, Prüfungsakte Otto Kirchheimer, Promotion 1927/28, No. 500–524.

36 Letter from Otto Kirchheimer to the Dean of the Faculty of Law, University of Bonn, Heinrich Göppert dated 2 March 1928. Universität Bonn, Archiv der Juristischen Fakultät, Prüfungsakte Otto Kirchheimer, Promotion 1927/28, No. 500–524.

37 Letter from Schmitt to the Dean of the Faculty of Law, University of Bonn dated 1 March 1928. Universität Bonn, Archiv der Juristischen Fakultät, Prüfungsakte Otto Kirchheimer, Promotion 1927/28, No. 500–524.

38 See Kirchheimer (1928a). The following page numbers refer to this article.

of trusting too naively in constitutionalism and in the notion of the bourgeois *Rechtsstaat* (the bourgeois state under the rule of law) when struggling against the feudal powers in the early nineteenth century. In the meantime, the working class had matured into a relevant political factor. Owing to their "common front against feudal semi-absolutism" (3), bourgeois liberalism and the working class had entered into a closer relationship in the final third of the nineteenth century, which, in Kirchheimer's view, had left its mark on the political identity of Western European socialists that could still be observed. This historic alliance had only come apart when universal and equal suffrage had been established because then the democratic principles were being directed against the social strata supporting liberalism itself. These differences became trenchant in terms of the various conceptual interpretations of democracy. First of all, he claims, democracy meant the political "participation of all individuals" (4) in a very general sense.

For his further conceptual differentiations, Kirchheimer borrows from the terminology of Max Adler, an author on the revolutionary left wing of the Austro-Marxists, which Schmitt had commended. He also borrows Adler's methodology. Adler had given his book *The Marxist Conception of the State* the subtitle *A Contribution to the Differentiation of the Sociological and Juristic Method*. Kirchheimer agrees that all juristic forms were an expression of societal class relations. Adler distinguishes between "political" and "social" democracy.[39] Whereas "merely political democracy" granted all citizens the same political participation rights in principle but was otherwise based on the social heterogeneity of a capitalist class society, he believed only "social democracy" in a classless society was "true democracy." In Adler's opinion, since the character of contemporary bourgeois democracy was based on societal class, it would not be wrong to describe it as a dictatorship of the bourgeoisie. Referring to Marx and Luxemburg as well as Schmitt's book on dictatorship, Adler argues that Marx's formula of the "dictatorship of the proletariat" should be adopted again in the language used by theorists of Austrian and German social democracy.

In Adler's view, Schmitt had provided an "extremely lucid analysis" (Adler 1922, 165) of the problem of dictatorship. Adler praised Schmitt's non-formalist treatment of the problem of dictatorship in particular. Insofar as Schmitt had defined dictatorship as a "concrete exception," he had illuminated the fact that the substance of every dictatorship depends on the existence of the enemy it professed to eliminate.[40] Max Adler's writings and notably his terminological differentiation between the two forms of democracy were embraced by the leftist circles of the Weimar Republic's Young Socialists in the *Jungsozialistische Blätter* and the milieu of the magazine *Klassenkampf–Sozialistische Politik und Wirtschaft*.[41]

Kirchheimer takes up this differentiation, too, but develops his own terms for it: "formal democracy" and "value-based democracy" (5). Following Adler, he considers formal democracy under liberalism to be the condition of general political equal rights, which sees "in the absence of values a value in itself" (5). During a certain phase of the

39 See Adler (1922, 83–94) and Adler (1926).

40 On Adler and Schmitt on dictatorship, see Ananiadas (1999, 121–128).

41 On Adler's theory of democracy and his major influence on the left-socialist theory formation of the day, see Pfabigan (1982), and Bavaj (2005, 201–218).

class struggle, formal democracy was the political form in which the opposing social forces would organize in groups until they had reached a historic decision. In contrast, a democracy of values was based on all citizens recognizing "common values" (4), on a "certain understanding of social homogeneity" (6) going beyond equal rights in the merely political sense. Kirchheimer also follows Adler with respect to his hypothesis, based on Marx's deliberations in his *Eighteenth Brumaire of Louis Bonaparte*, that formal democracy was not stable. It functioned only as long as there was an approximate balance between the social classes struggling against each other and a "tacit agreement" (6) between them resulting from that approximate balance to let the outcome of "each election decide" (6) who would form the government that particular time. Since formal democracy was based on a compromise, all social groups would attempt to secure their visions of social policy by having them included in the constitution.

At this point, Kirchheimer addresses deliberations of his contemporaries and reform socialists Heinrich Cunow and Karl Renner, who advocated for closely circumscribed legal limitations on governmental power to give a bourgeois government as little room as possible to take action opposing the interests of the working class. The risk of this happening was the reason why these socialist theorists had also opposed the *Freirecht*[42] school of legal thought and had advocated strictly binding the judiciary to legal positivism. In connection with the strategy for legal policy proposed by Cunow and Renner, Kirchheimer used the German term *Verrechtlichung* (juridification), which he understood to be the expansion of the legal codification of state administrative action as well as an attempt to "avoid […] all factual decisions" (7).

The German term *Verrechtlichung* was coined in 1919 by the social democratic legal theorist Hugo Sinzheimer in the context of the *Räteverfassung* (Council Constitution); Kirchheimer expanded it to cover all areas of the law. Only when the juridification of social relationships had become widespread would the "true epoch of the *Rechtsstaat*" (the rule of law) (7) have dawned. Then the value of a decision would no longer lie in the factual reasons given for it but exclusively in the fact that it was a decision based on the law. Kirchheimer critically commented on this development, stating that this kind of state "lives off the law; yet it is no longer law (*Recht*), it is only a legal mechanism, so that those who think they are guiding the affairs of the state actually wield only a legal machinery which claims their attention in the same way a machinist is tied down by the apparatus he serves" (8).

Against the background of this general characterization of contemporary mass democracy under the *Rechtsstaat* in terms of legal policy, Kirchheimer presented two theories of the state, namely socialism and Bolshevism. He did not present them in a systematically organized fashion but meandered between the two theories and various topoi. Nor did Kirchheimer separate his presentation from his critique of the theories but reconstructed them from a critical perspective from the outset. To characterize the Russian and Soviet doctrines and circumstances, Kirchheimer drew on the relevant comments by Marx and Engels on Russia (to the extent these were known at the time),

42 In the early twentieth century, the *Freirecht* school of legal thought (Hermann Kantorowicz, Ernst Fuchs) demanded discretionary power for judges in order to infuse progressive ideas into a reactionary legal system.

statements by Lenin and Stalin, and older Menshevik literature that had been translated. In his presentation of the socialist theory of the state of the Second International, he mostly referenced the writings of Russian social democrat Plekhanov, French socialist Jean Jaurès, and Karl Kautsky, the most important theoretician of German social democracy of his time. Kirchheimer accused the social democrats of paying homage to a naive theory of twofold progress (10) according to which progress in capitalist economic development almost automatically also entailed progress toward humanism in the development of humankind, for which reason political conflicts could be dealt with in a more civilized way. Kirchheimer claimed that this theory fueled the illusion of a peaceful majority of socialist forces in the existing formal democracy, and its logical consequence would be to abandon the concept of dictatorship in the name of the cause of socialism.

According to Kirchheimer, however, Marx had never espoused such a humanist theory. The true kernel of Marx's theory is the doctrine of class struggle. One of Marx's achievements as a political theorist had been his acknowledgment of the existential intensity of class-based enmity. In Russia, it had been Lenin who had effectively rejected ideas like this, replacing them with a theory of relentless class struggle which did not recognize any supra-class morals. Kirchheimer saw parallels in these hypotheses of Lenin's both to Nikolai Berdyaev's Russian Orthodox philosophy of religion with its pointed emphasis of the relentless struggle between Christ and the Antichrist and to socialist theorist Georges Sorel's celebration of political violence and myth.[43] Similarly to Carl Schmitt in his chapter on the irrationalist theories of direct use of force in his work *The Crisis of Parliamentary Democracy* (see Schmitt 1923a, 65–76),[44] Kirchheimer recounted the hypotheses put forward by Sorel and Lenin in a way that revealed his fascination for these two propagandists of relentless political action. He was impressed by the Bolsheviks' ability to evoke the myth of glorifying the world revolution, claiming that it unveils and finally overcomes the enmity between the classes. Soviet mythmaking appeared to be more effective than reformist strategies.

Kirchheimer devoted particular attention to the Bolshevik concept of dictatorship following Schmitt's terminological differentiation between commissarial and sovereign dictatorship in the fourth chapter of his book *Dictatorship* (see Schmitt 1921, 112–131). The Soviet leadership had fully understood the centrality of the "principle of emergency" (14) for their political goals. Kirchheimer classified Lenin's understanding of dictatorship under the label of sovereign dictatorship since it sought to prepare the ground for the establishment of a socialist state of social equality using all means available and in a targeted fashion. Kirchheimer's creativity here in drawing on deliberations he was familiar with from Rudolf Smend's theory of integration is striking. Although Smend did not publish his comprehensive theory of integration until the autumn of 1928 in his book *Verfassung und Verfassungsrecht* [Constitution and constitutional law], preliminary deliberations on the matter can be identified in earlier publications; Kirchheimer had learned about the fundamentals of this theory in the classes he had taken with Smend in Berlin in 1926 (see Smend 1923, 84–86).

43 See Berdjajew (1924) and Sorel (1906).

44 On Schmitt's theory of the myth, see, in more detail, the discussion in the next chapter.

The sovereign dictatorship of the Bolsheviks would change the status of the law within the state by breaking with the liberal concept of the judiciary as a neutral third party ranked above the disputing parties, instead issuing rulings exclusively in line with Bolshevik values, thus attempting to integrate the lower strata of the population into the new state. The status of elections would change in the new state, too; instead of the liberal notion of keeping voting secret, open and unconcealed voting would be reshaped into a factor integrating the state. The everyday practice of the legal system and holding elections were also two key mechanisms of state integration in Smend's constitutional theory.[45]

The Bolshevik theory also changed the doctrine of international law used by the sovereign dictatorship to define its relations to other states. Departing from the irreconcilability of class antagonisms, the Bolshevik power elite did not consider international law to be a law of peace but, rather, a law of ceasefire and, consequently, they were opposed to the Geneva League of Nations as a matter of principle.[46] That had implications for the concept of sovereignty, too. Whereas Kirchheimer believed that notions of sovereignty had been diminished in Western Europe—in political theory by authors such as Harold Laski and in political practice through manifold international contractual relations—"the USSR singled out a definite and well-known locus of sovereignty that is sensational when held against the present-day tendencies of masking and concealment" (20). This locus was the proletarian class, in whom sovereignty was now newly vested. By deeming the international proletariat to be officially granted sovereignty, the Bolshevist theory of the state was the first in political theory to propose the "intentional separation […] of the concepts of state and sovereignty" (20). In its political tendency, this sovereignty was not bound to the borders of nation-states but was universal, just like the proletarian class.

Finally, Kirchheimer raised the question once again whether Soviet Russia was actually to be characterized as a state. He answered his own question in the affirmative: unlike bourgeois democracy—from which the majority of social democrats hoped to be able to begin the peaceful transition toward socialism one day—the political system established by Lenin "restored the integrational character of law and elections" (21). The Soviet Union had succeeded in invigorating the political forces using the political myth of the world revolution. The formal democracies of the West were in a different situation. Although the mere shell of the state still existed there, the state had become something "less than itself, a mere legal mechanism" (21); its citizens' participation in and enthusiasm for the state was only just enough to support the theory of twofold progress (10), which in turn was also an option for exiting the bourgeois *Rechtsstaat*. Such a "state—which no longer is one," Kirchheimer wrote at the end of his essay, "can no longer have an enemy; for it lacks tangible forms of political expression" (21).

The polemical thrust of the essay was obvious: moderate social democrats' basic flaw was to agree to compromises with the bourgeoisie instead of taking up the fervent struggle for socialism. Kirchheimer viewed the class relationship between the capitalist property owners and the working class as irreconcilable enmity. The current-day balance of

45 See Smend (1928, 154–157 and 207–212).

46 On Kirchheimer's discussion of the international law, see Chapter 4.

the class forces was only temporary and precarious and would tip over to one side or the other sooner or later. The socialists were to be under no illusions about a gradual transition to socialism along a sedate administrative path. Its academic status notwithstanding, Schmitt's work was not the only—not even the predominant—influence on Kirchheimer's thought in his essay. It was an eminently political contribution to leftist political theory in which Kirchheimer had mixed elements of the theories by Adler, Smend, and Schmitt in a truly original way.

In addition to his written dissertation, Kirchheimer had to undergo an oral examination with Schmitt. He selected general theory of the state as his major and international law and law of criminal procedure as his two minors for the oral examination. On 14 February 1928, Schmitt noted in his diary that he had conducted Kirchheimer's First State Examination in Law and given him the grade "very good, with distinction"—only two other students of Schmitt's in Bonn received such an exceptionally high grade from him. He read Kirchheimer's dissertation on 19 February 1928 and submitted his report to the Faculty of Law at the University of Bonn the following day. Compared with what is customary today, the report is relatively brief. Its complete text reads as follows:

> There are too many hypotheses and ideas that were not expanded upon in the work. The following are to be mentioned as particularly interesting and scientifically valuable: the hypotheses on the structure of social balance of the modern industrial state and the statement that socialism nowadays encompasses a dual concept of progress (the "theory of twofold progress"). These are complemented by outstanding conceptual deliberations such as the differentiation of utopia and myth, the integrating function of the judiciary, etc. Almost every single one of these hypotheses and opinions—expanded upon and presented soberly and systematically—would have sufficed for a dissertation, whereas now, the reader's overall impression suffers from the overabundance of ideas that are not expanded upon. This is not to say that they are superficial or dilettantish aperçus; rather, this is simply a typical case of youthful productivity. In other words, I would not like to accuse the author of having too many ideas; instead, I would like to emphasize his doubtless very great scientific talent and his independent and valuable discussion of particularly current and important concepts (such as democracy, liberalism, parliamentarism, or socialism) which in my opinion justify assessing the work as excellent.[47]

No secondary report is to be found in the files; at the time, the secondary reviewer would often assent to the first reviewer's assessment simply by commenting "agreed." Kirchheimer defended his dissertation jointly with Werner Weber, another doctoral candidate of Schmitt's, in a two-hour session. After submitting 120 copies of the essay that had been published in the *Zeitschrift für Politik* to the faculty in Bonn, he received his doctoral title on 15 May 1928.[48]

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47 Dissertation report written by Carl Schmitt, 19 February 1928. Universität Bonn, Archiv der Juristischen Fakultät, Prüfungsakte Otto Kirchheimer, Promotion 1927/28, No. 500–524.

48 In contrast to the correspondence, Schmitt's report, and the article published in the *Zeitschrift für Politik*, the doctoral certificate gives the title of the work as follows "*Zur Staatstheorie* […]" and not "*Zur Staatslehre des Sozialismus und Bolschewismus*." The grade indicated on the doctoral certificate

One episode at the end of Kirchheimer and Schmitt's time together in Bonn was striking. On the evening of 25 February 1928, after the successful defense, Kirchheimer met Erik Peterson at Schmitt's house for a few glasses of wine to celebrate his exam. This time, Schmitt no longer reacted to the political disagreements between himself and Kirchheimer in a sympathetic and paternal manner. It might be that Kirchheimer expressed his criticism of the mostly rightist and radical rightist students in the Bonn circle around Schmitt more openly now that he had passed his exam or that he attacked Schmitt's political position more directly than before—for Schmitt, in any case, the get-together at his house ended on a sour note. For the first time, he wrote a negative comment about Kirchheimer in his diary: "Kirchheimer lacks any national sentiment, horrendous."[49]

5. Conclusion: Lessons from Bolshevism for Social Democrats

In the same year as Kirchheimer published his article, the SPD received almost 30% of the vote, its best election result since 1919. From the perspective of the SPD leadership, nothing seemed to stand in the way of the reformist dream of twofold progress. These optimistic expectations were vigorously rejected by the communist left, who denounced every social democratic policy success as that of agents of the capitalist system. The criticism of the party leadership's policies from the leftist wing of the SPD—including many Young Socialists as well as highly regarded members of the Reichstag such as Kurt Rosenfeld, Kirchheimer's partner's father—was more complicated. They had less trust in the political neutrality of the institution of the state and its bureaucracy, military, and judiciary. Kirchheimer's critique of the concept of the state held by the reformist party leadership of the SPD was an important contribution to the leftist debates of the day in that, building on Schmitt's theory of sovereignty, he doubted the permanence of the Weimar Republic's model of social balance, thus asserting that its existence was precarious. Instead, he reminded readers of the irreconcilability of the social class basis of the Weimar state.

It is hardly surprising that his first longer essay was quoted a few times in leftist journals such as *Klassenkampf* and *Sozialistische Tribüne* during the Weimar Republic. Yet it was Schmitt in particular who emphasized that the essay was a truly "noteworthy" contribution (Schmitt 1931b, 142) to the theory of the modern state derived from Marxist discussions. He repeated his praise in a number of publications and called it an outstanding analysis of the precarious social balance in the relationship between the bourgeoisie and the working class in modern industrial countries such as Germany.[50] To Schmitt, Kirchheimer's dissertation proved that the Marxists considered the current-day state and its constitution merely a transition period toward a better socialist future. Kirchheimer thus became a key witness for Schmitt's deep conviction that the stance of the left toward

is "very good," the best possible grade (Otto Kirchheimer's doctoral certificate; original, owned by Hanna Kirchheimer-Grossman).

49 Carl Schmitt, diary entry of 25 February 1928 (Schmitt 2018, 208).

50 See Schmitt (1929a, 99) and (1930c, 183).

the existing state was one of uncompromising enmity. Schmitt read Kirchheimer's hypotheses as confirming his own expectations of instability, which—in contrast to Kirchheimer—led him to seek authoritarian mechanisms for stabilization. After the Grand Coalition had collapsed in the summer of 1930, Schmitt even sent a copy of Kirchheimer's essay to his colleague Gerhard Anschütz. The leading liberal defender of the Weimar Constitution, however, reacted in a somewhat perplexed way, writing to Schmitt: "As so often with such writings from the camp of the youngest generation, I had the uneasy impression: everything is faltering nowadays, everything. Where will this lead?" [51]

Nevertheless—at the young age of 22, Kirchheimer had already made a name for himself in the Weimar debates on legal theory. In the following decades, his essay became part of the Marxist canon on state theory. More than fifty years later, Jürgen Habermas referred in his seminal *Theory of Communicative Action* to Kirchheimer's term *Verrechtlichung* (juridification) and turned it into a paradigmatic concept of critical theory to illustrate the "colonization of the lifeworld" (see Habermas 1981, 356–373). The piece by the young Kirchheimer has been interpreted by some in the secondary literature as an argument in favor of Bolshevism or at least as evidence of certain sympathies with the development in Soviet Russia.[52]

Yet Kirchheimer emphasizing the power and strength of Bolshevism must not be confused with him supporting it. After all, Kirchheimer saw no realistic political opportunity for Soviet Russian-style communism to take hold in Germany. In order to justify this view, he referenced letters Marx wrote in 1881 to his Russian translator Vera Zasulich about the specific features of the Russian Empire. These letters were first published in 1924 and triggered heated discussions among socialist and communist leftists at the time. Kirchheimer also made no secret of the fact that although he was impressed by the political power of the myth of the class struggle preached by Sorel, he agreed with the French ethnologist Lucien Lévy-Bruhl that the mythical consciousness was a pre-logical irrationalism. Such an irrationalism belonged to the emotional and spiritual world of "primitive peoples"[53] and could not detect any rational form of consciousness reconcilable with Marxism in any way, shape, or form. Kirchheimer was fascinated by Lenin's strong political will. But he rejected any mythical foundation of left-wing politics.

When Kirchheimer emphasized the strength of Bolshevism, this did not mean that he identified with it. However, the Bolsheviks taught the social democrats a lesson about the conditions for the success of left-wing politics. For him, this lesson was about the courage to formulate a socialist program that deliberately placed itself outside the political form of liberal democracy, which was fetishized by contemporary social democracy. Social democracy was to take on the courage for an active, decisive, and militant policy from the Bolsheviks.

51 The letter from Anschütz to Schmitt is quoted in Schmitt and Smend (2011, 85).

52 See Scheuerman (1994, 24–26), Bavaj (2007, 42), and Breuer (2012, 114).

53 Kirchheimer (1928a, 4), see also Lévy-Bruhl (1922, 94–97).